Circuit Court for Washington County
Case No. C-21-CR-23-000386

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1488

September Term, 2023

MICHAEL EUGENE STONE

v.

STATE OF MARYLAND

Shaw,
Ripken,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.
Dissenting Opinion by Harrell, J.

Filed: January 24, 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, Michael Eugene Stone, was found guilty in the Circuit Court for Washington County of unlawful possession of a controlled dangerous substance and unlawful possession of a controlled dangerous substance with the intent to distribute. On May 5, 2023, after observing Appellant manipulate a cell phone that was attached to his windshield, police conducted a traffic stop, and during a search, they seized CDS from his car and his person. Appellant was arrested and the State filed a criminal information in the circuit court, charging him with the CDS violations. He filed a pretrial motion to suppress, arguing that his Fourth Amendment rights had been violated, which the court denied at the conclusion of a hearing. Appellant was convicted of the CDS violations and sentenced to ten years' incarceration, all but six suspended, and three years' probation. Appellant noted this timely appeal and presents one question for our review:

1. Did the circuit court err in denying the motion to suppress the evidence resulting from a traffic stop based solely on the driver touching the screen of his dashboard-mounted mobile device while operating the vehicle?

For the following reasons, we hold that the circuit court erred in denying Appellant's motion to suppress, and we reverse the judgment of the court.

BACKGROUND

Officer Scott Huff of the Hagerstown Police Department's Crimes Suppression Unit testified at the suppression hearing, that on May 5, 2023, he and Officer Travis Wheat were on routine patrol in a marked police vehicle. Officer Huff indicated that the officers "observed a black Mercedes Benz with a temporary Maryland registration turn off of Broadway and travel south onto Potomac Street and make a right on North Ave." Officer

Huff testified that "[w]hile we were behind it going west on West North Ave, we observed the operator begin to manipulate the cellphone that was mounted to the dash or windshield, and it appeared like he was typing a message or placing a phone call while he was driving the vehicle." When asked to describe what he observed, he stated that he "saw him with his right hand manipulate the phone, touching it while he was driving down the roadway." Officer Huff then testified that "Officer Wheat activated his emergency equipment. We conducted a traffic stop on the vehicle."

Officer Travis Wheat of the Hagerstown Police Department's Crimes Suppression Unit also testified at the suppression hearing. Officer Wheat indicated that he "was driving and Officer Huff was in the front passenger seat." Officer Wheat testified that, at approximately 9:18 p.m.:

> While we were behind the vehicle going up West North Ave in the 100th block I observed the driver, he had a cellphone that was stuck to the windshield of the vehicle. I could see the cellphone illuminated when I was behind it, and I saw him pressing the screen while he was driving.

When asked if the vehicle was in motion while Appellant was pressing his cell phone screen, Officer Wheat stated "[t]hat's correct." Based on these observations, the officers conducted a traffic stop "for the using [sic] the mobile device while the vehicle was in motion."

Officer Huff approached the vehicle and "requested [Appellant's] driver's license and registration for the vehicle." Appellant provided the registration for the vehicle but informed Officer Huff that "he did not have his driver's license with him. He thought that he might have been suspended." The body camera footage, which was admitted into

evidence, revealed that, during the interaction, Officer Huff informed Appellant that he was stopped for "using the phone while driving." Appellant responded that he "was trying to get ahold" of his girlfriend. Officer Huff relayed to Officer Wheat that Appellant did not have a license. Officer Wheat ran a record search and confirmed that his license was suspended. Officer Wheat subsequently requested a tow for Appellant's vehicle. Officer Huff "smelled an odor of marijuana coming from the vehicle." When asked about the odor, Appellant confirmed he had "a small amount of marijuana[.]" When asked if he had any other illegal substances in the car, Appellant said no. Officer Huff then asked Appellant for consent to do an inventory search of the vehicle before towing it, and he gave his consent.

