Circuit Court for Montgomery County
Case No. 126667C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2465

September Term, 2015

CASEY O. JOHNSON

v.

STATE OF MARYLAND

Woodward, C.J.
Arthur,
Leahy,

JJ.

Opinion by Leahy, J.
Concurring Opinion by Arthur, J.

Filed: November 14, 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.

In *Johnson v. State*, this Court considered whether the Circuit Court for Montgomery County erred in denying Casey Johnson's motion to suppress evidence that police seized pursuant to a warrantless search of the trunk of her car during a traffic stop. 232 Md. App. 241, 243-44 (2017), *vacated*, *State v. Johnson*, 458 Md. 519 (2018). We held that "[t]he factual circumstances surrounding the stop of Johnson's vehicle fell short of establishing probable cause that she was transporting contraband in the trunk of her car." *Id.* at 271. Earlier this year, the Court of Appeals vacated our judgment, holding that our decision "fail[ed] to view, in their entirety, the facts and circumstances that led the police to search the trunk of [Johnson's] car." *Johnson*, 458 Md. at 543. That Court then remanded the case, so that we could consider Johnson's remaining question presented, which we did not reach in our original decision:

> "Did the police have reasonable articulable suspicion to continue detaining Ms. Johnson after a reasonable amount of time to process a traffic stop had passed?"

We hold that, based on the totality of the circumstances, the police had reasonable articulable suspicion to extend the duration of the initial stop to investigate further criminal activity, and they pursued that investigation in a diligent and reasonable manner.

DISCUSSION[1]

Johnson argues that Officer Sheehan's bare assertions that the stop occurred in a "high crime area"; that Johnson appeared "extremely nervous"; and that Johnson and her

[1] Because our decision, 232 Md. App. 241, 244-55, and the Court of Appeals' decision, 458 Md. at 523-30, both set out in detail the facts adduced at the suppression hearing in this case, we will not set them out separately again here. Instead, we will include only those facts necessary for our discussion.

front-seat passenger, Anthony Haqq, made "furtive movements" without supporting facts or context; were insufficient to support a finding that the officers had reasonable articulable suspicion of criminal activity. **App. Br. 14, 20, 22** Johnson claims that, upon these facts, the officers had no more than "an unparticularized hunch."

The State contends that the trial court was correct in finding that Officer Sheehan had reasonable articulable suspicion of criminal activity to continue to detain Johnson after the conclusion of the traffic stop, viewing Officer Sheehan's observations under the totality of the circumstances and given the officer's training and expertise. **A'ee Br. 3-5.** The State argues that Officer Sheehan "articulated his logic for reasonably suspecting" Johnson was engaged in criminal activity. **A'ee Br. 3-4.**

The Supreme Court has made clear that when the police stop a motor vehicle and detain the occupant(s), the detention is a seizure that implicates the Fourth Amendment, *States v. Sharpe*, 470 U.S. 675, 682 (1985); *Delaware v. Prouse*, 440 U.S. 648, 653 (1979), and is "subject to the constitutional imperative that it not be 'unreasonable' under the circumstances." *Whren v. United States*, 517 U.S. 806, 810 (1996).

The duration of a traffic stop "'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)). An officer's purpose during a traffic stop is ordinarily "to enforce the laws of the roadway" and "to investigate the manner of driving with the intent to issue a citation or warning." *Ferris v. State*, 355 Md. 356, 372 (1999).

Once an officer has completed the tasks related to the original traffic stop, any continued detention is considered a second stop and, absent the driver's consent, the officer may only extend the stop as a second, *Terry*-style stop if "the officer has, at a minimum, a reasonable, articulable suspicion that criminal activity is afoot."[2] *Ferris v. State*, 355 Md. at 372; *see also State v. Ofori*, 170 Md. App. 211, 245 (2006) ("Unfolding events in the course of the traffic stop may give rise to *Terry*-level articulable suspicion of criminality, thereby warranting further investigation in its own right and for a different purpose.").

Reasonable articulable suspicion "is a less demanding standard than probable cause, [but] there must be at least a minimal level of objective justification for the stop. The officer must be able to articulate more than an 'inchoate and unparticularized suspicion or "hunch" of criminal activity.'" *Illinois v. Wardlow*, 528 U.S. 119, 123-24 (2000) (internal citations omitted). "Whether the police have reasonable articulable suspicion to investigate further is based on the totality of circumstances." *Santos v. State*, 230 Md. App. 487, 498 (2016). Officers may develop reasonable suspicion "from 'a series of acts, each of them perhaps innocent' if viewed separately, 'but which taken together warrant[s] further investigation.'" *U.S. v. Sokolow*, 490 U.S. 1, 9-10 (1989) (citations omitted). This standard permits officers "to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that

[2] Here, Johnson refused expressly to consent to the search of her vehicle; therefore, our review focuses on the trial court's finding that Officer Sheehan developed reasonable articulable suspicion that Johnson was engaged in criminal activity. **T2. 18.**

'might well elude an untrained person.'" *U.S. v. Arvizu*, 524 U.S. 266, 273 (2002) (citations omitted).

