Circuit Court for Anne Arundel County
Case No. C-02-CR-16-001058

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2163

September Term, 2016

CORBEN JOHNSON

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: May 21, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On the evening of May 4, 2016, Corporal Christopher Rajcsok was on patrol near the Annapolis mall when a Chevy Cruz maneuvered down the center of two lanes of traffic and then turned, cutting off the patrol car and forcing Corporal Rajcsok to hit his brakes. After observing the Chevy Cruz fail to yield to another vehicle, Corporal Rajcsok activated his emergency lights and effected a traffic stop. He obtained the driver's license and a rental agreement for the Cruz, and recognized the driver's name from an arrest roughly two years prior involving drugs in a rental car in roughly the same area. Corben Johnson, ("Appellant") was sitting in the front passenger seat. Corporal Rajcsok radioed in a request for backup and a drug-detection dog. Ultimately, a search of the vehicle yielded several baggies of suspected heroin in a child's sock under the front passenger seat, and after initially fleeing from the scene, Appellant was apprehended and arrested.

Prior to his bench trial (that proceeded on a not guilty agreed set of facts) in the Circuit Court for Anne Arundel County, Appellant moved to suppress the heroin recovered in the vehicle (as well as additional bags of heroin that he discarded while fleeing arrest), arguing that the traffic stop had ended when he was issued a warning some minutes before the K-9 unit arrived. The suppression court denied Appellant's motion, finding that the officer had a reasonable suspicion that criminal activity was afoot to detain the vehicle while waiting for the K-9 unit. At trial, the circuit court convicted Appellant of possession of heroin with the intent to distribute.

Appellant presents one issue on appeal, which we quote:

"Did the circuit court err in denying the motion to suppress?"

We affirm the decision of the suppression court and hold that the decision to detain Appellant until the arrival of the K-9 unit was premised on reasonable, articulable suspicion that criminal activity was afoot.

BACKGROUND

On October 5, 2016, Appellant moved to suppress the baggies of heroin recovered both in the vehicle and that he abandoned while fleeing from the arresting officers.[1] During the hearing, Appellant's counsel stated that she was not challenging the legality of the traffic stop itself, but argued that detaining Appellant while the K-9 unit arrived constituted a second stop, which "was not justified by reasonable articulable suspicion."

During the hearing, Corporal Rajcsok from the Anne Arundel County Police Department recalled the events that transpired on the evening May 4, 2016. He stated that while he was on patrol in the area of the Annapolis mall, he observed a "black Chevy Cruz[e] with a Maryland tag on it[] . . . driving in the middle of the two lanes entering the mall[.]" According to Cpl. Rajcsok, the black Chevy Cruze made a left turn, "cutting me off and causing me to hit my brakes." The Chevy Cruze then entered a traffic circle "without yielding to the right of way" of another vehicle already in the traffic circle, "causing them to stop and hitting their brakes also." Cpl. Rajcsok radioed his dispatcher to report the stop at 8:36PM and activated his emergency equipment to conduct the traffic stop.

[1] Appellant's counsel told the court at the beginning of her argument during the suppression hearing that she also sought to suppress a statement that Appellant supposedly made at the police station after being arrested. There is no argument on this issue in Appellant's brief.

Cpl. Rajcsok exited his vehicle and approached the driver side window of the Chevy Cruze to obtain the driver's license and registration and explain why he stopped the driver. The driver gave Cpl. Rajcsok his license and a rental agreement for the vehicle. Cpl. Rajcsok testified that he recognized the driver's name—Willie Rhodes, Jr.—from a past arrest roughly two years earlier. He explained that

> I've had a couple of run-ins with Mr. Rhodes, one of which was a lengthy car chase from the Annapolis Mall through Annapolis, into the city, down into New Town where the car crashed. We caught him and he had heroin on him.

