Circuit Court for Washington County
Case No. C-21-CR-23-000251

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1446

September Term, 2023

ORLANDO CARSON ROGERS, JR.

v.

STATE OF MARYLAND

Wells, C.J.,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: March 27, 2025

*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 Rule 1-104(a)(2)(B).

Appellant, Orlando Carson Rogers, Jr., was convicted by a jury in the Circuit Court for Washington County of possession of cocaine with intent to distribute, simple possession of cocaine, and resisting arrest. Appellant presents the following question for our review:

> "Did the motions court err by denying Appellant's motion to suppress?"

We shall hold that the motion court did not err in denying appellant's motion to suppress and shall affirm.

I.

By criminal information filed in the Circuit Court for Washington County, the State charged appellant with possession of cocaine with intent to distribute, possession of cocaine, possession of heroin with intent to distribute, possession of heroin, possession of a mixture of heroin and fentanyl with intent to distribute, obstructing a police officer, and resisting arrest. Appellant filed a pre-trial motion to suppress evidence the police seized while searching his vehicle. The court denied the motion and appellant proceeded to trial before a jury. A jury convicted him of possession of cocaine with intent to distribute, simple possession of cocaine, and resisting arrest.[1] The Court imposed a term of incarceration of twenty years, all but twelve years suspended, followed by three years' probation on the possession of cocaine with the intent to distribute count, and a term of eighteen months

[1] The trial court entered judgment of acquittal on possession of a mixture of heroin and fentanyl with intent to distribute, and the State entered a *nolle prosequi* to the possession of heroin with the intent to distribute, simple possession of heroin, and obstruction counts.

incarceration, to be served consecutively, on the resisting arrest count. The court merged the simple possession charge for sentencing purposes.

This appeal presents the single question of whether the motions court erred in denying appellant's motion to suppress evidence seized by the police when they searched his vehicle following a canine sniff. We consider only the record created from the motion's hearing in this appeal.

On March 1, 2023, Trooper David Thompson of the Maryland State Police was using a radar-gun in selective traffic enforcement on Dual Highway at Day Road in Hagerstown, Maryland. Around 12:50 p.m., a grey Nissan Versa driven by appellant appeared to be travelling at the rate of sixty-three miles per hour in a zone with a forty-five mile per hour posted speed limit. In response to the trooper's red lights and siren, appellant stopped his car and the trooper directed him via loudspeaker to stop in a nearby parking lot. Trooper Thompson approached the car on the driver's side and informed appellant that he was stopped for speeding. Appellant provided his license and initially informed the trooper that the car was a one-day rental and that he would need to retrieve the rental agreement from his email on his phone. Appellant told the trooper later that the rental was a two-day rental.

At the motions hearing, Trooper Thompson testified to his professional background. He has been an officer with the State Police for twenty-two years, and a canine officer for ten years. He testified to his extensive training as a drug interdiction officer, with hundreds of drug arrests and distribution cases in his career. He stated as follows:

> "I stop a lot of vehicles and this is strictly what—this is strictly what I look for. I look—I look for criminal—interdiction, and I—this is my scope really what I—what I look for along with enforcing the traffic laws and keeping the drivers safe while traveling through the state."

He described Dual Highway as a funnel and direct route for drugs coming from Baltimore.

Trooper Thompson testified that he and appellant "diligently" looked for and located the rental agreement on the cellphone, but that appellant made minimal eye contact during the encounter. Appellant told the trooper he was going to do some DJ work in Hagerstown. The trooper testified he became suspicious as he could not see any luggage, DJ equipment or a laptop. He observed a bottle of cologne on the center console, and that appellant appeared nervous. Once he had appellant's license and reviewed the rental agreement, the trooper returned to his vehicle to continue the process of issuing a warning. The trooper requested back-up from the dispatcher and requested a check of appellant's license status and registration. He ran appellant's license on his laptop to check for open warrants and any other potential concerns. Initially, dispatch responded saying there was a "caution" indicator on appellant's file. Trooper Thompson explained at the hearing that a "caution . . . means he has previous FBI entry for drug possession and/or distribution." The trooper testified as to the significance of the caution response as follows:

> "TROOPER THOMPSON: Because he had a caution code, and he came back also looking for the— a previous—some of his previous cases to see if maybe involved any weapons. Maybe he's a—he's a police fighter or he, you know, he had a first-degree assault charges or anything that I should be aware of before I approach him for my safety.
>
> [STATE]: Okay. In—in your past…

> TROOPER THOMPSON: I routinely do that on stops.
>
> [STATE]: Okay. In your past experience, have you ever had—discovered something that dispatch didn't tell you while on your laptop?
>
> TROOPER THOMPSON: Correct.
>
> [STATE]: Okay.
>
> TROOPER THOMPSON: warrants. There's a lot of internal local warrants that are in the METERS that aren't in NCIC that I've discovered through case search that somebody actually had a warrant, and the barrack didn't discover it."