Officer Wheat began searching the vehicle, and during the search, Officer Huff asked Appellant if he could search him for weapons. He consented. After feeling a hard object that he believed to be a weapon within a "cross bag on the right side of [Appellant's] body[,]" Officer Huff retrieved a pair of brass knuckles. Officer Wheat testified that while searching the floor of the driver's side of the vehicle, he located what he believed was "a vial that was used to contain and transport crack cocaine which is a schedule, controlled dangerous substance."

Officer Wheat returned to Officer Huff and Appellant and informed them that he had located an illegal substance in the car. Both officers testified that Appellant was placed under arrest at that point. Officer Wheat then initiated a search incident to arrest and testified, "I believed I had probable cause to search him due to the crack cocaine in the

car." During a search of Appellant's person, Officer Huff testified that "Officer Wheat conducted a search of the area between his legs and below his genitals and felt an object that was not consistent with the human anatomy and told him not to move while I placed him in handcuffs." Officer Wheat retrieved drug paraphernalia from Appellant's underwear, including "a glass smoking device and a metal push rod[.]" Officer Wheat also recovered a sock which "had some fentanyl caps inside of it." Officer Wheat testified that the officers then placed Appellant in the back of the patrol cruiser, and "Officer Huff Mirandized him and I believe questioned him."

Appellant was charged with unlawful possession of a controlled dangerous substance and unlawful possession of a controlled dangerous substance with intent to distribute. Appellant filed a motion to suppress, arguing that the officers violated his Fourth Amendment rights when they conducted the initial traffic stop, and thus, the evidence seized from his vehicle and person should be suppressed. At the conclusion of the suppression hearing, Appellant's motion was denied. The court stated:

> So, the, you know the standard for the stop is reasonable articulable suspicion. Seeing a person manipulating the phone is enough reasonable articulable suspicion because they, in this day and age they could easily be texting. And it wouldn't matter if they were actually making a telephone call because making a telephone call looked exactly like texting. So, it's what the person, what it appears to it [sic]. So, the initial stop is supported by reasonable articulable suspicion. A very close call. If, if [sic] the Officer would have testified, looked like he was making a telephone call then if that was the reasonable articulable suspicion then this, this case would be, would be dead at that point. But he says it looked like he was making a call or sending a text message and Officer Wheat's testimony is the same.
>
> The manipulation of a cellphone does provide reasonable articulable suspicion. It would not be enough to provide, you know, a – certainly a

> conviction for that offense and the Officer does not have to charge him with that offense to make the initial stop.
>
> The balance of the continuation of the stop, the check of his driving history, that he's not licensed, he can't drive the car, etcetera, the keeping the vehicle on the scene and the inventory that stems from that is therefore not suppressed.

Appellant was later found guilty on both charges. He noted this timely appeal.

STANDARD OF REVIEW

In evaluating the grant or denial of a motion to suppress, appellate courts "accept the suppression hearing court's factual findings and determinations regarding the credibility of testimony unless they are clearly erroneous." *Small v. State*, 464 Md. 68, 88 (2019) (citing *McFarlin v. State*, 409 Md. 391, 403 (2009)). We will not deem a finding clearly erroneous where "'there is any competent material evidence to support the factual findings of the trial court.'" *Id.* (quoting *YIVO Inst. for Jewish Rsch. v. Zaleski*, 386 Md. 654, 663 (2005)). In our review, we "limit ourselves to considering the record of the suppression hearing" and view all evidence and reasonable inferences in a light most favorable to the prevailing party. *Id.* This Court, however, reviews legal conclusions regarding whether an appellant's constitutional rights have been violated under a *de novo* standard of review. *Id.*

DISCUSSION

I. The court erred in denying Appellant's motion to suppress.

Appellant argues the court erred in denying his motion to suppress. He contends that the officers conducted a traffic stop based solely on observing him touch the screen of

his cell phone, which was mounted to his vehicle's windshield. While texting and driving is prohibited, Appellant argues that the Maryland Transportation Article permits a driver to briefly initiate or terminate a call. He contends that the officers did not have a reasonable suspicion that he was violating the law when they observed him manipulating his cell phone, nor did they have probable cause, which Appellant contends was required. He relies, in part, on *Santos*, *Lewis*, and *Williams,* in support of his argument, as well as holdings from out-of-state courts. Appellant notes the significant implications of allowing law enforcement to arbitrarily conduct traffic stops any time a motorist touches his or her cell phone screen.

