Circuit Court for Queen Anne's County
Case No. C-17-CR-21-000540

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 800

September Term, 2022

MICHAEL CASEY

v.

STATE OF MARYLAND

Albright,
Arthur,
Reed,

JJ.

Opinion by Reed, J.

Filed: February 27, 2025

The State's Attorney of Queen Anne's County charged Appellant, Michael Casey, with possession of a controlled dangerous substance with intent to distribute, possession of a firearm, and other related charges.[1] On March 3, 2022, the Appellant made a motion to suppress evidence obtained in a warrantless search, which the circuit court denied. Appellant then pled not guilty on an agreed statement of facts and was convicted of possession of a controlled dangerous substance with intent to distribute and wearing, carrying, and transporting a handgun upon his person. Appellant was sentenced to twenty years, suspending all but three years, for the possession offense, three years, consecutive, for the possession of a firearm offense, and three years of probation. He then timely appealed this sentence.

In bringing his appeal, Appellant presents one question for appellate review:

> I. Did the suppression court err in concluding there was reasonable articulable suspicion to extend a traffic stop when the trooper did not sufficiently articulate his suspicion of criminal activity?[2]

[1] The full list of the Appellant's charged offenses is as follows: possession of a controlled dangerous substance, methamphetamine, with intent to distribute, possessing more than 448 grams of methamphetamine, importation of a controlled dangerous substance, possession of marijuana, possession of methamphetamine, possession of drug paraphernalia, having a loaded handgun in a vehicle, having a loaded handgun on one's person, transporting a handgun on a public road, carrying and transporting a handgun on one's person, illegally possessing a firearm, using a firearm in the commission of a felony, possessing a firearm in relation to a drug trafficking crime, wearing, carrying, and transporting a firearm in relation to a drug trafficking crime, illegally possessing ammunition, and driving on a highway above the speed limit.

[2] We rephrase the Appellant's question, which was originally phrased as:

> Did the suppression court err in concluding there was reasonable articulable suspicion to extend a traffic stop beyond the time necessary to process the

For the reasons discussed below, we reverse the finding of the suppression court.

FACTUAL & PROCEDURAL BACKGROUND

In the early hours of September 8, 2021, the Appellant was driving home to New Jersey in his Winnebago along Route 301 in Queen Anne's County, Maryland. Trooper First Class Justin Daigle of the Maryland State Police was on patrol on Route 301 that night. As Appellant's Winnebago passed by Trooper Daigle, Trooper Daigle noticed that the Appellant "kind of half stood up, turned his whole body to [Trooper Daigle] and gave [him] an over-exaggerated wave." Trooper Daigle began to follow the Winnebago after noticing a speeding violation and a headlamp violation. Appellant was driving sixty-four miles per hour when the speed limit was fifty-five miles per hour. Trooper Daigle ran the vehicle's registration, finding that the Winnebago was registered to McDeisel, LLC, a business registered in Montana. At 2:07 a.m., Trooper Daigle pulled the Appellant over.

Trooper Daigle initiated a traffic stop of the Winnebago, approaching the passenger side door to speak with the Appellant. Trooper Daigle described the Appellant as "looking frantically" because he was standing up and moving side-to-side and his eyes were wide open and moving side-to-side. When the Appellant opened the Winnebago door, Trooper Daigle could see that he was "profusely" sweating despite the cool air coming from the RV, and the carotid artery in his neck was throbbing.

Trooper Daigle then asked Appellant a few questions. As the Appellant answered

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citation when the sole basis for police suspicion was Appellant's claimed nervousness?

Trooper Daigle's questions, his manner of speech was very rapid and the end of his words or sentences would have a higher pitch. First, Trooper Daigle asked for Appellant's license and registration, which Appellant produced. Then Trooper Daigle asked about the vehicle's registration being from McDeisel, LLC, and Appellant responded that the Winnebago was his company's vehicle. The third question was about work being done to the vehicle after Trooper Daigle noticed the stairs being re-done. Trooper Daigle noticed that Appellant's voice was calmer and more coherent when discussing the improvements. Trooper Daigle next inquired about Appellant's itinerary. The Appellant first said that he was coming from Myrtle Beach, South Carolina where he went to see a woman, but he said he never saw her and instead stayed in a Walmart parking lot. Trooper Daigle said he had a second conversation with Appellant about his itinerary, and in this second conversation the Appellant said he was coming from Atlanta, Georgia.[3] Lastly, Trooper Daigle asked the Appellant about firearms. Trooper Daigle said Appellant broke eye contact with him and looked towards the rear of the vehicle when asked this question.