When the State inquired whether there were "other parts of his background" that Cpl. Rajcsok was familiar with, he responded:

> [CPL. RAJCSOK]: I mean I know his name. I've heard his name through other people during investigations about CDS and CS dealings, but the one that really sticks out is the one that I was in the car chase with where he was charged.
>
> * * *
>
> [THE STATE]: So, you've been familiar with other police officers communicating to you about Willie Rhodes?
>
> [CPL. RAJCSOK]: Yes, ma'am.
>
> [THE STATE]: And involvement of?
>
> [CPL. RAJCSOK]: Of drugs, yes, ma'am.
>
> [THE STATE]: Did that pique your interest?
>
> [CPL. RAJCSOK]: Yes, ma'am.

Cpl. Rajcsok testified that his suspicion continued to increase because "[i]t was a rental car." He explained that drug dealers commonly use rental cars "to conceal their

identity" and "because most likely, there's nothing wrong with th[e] vehicle so they don't have to worry about a brake light being out or the tag being bad. It's just basically a good car to drive because it stands out less to us in terms of like equipment violations and we're less likely to be able to know who's inside the vehicle." Cpl. Rajcsok added that he knew that Rhodes lived in Annapolis, which compounded his suspicion that the rental vehicle was being used to traffic drugs. Additionally, he recalled that when he arrested Rhodes two years prior, Rhodes was driving a rental car.

Cpl. Rajcsok then returned to his vehicle and contacted his dispatcher to request a backup squad car and a drug dog at 8:37PM. One minute later, at 8:38PM, he began to prepare paperwork in connection with the traffic stop. Shortly thereafter, Officer Lesaine arrived on the scene as a backup officer. Off. Lesaine spoke to Rhodes and reported back to Cpl. Rajcsok. Cpl. Rajcsok recalled their conversation. He testified that

> [w]hen I was in my vehicle conducting my traffic paperwork in the investigation of the traffic stop, [Off. Lesaine] spoke to the driver, who he conveyed to me, felt that he was nervous. He said that he was stuttering his words and that he gave them a story that they were there [to] get food for his daughter.

Cpl. Rajcsok clarified that there were no children or females present in the vehicle at the time of the stop.

On cross-examination, Appellant's counsel established that Cpl. Rajcsok's report actually stated that Rhodes said that he was at the mall to get chicken for his daughter. Then, on re-direct, to rebut Rhodes' explanation that he was there "to get some chicken for him and his daughter," Cpl. Rajcsok testified that at the time of the traffic stop, Rhodes had

actually driven past Nando's, a popular chicken restaurant in the Annapolis mall, and passed the parking area for Nando's before entering the traffic circle.

While preparing the paperwork in connection with the traffic stop, Cpl. Rajcsok contacted Cpl. Evan Lively, a K-9 handler for the Anne Arundel Police Department, and spoke with him about the stop and his knowledge of Rhodes. Cpl. Rajcsok then described the conversation:

> [CPL. RAJCSOK]: . . . I had a conversation with our K-9 officer. I kind of gave him the rundown of what I had, the driver, who had the drug priors, the rental car, the –
>
> THE COURT: The driver who had what?
>
> [CPL. RAJCSOK]: The priors, the drug priors. The fact that the driver appeared nervous and kind of gave a story about getting food for the kid to the mall. So I explained to him what I had and what I believed to be the reasonable articulable suspicion to hold them for them to get there.
>
> He confirmed. He said I could hold them, so I held them for the dog to get there.

On cross-examination, Cpl. Rajcsok was unable to attest to the time at which he completed the traffic stop, but agreed that it was completed before Cpl. Lively arrived.

Cpl. Lively then testified that he received a call from Cpl. Rajcsok on the evening of May 4, 2016, while he was at a police and K-9 training facility in Millersville, Maryland. Cpl. Lively told the court that based on the facts he received from Cpl. Rajcsok, he believed "that there was enough reasonable articulable suspicion to detain the vehicle" but clarified that when he receives a request to bring a detection dog, he does not "always agree that there's enough reasonable articulable suspicion[,]" and can decline to go. Cpl. Lively arrived at the Annapolis mall parking lot at 8:56PM and had a conversation with Cpl.