The State argues the court did not err in denying Appellant's motion to suppress because the officers had a reasonable basis to suspect that Appellant had violated traffic laws. The State argues that Appellant's contention that probable cause is the appropriate standard is not in accord with Maryland case law, and it was not raised or decided upon by the trial court. It is, therefore, not preserved.

We observe that, in the proceedings below, Appellant did not argue that probable cause was the appropriate standard for evaluating the stop. While the trial court did not fully articulate its reasoning, the court expressly stated that the reasonable suspicion standard was the basis for its decision. Its ruling was not made in the context of a dispute between the parties as to whether probable cause or reasonable suspicion applied.

In his brief, Appellant contends that Maryland case law is inconsistent and that "[a]lthough probable cause is the correct standard mandated by the United States Supreme

Court for a traffic stop the result in this case is the same regardless of the standard applied; the stop is not supported by either reasonable suspicion or probable cause."

The Fourth Amendment of the U.S. Constitution provides for the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" U.S. CONST. amend. IV. "'The exclusion of evidence obtained in violation of these provisions is an essential part of the Fourth Amendment protections.'" *Trott v. State*, 473 Md. 245, 254 (2021) (quoting *Swift v. State*, 393 Md. 139, 149 (2006)). The Maryland Supreme Court has categorized law enforcement interactions under the Fourth Amendment "into three categories based upon the level of intrusiveness of the police-citizen contact: an arrest; an investigatory stop; and a consensual encounter." *Id.* at 255 (citing *Swift*, 393 Md. at 149–51). While an arrest requires probable cause, a less intrusive investigatory stop, or a *Terry*[1] stop, requires reasonable suspicion. *Id.*

In *State v. Williams*, 401 Md. 676 (2007), the Maryland Supreme Court examined whether an officer had reasonable suspicion to conduct a traffic stop where he perceived a driver's windows to be illegally tinted. Police had been informed that a vehicle displaying the respondent's license plate number was suspected of carrying narcotics. *Id.* at 679. An officer observed the respondent operating the vehicle and requested K-9 assistance. *Id.* The officer did not observe the respondent commit any traffic violations. *Id.* He testified that he conducted a traffic stop because he believed that the rear window of the vehicle "was darker than 'normal.'" *Id.* His observation was not based on training or the results

[1] *Terry v. Ohio,* 392 U.S. 1 (1968).

of a tint meter but, rather, on the belief that an officer may conduct a traffic stop "if the officer in their own opinion feels it's too dark[.]" *Id.* at 680. A K-9 unit arrived while the officer was issuing the driver a repair order. *Id.* at 681. A police dog alerted to the presence of narcotics, which ultimately led to the discovery of cocaine and marijuana in the respondent's vehicle. *Id.* It was later determined that the windows did not contain an illegal tint. *Id.*

The Supreme Court explained that "an officer's observations may be the basis for such a stop, if those observations truly suffice to give a reasonable articulable suspicion that one or more windows are not in compliance with the statutory and regulatory requirements." *Id.* at 691. The court held that the officer did not have reasonable suspicion to conduct a stop because he solely relied on "comparing the darkness of the rear window to a window without any tinting." *Id.* Because the officer could not articulate the difference between an illegally tinted window and a legally tinted one, the evidence against the respondent was suppressed. *Id.* at 692.

