UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2267

September Term, 2015

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BONZIE LEE CURTIS, JR.

v.

STATE OF MARYLAND

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Arthur,
Reed,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Raker, J.

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Filed: January 4, 2017

Appellant, Bonzie Lee Curtis, Jr., was convicted in the Circuit Court for Wicomico County of possession of cocaine with intent to distribute, and related firearm offenses. Appellant presents one question for our review:

> "Did the trial court err in denying appellant's motion to suppress?"

We shall hold that the circuit court denied appellant's motion to suppress properly and shall affirm.

## I.

Appellant was charged in the Circuit Court for Wicomico County with possession of cocaine with the intent to distribute and related firearm offenses. The jury convicted him of possession of cocaine with intent to distribute, possession of a firearm in connection to a drug trafficking offense, possession of a shotgun as a prohibited person, possession of an unregistered shotgun rifle, possession of firearms, and illegal possession of ammunition. The circuit court sentenced appellant to a term of incarceration of thirty years.

The following evidence was presented at the suppression hearing: On March 14, 2015, at 10:22 p.m., Officer Brian Barr conducted a traffic stop of a silver Pontiac Grand Am with a Delaware license plate for three traffic violations: a non-operational front fog light, a non-operational brake light, and an obstructed front view.

Two individuals were in the car; appellant, the front seat passenger, and his son, Bonzie Lee Curtis, III, the driver. Officer Barr observed that both men appeared to be very nervous, avoided eye contact, and neither had very significant answers to any of his

questions. When one of the vehicle occupants opened the glove box to retrieve the vehicle's registration, Officer Barr noticed a Crown Royal bag in the glove box. Officer Barr testified that based on his experience such bags are "commonly used to carry controlled dangerous substances [or] . . . firearms." Officer Barr testified that he returned to his cruiser, and at 10:24 p.m., requested for a K-9 officer to respond to the scene. He then opened E-Tix[1] at 10:25 p.m.

Officer Barr testified that it was one of his common practices in a traffic stop, especially in a high-crime area with people that have criminal indicators as he had observed in this traffic stop, to first run the driver's information through Maryland Case Search. He further testified that it was only after completing a case search investigation and after feeling comfortable in the area, which sometimes required the presence of a backup officer, that he would start entering all of the information into E-Tix to complete the traffic stop. He testified that this was necessary for his personal safety, and that he knew of "numerous cases where officers have been injured and killed . . . because they [were] distracted during the traffic stop." After requesting K-9 assistance, Officer Barr started a case search investigation into both appellant and his son, producing multiple pages of results for appellant. Based on his practice, Officer Barr went through and opened each of the

[1] E-Tix stands for Electronic Traffic Information Exchange. The "E-Tix software . . . was developed by the Maryland State Police and is provided to allied agencies to be used as a method to issue Maryland Uniform Complaint and Citations." Anne Arundel County Police Department Written Directive, § 1904.2, http://www.aacounty.org/departments/police-department/rules-regs/sections17-19/1904.2%20E-Tix%2006-05-15.pdf (last visited October 28, 2016).

criminal cases and several of the traffic stops to learn the details of each event. This investigation revealed that appellant had been convicted of "distribution of narcotics with a handgun," and had been charged with possession of controlled dangerous substances not marijuana, possession of narcotics with the intent to distribute, and possession of not marijuana.

Upon seeing appellant's prior handgun conviction, at about 10:30 p.m.[2], Officer Barr called for backup and stopped entering information into E-Tix because he had to pay more attention to the subjects in the vehicle for his personal safety. Five minutes into opening E-Tix, Officer Barr noticed that the vehicle registration that the driver had provided did not match the car. With the knowledge of appellant's criminal history, Officer Barr approached the vehicle for the second time to inquire as to the incorrect registration. The driver explained the mistake and provided Officer Barr with the correct registration.