Rajcsok about the traffic stop. Cpl. Lively recalled that Cpl. Rajcsok "was familiar with the occupants in the vehicle and he explained to me the RAS [(Reasonable Articulable Suspicion)] had developed during . . . the course of the traffic stop[.]" Rhodes and Appellant were then asked to exit the vehicle.

Cpl. Lively retrieved his K-9 partner, Leo, from his police cruiser and performed a search on the Chevy Cruze. When asked to elaborate on the procedure used during the stop, Cpl. Lively explained that

> [i]n this particular case, I gave the command to locate the illegal narcotics and usually our first pass of the vehicle is what we call a "free sniff." Now, a free sniff of the vehicle is to allow that dog to work independently to locate the source of the odor without the interference of the handler.
>
> So, when I gave the dog the command to locate illegal narcotics, and in this case, he chose a clockwise direction of the vehicle and immediately pulled me to the open passenger's side door.

Cpl. Lively continued, testifying that after Leo signaled[2] that he smelled illegal narcotics, he "jumped into the vehicle" without guidance and "started messing around with the center console, placed his nose on the center console and then went down to the passenger's side seat. He started focusing a lot of his attention on the underneath of the passenger's side seat[.]" Cpl. Lively estimated that seven to eight minutes elapsed between when he arrived on the scene to the time that Leo signaled to the presence of illegal narcotics in the Chevy Cruze.

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[2] According to Cpl. Lively, a signal means a "noticeable difference or a change in behavior[,]" which for Leo, includes "an accelerated tail wag and several changes in his distinct breathing patterns[.]"

Upon further inspection of the area under the front passenger seat, officers recovered a small chip bag containing a knotted child's sock that had "protrusions of small lumps in it that were consistent with the size of like quarter- or half-gram bags of heroin." The sock contained "several smaller clear bags" of suspected heroin. After recovering the suspected heroin, officers approached Rhodes and Appellant, informing them that they were under arrest. Upon hearing this, Appellant attempted to flee the scene on foot, traveling through the mall parking lot and an adjacent restaurant parking lot. After a brief chase, Appellant was subdued and handcuffed. Officers retraced Appellant's flight path and recovered another child's sock, similar to the one they found in the car, which also contained a bag with several bags of suspected heroin. Appellant was then transported back to the police station.

During closing arguments before the suppression court, Appellant's counsel contended that the State had not met its burden of demonstrating that Cpl. Rajcsok had a reasonable suspicion to detain the vehicle until the K-9 unit arrived. Counsel pressed:

> I mean articulable means they need details. So, if that was enough, Mr. Rhodes could be detained any time because he has this reputation, because he seems nervous in the presence of law enforcement, which is true of a lot of innocent people, and he's driving a rental car, which we know is lawful.
>
> He's driving a rental car lawfully, based on the information that we have. I think the fact that he lives in Annapolis doesn't matter. I mean people are offered rental cars if their regular car needs bodywork on it or something. We don't know why because there's no statements by Mr. Rhodes as to why. He's at the mall during regular hours.
>
> None of this adds up to reasonable suspicion.

The court ultimately disagreed with Appellant's counsel, and found the testimony of both officers to be credible. The court further elaborated:

> I don't believe that they were in a fishing expedition. I believe the officer articulated the reasons why he felt that something was going on. It turned out that he was correct.
>
> So, I'm satisfied with that explanation. I think the State has proven that that is the reason for the stop and I think that's – for the continued stop. So, although the traffic stop, by that point, had ended, [] the officer continued to have reasonable suspicion that it was something other than a traffic stop going on based upon the particular circumstances that he had in front of him with his own previous knowledge.
>
> So, I conclude that the continued stop and the search and seizure was not illegal.

Appellant proceeded to trial and was convicted of possession of heroin with intent to distribute and sentenced Appellant to twenty years imprisonment, with all but eighteen months suspended, followed by three years supervised probation. Appellant noted a timely appeal.