The court further stated that reasonable suspicion is "the appropriate minimum standard" for a traffic stop. *Id.* at 687. It reasoned that while some Maryland and U.S. Supreme Court cases have referred to a probable cause determination in assessing a traffic stop's reasonableness, the references "may be taken as mere truisms rather than the fixing of probable cause as a minimum standard[.]" *Id.* at 688. These cases do not hold that probable cause is the minimum standard for a traffic stop. *Id.* at 609–91. Instead, these

cases indicate that law enforcement had satisfied the higher standard of probable cause in conducting a stop as opposed to the minimum standard of reasonable suspicion. *Id.*

Generally, in traffic stop cases, on appeal, we "'examine the totality of the circumstances to determine whether an officer could reasonably suspect that criminal activity is afoot.'" *Sizer v. State*, 456 Md. 350, 365–66 (2017) (quoting *State v. Holt*, 205 Md. App. 539, 558 (2013)). The Maryland Supreme Court has applied the following approach, articulated in *United States v. Cortez*, 449 U.S. 411, 418 (1981), stating:

> The idea that an assessment of the whole picture must yield a particularized suspicion contains two elements, each of which must be present before a stop is permissible. First, the assessment must be based upon all the circumstances. The analysis proceeds with various objective observations, information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of lawbreakers. From these data, a trained officer draws inferences and makes deductions—inferences and deductions that might well elude an untrained person.
>
> The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common sense conclusions about human behavior; jurors as factfinders are permitted to do the same—and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.
>
> The second element contained in the idea that an assessment of the whole picture must yield a particularized suspicion is the concept that the process just described must raise a suspicion that the particular individual being stopped is engaged in wrongdoing.

Cartnail v. State, 359 Md. 272, 288 (2000) (quoting *Cortez*, 449 U.S. at 418); *see also Holt*, 205 Md. App. at 460–61 (applying the *Cortez* test). Despite the two-part analysis, the Supreme Court has recognized that the reasonable suspicion standard is not a "standardized

litmus test[.]" *Cartnail*, 359 Md. at 286. Reasonable suspicion is left intentionally broad to encompass the "myriad of factual situations that arise." *Trott*, 473 Md. at 256–57 (quoting *Cortez*, 449 U.S. at 417).

While officers are required to present "some minimal level of objective justification for making the stop that amounts to something more than an 'inchoate and unparticularized suspicion or hunch', it does not require proof of wrongdoing by a preponderance of the evidence." *Id.* at 257 (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). As a result, where conduct can be interpreted as either legal or illegal, officers are permitted to dispel that suspicion and "resolve the ambiguity." *Illinois v. Wardlow*, 528 U.S. 119, 125–26 (2000) ("*Terry* accepts the risk that officers may stop innocent people.").

In determining whether reasonable suspicion was satisfied in this instance, we first turn to Md. Code Ann., Transportation Article § 21-1124.1 (2014) ("TR"). It states that a motorist is prohibited from using "a text messaging device to write, send, or read a text message or an electronic message while operating a motor vehicle in the travel portion of the roadway." TR § 21-1124.1(b). The statute carves out two exceptions for handheld devices, stating "[t]his section does not apply to the use of (1) [a] global positioning system; or (2) [a] text messaging device to contact a 9-1-1 system." TR § 21-1124.1(c). An additional exception is provided under TR § 21-1124.2(d)(2), which states, "[a] driver of a motor vehicle that is in motion may not use the driver's hands to use a handheld telephone other than to initiate or terminate a wireless telephone call or turn on or turn off the

handheld telephone."[2] Pursuant to TR § 21-1124.2(f)(2), law enforcement may waive a penalty for a first-time violator of the above-mentioned rule if the violator "[p]rovides proof that the person has acquired a hands-free accessory, an attachment or add-on, a built-in feature, or an addition for the person's handheld telephone that will allow the person to operate a motor vehicle in accordance with this section."