When reasonable suspicion exists, and officers extend a traffic stop to a *Terry* stop, the "constitutional duration" that is permissible for such a stop "varies dramatically from that of a traffic stop generally[.]" *Santos*, 230 Md. App. at 504. Thus, when reasonable suspicion of another crime appears to officers conducting a traffic stop, "the rules pertaining to *Terry*-stops take over. The inquiry shifts to whether the police pursued their investigation from that point in a diligent and reasonable manner." *Id.* The reasonableness of traffic stop detentions must be assessed on a case-by-case basis. *Jackson v. State*, 190 Md. App. 497, 512 (2010).

When reviewing a ruling on a motion to suppress, we limit our review to the facts adduced at the suppression hearing, deferring to the suppression court's findings of fact unless clearly erroneous and viewing those facts in the light most favorable to the prevailing party. *Carter*, 236 Md. App. at 467; *Santos*, 230 Md. App. at 494-95. And we review the suppression court's "legal conclusions *de novo*, making our own independent constitutional evaluation as to whether the officer's encounter with the defendant was lawful." *Sizer v. State*, 456 Md. 350, 362 (2017).

In the case before us, it is undisputed that Officer Sheehan had probable cause to stop Ms. Johnson's vehicle for a broken brake light. **T2. 18.** Instead, Ms. Johnson is challenging the duration of the traffic stop as constitutionally impermissible, and whether Officer Sheehan developed reasonable articulable suspicion of criminal activity to conduct an investigative stop after the traffic stop concluded. The suppression court found that

Officer Sheehan developed reasonable articulable suspicion to conduct the second stop based on the following observations: 1) the stop occurred in a high crime area; 2) Johnson and Haqq's furtive movements; and 3) Johnson and Haqq's "unusual degree of nervousness." **T2. 7-11.** A quick review of the timeline reveals that much of the indicia of criminality that provided the probable cause to search Johnson's trunk according to the Court of Appeals in *Johnson*, 458 Md. at 541-43, also satisfies the reasonable articulable suspicion necessary to investigate crimes other than Johnson's broken taillight during her traffic stop.

Officer Sheehan pulled over Johnson and her two passengers at 7:25:45 p.m. **T2. 7-8.** By 7:25:50, he got out of his police cruiser and approached Johnson's car. **T1. 28.** After observing Johnson's nervousness and Haqq's furtive movements, Officer Sheehan returned to his patrol car by 7:26:27 to call for backup and to begin processing the traffic stop and conduct routine license, registration, and warrant checks in four systems. **T1. 33-37.** While he did so, he continued to observe Haqq move furtively. **T1 34.** By 7:29:30, Officer Sheehan had received the results of the background checks on Johnson and her vehicle and Officer Dos Santos had arrived on the scene as backup. **T1. 38-40.** Officers Sheehan and Dos Santos waited just over two minutes, however, for Officer Mancuso to arrive at 7:32—just eight minutes after the stop began—before approaching the vehicle. This slight delay was for "officer safety reasons," because there were three occupants in Johnson's vehicle. **T1. 41, 106.**

Officer Sheehan then questioned Johnson and searched her person (with her consent) between 7:32:44 and 7:35:16. **T1. 41-46.** Meanwhile, Officer Mancuso had

retrieved Haqq's information and Officer Dos Santos had retrieved Mr. Helms' information. **T1. 46.** Officer Mancuso remained standing next to Haqq's passenger window, while Officer Sheehan ran the passengers' checks. Officer Sheehan testified that while he ran the background checks he also re-opened the e-ticket for the repair order for Johnson's broken brake light at 7:41 p.m.[3] **T1. 52.** At 7:42:39 background checks of Johnson's passengers revealed that both passengers had "PWID [possession with intent to distribute] or distribution priors," and Haqq had "a couple of assault on law enforcements." **T1. 50.** Therefore, in just 17 minutes (7:25 – 7:42) after pulling over Johnson, police had obtained all the information that the Court of Appeals held, "viewed in their totality and through the lens of the officers' experience and expertise, gave rise to *probable cause* that the trunk contained additional drugs or contraband." *Johnson*, 458 Md. at 541-43 (emphasis added).

Johnson contends that traffic stop should have concluded at 7:32, when Officer Sheehan approached her vehicle the second time because he had already confirmed that her brake light was broken and received the results of her background checks. But, by then, most of the facts were already apparent that the Court of Appeals determined in *Johnson*, offered the police probable cause to believe that criminal activity was afoot, including that:

- Officer Sheehan was "assigned to a unit specializing in crime suppression in high-crime areas[;]"
- "The suppression court credited Officer Sheehan's training and experience in

[3] Officer Sheehan's testimony is not exactly clear as to whether he actually issued the repair order at 7:41 p.m. or just opened it back up at that time. **T1. 73.** He did not give Johnson the order/citation until they got to the police station. **T1 91**

drug suppression[;]”