The trooper justified his pursuit of a potential drug-related crime at the hearing as follows:

> "Due to the—the totality of the circumstances, my training and knowledge and my numerous drug arrests, I saw several indicators, the one-day rental. A lot of drugs are being moved in rental cars. The main particular reason is—they know that we can't seize their car when they're hauling large amounts of narcotics. Turn around trip from Baltimore to Hagerstown, minimum eye contact. He was trying to direct his—more of his attention to his cell phone than me. The—the large bottle of cologne in the center console, no luggage, no DJ equipment. Went back to my car, immediately rolled up the window, made a phone call and lit a cigarette….
>
> The Defendant, yes, Mr. Rogers, appeared to be on the cell phone with somebody and smoking a cigarette. To me, that's—he's showing signs of nervousness and he's trying to talk on the phone. I don't know who he was talking to. But that's when I called—that's when I contacted another unit to respond to continue the business need of the stop so I could deploy my dog."

Trooper Thompson testified that while waiting for backup to arrive he "opened E-Tix to start typing the traffic citation. And [he] believe[d] [he] looked on case search while

[he] was waiting on the barrack to respond to see if there was any local Maryland charges on the driver as far as criminal wise." On cross-examination, defense counsel asked the trooper to explain what he was doing to write the warning when the body camera footage showed the trooper flipping between screens on his laptop. The trooper responded as follows:

> "Oh, well I called the stuff in. I'm still waiting on the dispatcher to return it. But the warning's actually still open on the next screen. So, yeah, I'm, like I say, I'm still waiting on—on the returns to dispatch on warrant checks and criminal history checks and that kind of stuff."

At twelve minutes into the body camera footage, defense counsel asked Trooper Thompson why there had been no typing from approximately 7 minutes into the footage until twelve minutes. The trooper responded that he did not "see any typing. But I'm still waiting—I don't recall the barrack coming back that he was valid and there was a negative on warrants yet. So I'm still waiting."

Officer Perez Valez, a Hagerstown police officer, arrived just prior to the sixteen-minute mark on Trooper Thompson's camera footage. Trooper Thompson exited his vehicle and asked her "Can you continue the stop? I'm writing him a warning for 63 in a 45. Can you just finish doing that for me please while I get him out?"

Officer Perez Valez struggled to operate the trooper's system to complete the warning. Her body worn camera footage, entered into evidence at the hearing through a joint stipulation, showed her struggling with the equipment and at one point showed her pulling out her cell phone and searching the internet to see how to enter appellant's

information to complete the warning. Observing Officer Perez Valez's body camera footage at the hearing, Trooper Thompson testified that the "only thing I saw that she did, she called her dispatch to get her to send them the 28.[2] They usually email them to them. That's the only thing I noticed that she was probably waiting on to get it returned though her email."

With the officer working on the warning, Trooper Thompson told appellant to step out of the car and informed him that he was going to scan the car with his dog. The dog alerted at the driver's side window and the trooper searched the car following the alert, finding controlled dangerous substances.

Appellant testified at the motions hearing. He explained his behavior during the stop, his lack of eye contact, the cologne presence and lack of luggage or DJ equipment. He testified that he was "DJ Drip," he had a job in Hagerstown, he had no need to bring his own equipment, and his laptop and luggage were in the trunk.

At the conclusion of the evidentiary portion of the hearing, appellant's counsel argued that the canine scan of the car constituted a second stop and was not supported by reasonable articulable suspicion. Appellant's counsel asserted the prolonged detention constituted a second stop because the officer changed the purpose for the stop, which initially was to issue a warning for speeding, but then became a narcotics investigation. Appellant's counsel argued that the "criminal indicators" listed by the trooper were all innocent behaviors and did not amount to reasonable suspicion to justify continuing the

[2] A "28" is a request to check vehicle registration.

stop. The trooper's feeling that it was "implausible" that appellant was in Hagerstown to act as a DJ and not sell narcotics was not based on special knowledge or experience.