Appellant relies, in part, on *Santos v. State*, 230 Md. App. 487 (2016), where we held that an initial traffic stop was justified when two detectives observed the appellant texting and driving in violation of TR § 21-1124.2(d)(2). There, we focused on the appellant's continued detention for investigation of a narcotics violation. The detectives were patrolling a McDonald's parking lot known for drug transactions in an unmarked car. *Id.* at 490. The detectives observed Santos enter the parking lot, park his vehicle away from other cars, and observe his surroundings along with a female passenger. *Id.* Santos waited in the car as the passenger entered the McDonald's and sat with another individual. *Id.* at 491. As he left the parking lot, the detectives observed that Santos was not wearing a seat belt and that he was using his cell phone. *Id.* They conducted a traffic stop, believing that they had witnessed a drug transaction. *Id.* The detectives testified that they observed Santos acting unusually nervous and that he lied to them about his previous whereabouts.

[2] TR § 21-1124.2(c)(2) prohibits the use of handheld devices in all circumstances for drivers who do not possess "a learner's instructional permit or a provisional driver's license who is 18 years of age or older." The State contends that because Appellant's license was suspended, any interaction the officers observed between the Appellant and his phone while driving, including initiating a call, was illegal. The officers, however, were not aware of the suspension until *after* the initial stop.

Id. They requested that he exit his vehicle. *Id.* Additional officers arrived at the scene and located the female passenger in the McDonald's restaurant. *Id.* at 491–92. She admitted to the officers that Santos sold her heroin. *Id.* at 492. Appellant was arrested, and a search of his vehicle revealed heroin and cocaine. *Id.*

This Court upheld the initial stop as constitutional under *Whren*[3] because the detectives suspected that Santos was committing a traffic violation when he was manipulating his cell phone while driving. *Id.* at 495. We did not discuss the merits of the manipulation issue because Santos "conceded that there is no such limitation for stopping a driver while using a handheld telephone." *Id.* We also did not rely on the appellant's failure to wear a seatbelt in our analysis as the detectives were not in uniform while patrolling. *Id.* Under TR § 22-106(a), "only uniformed police officers are authorized to stop motorists for seat belt violations." *Id.* Additional facts, such as the McDonald's parking lot being known for drug transactions and the appellant's suspicious behavior in the parking lot, were discussed by this Court in evaluating whether the officers legally conducted a *second* stop. *Id.* at 502. As a result, *Santos* is not dispositive here.

Appellant also relies, in part, on *Lewis v. State*, 398 Md. 349 (2007), where the Maryland Supreme Court held that law enforcement did not have reasonable suspicion to conduct a traffic stop after Lewis nearly caused an accident and almost hit a patrol vehicle while turning onto a road from a parking spot. *Id.* at 355, 367. Police stopped Lewis,

[3] *Whren v. United States*, 517 U.S. 806 (1996) (establishing that pretextual stops are constitutional under the Fourth Amendment).

believing they had reasonable suspicion that he was engaged in illegal activity when he nearly caused an accident. *Id.* at 355. The Maryland Supreme Court explained that "the police have the right to stop and detain the operator of a vehicle when they witness a violation of a traffic law." *Id.* at 363 (collecting cases). The court highlighted, however, that "mere hunches that unlawful activity is afoot" are insufficient to conduct a traffic stop. *Id.* at 364. In describing the totality of the circumstances test, the court stated that while the standard "makes it possible for individually innocuous factors to add up to reasonable suspicion, it is 'impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation.'" *Id.* at 366 (quoting *Cartnail*, 359 Md. at 294). The court noted that while it has upheld traffic stops of vehicles that were operating lawfully, in those cases, the "lawfulness was accompanied by suspicious behavior or information regarding criminal activity." *Id.* at 367.