After speaking to the Appellant, Trooper Daigle returned to his vehicle, ran the

[3] It is unclear from the suppression hearing when this second conversation happened and whether it occurred before the second stop began. On the cross examination of Trooper Daigle, Appellant's counsel established that Trooper Daigle asked the Appellant only five questions during his initial conversation at the Appellant's vehicle. Of these questions, the fourth question was about the itinerary. When asking about this second conversation, the State and Appellant's counsel never inquired as to when precisely this second conversation occurred. Neither party contends that this conversation happened after the second stop began and therefore, viewing the facts in the light most favorable to the State, Trooper Daigle learned this information before calling the K-9 unit. It should be noted that if this information was discovered after the K-9 unit was called, then it could not be used to establish that Trooper Daigle had reasonable suspicion. *See infra* footnote 6 (discussing the lack of an effect of subsequently discovered evidence on reasonable suspicion).

Appellant's information through a driving record database, and began writing the traffic warning. Trooper Daigle also gave the Appellant's information to dispatch. Dispatch informed Trooper Daigle of the Appellant's criminal history report, which showed a prior possession of a controlled dangerous substance charge and an assault charge. While still in his vehicle, Trooper Daigle requested the assistance of a K-9 unit due to his belief that the Appellant "was involved in some sort of criminal activity." The incident notes state that the K-9 request came in at 2:10 a.m.[4]

The K-9 unit arrived at 2:33 a.m. Trooper Daigle did not issue the traffic citation before the K-9 unit arrived. He could not recall how long it took him to write the citation for Appellant. Trooper Daigle did not give Appellant his traffic citation until they were at the state police barracks. He said he could have handed Appellant his citation while waiting for the K-9 unit to arrive but admitted that would have ended the traffic stop.

When the K-9 unit arrived, Trooper Daigle asked Appellant to exit the vehicle. Trooper Daigle observed the same panicky symptoms in Appellant's speech and throbbing artery. The K-9 officer scanned the vehicle's perimeter twice. The dog alerted to an odor coming from the vehicle. Law enforcement then searched the vehicle, finding a loaded gun under the driver's seat, another gun in the closet, and methamphetamine in a safe. The Appellant was arrested and taken to the Maryland State Police Barracks. Afterwards, on October 4, 2021, the State's Attorney of Queen Anne's County charged Appellant with

[4] This timeline disputes Trooper Daigle's testimony, where he estimated the stop took approximately five minutes. Appellant's counsel described the interaction as a three-minute conversation based on the incident notes saying the stop began at 2:07 a.m. and the K-9 call came in at 2:10 a.m.

possession of a controlled dangerous substance with intent to distribute, possession of a firearm, and other related charges.[5]

On March 3, 2022, the Appellant made a motion to suppress evidence obtained in a warrantless search, heard by Judge Lynn Knight. Trooper Daigle testified to his interactions with the Appellant. He described the Appellant waiving to him while half standing up as "not common." Trooper Daigle said the vehicle registration he examined was significant since it did not have a DOT number. Trooper Daigle said the Appellant's manner of speech indicated he was nervous about something. Even after informing the Appellant that he was only getting a traffic violation, the nervousness did not appear to dissipate per Trooper Daigle, even though he said that usually will calm people down. Trooper Daigle found the Appellant's change in itinerary significant because "it didn't seem to be a truthful statement" and indicated that the Appellant had forgotten what he said.

Appellant's counsel established that Trooper Daigle had never met the Appellant before and could not come to any conclusions about any health concerns, speech patterns, or demeanors that the Appellant would normally have compared to what was observed in this traffic stop. Trooper Daigle also said that a fifty-year-old man having one prior criminal conviction did not have any significance to him.

The Appellant argued that Trooper Daigle did not have reasonable articulable suspicion. This was because Trooper Daigle could only rely on a three-minute

[5] *See supra* footnote 1 for the full list of charges.

conversation, and most of the evidence discussed by Trooper Daigle was based on the Appellant's "demeanor, his behavior, and nervousness." The Appellant pointed to Supreme Court precedent discussing how nervousness is not enough to establish the necessary suspicion. The State conceded that this became a second-stop situation after the initial conversation between Appellant and Trooper Daigle. They argued that Trooper Daigle's observations gave him sufficient information to create reasonable articulable suspicion that criminal activity was afoot. After hearing from both parties, Judge Knight denied the motion to suppress.

The Appellant subsequently pled not guilty on an agreed statement of facts and was found guilty of possession of a controlled dangerous substance with intent to distribute and for wearing, carrying, and transporting a handgun. Appellant was sentenced to twenty years, suspending all but three years, for the possession offense, along with three years, consecutive, for the possession of a firearm offense, with three years of probation. The Appellant timely appealed the denial of the suppression motion.