The State argued that the traffic stop was one stop because appellant was not detained for an unreasonable amount of time, *i.e.*, approximately sixteen minutes, and the trooper had not received the necessary information from the dispatch before he performed the canine scan. Even if the motions court believed this was a two-stop scenario, the trooper explained that the totality of the circumstances led him to suspect that criminal activity was afoot and thus he had reasonable articulable suspicion for the canine scan.

The motions court denied the motion to suppress and found the detention was a single stop. The court had no problem with the trooper calling for back up assistance, recognizing that the trooper could not do two things at once—conduct a dog scan and write the ticket. The court made the following factual findings: (1) the stop lasted sixteen minutes from the initial stop to the alert by the dog; (2) the second officer arrived approximately fifteen minutes into the stop; and (3) the trooper was waiting for dispatch to confirm the validity of appellant's driver's license and other information when the dog scan occurred. Additionally, the court found no fault in the trooper, for his safety, checking multiple sources to better understand appellant's background. In sum, the court concluded as follows:

> "I think it's a one-stop case. I think the 16 minutes from stop to alert is the time frame we're dealing with. I'm going to make that factual finding. It was about approximately 15 minutes from the time of the stop until HPD arrived. It is an interesting case because the canine officer's there first, and the citation writing officer is there later. But the uncontroverted testimony

> is while he's in the car, he's going to issue a warning. He had the warning tab up, and he was still waiting for dispatch to give hm a response. So I don't think the time frame in and of itself is unreasonable. And under the circumstances, while he's still waiting for confirmation, I don't think it's unreasonable that we continue to wait. And there was no indication that that response from his dispatch regarding validity of a license or validity of the registration had been received. As a matter of fact, I believe the testimony was that it had not been received yet. I don't—and I don't care whether he was playing minesweeper on his computer while he was in the car because he didn't have all the information to complete the traffic citation under these circumstances.
>
> Now and I certainly don't fault him for checking through any source he could check prior record of the individual who's on the—in the car in front of him for officer safety and other reasons. I don't—I don't have any fault or find any fault with him doing further investigation through any resource he could do.
>
> *So I find there was no impermissible delay in between the stop and the conduct—conduct of the canine scan.*"

(Emphasis added). The court denied the motion to suppress.

Appellant proceeded to trial, and he was convicted and sentenced as indicated above. This timely appeal followed.

II.

Before this Court, appellant argues that the motions court erred in denying the motion to suppress evidence gathered during the traffic stop because the prolonged delay in awaiting the arrival of a second officer constituted a second stop that was not supported by reasonable articulable suspicion or probable cause. Appellant asserts that Trooper Thompson failed to diligently pursue the purpose of the traffic stop, issuing a warning for

speeding, and prolonged appellant's detention beyond what was reasonably necessary to effectuate the traffic stop. Appellant argues that Trooper Thompson had the needed information to issue the warning from METERS, the database used by the police to verify licenses, vehicle registration, insurance, and outstanding warrants, and instead of preparing the warning, he sat in his car and waited for back-up to arrive to effectuate his true purpose for the stop—a narcotics investigation. Appellant argues the trooper prolonged the detention of appellant to conduct a narcotics investigation without reasonable articulable suspicion.

Finally, appellant contends that the list of reasons articulated by Trooper Thompson—a large bottle of cologne in the car, not making eye contact with the trooper, renting a car for a single day, not carrying DJ equipment for his gig, smoking a cigarette and making a call when the trooper returned to his car—did not amount to reasonable articulable suspicion to conduct the canine scan.

The State maintains that the motions court did not err in denying appellant's motion to suppress. The court found, after considering the evidence, that the trooper was working continuously to address the reason for the traffic stop. He was waiting for dispatch to give him responses to his license check request and other relevant inquiries. The motions court concluded that the initial stop was not unreasonably delayed (for constitutional purposes) and that the purpose of the original traffic stop had not been brought to a close at the time of the canine scan. Because the purpose of the original traffic stop was not complete, in the State's view, this was a single stop. In addition, the State presents two arguments: the

length of the stop, approximately sixteen minutes, is not inherently lengthy for constitutional purposes, and the trooper had reasonable articulable suspicion to believe criminal activity was afoot.

III.

In reviewing the circuit court's ruling on a motion to suppress, we review 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 of Maryland. *Washington v. State*, 482 Md. 395, 420 (2022). We give deference to the suppression court's first-level findings of fact—who did what and when—unless those findings are clearly erroneous. *Holt v. State*, 435 Md. 443, 458 (2013). We review the trial court's application of the law to the facts *de novo*. "The ultimate determination of whether there was a constitutional violation, however, is an independent determination that is made by the appellate court alone, applying the law to the facts found in each particular case." *Belote v. State*, 411 Md. 104, 120 (2009). We may affirm the judgment of the trial court "on any ground adequately shown by the record, even though the ground was not relied on by the trial court." *Temoney v. State*, 290 Md. 251, 261 (1981).