- “Officer Sheehan observed both [Johnson and, her passenger] Mr. Haqq engage in simultaneous ‘furtive movements’ inside her vehicle[,]” making Officer Sheehan think that “[Johnson] and Mr. Haqq may be trying to conceal drugs or weapons[;]”
- “Officer Sheehan’s observation that [Johnson]’s nervousness was beyond that of normal nervousness that he encountered throughout his ‘thousands of traffic stops[;]’”
- “When [Johnson] asked Mr. Haqq to retrieve her registration, he provided no assistance, instead displaying an ‘unusual degree of nervousness in these actions[;]’”
- “When Officer Sheehan returned to his vehicle to input [Johnson]’s information, Mr. Haqq’s furtive behavior continued. He began ‘moving back and forth,’ ‘lifting up off his seat and leaning back,’ and appearing to ‘reach[] around’ the inside of the car[;]”

Id.

Based on these facts and the Court of Appeals’ holding in *Johnson*, we must conclude that during the constitutional duration of Johnson’s traffic stop, Officer Sheehan developed reasonable articulable suspicion to investigate further criminality, and that police pursued that investigation in a diligent and reasonable manner. Officer Sheehan did not deviate his behavior from the tasks relating to processing Johnson’s traffic violation until 7:32, eight minutes into the stop. By that point, Officer Sheehan had observed nearly all the facts that the Court of Appeals held gave rise to probable case, including Johnson’s “extreme nervousness” during an otherwise routine traffic stop in a “high-crime area” and Haqq’s numerous furtive movements and abnormal behavior. *Id.* 458 Md. at 541-43. He testified, credibly, that he found Johnson’s level of nervousness at this point to be beyond a level of normalcy that he’d observed in the thousands of traffic stops he’d conducted previously. *Id.* at 541-52.

Given that reasonable articulable suspicion "is a less demanding standard than probable cause," *Wardlow*, 528 U.S. at 123, we conclude that Officer Sheehan had reasonable articulable suspicion to justify extending Johnson's traffic stop to a *Terry* stop by the time Officer Dos Santos arrived on the scene at 7:29 and the two officers waited for Officer Mancuso to arrive at 7:32. **T1. 41, 106.** From there, the officers continued the investigation promptly. As stated above, the investigation garnered probable cause to search the trunk of Johnson's car by 7:42, just 10 minutes after Officer Mancuso arrived and 17 minutes after the initial traffic stop. Accordingly, we hold that "the officers here pursued their on-going *Terry* investigation in a diligent and reasonable manner." *Santos*, 230 Md. App. at 504-05.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANT TO PAY COSTS.

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I agree that the conclusion in this case is compelled by the reasoning in the majority opinion in *State v. Johnson*, 458 Md. 519 (2018). I write separately for the sole purpose of saying that, if the decision in this case were mine alone, I would give little weight to the officer's assertion that the traffic stop in this case occurred in a "high-crime area."

Others have pointed out that the term "high-crime area" is not only amorphous and undefined, but that it can be used as a proxy for race and ethnicity. *United States v. Montero-Camargo*, 208 F.3d 1122, 1132 (9th Cir. 2000); *see also United States v. Black*, 707 F.3d 531, 542 (4th Cir. 2013). This case illustrates why courts should not passively acquiesce in the deployment of that undefined term.

The briefs state that the traffic stop occurred at the intersection of Century Boulevard and Middlebrook Road in suburban Germantown, Maryland. According to Google Maps,[4] the site of the stop is just down the street from a Mercedes-Benz dealership (Euro Motorcars Germantown), the Germantown Public Library, and the BlackRock Center for the Arts. The amount of crime in that area may have been higher than it is in a gated community in Potomac or on the slopes of rural Sugarloaf Mountain, but I seriously doubt that it was "high" in any absolute sense of the term. I just do not find it very plausible that people would go into a "high-crime area" to shop for German luxury automobiles or to have their German luxury automobiles serviced.

[4] A court may take judicial notice of information in a digital map from an established online mapping service, such as MapQuest or Google Maps. *See Pahls v. Thomas*, 718 F.3d 1210, 1216 n.1 (10th Cir. 2013) (taking judicial notice of a Google Map and satellite image); *United States v. Perea-Rey*, 680 F.3d 1179, 1182 n.1 (9th Cir. 2012) (quoting Fed. R. Evid. 201) (taking "judicial notice of a Google map and satellite image as a 'source[ ] whose accuracy cannot reasonably be questioned'").

I know that there is serious crime in and near Germantown, and in other areas of Montgomery County. But I saw no evidence, other than the officer's characterization, about the allegedly "high" level of crime in the apparently ordinary suburban enclave where this stop occurred. 4 Wayne R. LaFave, *Search and Seizure* § 9.5(g), at 745 ("[u]nspecific assertions that there is a crime problem in a particular area should be given little weight, at least as compared to more particular indications that a certain type of criminal conduct of the kind suspected is present in that area") (footnotes omitted). If this was a high-crime area, then the term has little meaning other than to denote a place where, by fiat, the Fourth Amendment does not apply in full force.