The court found that the officers were operating on a "hunch" when they conducted the stop because Lewis had not engaged in any illegal activity by almost causing an accident and there were no additional facts to raise suspicion of criminal activity. *Id.* at 368. It explained that reasonable suspicion based on almost causing an accident alone would "run[] afoul of the Fourth Amendment jurisprudence because there is no basis for conducting an investigatory traffic stop when it is evident that the driver is lawfully operating his vehicle without any accompanying illegal activity." *Id.* The court remarked that such a standard would subject drivers to arbitrary traffic stops for other lawful conduct

that may almost cause an accident, such as "driving less than the speed limit, passing another car appropriately or merely parallel parking." *Id.* at 369. Ultimately, the court held that the officers did not have reasonable suspicion to conduct a traffic stop based on a driver almost causing an accident. *Id.* at 373.

Appellant also cites several holdings from out-of-state courts, and we will discuss the cases we find most relevant to this appeal.[4] In the case of *People v. Corrales*, 152 Cal. Rptr. 3d 667 (Cal. Ct. App. 2013), police observed a motorist "parked on the side of the road using his cellular telephone." *Id.* at 698. The officers slowly drove by the vehicle and saw the motorist "using his cellphone to send a text message." *Id.* Several minutes later, while the officers were behind the motorist's vehicle, the motorist pulled out into traffic. *Id.* The officers testified that the motorist "was leaning and looking down. He was making movements with his hand as if he was texting. [He] continued to text for 30 to 40 seconds." *Id.* at 698–99. The officers subsequently conducted a traffic stop believing they had reasonable suspicion that the motorist was texting and driving in violation of California

[4] We do not find *United States v. Paniagua-Garcia*, 813 F.3d 1013 (7th Cir. 2016), to be relevant here. As the State correctly notes, the Indiana statutes on phone usage while driving provide significantly broader permitted uses than the Maryland Transportation Article. Motorists in Indiana are permitted to use their cell phones for any use except "to type, transmit, or read a text message or an electronic mail message." *Id.* at 1013. However, "[a]ll other uses of cell phones by drivers are allowed." *Id.* In contrast, Maryland only allows phone usage while driving in three circumstances: using a GPS, calling 9-1-1, and initiating or terminating a call. Considering the wide range of permitted activities while driving in Indiana, it is foreseeable that the officers in those cases were required to provide more detailed observations to establish reasonable suspicion. We do not find it useful to rely on a court's holding that was based on a statute that does not resemble the Maryland Transportation Article in determining whether reasonable suspicion exists here.

law. *Id.* at 699. The court explained that the aforementioned facts were sufficient grounds for an experienced officer to suspect that a motorist was texting and driving. *Id.* at 700. The court held that "[n]o Fourth Amendment violation occurred." *Id.*

In the case of *State v. Dalton*, 850 S.E.2d 560 (N.C. Ct. App. 2020), an officer observed a vehicle "traveling with a 'large glow coming from inside the vehicle.'" *Id.* at 562. The officer followed the vehicle and "he noticed a 'more prevalent' glow emitting from the vehicle." *Id.* The officer "discovered that the glow was being produced by a cellular device held by the driver and sole occupant of the car." *Id.* The officer described the phone as being "'up in the air, almost like in the center'" and it "appeared that the driver was texting on the phone." *Id.* The officer subsequently initiated a traffic stop. *Id.* The court relied on the officer's testimony that he "observed [the] defendant using and handling a cellular device while traveling on multiple streets in a manner consistent with texting or reading text messages—which is unlawful per N.C. Gen. Stat. § 20-137.4A(a)(1)-(2)." *Id.* at 54. The officer also drew upon his experience by distinguishing legal versus illegal behavior, stating "had [the] defendant been using a 'mapping system' on the device as he claimed, 'it would be a look, and then [placing the phone] down as opposed to holding it up the entire street just to get to a stop sign, and then to make a left turn onto a street.'" *Id.* The court held that the officer had reasonable suspicion to conduct a traffic stop. *Id.* at 55.