The Fourth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, protects individuals against unreasonable searches and seizures by the government. *Whren v. United States*, 517 U.S. 806, 809 (1996); *United States v. Mendenhall*, 446 U.S. 544, 551 (1980); *Lewis v. State*, 398 Md.

349, 360-61 (2007). A temporary detention of a person in a traffic stop of an automobile, even if only briefly, constitutes a seizure within the meaning of the Fourth Amendment. *United States v. Sharpe*, 470 U.S. 675, 682 (1985). The United States Supreme Court, and the Supreme Court of Maryland, have explained that a traffic stop may be justified by either probable cause or the less demanding standard of reasonable suspicion, explaining as follows:

> "Where the police have probable cause to believe that a traffic violation has occurred, a traffic stop and the resultant temporary detention may be reasonable. A traffic stop may also be constitutionally permissible where the officer has a reasonable belief that 'criminal activity is afoot.' Whether probable cause or a reasonable articulable suspicion exists to justify a stop depends on the totality of the circumstances."

Rowe v. State, 363 Md. 424, 433 (2001) (internal citations omitted). We apply "a totality of the circumstances analysis, based on the unique facts and circumstances of each case." *State v. McDonnell*, 484 Md. 56, 80 (2023); *State v. Johnson*, 458 Md. 519, 534 (2018) (appellate courts do not "view each fact in isolation," and the totality of the circumstances test "precludes a divide-and-conquer analysis").

The Fourth Amendment, however, is not "a guarantee against all searches and seizures, but only against *unreasonable* searches and seizures." *United States v. Sharpe*, 470 U.S. 675, 682 (1985). In assessing the reasonableness of a traffic stop, we employ a dual inquiry, examining "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Terry v. Ohio,* 392 U.S. 1, 20 (1968). When a person is

detained in a traffic stop based upon probable cause of a violation of State traffic laws, the officer's purpose is to enforce the laws of the roadway, and ordinarily to investigate the driving, with the intent to issue a citation or a warning. *Carter v. State,* 236 Md. App. 456, 469 (2018) (confirming the purpose of a traffic stop is to address the traffic violation that warranted the stop and related safety concerns); *Ferris v State*, 355 Md. 356, 372 (1999) ("[T]he officer's purpose in an ordinary traffic stop is to enforce the laws of the roadway, and ordinarily to investigate the manner of driving with the intent to issue a citation or warning.").

Once the purpose of the stop and safety concerns have been fulfilled, the continued detention of the vehicle and the occupant(s) constitutes a second detention. *Ferris*, 355 Md. at 372. Law enforcement cannot prolong a traffic stop to await the arrival of a canine drug dog because "a scan by a drug sniffing dog serves no traffic related purpose." *Carter,* 236 Md. App. at 469.

A canine sniff of a vehicle stopped for a traffic violation does not constitute a search within the meaning of the Fourth Amendment and therefore, law enforcement does not need probable cause, reasonable suspicion, or consent to run a trained drug dog around the vehicle. *Illinois v. Caballes*, 543 U.S. 405, 410 (2005) ("A dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment."). However, upon stopping a motorist for a traffic violation, an officer may delay the driver for only the amount of time necessary to issue a ticket or warning citation

and to verify the driver's identity, license, registration, and license plates. *Ferris*, 355 Md. at 369 (noting that when a detention is related to a traffic stop, it "must be temporary and last no longer than is necessary to effectuate the purpose of the stop") (cleaned-up). A motorist may be detained longer than necessary for the initial traffic stop only if the officer has additional facts that give rise to a reasonable, articulable suspicion or probable cause of criminal activity beyond that which prompted the initial stop. *Id.* at 384.

Before this Court, appellant does not challenge the legality of the initial traffic stop for speeding. The significant question here is whether the dog scan constituted a second stop and, if so, was the second stop supported by reasonable articulable suspicion.