DISCUSSION

Denial of the Motion to Suppress

A. Parties' Contentions

The Appellant argued the trial court erred in denying the motion to suppress. The Appellant contends that Trooper Daigle did not have reasonable articulable suspicion to detain the Appellant because that suspicion arose based on the perceived nervousness of the Appellant. Appellant cited to Supreme Court and Maryland precedent discussing how nervousness is insufficient to establish reasonable suspicion. Further, the Appellant argued

that the other bases for the suspicion, such as the Appellant's registration and change in travel itinerary, were insufficient to establish reasonable suspicion. Therefore, Trooper Daigle did not have the reasonable suspicion required to extend the traffic stop.

The State argued that the lower court properly denied the motion to suppress because, based on the totality of the circumstances, there was sufficient evidence to show Trooper Daigle had reasonable articulable suspicion. This was based on multiple factors including the "over-exaggerated" wave Appellant performed, his heightened nervousness, his criminal history, the vehicle registration, and the inconsistency in the travel plans. Putting these factors together, Trooper Daigle had enough evidence to establish the needed reasonable suspicion to prolong the traffic stop and call for the K-9 unit.

B. Standard of Review

When reviewing a trial court's denial of a motion to suppress on Fourth Amendment grounds, this court is limited to the record of the suppression hearing. *Crosby v. State*, 408 Md. 490, 505 (2009) (citing *Lewis v. State*, 398 Md. 349, 358 (2007)). That record is viewed in the light most favorable to the party that prevailed on the motion. *Bailey v. State*, 412 Md. 349, 362 (2010) (quoting *Crosby*, 408 Md. at 504). Suppression rulings present a mixed question of law and fact. *Thornton v. State*, 465 Md. 122, 139 (2019) (citing *Swift v. State*, 393 Md. 139, 154 (2006)). Factual findings are reviewed for clear error, but this court will make its own "independent constitutional appraisal" of whether the government's conduct violated the Fourth Amendment "by reviewing the law and applying it to the facts of the case." *Id.* (quoting *Crosby*, 408 Md. at 505) (internal quotations omitted).

C. Analysis

The Fourth Amendment to the United States Constitution guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." U.S. Const. amend IV. The ultimate touchstone of this analysis is reasonableness, which "depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *Sellman v. State*, 449 Md. 526, 540 (2016) (quoting *Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1977)). Evidence obtained by the government in violation of the Fourth Amendment will ordinarily be inadmissible in a state criminal prosecution based on the exclusionary rule. *Thornton*, 465 Md. at 140 (citing *Bailey*, 412 Md. at 363).

The Supreme Court and Maryland courts have both held that "stopping an automobile and detaining its occupants constitute[s] a 'seizure' within the meaning of the Fourth Amendment, even though the purpose of the stop is limited and the resulting detention quite brief." *Snow v. State*, 84 Md. App. 243, 265 (1990) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 436–37 (1984)). Law enforcement may stop a vehicle legally when they either (1) observe a traffic violation or (2) observe conduct that establishes reasonable articulable suspicion that the driver may be committing another crime. *Pryor v. State*, 122 Md. App. 671, 679–80 (1998). When the stop is for a traffic violation, the detention must last only long enough for the time it would reasonably take the officer to "go through the procedure involved in issuing a citation to a motorist." *Id.* at 682. The authority for the seizure will end "when tasks tied to the traffic infraction are—or reasonably should have

been—completed." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (citing *United States v. Sharpe*, 470 U.S. 675, 685 (1985)); *see also Pryor*, 122 Md. App. at 680 ("The right to make a forcible stop does not justify a subsequent unreasonable detention."); *Snow*, 84 Md. App. at 264 (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983)) (stating that the intrusion on a person's liberty "must be temporary and last no longer than is necessary to effectuate the purpose of the stop"). If the stop extends beyond the reasonable time needed to complete the traffic stop, then "continued detention is considered a second stop for Fourth Amendment purposes, and thus requires new, constitutionally-sufficient justification." *Carter v. State*, 236 Md. App. 456, 469 (2018) (citing *Byndloss v. State*, 391 Md. 462, 483 (2006)).