STANDARD OF REVIEW

When reviewing a circuit court's grant or denial of a motion to suppress, we consider only the evidence before the court at the suppression hearing. *McFarlin v. State*, 409 Md. 391, 403 (2009). We view the evidence and inferences that may be drawn therefrom in the light most favorable to the prevailing party. *Briscoe v. State*, 422 Md. 384, 396 (2011). We also "extend 'great deference' to the factual findings and credibility determinations of the circuit court, and review those findings only for clear error." *State v. Andrews*, 227 Md. App. 350, 371 (2016) (quoting *State v. Donaldson*, 221 Md. App. 134, 138 (2015) (internal quotation marks and citation omitted). "Although we extend

great deference to the hearing judge's findings of fact, we review, independently, the application of the law to those facts to determine if the evidence at issue was obtained in violation of the law and, accordingly, should be suppressed." *Laney v. State*, 379 Md. 522, 533-34 (2004). "We will review the legal questions *de novo* and based upon the evidence presented at the suppression hearing and the applicable law, we then make our own constitutional appraisal." *Wilkes v. State*, 364 Md. 554, 569 (2001).

DISCUSSION

Appellant concedes the traffic stop was lawful, but argues that the suppression court ruling should be reversed because the officers did not have reasonable articulable suspicion to detain the vehicle after the traffic stop concluded. Appellant's assignment of error centers on the contention that the traffic stop was impermissibly prolonged to conduct the K-9 scan based on the officers' improper reliance on: 1) Rhodes' arrest two years prior and his general criminal reputation; 2) his overall nervous behavior; 3) his use of a rental car; and 4) a doubtful explanation as to why he was at the mall. Appellant urges that these factors, even when considered in the totality of the circumstances, fall short of reasonable suspicion.

The State responds that the circuit court did not err in denying the motion to suppress, as the myriad factors cited by Corporal Rajcsok, when reviewed in totality, established a reasonable, articulable suspicion that the occupants of the vehicle were engaged in criminal activity.

The stopping of a vehicle and the detention of its occupants is a seizure and implicates the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809-10 (1996). However, "the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Id.* at 810. The detention of a person "'must be temporary and last no longer than is necessary to effectuate the purpose of the stop.'" *Byndloss v. State*, 391 Md. 462, 480 (2006) (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion)). "[T]he purpose of a traffic stop is to issue a citation or warning. Once that purpose has been satisfied, the continued detention of a vehicle and its occupant(s) constitutes a second stop, and must be independently justified by reasonable suspicion." *Munafo v. State*, 105 Md. App. 662, 670 (1995). Reasonable suspicion need not be apparent at the outset of a traffic stop, but may develop during the course of a traffic stop and the two investigations—for the traffic violation and alternate criminal activity—may proceed on parallel tracks. *Jackson v. State*, 190 Md. App. 497, 515 (2012). Appellant does not contest the validity of the initial traffic stop. The issue in this case, therefore, hinges on whether the State demonstrated that police had "reasonable suspicion that criminal activity [wa]s afoot" in order to detain Appellant until the K-9 unit arrived. *Crosby v. State*, 408 Md. 490, 505 (2009) (citing *Terry v. Ohio*, 392 U.S. 1, 17 (1968)).

There is no standardized test to determine whether reasonable suspicion exists. *Bost v. State*, 406 Md. 341, 356 (2008). Rather, it is a

> common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act. While the level of required suspicion is less than that required by the probable cause standard, reasonable suspicion nevertheless embraces something more than an inchoate and unparticularized suspicion or hunch.

Crosby, 408 Md. at 507 (internal quotation marks and citations omitted).