At 10:33 p.m., after talking to the driver, Officer Barr returned to his cruiser. Corporal Underwood arrived and Officer Barr briefed him on the situation. He testified that after briefing Corporal Underwood, he again requested a K-9 officer at 10:34 p.m. because he had not heard back regarding K-9 availability, and he proceeded to complete the E-Tix process. Officer Barr testified that it was his standard procedure on a traffic stop

[2] The record is unclear as to exactly when Officer Barr called for backup. The suppression hearing transcript indicates that he called for another officer "[w]hen [he] observed that [appellant] had a history of firearms" during the course of his case search investigation. The transcript states that, at 10:30 p.m., Officer Barr was waiting for Corporal Underwood "to clear his call a couple blocks down the road," implying that the backup request occurred at some point between 10:25 p.m. after opening E-Tix and starting the case search investigation, and 10:30 p.m.

that "once [he's] finished entering all the information into E-Tix and [has] all of the charges . . . pulled up, [he would] verify the license status and the wanted status of the driver."

At 10:38 p.m., Officer Barr ran the driver's information with the dispatcher to see if the license was valid and if the driver had any outstanding warrants. He testified that it was a very busy night and that it was sometimes difficult to get onto the radio. Furthermore, "[another] officer had requested and was actually temporarily given a higher [priority] code by a different supervisor for a more urgent call that had been going on," and that he could not use his radio to contact the dispatcher if someone else is on the radio.

Concurrently at 10:38 p.m., Corporal Engle arrived with his K-9, and after running the driver's information with the dispatcher, Officer Barr briefed Corporal Engle on the situation. Corporal Underwood had appellant and the driver get out of the vehicle. Corporal Engle and his K-9 then conducted a dog scan of the vehicle. Both men were subsequently arrested based on the scan and search of the car and its contents. A sawed-off shotgun, seven shotgun shells, numerous baggies containing suspected crack cocaine, a Crown Royal bag, and $500 in U.S. currency were recovered from the scan of the vehicle, from appellant, and from the floor of the police cruiser where appellant's feet had been. Officer Barr could not recall as to exactly when the dispatcher returned information as to the driver's driving or warrant status, specifically, whether before or after Corporal Engle approached the vehicle. Officer Barr issued the driver a warning for the three traffic violations.

On April 27, 2015, appellant filed a motion to suppress the evidence seized by the police. In the motion, he claimed that "[e]vidence seized in this case was obtained as the result of an illegal search and seizure," and requested the "[s]uppression of . . . illegally seized evidence . . . ." Following an evidentiary hearing, the circuit court denied the motion to suppress evidence. The court held that the initial stop was justified by the legitimate traffic violations, and that Officer Barr was justified in pursuing both the traffic stop and the case search investigation based on his observations of extreme nervousness of the driver and passenger, a Crown Royal bag, the fact that he was in a high-crime area, and that he was dealing with the improper registration at one point. The court held that there was no unreasonable prolonging of the traffic stop, and regardless, that Officer Barr had reasonable, articulable suspicion to await the arrival of the K-9.

Following sentencing, appellant noted this timely appeal.

## II.

In this appeal, appellant contends that the circuit court erred in denying his motion to suppress evidence by holding that there was no unreasonable prolonging of the traffic stop, and that the consequential searches prompted by a K-9 alert violated his Fourth Amendment right against unreasonable searches and seizures. In arguing that there was an unreasonable prolonging of the traffic stop, appellant posits that Officer Barr was not diligent in issuing a traffic ticket during the 17 minutes between the initial traffic stop and the beginning of the K-9 scan. Specifically, appellant argues that Officer Barr unduly

extended the traffic stop by investing a significant amount of time to investigate thoroughly the prior criminal convictions and traffic encounters of appellant, failing to diligently pursue the traffic stop after backup arrived, requesting a K-9 unit for the second time after backup arrived, and calling in the driver's name to dispatch for the first time 17 minutes into the traffic stop. Appellant also claims that Officer Barr was not genuinely concerned for his personal safety in justifying the delay, evidenced by his second approach to the vehicle despite knowledge of appellant's criminal background and absence of backup. Appellant further contends that the circuit court did not find that there was independent reasonable articulable suspicion.[3]

The State contends that the circuit court denied the motion to suppress evidence properly, because the traffic stop was running its course and never amounted to unreasonable prolongation. Although the State recognizes that an officer conducting a traffic stop may not delay in fulfilling the purpose of the stop, it argues that Officer Barr's delay, if any, in pursuing the traffic stop was reasonable for the following reasons: First, Officer Barr possessed legitimate concerns for his personal safety. Second, Officer Barr followed his standard procedure for when someone acts in a suspicious manner during a

