Circuit Court for Frederick County
Case No.: C-10-CR-21-000274

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1287

September Term, 2023

WILLIAM ALLEN SPENCER, JR.

v.

STATE OF MARYLAND

Berger,
Albright,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: November 7, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

On the morning of April 22, 2021, a Maryland State Police Trooper stopped a car operated by William Allen Spencer, Jr., appellant, for not displaying a front tag. Following a canine search, the Trooper recovered a loaded handgun and several kinds of narcotics. As a result, the State charged appellant with firearm and narcotic possession and distribution offenses. Prior to trial, appellant unsuccessfully moved to suppress the evidence recovered by the police on the basis that he was illegally detained when it was recovered.

On August 17, 2023, pursuant to a conditional binding plea agreement, appellant pleaded guilty to illegal possession of a firearm by a disqualified person, possession with intent to distribute cocaine, and possession with intent to distribute fentanyl. Under the plea agreement, appellant preserved the right to appeal the suppression court's decision.[1] The court sentenced him to a net total of nine years and six months' imprisonment for those offenses.[2]

[1] On August 23, 2022, appellant had pleaded guilty to the same offenses and received the same sentence. The circuit court, however, with the agreement of the parties, later granted post-conviction relief in the form of vacating appellant's guilty plea. As part of that agreement, appellant entered the conditional guilty plea in this case preserving the right to appeal the suppression court's decision.

[2] Specifically, the court sentenced appellant as follows: fifteen years' imprisonment with all but five years suspended for the firearm offense; twenty concurrent years with all but nine years and six months suspended for possession with intent to distribute fentanyl; twenty-four consecutive years for possession with intent to distribute cocaine all suspended; and five years' probation.

On appeal, appellant presents the following question: "Did the circuit court err in denying [his] motion to suppress?" For reasons stated below, we answer that question in the negative and affirm the judgment of the circuit court.

BACKGROUND

The Suppression Hearing

After the hearing on appellant's motion to suppress evidence, the parties submitted post-hearing memoranda in support of their respective positions on the motion. The court later issued a written opinion and order denying appellant's motion to suppress. The evidence at the hearing revealed the following about the stop and search of appellant and his car, beginning with the investigation of appellant.

The Investigation into Appellant's Narcotics Distribution

Master Trooper Jason Stevens of the Northern Region Narcotics Unit of the Maryland State Police testified that he became the primary investigator in an investigation into appellant's narcotics distribution activity in February 2021. About a week before the police stopped appellant's car, Trooper Stevens had developed evidence supporting sufficient probable cause to apply for an order from a judge "authorizing the installation and use of a device known as a [pen/trap] and trace" (the "pen/trap") on appellant's phone number. A pen/trap provides real-time cell site information. Trooper Stevens testified that an analysis of appellant's phone contacts indicated his regular contact with multiple drug users:

> I did a call analysis or a ping register analysis of contacts between [appellant]'s phone and people who are calling and receiving activations whether it's text messages or voice calls. And I determined very easily with

> the contacts that most of the contacts calling [appellant]'s phone are either drug users, they've been victims of overdoses, they commit crimes. They're associated with a lot of people who use drugs such as thefts and there was an overwhelming amount of activations.
>
> And the way I determined who those people were, I used police data bases and it, it was overwhelming. There was certain numbers that I did not identify. And I didn't try to identify every single phone number. But the majority of the phone numbers that I identified were people who recently were arrested, in possession of CDS and CDS not marijuana. So, that was most likely fentanyl, heroin, cocaine, crack cocaine. That's the normal charge for that. It was people who had cases that were pending. People who have recently overdosed and it was a very consistent pattern that I saw.

Trooper Stevens further testified that, about a month before the traffic stop, a "concerned citizen" reported appellant's possession of "gel caps" of heroin or fentanyl which, based on his knowledge, Trooper Stevens found significant because: "[G]el caps are very unique to Baltimore. I wouldn't say they're exclusive to Baltimore, but it's very rare. You don't go to Philly and buy gel caps, you buy wax folds." Therefore, Trooper Stevens believed that the gel caps seen by the concerned citizen probably came from Baltimore.

Trooper Stevens had also become aware that Washington County's Narcotic Task Force had had a confidential informant buy narcotics from appellant at a hotel in Hagerstown where appellant sometimes lived on February 22, 2021.