In making this determination, "the court must examine the totality of the circumstances[,]" and can consider a variety of factors including, but not limited to, "the environment in which the detention occurs, as well as the appearance, conduct, and criminal record of the detainee." *Mufano*, 105 Md. App. at 674 (citations omitted). As the Supreme Court instructed in *United States v. Arvizu*, "Although an officer's reliance on a mere 'hunch,' is insufficient to justify a [*Terry*] stop, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard[.]" 534 U.S. 266, 274 (2002) (internal citations omitted). Our Court of Appeals has further instructed that a court should defer "to the training and experience of the law enforcement officer who engaged the stop at issue. Such deference 'allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude and untrained person.'" *Crosby*, 408 Md. at 507 (quoting *Arvizu*, 534 U.S. at 273) (additional citations and quotation marks omitted). This deference to police officers, however, is not limitless, and "does not allow [a] law enforcement official to simply assert that apparently innocent conduct was suspicious to him or her[.]" *Ferris v. State*, 355 Md. 356, 391-92 (1999). Rather, in order to satisfy the constitutional protections of the Fourth Amendment, an officer "must explain how the observed conduct, when viewed in the context of all the other circumstances known to the officer, was indicative of criminal activity." *Crosby*, 408 Md. at 508.

Applying these principles to the instant case, we conclude that the police officers had a reasonable suspicion to support their continued detention of Appellant based on the totality of the circumstances, and testimony presented at the suppression hearing sufficiently articulated how this suspicion was formed.

1. Rhodes' Prior Arrest and Criminal Reputation

Appellant contends that the court improperly relied on "generalized assertions of criminal reputation" and that the probative value of Rhodes' prior arrest in 2014 "was reliable, but long stale" at the time of the traffic stop. While we generally agree with Appellant's assertion that "those with prior arrests and prior convictions must be allowed to live in the world without the risk of constant harassment," 4 Wayne R. Lafave, et al., 4 Search & Seizure § 9.5(g) (5th ed.), the decision to detain Rhodes and Appellant was not simply based on Rhodes' prior record, but a panoply of other factors. As the State correctly points out, Cpl. Rajcsok "and Rhodes had literally been down this road before, and [] it ended with the crash of Rhodes' rental vehicle and the seizure of heroin."

The knowledge of Rhodes' general criminal background—including his arrest in 2014 involving heroin in a rental vehicle—may not have been enough to satisfy the standard required to demonstrate probable cause, as Appellant points out. *See Greenstreet v. State*, 392 Md. 652, 677 (2006) (holding that an affidavit citing evidence recovered in a residential trash seizure one-year prior was insufficient to provide probable cause to issue a search warrant); *Lee v. State*, 47 Md. App. 213, 231 (1980) (holding that information from a drug sale 11 months prior was too stale to support probable cause to issue search warrant). As we have previously discussed, however, the standard required to establish

reasonable suspicion is considerably lower than that of probable cause. *Crosby*, *supra*, 408 Md. at 507. In the instant case, Cpl. Rajcsok testified that he recognized Rhodes from a previous high-speed chase that started at the Annapolis mall and ended with an arrest and the recovery of heroin from a rental car. Additionally, Rhodes' name had been mentioned among law enforcement officers as a person involved in drug trafficking several months before this traffic stop.

2. Nervousness

Appellant avers that Rhodes' nervousness and stuttering during the traffic stop were irrelevant to a finding of reasonable suspicion. As the Court of Appeals has noted, nervousness during an encounter with a law enforcement official, standing alone, is not automatically indicative of criminal activity sufficient to warrant further investigation, especially when the person stopped by police is compliant and other suspicious circumstances are not present. *Sellman v. State*, 449 Md. 526, 554-55 (2016). *See also Ferris*, 355 Md. at 387-88 (noting that nervousness during a traffic stop that is not "out of the ordinary" does not demonstrate criminality readily distinguishable from an innocent traveler); *Whitehead v. State*, 116 Md. App. 497, 505 (1997) (observing the difficulty in "distinguish[ing] the nervousness of an ordinary citizen" during a routine traffic stop "from the nervousness of a criminal who traffics in narcotics."). However, as Judge Moylan, writing for this Court in *Jackson v. State*, eloquently stated: "A nervous reaction by a detainee, we readily agree, means almost nothing by itself, but like the slow drip, drip, drip of water on a rock, it may nonetheless contribute to a larger totality. A single drop means little, but in the end a mountain has become a plain." 190 Md. App. at 520. Therefore,

while we consider Rhodes' nervousness as part of the totality of the circumstances, we view its worth with skepticism as directed by prior Maryland appellate opinions.