In the case of *State v. Struve*, 956 N.W.2d 90 (Iowa 2021), two officers "were driving next to a vehicle when they observed the driver holding a phone in front of his face." *Id.* at 94. The officers "could see the glow of the phone from their car and that the

driver was 'manipulating' the screen with his finger." *Id.* After observing this behavior for ten seconds while driving alongside the vehicle, the officers conducted a traffic stop. *Id.* The court found that the officer had reasonable suspicion to conduct the traffic stop, explaining:

> [M]erely observing a cell phone in a driver's hand reflects innocuous behavior. But additional observations can raise an officer's suspicions sufficient to justify an investigatory stop, even if the observations do not necessarily reveal prohibited as opposed to allowed activity. Here, the officers observed more than mere use of a cell phone. The officers followed alongside Struve and observed him holding the phone in front of his face for a significant period of time while manipulating it, actions consistent with improper use of his phone.

Id. at 105.

In the case of *State v. Morsette*, 924 N.W.2d 434 (N.D. 2019), an officer "observed a driver in the adjacent lane manipulating his touchscreen cell phone for approximately two seconds." *Id.* at 436. The officer then saw the driver "tap approximately ten times on the illuminated screen." *Id.* Based on these observations, the officer conducted a traffic stop. *Id.* The court noted that the officer had two-and-a-half years of experience working for the police department, that "he observed Morsette manipulating his cell phone for approximately two seconds, tapping the illuminated screen about ten times," and that he could not view "the content of the screen at the time of the tapping." *Id.* at 440. The court highlighted that "no testimony was elicited" regarding the officer's "past success rate at identifying violations of the cell phone-use-while-driving law or any unique training he received enabling him to conclude the facts he observed amounted to violations of the law."

Id. The court held that, based on these facts, the officer did not have reasonable suspicion to conduct a traffic stop. *Id.*

In the present case, both officers testified at the suppression hearing that they observed Appellant "manipulate" his cell phone. Officer Huff stated that "[w]hile we were behind it going west on West North Ave, we observed the operator begin to manipulate the cellphone that was mounted to the dash or windshield, and it appeared like he was typing a message or placing a phone call while he was driving the vehicle." Officer Wheat corroborated this testimony by stating, "I could see the cellphone illuminated when I was behind it, and I saw him pressing the screen while he was driving."

In denying the motion to suppress, the judge first held that reasonable suspicion was the proper Fourth Amendment standard to apply. He stated that his ruling was, in large part, based on the officers' testimony that both officers believed that Appellant may have been committing a traffic violation by texting and driving. The court noted that if the officers had only suspected Appellant of initiating a phone call, they would not have had reasonable suspicion to conduct the stop.

In our review of the record, we discerned that neither officer distinguished how Appellant appeared to be texting as opposed to initiating or terminating a call. Testimony from the officers describing why they believed he was violating traffic laws is limited: "[I]t appeared like he was typing a message" and "I saw him pressing the screen while driving." The officers did not provide details, nor did they state how long they observed Appellant manipulate his phone or whether he appeared distracted. The officers did not testify, that

based on their experiences or knowledge, they concluded that Appellant may be texting, nor did they characterize their observations of legal versus illegal cell phone use. Officer Huff testified, alternatively, stating "it appeared like he was typing a message or placing a phone call while he was driving."

The Maryland Supreme Court in *Williams* explained that in order to rely on the observations of law enforcement in establishing reasonable suspicion, the officer must have been able to articulate the difference between an illegally tinted window and one without tinting. *Williams*, 401 Md. at 692. The Supreme Court's holding in *Lewis* indicated that officers cannot conduct traffic stops for innocuous behavior unless there is some additional evidence to suspect criminal activity. *Lewis*, 398 Md. at 368.

In Maryland, there are several exceptions for phone usage while driving, such as using a GPS, calling 9-1-1, and initiating or terminating a call. Pressing a cellphone screen while driving is, in our view, innocuous behavior unless additional information indicates criminal activity. The officers here did not articulate any additional observations or indications of criminal activity. There was no testimony as to why the manipulation of the phone might *not* fall within lawful exceptions or a distinction between legal and illegal behavior. As such, the court erred in denying the motion to suppress.