Trooper Stevens testified that, on the evening of April 21, 2021, the pen/trap on appellant's phone indicated that he was at a residence in Baltimore County. The next morning, it indicated that appellant drove to multiple locations in Baltimore City and then headed westbound on I-70. Appellant's exact positions in Baltimore City could not be

pinpointed, but, based on his training, knowledge, and experience, appellant's movements elevated Trooper Stevens's suspicion level. He explained:

> Baltimore is normally the source area for CDS for drugs throughout the State of Maryland. It's actually a source area for other states as well. And it's my belief that Mr. Spencer was picking up drugs because they're cheaper in Baltimore and then driving them to Hagerstown to sell. That was my belief.

Acting on that belief, Trooper Stevens contacted the State Police Barrack in Frederick and reported that appellant was the subject of a narcotics investigation and would be driving a white Lexus westbound on I-70. He stated that if there were any traffic violations, to stop the car because he believed that narcotics would be found in the car.

Much of what Trooper Stevens testified to concerning appellant was also contained in his application for the installation and use of the pen/trap on appellant's phone, which was admitted into evidence during the suppression hearing. In that application, Trooper Stevens provided more details of his investigation into appellant's drug dealing. Rather than going through all those details during the hearing, the court agreed to read and consider them. The application contained the following additional information:

In July 2020, the State Police learned that a person known as "Silk," who lived in Baltimore and distributed narcotics in Hagerstown, had been seen carrying a gun. Through their investigation, the police determined that "Silk" was appellant. Through his criminal record, they learned that appellant had several criminal arrests and convictions resulting in prison time, some of which involved narcotics dating back to 2016.

In February 2021, the police learned from an unidentified person that appellant was distributing narcotics, and that the cell phone number he used was not registered in his

name. Based on his knowledge, training, and experience, Trooper Stevens noted that persons engaged in crime often subscribe their cell phones to other persons to protect their anonymity and limit their exposure to law enforcement.

The pen/trap application provided more details about the tip received from the concerned citizen regarding appellant's distributing of narcotics in Hagerstown, and his being seen with approximately 150 capsules of drugs. In addition, the concerned citizen had seen appellant with a person known to police to have a "significant criminal history" for narcotics, and that those two, along with a third person, were together in appellant's recently-purchased white Lexus.

The Stop

Maryland State Police Trooper Corey Rafter stopped appellant's car on the morning of April 22, 2021, because it did not display a front license tag. Trooper Rafter testified that, prior to stopping the car, he had been told by another Trooper at the Frederick Barrack to be on the lookout ("BOLO") for appellant's Lexus GS350, and that the BOLO request came from a Trooper with the "Drug Task Force," indicating that the driver of the Lexus was the subject of a narcotics investigation, and that there could be narcotics in the car.

After stopping appellant's car and obtaining appellant's driver's license and vehicle registration, Trooper Rafter returned to his police car where he ran "routine" checks and requested a K-9 scan. From the routine checks, Trooper Rafter learned that appellant was

on probation or parole, and had "some CDS and firearms violations in his [past.]" Appellant told the Trooper that he was travelling from Baltimore to Hagerstown for work.[3]

A K-9 unit responded to the scene and alerted to appellant's car. According to Trooper Rafter, the "CAD" report indicated that he stopped appellant at 10:26 a.m. and that the K-9 alerted ten minutes later at 10:36 a.m. Trooper Rafter estimated that the K-9 alert came within two or three minutes after the business of the traffic stop was concluded but "since [he was] waiting for the K-9[, he] had the vehicle remain there until the K-9 got there[.]"

Once the K-9 alerted, the police searched appellant's car. From the glovebox, which was locked, they recovered a loaded pistol[4] and a bag of marijuana. Appellant was then arrested, and from a search of appellant's person incident to that arrest, the police recovered both fentanyl and cocaine.[5]

The Motion to Suppress

Appellant moved to suppress the evidence the police obtained during the search of his car and person because it was recovered during a period of unconstitutional detention, *i.e.*, during the two to three minutes between the completion of the traffic stop and the K-

[3] He also stated that the windows of appellant's car "were tinted extremely dark[,]" and that Baltimore was known to be "a high drug activity area." He did not issue a violation ticket, warning, or repair order for the tinted glass.

[4] At appellant's guilty plea hearing, it was stated that the loaded pistol was a .40 caliber Taurus Millennium PT140 semi-automatic handgun with an obliterated serial number.

[5] At appellant's guilty plea hearing, it was stated that the recovered narcotics included eighty-three gel caps of fentanyl and other baggies containing fentanyl and cocaine.

9 alert. As noted earlier, after holding a hearing on the motion, the suppression court denied the motion to suppress in a written Opinion and Order dated December 6, 2021. In sum, the suppression court concluded that the police had reasonable articulable suspicion that appellant possessed narcotics and thus had sufficient justification to detain appellant for the two to three extra minutes for the K-9 scan.