[3] Appellant misstates in his brief that "the [circuit] court *did not* find that there was independent reasonable articulable suspicion that drug related activity was afoot to search Appellant's son's car," and "any such finding would been [sic] error." Appellant's Br. 27 (emphasis added). The circuit court found as follows:

> "[THE STATE]: And the last point, or question I have is, is the Court also finding that, independent of the traffic stop, the officer had reasonable articulable suspicion to await the presence of the K-9, or the arrival of the K-9?
> THE COURT: Yes."

traffic stop or when he is in a high-crime area. Third, the dispatcher was extremely busy on this particular night and was not dedicated exclusively to his use. Fourth, the driver partially caused the delay by handing Officer Barr the incorrect vehicle registration. Fifth, while there is no set amount of time that must elapse for a traffic stop to be *per se* unreasonable or *per se* reasonable, the entire stop lasted only 16 minutes, which falls near the short end of the spectrum.

III.

Ordinarily, an appellate court reviews the denial of a motion to suppress based solely upon the record of the suppression hearing. *Ferris v. State*, 355 Md. 356, 368 (1999). In doing so, we review the facts and reasonable inferences as found by the trial court in the light most favorable to the State as the prevailing party on the motion. *Cartnail v. State*, 359 Md. 272, 282 (2000). *See also State v. Sizer*, No. 0784, Sept. Term, 2016, 2016 WL 6962571, at *2 (Md. Ct. Spec. App. Nov. 29, 2016) (stating that when there is a conflict between the versions of evidence presented by the State and by the defense, appellate review should favor the prevailing party). "When there is a conflict in the evidence, an appellate court will give great deference to a hearing judge's determination and weighing of first-level findings of fact. It will not disturb either the determinations or the weight given to them, unless they are shown to be clearly erroneous." *Id.* (quoting *Longshore v. State*, 399 Md. 486, 498 (2007)).

Because the trial judge is in the best position to judge the credibility of the witnesses, we extend great deference to the fact-finding of the hearing judge as to the credibility of witnesses and to weighing and determining first-level facts. *In re Tariq A-R-Y*, 347 Md. 484, 488 (1997). We accept the facts as found by the hearing judge unless those facts are clearly erroneous. *State v. Collins*, 367 Md. 700, 707 (2002). However, on review, we do not defer to the suppression hearing court's legal determinations. *Turkes v. State*, 199 Md. App. 96, 113 (2011). We make our own independent *de novo* review with respect to ultimate, conclusory, or mixed questions of law and fact. *Charity v. State*, 132 Md. App. 598, 607 (2000).

IV.

The primary question before us requiring our independent constitutional appraisal in this case is whether Officer Barr unreasonably prolonged the traffic stop, thereby unreasonably seizing appellant without possessing reasonable articulable suspicion.

The Fourth Amendment to the United States Constitution provides as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable searches and seizures*, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

U.S. Const. amend. IV. The Fourth Amendment protects against *unreasonable* searches and seizures. *Byndloss v. State*, 391 Md. 462, 479-80 (2006). To be sure, the Fourth Amendment applies to traffic stops. *See United States v. Sharpe*, 470 U.S. 675, 682 (1985);

*State v. Green*, 375 Md. 595, 609 (2003). However, a traffic stop does not violate the Fourth Amendment initially if a police officer has probable cause to believe that a traffic violation has occurred. *Whren v. United States*, 517 U.S. 806, 810 (1996).

In addition, the detention "must be temporary and last no longer than is necessary to effectuate the purpose of the stop," which is "to issue a citation or warning." *Munafo v. State*, 105 Md. App. 662, 670 (1995) (citation omitted). "Maryland law demands that a motorist who is subjected to a traffic stop for a minor traffic violation cannot be detained at the scene of the stop longer than it takes–or reasonably should take–to issue a citation for the traffic violation that the motorist committed." *Wallace v. State*, 142 Md. App. 673, 680 (2002).

Once the purpose of a traffic stop has been fulfilled, however, the continued custody of the car and occupants amounts to a *secondary detention*, which to be valid under the Fourth Amendment must be independently justified by reasonable articulable suspicion. *See Ferris*, 355 Md. at 372. Moreover, a delay in pursuing a traffic stop equally constitutes a *secondary detention* if the purpose of the traffic stop could have been completed and the issuance of a ticket or warning is simply delayed in order for an officer to engage in an investigation unrelated to the traffic stop. *See Graham v. State*, 119 Md. App. 444, 456-58 (1998) (finding that 25 minutes of detention between initial stop and arrival of K-9 was unreasonable when purpose of stop had been satisfied within first few minutes).