If the stop is not based on a traffic violation, then the officer will need reasonable articulable suspicion to continue to detain the suspect. *Pryor*, 122 Md. App. at 679–80. When reviewing whether reasonable articulable suspicion exists, a court must assess the totality of the circumstances to determine whether the law enforcement officer was justified. *Washington v. State*, 482 Md. 395, 405 (2022) (citing *Collins v. State*, 376 Md. 359, 368 (2003)). There is no exact litmus test to define "reasonable suspicion" and instead it requires "nothing more than a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Bost v. State*, 406 Md. 341, 356 (2008) (quoting *Stokes v. State*, 362 Md. 407, 415 (2001)) (internal citations omitted). Reasonable suspicion is a "common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act." *Id.* (quoting *Stokes*, 362 Md. at 415). This Court should give deference to the training and experience of law

enforcement officers engaging in stops, as factors that may seem neutral and innocent to an untrained person can raise a legitimate suspicion in the mind of an experienced officer. *Sellman*, 449 Md. at 543 (quoting *Crosby*, 408 Md. at 507–08). Additionally, in a totality of the circumstances analysis, Maryland courts must avoid a "divide and conquer" approach to addressing various factors. *Washington*, 482 Md. at 422 (quoting *Crosby*, 408 Md. at 510).

In evaluating whether there was reasonable articulable suspicion, courts cannot just "rubber stamp" conduct that an officer merely believed that they had a right to engage in. *Ransome v. State*, 373 Md. 99, 110–11 (2003). Maryland courts will not give weight to an officer's "inchoate and unparticularized suspicion or 'hunch.'" *Sizer v. State*, 456 Md. 350, 364 (2017) (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)). Instead, the officer must rely on "specific reasonable inferences . . . from the facts in light of his experience." *Id.* (quoting *Terry*, 392 U.S. at 27). An officer must be able to explain how the observed conduct was indicative of criminal activity rather than "simply assert[ing] that innocent conduct was suspicious to him or her." *Id.* (quoting *Crosby*, 408 Md. at 508). "There must be an 'articulated logic to which this Court can defer.'" *Crosby*, 408 Md. at 508 (quoting *United States v. Lester*, 148 F.Supp.2d 597, 607 (D. Md. 2001)).

In addition to not relying on hunches, the factors articulated by the officer for the totality of the circumstances analysis "must serve to eliminate a substantial portion of innocent travelers before the requirement of reasonable suspicion will be satisfied." *United States v. Brugal*, 209 F.3d 353, 359 (4th Cir. 2000) (en banc). In *United States v. Sokolow*, the Supreme Court, in analyzing a case under the totality of the circumstances, recognized

that "[a]ny one of these factors is not by itself proof of any illegal conduct and is quite consistent with innocent travel. But we think taken together they amount to reasonable suspicion." 490 U.S. 1, 9 (1989). Just because conduct is innocent does not mean that the court cannot consider it, *Nathan v. State*, 370 Md. 648, 665 n.5 (2002), but their combination must still have some indication that reasonable suspicion is justified. *Brugal*, 209 F.3d at 359. "[I]t is impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation." *Crosby*, 408 Md. at 512 (quoting *United States v. Wood*, 106 F.3d 942, 948 (10th Cir. 1997)).

Turning to this case, both parties agree that this is a second-stop situation. Arguing against the suppression motion, counsel for the State said, "this is a second stop situation. . . . I one hundred percent concede that to the Court." The initial traffic stop of the Appellant was proper based on Trooper Daigle's observation of the headlamp violation and Appellant's speeding. *Pryor*, 122 Md. App. at 679–80; This initial stop ended when Trooper Daigle returned to his patrol car after speaking with Appellant and then called in for a K-9 unit to come to the car. As Trooper Daigle testified at the suppression hearing, he could have given Appellant his citation before the K-9 unit arrived, but instead waited until after Appellant was taken to the station. Under *Rodriguez*, since the "tasks tied to the traffic infraction . . . reasonably should have been completed" before the K-9 unit arrived, the second stop had begun while Appellant and Trooper Daigle were waiting. *Rodriguez*, 575 U.S. at 354. The issue then is whether Trooper Daigle had reasonable articulable suspicion when he made the call for the K-9 unit to continue to detain the Appellant, instead

of just giving him the traffic citation and allowing the Appellant to leave.

The State referenced numerous factors that Trooper Daigle could have relied upon for reasonable articulable suspicion at the motions hearing and in their arguments before this Court. Those factors include: (1) the Appellant appearing nervous, based on the Appellant's rapid pulse, his sweating, his eye movement, and his rapid speaking; (2) concerns about the Appellant's vehicle registration; (3) inconsistencies in the Appellant's itinerary; (4) Appellant's criminal history; (5) and Appellant's "not common" wave.[6] We must avoid a divide and conquer approach, *Washington*, 482 Md. at 422, but these factors must be discussed individually related to how prior courts have treated them in a totality of the circumstances analysis before then looking at all of the evidence as a whole.