DISCUSSION

When we review a trial court's denial of a motion to suppress, "we are limited to information in the record of the suppression hearing and consider the facts found by the trial court in the light most favorable to the prevailing party, in this case, the State." *Washington v. State*, 482 Md. 395, 420 (2022). "We accept facts found by the trial court during the suppression hearing unless clearly erroneous" but our review of "the trial court's application of law to the facts is *de novo*." *Id.* When faced with a constitutional challenge, "we conduct an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case." *Id.* (cleaned up).

The Fourth Amendment to the Constitution of the United States, made applicable to the States through the Fourteenth Amendment, *Mapp v. Ohio*, 367 U.S. 643, 655 (1961), provides the people the right to be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" U.S. CONST. amend. IV. Evidence that is obtained in violation of the Fourth Amendment "will ordinarily be inadmissible under the exclusionary rule." *Richardson v. State*, 481 Md. 423, 446 (2022) (citing *Thornton v. State*, 465 Md. 122, 140 (2019)). As the Supreme Court has often repeated, "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Id.* at 445 (cleaned up).

Traffic stops are seizures under the Fourth Amendment. If there is probable cause to believe that the driver has committed a violation of the vehicle laws, or if there is reasonable, articulable suspicion that '"criminal activity may be afoot[,]"' a traffic stop is lawful. *Brice v. State*, 225 Md. App. 666, 695-96 (2015) (quoting *Terry v. Ohio*, 392 U.S. 1, 30 (1968) and citing *Whren v. United States*, 517 U.S. 806, 810 (1996)), *cert. denied*, 447 Md. 298 (2016). Under such circumstances, a motorist can be temporarily detained even if the stop is a pretext to investigate other criminal activity. *See Whren*, 517 U.S. at 811-13. *Accord Carter v. State*, 236 Md. App. 456, 468 (stating that "an otherwise-valid traffic stop does not become unconstitutional just because the actual purpose of the law enforcement officer making the stop was to investigate potential drug crimes"), *cert. denied*, 460 Md. 9 (2018).

During the course of a routine traffic stop, an officer "may request a driver's license, vehicle registration, and insurance papers, run a computer check, and issue a citation or a warning." *Nathan v. State*, 370 Md. 648, 661-62 (2002). Even an inquiry into unrelated matters is not prohibited, "so long as those inquiries do not measurably extend the duration of the stop." *Arizona v. Johnson*, 555 U.S. 323, 333 (2009).

In the traffic-stop context, the "tolerable duration" of such inquiries "is determined by the seizure's 'mission' – to address the traffic violation that warranted the stop and attend to related safety concerns." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (citations omitted). "Authority for the seizure thus ends when tasks tied to the traffic infraction are – or reasonably should have been – completed." *Id*. In other words, the police may conduct a K-9 scan during a lawful traffic stop without violating the Fourth

Amendment but it will become unlawful if '"it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing" a ticket or a warning. *Id.* at 354-55 (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). "[W]aiting for the K-9 unit to arrive amount[s] to an unjustified second detention[,]" *Wilkes v. State*, 364 Md. 554, 575 (2001), that "is constitutionally permissible only if either (1) the driver consents to the continuing intrusion or (2) the officer has, at a minimum, a reasonable, articulable suspicion that criminal activity is afoot." *Ferris v. State*, 355 Md. 356, 372 (1999).

The Appellate Contentions

On appeal, appellant advances two arguments to support the theory that his continued detention was unlawful once the traffic stop had been concluded, and therefore, that the evidence collected from him and his car as a result of this unconstitutional detention must be suppressed.

A.

First, relying primarily on *Pryor v. State*, 122 Md. App. 671 (1998), he argues that, regardless of whether the police had reasonable suspicion that he possessed narcotics at the time of the traffic stop, the duration of the stop could not lawfully exceed the length of time it would reasonably take an officer to issue a citation unless, prior to the issuance of any citation, their observations during the stop confirmed their earlier suspicion that he possessed narcotics. We are not persuaded.

In *Pryor*, a confidential informant told a police detective that Pryor was selling a large quantity of cocaine in Catonsville. The informant provided Pryor's address and the make and model of his car, both of which the police verified. *Id*. at 675. In addition, the

informant told the police that there was a secret compartment in the dash area of Pryor's car used to conceal cocaine. *Id*. Based on that information, the police followed Pryor's car and stopped it for speeding. Pryor and his passengers were ordered out of the car and forced to wait for twenty to twenty-five minutes for a K-9 scan to be conducted. *Id*. at 678.