Officers can investigate a separate crime and a traffic violation simultaneously, *Charity v. State*, 132 Md. App. 598, 614 (2000), but "the purpose of a traffic stop is to issue a citation or warning." *Snow v. State*, 84 Md. App. 243, 248 (1990); *Ferris*, 355 Md. at 372. The determination of whether the length of a traffic stop detention is reasonable varies with the circumstances; there is no magic time limit to determine reasonableness. *Carter*, 236 Md. App. at 460. In *Carter*, Chief Judge (now Chief Justice) Mathew Fader, writing for this Court, explained the length of the stop analysis as follows:

> "We determine the reasonableness of the duration of a *Whren* stop on a case-by-case basis. 'There is no set formula for measuring in the abstract what should be the reasonable duration of a traffic stop.' Thus, a very lengthy detention may be reasonable in one circumstance, and a very brief one may be unreasonable in another. Generally, the reviewing court must look to whether the stop '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.'"

Id. at 460 (internal citations omitted).

Here, the motion court, after hearing all the evidence, held that the trooper took the appropriate steps promptly to process appellant's traffic violations and did not engage in any delay. The court found that Trooper Thompson returned to his cruiser after his initial contact with appellant, and he then radioed dispatch requesting backup and verification of appellant's information. Approximately fifteen minutes after the initial stop, when Officer Perez Valez arrived, Trooper Thompson had not heard back from his dispatcher as to the validity of appellant's license and registration. The trooper was still in the process of preparing the warning citation.

We agree with the motion court and hold, based on our independent constitutional appraisal of the record as a whole, there was no impermissible delay or what might be referred to as a second stop. Giving proper deference to the trial court's first-level findings of fact, the officer's conduct was reasonable and does not suggest impermissible delay. Sixteen minutes expired from the initial stop to the canine scan. Although the total amount of time of a stop is not dispositive, sixteen minutes is not *per se* unreasonable. *Jackson v. State*, 190 Md. App. 497, 512 (2010) ("In almost all of the cases, the critical breaking point between permissible and unreasonably prolonged traffic detentions occurs at somewhere near the 20 to 25 minute marker"); *State v. Ofori*, 170 Md. App. 211, 243 1089 (2006) ("The 24-minute period of delay was not, in and of itself, especially inordinate."); *Charity*, 132 Md. App. at 617 (holding that when assessing the length of time of a stop, we consider

the "reasonableness of each detention on a case-by-case basis and not by the running of the clock").

The body camera footage indicated that when the trooper returned to his vehicle, the first thing he did was call for police backup so he could conduct a dog sniff of the vehicle. He asked dispatch to run the license and verify the registration. In addition to requesting a warrant and record check, the trooper checked Maryland case search on his vehicle computer. The trooper became suspicious of appellant's actions, which included general nervousness, a large bottle of cologne in the front console, a one-day car rental operated in a known drug corridor, and appellant talking on his phone and smoking a cigarette after the initial encounter. When Officer Perez Valez arrived, Trooper Thompson had not finished writing the warning because he had not received confirmation from dispatch about appellant's license and registration. He asked Officer Perez Valez to finish writing the warning so he could inform appellant that he intended to run a scan of the car with his dog.

Even though Trooper Thompson was a traffic enforcement officer *and canine officer*, and he had his dog with him at the time of the traffic stop, and he obviously intended to perform a canine search, his call for backup to enable him to perform the canine sniff did not delay the stop. He was working on the citation and awaiting dispatch response. Appellant was exceeding the posted speed limit, and, given the initial purpose of the stop was to issue a warning for speeding, the trooper had probable cause to investigate the traffic violation. The duration of the traffic stop did not preclude the trooper from conducting a

scan of appellant's car, and the resulting alert by the dog gave the trooper probable cause to search the vehicle.

As an alternative basis to affirm the judgment of the circuit court, we find that the trooper had reasonable articulable suspicion of criminal activity afoot. We note that the trooper had extensive professional experience as a law enforcement officer with special training in drug interdiction. He was present in a drug corridor and observed the following: a driver speeding while operating a one- or two-day car rental; no visible luggage, computer, or DJ equipment; nervousness and lack of eye contact by the driver; and a large bottle of cologne in the car. Considering the totality of the circumstances, while each factor may have an innocent explanation, together, in the trooper's vast experience, they raised his suspicion of criminal activity, which he articulated at the hearing. *Derricott v. State*, 327 Md. 582, 588 (1992) (quoting *Terry*, 392 U.S. at 27) ("Due weight must be given 'not to [an officer's] inchoate and unparticularized suspicion or 'hunch,' but to 'the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.'"). And, while nervousness alone may be insufficient for reasonable suspicion, that was just one factor enunciated by the trooper. We conclude that if the detention was to be considered a second stop, that stop was supported by reasonable articulable suspicion.

JUDGMENTS OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.