A. Nervousness

Starting first with the alleged nervousness. Nervousness will be weighed differently in the analysis depending on whether it is extreme or ordinary. Nervousness is a factor that can be properly considered under the totality of the circumstances. *Matoumba v. State*, 162

[6] The State did discuss other factors that would not be relevant for this analysis including questions asked to the Appellant about the presence of contraband in his vehicle. This series of questions was asked after the K-9 unit was already on the way. "The discovery of facts, subsequent to the stop, cannot overcome a stop that started out without enough to justify a detention." *Jones v. State*, 194 Md. App. 110, 131 (2010) (quoting *Lawson v. State*, 120 Md. App. 610, 618 (1998)). Since the second stop began before this interaction about the contraband occurred, any information Trooper Daigle learned would not be relevant to his reasonable articulable suspicion to continue the stop.

Additionally, Trooper Daigle observed more panicky symptoms when he asked the Appellant to exit the vehicle, citing the Appellant's speech and throbbing carotid artery. This information also cannot be relied upon for the reasonable articulable suspicion analysis since it came after the K-9 unit call was made.

Md. App. 39, 49–50 (2005), *aff'd*, 390 Md. 544 (2006). However, courts should not "accord[] too much weight to the State's routine claim that garden variety nervousness accurately indicates complicity in criminal activity . . . ." *Sellman*, 449 Md. at 554 (quoting *Ferris v. State*, 335 Md. 356, 389 (1999)). "[U]nexceptional nervousness, in reaction to encountering [an officer], [is] simply too ordinary to suggest criminal activity." *Ferris*, 335 Md. at 389. This is because an officer cannot "distinguish the nervousness of an ordinary citizen under such circumstance from the nervousness of a criminal who traffics in narcotics." *Whitehead v. State*, 116 Md. App. 497, 505 (1997); "Permitting a citizen's nervousness to be the basis for a finding of probable cause would confer upon the police a degree of discretion not grounded in police expertise, and, moreover, would be totally insusceptible to judicial review." *Id.* Officers especially cannot perform these analyses when they have not interacted with the individual before and cannot gauge whether the person's behavior is different from how they usually act. *United States v. Beck*, 140 F.3d 1129, 1139 (8th Cir. 1998).

By contrast, a "manifestation of extreme nervousness" has been held to be "a factor towards reasonable suspicion" because it can be distinguished from the nervousness of an ordinary traveler. *United States v. Simpson*, 609 F.3d 1140, 1148 (10th Cir. 2010); *see also Nathan*, 370 Md. at 665 (describing how the driver and passenger exhibited "extreme nervousness" in support of a finding of reasonable suspicion). In *United States v. Simpson*, the evidence of extreme nervousness was the driver shaking uncontrollably throughout the entire stop, experiencing "full body tremors," even after the trooper told him he was only getting a warning ticket. 609 F.3d at 1148. This "[e]xtreme and persistent nervousness"

was considered a relevant factor, even though the court was still "somewhat reluctant to give substantial weight to that factor." *Id.* In *Nathan v. State*, the evidence of nervousness was the driver's carotid artery pounding, his chest "palpitating," and his hands "trembling." 370 Md. at 654. The passenger also had trembling hands and a pounding carotid artery pounding, along with a nervous twitch above his eye. *Id.* The Sergeant specifically characterized this nervousness as "extreme." *Id.* at 665 n.5. The court held that there was sufficient evidence for reasonable suspicion in part based on the extreme nervousness. *Id.* at 665.

Here, the Appellant's nervousness was not extreme. The Appellant did not have full body shakes in his interactions with Trooper Daigle, and the nervousness therefore did not rise to what the trooper saw as extreme in *Simpson*. This case also does not rise to the level of *Nathan* because while both cases involved a visible carotid artery, here the Appellant was not seen with any nervous twitches by Trooper Daigle. Trooper Daigle noticed some sweating and rapid speech, but Trooper Daigle could not provide any testimony as to whether this was out of the ordinary.

Appellant's counsel further established that Trooper Daigle had never met the Appellant before. As a result, Trooper Daigle could not determine whether Appellant's actions rose above the nervousness that Appellant routinely has. *See Beck*, 140 F.3d at 1139 (stating how the officer in the case "had never previously met [the defendant] and therefore had no measure by which to gauge [the defendant]'s behavior during the traffic stop with his usual demeanor").

In *Ferris v. State*, the evidence of nervousness was that the driver was fidgeting and

looking back to look at the police car. 335 Md. at 363–64. The Court said that the nervousness was not especially dramatic and "too ordinary to suggest criminal activity." *Id.* at 390. Appellant's actions in this case are closer factually to *Ferris*. Trooper Daigle described the nervousness as including the Appellant speaking quickly,[7] looking around, and having a visible carotid artery. There are conflicting facts over whether the Appellant calmed down during the conversation.[8] These symptoms of nervousness do not rise far beyond the "ordinary" nervousness someone may experience when being pulled over by the police.