In the case at bar, it is undisputed that Officer Barr had probable cause to stop the Pontiac Grand Am and that there was an initial valid traffic stop based upon non-operating

front and rear lights, and an obscured front view. Appellant disputes neither the stop itself nor the searches conducted after the K-9 alert to the presence of narcotics, but instead relies solely upon his alleged unreasonably prolonged detention.

Because the initial traffic stop and initial seizure is undisputed and justified, we address whether the traffic stop took longer than necessary to effectuate the purpose of the stop. Because appellant argues not that there were two separate detentions, but that the initial stop was unreasonably prolonged, we analyze only the latter.

When the length of a traffic stop is in question, that is, the officer unreasonably prolonged the traffic stop to effectively constitute unreasonable seizure implicating the Fourth Amendment, we look at whether the investigating officer has proceeded as *diligently* as the officer could have under the circumstances. *See Graham*, 119 Md. App. at 465-68. When "there is evidence that the investigating officers have not proceeded as diligently as they could under the circumstances, a prolonged detention will be viewed as unreasonable." *Id.* at 468.

In *Byndloss*, the police officer stopped the vehicle legitimately after witnessing a minor traffic infraction. *Byndloss*, 391 Md. at 468-69. Due to no fault of the officer, however, the information system that was used to retrieve the license, registration and warrant information was down. *Id.* This caused an approximately 30 minute delay that allowed the K-9 unit to arrive on the scene, leading to the discovery of contraband. *Id.* at 472-73. The Court of Appeals held that because the records check was incomplete, the purpose of the stop had not been accomplished before the K-9 unit arrived, and that due to

the officer's repeated attempts to contact the barracks for information, he had pursued the acquisition of the records check with sufficient diligence. *Id.* at 477-92.

Like *Byndloss*, we find that Officer Barr was diligent throughout the traffic stop. The following is a brief reiteration of the traffic stop. At 10:22 p.m., Officer Barr made the initial traffic stop, approached the vehicle, briefly talked to the occupants and received their identification and vehicle registration. After returning to his cruiser, he called for a K-9 unit at 10:24 p.m., opened E-Tix at 10:25 p.m., and concurrently started his case search investigation into the occupants. Whereupon discovering appellant's unusually long criminal and traffic history, in particular the gun offense, Officer Barr requested backup for his personal safety. While waiting for backup to arrive, he discovered that the vehicle registration did not match. Thus, at 10:30 p.m., he approached the vehicle, talked to the driver, and received an explanation and the correct registration. At 10:33 p.m., as he returned to his cruiser, Corporal Underwood, the backup officer, arrived on the scene and was subsequently briefed. After briefing Corporal Underwood, Officer Barr contacted the dispatcher at 10:34 p.m., as he had not heard back regarding the availability of K-9 support. Officer Barr then called in the driver's information at 10:38 p.m., concurrent to the arrival of the K-9 unit.

There are four points during the stop where appellant argues that Officer Barr prolonged the traffic stop to the point of unreasonableness: Officer Barr (1) conducted case search investigations into the driver and appellant, (2) waited for backup to arrive, upon which appellant alleges that Officer Barr did not diligently complete the traffic stop,

(3) called for K-9 assistance on two separate occasions, and (4) belatedly called the dispatcher 16 minutes into the traffic stop.

First, appellant argues that Officer Barr unreasonably prolonged the traffic stop by conducting case search investigations into both the driver and appellant. Officer Barr testified that it was his practice during traffic stops, especially in high-crime areas, to conduct case search investigations in order to find out with whom he was dealing. In this case, the officer looked up appellant on Maryland Case Search, which proved to be a long list consisting of several pages, and upon seeing the criminal charges, clicked through them to see what they were for, revealing gun charges associated with drug convictions. When the search revealed appellant's gun history, he called immediately for backup assistance and stopped entering information into E-Tix, based on his knowledge of officer deaths and injuries from failing to pay attention. Moreover, this "extensive" investigation into appellant's and driver's criminal and traffic history consumed, at maximum, 5 minutes between 10:25 p.m., when Officer Barr initially opened E-Tix, and 10:30 p.m., when he made his second approach to the vehicle to address the incorrect registration problem.