3. Use of a Rental Vehicle

Appellant argues that Rhodes' employment of the rental car "has virtually no probative value" as "[p]eople rent cars for many legitimate reasons[.]" While the employment of a rental car, without more, does not provide the level of suspicion necessary to conduct an investigatory stop, it is nevertheless an important factor in the calculus of reasonable suspicion. In *Jackson*, *supra*, police stopped a male driver for speeding and discovered that the car, which had out-of-state plates, was rented by female who was not in the vehicle. 190 Md. App. at 523. This Court held that the fact that the driver was operating a rental car—in conjunction with the possession of two cell phones, a number of air fresheners, excessive nervousness, presence on a known drug-corridor, and a suspicious explanation of where he was going—was appropriately considered in the calculus of the suspicion required to detain the defendant. *Id.* at 523.

Appellant points out that in this case, the car was rented by Rhodes and it did not have out-of-state plates. However, Cpl. Rajcsok testified that he found the use of the rental car to be suspicious because Rhodes lived in Annapolis, that drug dealers commonly use rental cars to conceal their identity, and most importantly, that Rhodes had used a rental car roughly two years prior to transport heroin in roughly the same location. The suppression court was permitted, and encouraged, to rely on Cpl. Rajcsok's experience, training, and knowledge as a police officer in making a determination as to whether reasonable suspicion existed. *See Crosby*, *supra*, 408 Md. at 507.

4. The Chicken Restaurant

Lastly, Appellant argues that Rhodes' stated reason for being at the mall—to get chicken for his daughter—was not so incredulous as to create reasonable suspicion to conduct an investigative detention. Simply because Rhodes may have had a legal explanation as to why he and Appellant were driving through the Annapolis mall thoroughfare does not then automatically negate other factors that could lead a reasonable police officer to develop a level of suspicion to sufficient to justify a stop. *Cf. Illinois v. Wardlow*, 528 U.S. 119, 125 (2000) (noting that lawful, but suspicious behavior can be the basis for an investigative stop to resolve the ambiguity without violating the Fourth Amendment). Cpl. Rajcsok testified in this case that Rhodes passed a chicken restaurant and that, although Rhodes said that he and Appellant were buying chicken for his daughter, there were no females in the vehicle.[3]

Based on the foregoing factors, considered in the totality of the circumstances, we hold that the decision to detain Rhodes and Appellant after the traffic stop until the arrival of the K-9 unit was premised on the reasonable and articulable suspicion of the police

[3] Appellant argues that because "the suppression hearing judge did not mention the chicken theory in explaining his ruling[,]" we should be precluded from considering Cpl. Rajcsok's testimony that his suspicion was aroused when Rhodes told him that he was in the parking lot to get chicken for his daughter despite the fact that he had already driven past Nando's, the only chicken restaurant visible in the area. Because we review the factual findings of the court as applied to the law under a *de novo* standard, we examine all of the evidence developed during the hearing, regardless of whether the court explicitly stated that it considered it in its ruling. *Wilkes*, 364 Md. at 569. Moreover, we view the inferences that may be drawn from that evidence in the light most favorable to the prevailing party—in this case the State. *Briscoe*, 422 Md. at 396. Therefore, we may consider Cpl. Rajcsok's testimony that he witnessed Rhodes drive past the Nando's as part of the overall reasonable suspicion inquiry.

officers at the scene. The suppression court correctly denied Appellant's motion to suppress the heroin recovered in the car and during his flight from the scene of the traffic stop.

JUDGMENT OF THE CIRCUIT COURT OF ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.