We must give Trooper Daigle's assessment of the Appellant the due weight to which it is entitled under the Supreme Court's rulings. *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (requiring giving "due weight" to the factual inferences drawn by law enforcement and the lower court fact-finder). But neither Trooper Daigle nor the lower court ever contended that the Appellant's nervousness was "extreme" or "extraordinary," which would require this evidence to have more weight in a reasonable suspicion analysis. The

[7] As for the speech pattern issue, in *Whitehead v. State*, the nervousness in question was Whitehead stuttering when asked whether he was willing to sign a form about the right of the police to search his car. 116 Md. App. at 504. The Court in *Whitehead* found that this nervousness was insufficient for reasonable suspicion because the officer could not determine whether Whitehead's reactions were that of an ordinary citizen or a criminal. *Id.* at 505. Therefore, the stuttering by the Appellant will not be sufficient to show that there was extreme nervousness, especially given the context that Trooper Daigle had never heard the Appellant speak before.

[8] At one point in the suppression hearing, Trooper Daigle said that when he informed the Appellant he was only getting a traffic violation, the nervousness did not dissipate and he found that important when compared to the behavior of other drivers. However, Trooper Daigle also noticed that the Appellant became calmer and more coherent when discussing work being done on his stairs.

evidence does not show Appellant's nervousness rose to the level of extreme nervousness that would weigh more heavily in favor of finding reasonable suspicion. As a result, the nervousness cannot weigh as heavily in the totality of the circumstances test.

B. Vehicle Registration

The next factor the state argued was the vehicle registration because the Winnebago was registered to a business but did not have a DOT number from the Federal Motor Carrier Safety Administration to show it was engaged in interstate commerce. At the suppression hearing, over an objection, Trooper Daigle described that normally vehicles registered to businesses have a DOT number. Importantly, Trooper Daigle also testified that these vehicles are not required to have these DOT numbers when used for personal purposes, and that he "didn't know" whether the Appellant needed a DOT. Trooper Daigle did not give an articulation of why having a business registered vehicle would be suspicious of criminal activity. The State argued at the suppression hearing that the registration issue contributed to Trooper Daigle's reasonable suspicion because it was registered to a business, but the State conceded that it appears to be a personal vehicle. In the Appellee's brief, they argue this "suggested that perhaps the large vehicle was not being used for a legitimate business purpose." However, this conclusion is not present in the suppression hearing and is speculative. In *Crosby v. State*, a car registered in Bel Air was pulled over in Edgewood and the officer said this difference in address was suspicious but never argued why that difference related to the registration was significant. 408 Md. at 503. Since the officer did not explain the significance, the court held that the registration did not add anything to the analysis. *Id.* at 513. We will hold similarly here. Since Trooper Daigle and

the State did not specifically articulate *why* the vehicle registration was suspicious, this factor cannot hold much weight in establishing reasonable suspicion.[9]

C. Inconsistencies in the Itinerary

Trooper Daigle also discussed how the inconsistencies in the Appellant's itinerary made him believe that the Appellant was not telling the truth because "he forgot what he initially told [Trooper Daigle]." First, the Appellant said that he was travelling from Myrtle Beach, South Carolina, and then he said he was coming from Atlanta, Georgia in a later conversation.[10] Trooper Daigle noted that this itinerary did not make sense to him. The State in their argument said that Trooper Daigle was trained to recognize when someone is travelling interstate. The State also said that the change in the itinerary meant that at some point, the Appellant was not truthful since "[i]t couldn't be both" that he came from Atlanta and South Carolina. The Appellant argued at the suppression hearing that there were indicators of truthfulness about the itinerary, which was that he had a New Jersey driver's license, said he was going back to New Jersey, and was headed northbound on a road in that direction.

In *United States v. Santos*, cited by the State in their brief, the court considered how

[9] Further, the Appellant provided reasoning Trooper Daigle could have relied upon to explain the issues with the registration. As Trooper Daigle said, these vehicles do not need DOT numbers when they are used for personal purposes, instead of being engaged in interstate commerce. When Trooper Daigle asked the Appellant about his vehicle and the itinerary, the Appellant described personal trips unrelated to any business purpose. Based on this stated use, Appellant would not need a DOT number even though it was registered to a business.