Appellant argues that Officer Barr wasted even more time by conducting the case search investigation into not only the driver, but also appellant, the passenger. In *Maryland v. Wilson*, however, the Supreme Court held that a police officer's authority to order the driver of a lawfully stopped car to exit his vehicle extended to passengers as well. *Maryland v. Wilson*, 519 U.S. 408, 415 (1997). The *Wilson* Court noted "it was the officer's practice to order all drivers [stopped in traffic stops] out of their vehicles as a

matter of course as a precautionary measure to protect the officer's safety." *Id.* at 412. The Court believed it "too plain for argument" that this justification of officer safety was "both legitimate and weighty." *Id.* (citation omitted). The *Wilson* majority reasoned that the "danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car," and because "as a practical matter, the passengers are already stopped by virtue of the stop of the vehicle," the "additional intrusion on the passenger is minimal." *Id.* at 413-15. The trial court was not clearly erroneous in finding that it was reasonable for Officer Barr to take precautionary measures and to conduct case search investigations as a precautionary measure for his safety.

Second, appellant asserts that Officer Barr was not diligent in pursuing the traffic stop after backup arrived. The record, however, does not support appellant's claim. After Corporal Underwood arrived, Officer Barr briefed him, made a second call inquiring as to the K-9 availability because he had not heard back from the dispatcher, and proceeded to fill out the E-Tix in the five minutes that elapsed from 10:33 p.m. to 10:38 p.m., upon which the K-9 unit arrived. Officer Barr testified that it was his standard procedure on a traffic stop that "once [he's] finished entering all the information into E-Tix and [has] all of the charges . . . pulled up, [he would] verify the license status and the wanted status of the driver." From this testimony and the fact that he ran the driver's license and warrant check at 10:38 p.m., the trial court could have inferred reasonably that Officer Barr used the five minutes after backup arrived to finish entering information into E-Tix.

Third, appellant argues that Officer Barr unreasonably prolonged the traffic stop by calling twice for a K-9 officer. Under the Fourth Amendment, "[u]sing a dog is accepted as a perfectly legitimate utilization of a free investigative bonus as long as the traffic stop is still *genuinely* in progress," and the stop is not prolonged for the purpose of conducting the scan. *Padilla v. State*, 180 Md. App. 210, 224 (2008) (citation omitted). *See also Wilkes v. State*, 364 Md. 554, 582 (2001). Here, Officer Barr was in the process of entering information into E-Tix, and had yet to call in the driver's information. The record is clear that Officer Barr called for a K-9 unit the second time only because he had not heard back from the dispatcher.

Fourth, appellant argues that the traffic stop was unreasonably prolonged because Officer Barr called in the driver's information 16 minutes into the traffic stop. The dispatcher in the case at bar was not dedicated exclusively to Officer Barr. The dispatcher was very busy that evening, and that another officer was temporarily given higher priority during a portion of Officer Barr's traffic stop.

As the prevailing party on the suppression motion, this Court's appellate review will favor the State in any conflict between competing versions of evidence. More importantly, the trial judge heard all of the evidence and judged the credibility of the witnesses, particularly the police officer. He found the officer's testimony credible. He believed that the officer was concerned genuinely for his safety. This Court pays great deference to the credibility findings of the hearing judge. Although at first blush it might appear that the officer delayed the stop to await the K-9 officer, the hearing judge listened to all of the

evidence and evaluated it. Fourth Amendment cases stress that an officer's actions must be evaluated in the totality of the circumstances. In these days where officers are shot for no apparent reasons, we are not prepared to say that a police officer, when stopping an unknown motorist, is not permitted to evaluate the criminal record of a driver or passenger. Considering all of the circumstances presented herein, the 16 minutes, which included a verification of the identity of the occupants in the vehicle, the resolution of the registration discrepancy, and the criminal history exploration of the passenger, along with the wait for backup, we conclude that Officer Barr acted reasonably.

We hold that the circuit court did not err or abuse its discretion in finding that Officer Barr did not unreasonably prolong the traffic stop.[4]

**JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**

[4] Because we hold that there was no unreasonable prolonging of the traffic stop, there was no unreasonable seizure under the Fourth Amendment. Therefore, we do not address whether there existed reasonable articulable suspicion.