This Court found the length of time that Pryor was detained waiting for the K-9 scan to be unreasonable. In reversing the suppression court's denial of Pryor's motion to suppress evidence, we said:

> Although the stop of [Pryor]'s vehicle was justified under two different theories, neither of those theories justified a detention that extended beyond the period of time that it would reasonably have taken for a uniformed officer to go through the procedure involved in issuing a citation to a motorist. The police did not have a right to subject [Pryor] to the functional equivalent of two successive periods of detention. The reasonable articulable suspicion that preceded the *Whren* stop in this case did not extend the limited period of detention that is permissible under *Whren*.

Id. at 682.

The Court further explained that "whether the period of [Pryor]'s detention is characterized as a 'first' (traffic) stop followed by a 'second' (drug investigation) stop or as a single stop that was justifiable for two different reasons, appellant was detained much longer than was reasonable." *Id*.

Appellant reads *Pryor* as prohibiting his two-to-three-minute detention in this case because the police did not develop further justification for a *Terry* stop during the time when he was stopped for the traffic citation. We read *Pryor* to hold that the length of time a person is detained based on reasonable suspicion of criminal activity must be reasonable under the circumstances.

As we later discussed in *Jackson v. State*, 190 Md. App. 497, 514-15 (2010), a traffic stop may ripen into a *Terry*-stop in the "blink of an eye" or, under *Whren*, 517 U.S. 806, the detention may serve a dual purpose. In either investigation, "[t]he time limit for processing the traffic infraction . . . might run its course before the *Terry* drug investigation time limit runs out; but the detention itself will still be reasonable as long as either of its justifying rationales, the old one or the new one, remains vital." *Jackson*, 190 Md. App. at 515. Thus, when "the energizing articulable suspicion is that a violation of the drug laws may be afoot," reasonableness is not measured by the time to process the traffic charges but by "the diligence of the police in calling for and procuring the arrival of the canine at the scene." *State v. Ofori*, 170 Md. App. 211, 251-52 (2006) (cleaned up).

Here, the most distinguishing features between *Pryor* and this case include: (1) the police having gathered a great deal more information about appellant's drug dealing than the tip received in *Pryor*, and (2) the amount of time that appellant was detained waiting for the K-9 alert was minimal compared to *Pryor*. In other words, the police had substantially greater justification to detain appellant and the detention was for substantially less time. As we explained in *Ofori*, a traffic stop, standing alone, "once completed, will not await the arrival of the dog for so much as 30 seconds"; a "*Terry*-stop for drugs very deliberately and patiently [will] await the arrival of the dog" because the "dog's arrival is, indeed, the primary reason for waiting." *Id.* at 251. Here, the predicate for the BOLO request was a *Terry*-stop for drugs and the K-9 unit based on the collective knowledge of the prior police investigation.

B.

Appellant argues that the so-called "collective knowledge" doctrine had no application to this case because Trooper Rafter did not stop appellant based on the instruction of another officer. Appellant directs us to the following excerpt from Trooper Rafter's testimony during the suppression hearing:

Q When they asked you – they actually asked you to make a stop, correct?

A No, they didn't. They just looked out for the vehicle.

According to appellant, if Trooper Rafter, the arresting officer, was not acting on the instructions of another officer who had provided him "either facts or a conclusion constituting probable cause, or an arrest order[,]" then the other officer's knowledge cannot be imputed to him and the collective knowledge doctrine has no application.

Under the "collective knowledge" doctrine, "when an officer acts on an instruction from another officer, the act is justified if the instructing officer had sufficient information to justify taking such action herself; in this very limited sense, the instructing officer's knowledge is imputed to the acting officer." *United States v. Massenburg*, 654 F.3d 480, 492 (4th Cir. 2011). In *United States v. Hensley*, 469 U.S. 221, 233 (1985), the police detained Hensley based on a flyer from another police department that said that Hensley was wanted in connection with an armed robbery. *Id.* at 223. The United States Supreme Court held that,

> [a]ssuming the police make a *Terry* stop in objective reliance on a flyer or bulletin, we hold that the evidence uncovered in the course of the stop is admissible if the police who issued the flyer or bulletin possessed a reasonable suspicion justifying a stop, and if the stop that in fact occurred

> was not significantly more intrusive than would have been permitted the issuing department.

Id. at 233 (cleaned up).

We conclude that the collective knowledge doctrine does apply in this case, and that Trooper Rafter acted in response to Trooper Stevens's communication to the Frederick Barrack, and that information was conveyed to Trooper Rafter by another Trooper from the Frederick Barrack. He was to be on the lookout for appellant's car because appellant was the subject of a narcotics investigation, and that there was a likelihood of narcotics in the car. Thus, we hold that Trooper Rafter's detention of appellant for two to three minutes awaiting the K-9 scan was a justified *Terry*-stop based on reasonable articulable suspicion.