[10] *See supra* footnote 3 (describing the lack of clarity on when this second conversation about the itinerary happened).

the driver gave "vague, evasive, or inconsistent answers to questions about his travel plans." 403 F.3d 1120, 1130 (10th Cir. 2005). These answers included inconsistencies about his length of stay, not knowing his mother's phone number, and not knowing whether his sister had a job in California where she was moving. *Id.* The court acknowledged that these answers were just "a story" and the inconsistencies indicated it could be fabricated. *Id.* at 1131. However, the court said that "the inconsistencies and gaps in his story were not so significant that they would arouse genuine suspicion in the absence of other indications of wrongdoing." *Id.* The court ended up not giving much independent weight to the factor, but found it contributed to the determination of reasonable suspicion. *Id.*

The Appellant arguably gave an inconsistent answer to the question about his itinerary. The city of origin changed from Myrtle Beach to Atlanta. However, merely changing the city of origin when Trooper Daigle never clarified if these were actually inconsistent[11] are "not so significant" when as discussed here there were few other indications of wrongdoing. *Santos,* 403 F.3d at 1131. Additionally, there was nothing established by the State for how this inconsistency shows that there was reasonable suspicion. *See Whitehead*, 116 Md. App. at 504 ("[T]here is nothing about narcotics laws violators that police can recognize from an inability to agree upon these details of their journey to New Jersey. . . . Our review of the 'inconsistency' . . . does not support any inference that the occupants were in possession of narcotics or that the automobile that

[11] As the Appellant argued, there is a simple consistent explanation for these two answers, which is that the Appellant was travelling from Atlanta, through Myrtle Beach, before heading home to New Jersey.

Whitehead was driving contained narcotics.").[12] Therefore, this inconsistency cannot be weighed very heavily in the reasonable suspicion analysis.

D. Appellant's Criminal History

When Trooper Daigle ran the Appellant's information through dispatch, he found out that the Appellant had a criminal history report that revealed prior possession and assault charges and prevented him from owning firearms. When Trooper Daigle was specifically asked about this matter on cross-examination and whether he found it suspicious, he said no.[13] After that, the prior criminal history was not argued by the State

[12] The State's brief argues that reliance on *Whitehead* is misplaced because the issue in that case was whether there was probable cause, a more stringent standard than reasonable suspicion. However, the language in *Whitehead* does not refer to the level of suspicion needed for probable cause but instead that there is "nothing" that can be gathered from an inconsistency in itineraries. *Whitehead*, 116 Md. App. at 504. Having no suspicion would mean that there is both no probable cause *and* no reasonable suspicion.

[13] This is the exchange between Appellant's counsel, Mr. John Leo Walter, and Trooper Daigle where they discussed the Appellant's prior convictions:

> **Q (Mr. Walter):** Now, this criminal record that you indicated that Mr. Casey had, he had one prior conviction, is that correct?
> **A (Trooper Daigle):** I don't recall.
> **Q:** Do you have notes to show what you recall?
> **A:** I don't have his criminal history in front of me.
> **Q:** Well, you recall he had a criminal history on direct examination, that's all you recall is that he had a criminal history?
> **A:** Correct.
> . . .
> **Q:** How old is Mr. Casey?
> **A:** I'm not sure.
> **Q:** Can you look at your notes to refresh your recollection as to how old he is?
> **A:** In his 50s.

at the suppression hearing. The State brought up this criminal history in its brief, arguing that it "lent further support to Trooper Daigle's suspicion that [the Appellant] was engaged in criminal activity." However, we are limited to the record of the suppression hearing. *Crosby*, 408 Md. at 505 (citing *Lewis*, 398 Md. 358). Since at the suppression hearing, the record shows that Trooper Daigle did not consider the prior criminal record to be suspicious, the State cannot now try to add this fact in its reasoning. If Trooper Daigle said this factor was not significant, then this Court is obligated to assume the same.

E. Appellant's Wave

When the Appellant first passed Trooper Daigle's vehicle, Trooper Daigle described how the Appellant "kind of half stood up, turned his whole body to [Trooper Daigle] and gave [him] an over-exaggerated wave." Trooper Daigle described this action as "not common." The State said that the wave was perhaps "a diversion to distract the trooper while Casey concealed an item under the driver's seat."

The State argued that *United States v. Arvizu* supports the contention that the Appellant's wave should be weighed in the reasonable suspicion analysis. In *Arvizu*, a border patrol agent was observing a rural road when he saw a minivan drive by and the driver "seemed to be trying to pretend that [the agent] was not there." 534 U.S. at 270. He then observed children in the backseat putting their hands up at the same time and waving

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> **Q:** In the event that he had one prior criminal conviction in his 50s, is that of any significance to you?
> **A:** No.