Our conclusion is also consistent with the holdings of several out-of-state courts, including *Corrales*, *Dalton*, *Struve*, and *Morsette*. In those cases, the officers provided at least some additional description of the suspected illegal behavior beyond pressing a screen, or the officers distinguished the illegal behavior from legal behavior. While we

agree with the State that these out-of-state cases are not controlling, they are, nevertheless, examples of the analysis undertaken in other jurisdictions. Our holding is based on the precedents established in *Williams* and *Lewis*.

In sum, here, there is insufficient evidence in the record from which the trial court could properly conclude that the officers had reasonable suspicion to conduct a traffic stop of Appellant's vehicle. Accordingly, we reverse the judgment of the court.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY REVERSED; COSTS TO BE PAID BY WASHINGTON COUNTY.

Circuit Court for Washington County
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UNREPORTED*

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Shaw,
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JJ.

Dissenting Opinion by Harrell, J.

Filed: January 24, 2025

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With the utmost respect, I dissent. This case poses an interesting question, presenting a close call worthy of consideration by our Supreme Court. In the meantime, we are tasked with formulating an answer. Unfortunately, the majority opinion chooses (waiting almost to its end, beginning on slip. op. at 17) the incorrect outcome.

First, I note that the majority opinion is accurate in framing the legal standards by which the officers' suppression hearing testimony should be evaluated. Reasonable suspicion is the minimum standard for making an investigatory traffic stop. Maj. slip op. at 8 (citing *Williams v. State*, 401 Md. 676, 687 (2007)). In considering the totality of the circumstances revealed by the suppression hearing, a court does not demand an officer's inferences and deductions, which may well elude an untrained person, to be hard certainties, but rather probabilities, i.e., common sense conclusions regarding human behavior. Maj. slip op. at 9 (citing *Cartnail v. State*, 359 Md. 272, 288 (2000), quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)). "[T]he evidence . . . [should] be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." *Cartnail*, 359 Md. at 288 (cleaned up). Most critical to proper analysis of the suppression record in the present case is the guidance that, where conduct viewed by an officer may be interpreted as either legal or illegal, officers are permitted to dispel that suspicion (via an investigatory stop) and "resolve the ambiguity." Maj. slip op. at 10 (citing *Illinois v. Wardlow*, 528 U.S. 119, 125-26 (2000)). This principle acknowledges that, in making an investigatory stop to resolve ambiguity, officers may stop occasionally innocent people. *Wardlow*, 528 U.S. at 126.

Turning to the proper application of these standards to the present case, I submit that determining, most often from the vantage of a moving police vehicle (in the present scenario, trailing the target vehicle), whether the operator of another moving motor vehicle is making lawful or unlawful use of a cell phone, under Maryland's relevant statutes and of such situations, presents often an ambiguity. As the majority opinion confirms, one officer was able to observe Stone "manipulate the cellphone that was mounted to the dash . . . , and it appeared like he was typing a message or placing a phone call . . . with his right hand[.]" Maj. slip op. at 2. The accompanying officer saw "the cellphone illuminated . . . [and Stone] pressing the screen[.]" *Id.* To describe what Stone was observed doing, potentially "typing a message" would be consistent with being in the process of preparing to transmit (or transmitting) a text message. Thus, resolving the ambiguity under the Maryland statutes merited an investigatory stop.

So viewed, the facts of Stone's case are just as consistent with the out-of-state cases in *Corrales*, *Dalton*, *Struve*, and *Morsette* analyzed by the majority opinion (slip op. at 14-17), but which the majority opinion (slip op. at 18) concludes are consistent with its holding.

The majority opinion engages in a brief "woulda, shoulda, coulda" exposition of how Officers Huff and Wheat could have bolstered their testimony that would have satisfied my colleagues more in justification of the stop here. Maj. slip op. at 17-18. I

submit such speculation is unwarranted and invites burdening unduly law enforcement in carrying out its primary functions.

The trial court judge got it exactly right. I would affirm the judgment.