Alternatively, appellant argues that, if the "collective knowledge" doctrine is inapplicable, Trooper Stevens, who had been investigating appellant's narcotics distribution activity, lacked reasonable articulable suspicion that appellant was involved in criminal activity.

When it denied appellant's motion to suppress, the court expressed the following about the reasonableness of police suspicion that appellant was engaged in narcotics distribution:

> [Appellant] posits that there was no reasonable and articulable suspicion that would support the K-9 scan. This Court disagrees with [Appellant]'s position. It is abundantly clear that Trooper Rafter was not acting off of the "hunch" of M/T Stevens, as [Appellant] would have this Court believe. M/T Stevens testified that [Appellant] had been under investigation for an extended period of time, as far back as February of 2021. M/T Stevens had numerous indicators of [Appellant]'s possible role in CDS trafficking such as his lack of legitimate source of income, his frequent travel from Baltimore, MD to Hagerstown, MD (which is a known drug trafficking route), tips and complaints from citizens stating that [Appellant] was selling

> drugs in the Hagerstown area, and a [pen/trap] which indicated the [Appellant]'s communications with known drug users and others connected with illicit substances. M/T Stevens also identified the exact make and model of the car [Appellant] was operating, singling him out from other innocent travelers down I-70.
>
> The tip provided to Trooper Rafter was more than enough to show a reasonable and articulable suspicion as required by the holding in *Terry v. Ohio*, 392 U.S. 1 (1968).[6]

Moreover, Trooper Rafter, through appellant's record search, had learned of appellant's illegal drug distribution record which tracked what he had been told in connection with the BOLO.

In addition, Trooper Stevens, as previously noted, was aware that appellant had, several months before his arrest, sold narcotics to a police informant as part of a controlled buy. Also, as the record reflects, he knew that, about a month before appellant's arrest, appellant had been seen driving his white Lexus from a hotel in Hagerstown by a "concerned citizen" who indicated that appellant was distributing narcotics and had about 150 capsules of drugs in his possession. Trooper Stevens also knew that appellant used a

[6] Appellant argues also that the record contains no assertion by anyone that appellant "had no legitimate source of income," and therefore, the suppression court relied on a clearly erroneous factual finding. The record does not expressly indicate "his lack of [a] legitimate source of income[,]" but it does reflect his back and forth from Baltimore to Hagerstown without any reference to employment, which might support an inference that he did not have a legitimate source of income. In our view, removing that "indicator" of appellant's "possible role in CDS trafficking" could still support the trial court's conclusion. *See Rush v. State*, 403 Md. 68, 103 (2008) (stating that "a reviewing court may uphold the final judgment of a lower court on any ground adequately shown by the record" (cleaned up)). Nevertheless, as explained *infra*, the police had sufficient justification to detain appellant for the two to three minutes it took for the K-9 scan without relying on that fact.

phone number registered to another person, and that he had been identified as a drug dealer known as "Silk," who had prior convictions for narcotics as far back as October 2016.

When determining whether a law enforcement officer acted with reasonable suspicion, we consider the totality of the circumstances. *Crosby v. State*, 408 Md. 490, 507 (2009). In doing so, we must "not parse out each individual circumstance for separate consideration[.]" *Ransome v. State*, 373 Md. 99, 104 (2003). That is because "'context matters: actions that may appear innocuous at a certain time or in a certain place may very well serve as a harbinger of criminal activity under different circumstances.'" *Crosby*, 408 Md. at 508 (quoting *United States v. Branch*, 537 F.3d 328, 336 (2008)). Moreover, deference is owed to the training and experience of the police whose inferences and deductions from the cumulative information available "might well elude an untrained person." *Id.* (quotation marks and citations omitted). '"[A] factor that, by itself, may be entirely neutral and innocent, can, when viewed in combination with other circumstances, raise a legitimate suspicion in the mind of an experienced officer."' *Id.* (quoting *Ransome*, 373 Md. at 105).

Here, informed by Master Trooper Stevens's investigation, the police, under the totality of the circumstances, had reasonable articulable suspicion that appellant was a narcotics distributor in likely possession of narcotics when he was stopped for the traffic violation. Having requested the K-9 scan upon returning to his vehicle after the stop, there

was sufficient justification to hold appellant for the two to three minutes required for the K-9 scan to be performed.

We therefore affirm the judgment of the circuit court.

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