(omitting an objection).

in "an abnormal pattern . . . as if the children were being instructed." *Id.* at 270–71. The agent found this activity "suspicious" since "in that area most drivers give border patrol agents a friendly wave." *Id.* at 270. The Supreme Court agreed that the context of being in a remote portion of a rural road made the failure to acknowledge an officer "quite unusual." *Id.* at 276. Therefore, this information contributed to the totality of the circumstances in favor of a proper stop. *Id.*

The Appellant's behavior and Trooper Daigle's testimony differentiate this case from *Arvizu*. There was no testimony as to why this behavior on this road was suspicious. In *Arvizu* the agent specifically testified that the behavior was "suspicious" because it was unusual in combination with the location where the stop would occur. *Id.* at 270. Therefore, it weighed in favor of the totality of the circumstances. Here, Trooper Daigle only said that it was "not common" but not that this rarity meant that it indicated the Appellant was being suspicious or that he was trying to conceal something.[14] The description of the wave being "not common" does not automatically mean that it was suggestive of criminal activity, since the standard for reasonable suspicion requires "specific reasonable inferences." *Sizer*, 456 Md. at 364 (quoting *Terry*, 392 U.S. at 27). Trooper Daigle never articulated how the

[14] The articulated factors need to "eliminate a substantial portion of innocent travelers." *Brugal*, 209 F.3d at 359. However, both waving and not waving at officers has been held to be suspicious depending on the circumstances the officer describes. *See Ferris*, 355 Md. at 390 (citing cases on both sides); *see also Arvizu*, 534 U.S. at 276 (describing how not waving can be unremarkable on a busy highway but quite unusual on a remote road). "[A]llowing both a factor and its opposite to support a finding of reasonable suspicion impermissibly allows the police to detain an individual for 'suspiciously innocent' behavior." *Ferris*, 355 Md. at 390 (quoting *Gonzales-Rivera v. I.N.S.*, 22 F.3d 1441, 1446–47 (9th Cir. 1994)).

conduct indicated criminal activity may be afoot.

The State attempted to extend this argument to the idea that the wave was a "diversion" while the Appellant was trying to hide something. However, this argument was never made in the suppression hearing because the State never brought up the wave when making their argument, so we are limited in our ability to consider the argument here. *Crosby*, 408 Md. at 505 (citing *Lewis*, 398 Md. 358). As a result, the factor cannot weigh heavily in the totality of the circumstances.

F. The Totality of the Circumstances

Viewing the evidence in the light most favorable to the State, the totality of the circumstances appears to be a person who was not displaying "extreme" nervousness, with a vehicle registration that was proper for a recreational vehicle, who gave differing but consistent answers about his itinerary, had an insignificant criminal history, and waved in an uncommon manner. When viewed in their totality, this combination of factors is insufficient to justify the continued stop of the Appellant. As this Court stated in *Ransome v. State*, "if the officer seeks to justify a Fourth Amendment intrusion" based on conduct that "may properly be regarded as suspicious by a trained or experienced officer" then "the officer ordinarily must offer some explanation of why he or she regarded the conduct as suspicious; otherwise, there is no ability to review the officer's action." 373 Md. at 111. That is precisely the problem in this case.

Trooper Daigle's testimony at the suppression hearing did not sufficiently show why his observations established a reasonable articulable suspicion of criminal activity and as a result, there is not an "articulated logic to which this Court can defer." *Crosby*, 408 Md.

at 508 (quoting *Lester*, 148 F.Supp.2d at 607). We recognize that we must defer to the knowledge and experience of Trooper Daigle, *Sellman*, 449 Md. at 543, however, when that knowledge and experience is not articulated at the suppression hearing in how the observed conduct provides a particularized basis to suspect a person of criminal activity, then we have nothing to which we can defer. This case involved a combination of "wholly innocent factors" that cannot combine into a suspicious conglomeration based on the testimony presented at the suppression hearing. *Crosby*, 408 Md. at 512 (quoting *Wood*, 106 F.3d at 948). Without that support, all we are left with is an "unparticularized suspicion or hunch" that we will not give weight to. *Sizer*, 456 Md. at 364 (internal quotations removed).

As a result, the continued stop of the Appellant while waiting for the K-9 unit was improper and violated the Appellant's Fourth Amendment rights. Since there was no reasonable suspicion, the trial court should have suppressed the evidence found as a result of the K-9 search. *Thornton*, 465 Md. at 140 (citing *Bailey*, 412 Md. at 363).

CONCLUSION

Accordingly, we reverse the finding of the suppression court and hold that the Appellant's convictions should be vacated as a result.

JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY REVERSED; COSTS TO QUEEN ANNE'S COUNTY.