Circuit Court for Worcester County
Case No. C-23-CR-23-000048

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2024

September Term, 2023

ADAM HEATH

v.

STATE OF MARYLAND

Arthur,
Leahy,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: February 11, 2025

* This is an unreported opinion. The 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, Adam Heath, was a passenger in a car pulled over by the Berlin Police Department as part of a check fraud investigation. Heath was subsequently arrested and charged with sixteen counts of forgery under Maryland Code (2002, 2021 Repl. Vol.), Criminal Law Article ("CR") § 8-601(a)-(b), via a District Court application. Heath requested a jury trial, and the case was transferred to the Circuit Court for Worcester County. Heath filed a motion to suppress, arguing that the traffic stop was conducted in violation of the Fourth Amendment because it was not supported by reasonable articulable suspicion and all fruits of the stop had to be suppressed. After a hearing, the suppression court denied his motion.

Heath then pled not guilty to one count of counterfeiting a check under CR § 8-601(a) on an agreed statement of facts. The circuit court found Heath guilty and sentenced him to ten years of incarceration with five years suspended, followed by three years of probation. Heath timely noted this appeal and presents two questions for our review, which we have rephrased as follows[1]:

1. Did the suppression court err in denying Heath's motion to suppress?
2. Did the circuit court abuse its discretion in imposing Heath's sentence?

[1] Heath's questions presented are, as originally phrased:

1. Did the Trial Court err in denying the Appellant's motion to suppress the stop of the automobile in which he was a passenger, because the stop was not supported by reasonable articulable suspicion that the occupants of the automobile had committed a crime?

2. Did the Trial Court abuse its discretion by imposing a sentence against Appellant that was two years above the very top of the Maryland Sentencing Guidelines?

We hold that the stop was supported by reasonable articulable suspicion, and that the circuit court did not abuse its discretion in imposing Heath's sentence. We therefore affirm the judgment of the circuit court.

BACKGROUND

Our summary of the relevant facts is drawn solely from the evidence in the record before the suppression court. *Longshore v. State*, 399 Md. 486, 498 (2007).

Investigation and Traffic Stop

On August 1, 2022, at about 2:13 P.M., Senior Officer Gary Bratten of the Berlin Police Department was dispatched to the Bank of Ocean City to respond to a call. When he arrived at the bank, Ofc. Bratten was directed to Jason Bethea, who had allegedly tried to cash a fraudulent check. Ofc. Bratten spoke with Bethea and learned that Bethea was friends with a man named Adam Heath, that they had come to the bank together, and that they had parked by the Shop Kwik across the street. Bethea described Heath as an approximately six-foot tall black male and stated that Heath was still inside the vehicle. Bethea described their vehicle as a square, silver four-door with Florida registration. Ofc. Bratten looked out the bank's window at the Shop Kwik and saw a vehicle matching Bethea's description pull out of the parking lot. However, Ofc. Bratten was not able to see inside the vehicle.

While Ofc. Bratten was speaking to Bethea at the bank, Bethea's cell phone kept going off. Bethea granted Ofc. Bratten permission to view his phone and the incoming text messages. One of the text messages said, "are you okay. Come out. Walk out back." Upon

questioning Bethea, Ofc. Bratten learned that Heath was the source of these messages. Police then set up a controlled meet between Heath and Bethea. Bethea called Heath and told him that he cashed the check without issues, and that he needed Heath to pick him up. Heath asked Bethea why the police were there. Bethea responded that he didn't know, but he had cashed the check.

Heath was set to pick up Bethea at Food Lion, in the same parking complex as the Shop Kwik. Ofc. Bratten moved his marked patrol vehicle from the front of the bank to behind a nearby Rite Aid, where it was out of view of the Food Lion parking lot. Detective Corporal Jessica Collins, who had helped set up the controlled meet, left her unmarked car in the bank parking lot to observe Bethea's movements. While Ofc. Bratten was waiting behind the Rite Aid, Det. Collins noticed a square, silver, four-door vehicle stopped at the east side of a nearby intersection. However, rather than continuing west towards the Food Lion parking lot, the vehicle turned left and headed south, down the highway.

Ofc. Bratten followed this vehicle, eventually driving behind it. While following the vehicle, he saw that it was a Kia Soul with Florida registration. He could see two occupants: a female driver and a male passenger. The male passenger was a "taller black male," and was talking on his cell phone. Ofc. Bratten was on the phone with Det. Collins, who informed him that Bethea was currently talking on his cell phone. Ofc. Bratten did not observe any traffic infractions. At about 3:06 PM, Ofc. Bratten initiated a traffic stop.

Charges and Motion to Suppress

Following the traffic stop, Heath was arrested and charged via a District Court application with sixteen counts of forgery under CR § 8-601(a)-(b). Heath requested a jury trial, transferring the case to the circuit court. On April 13, 2023, Heath filed a general "Motion to Suppress Evidence" and "Motion to Suppress Statements." On July 23, 2023, Heath filed a "Supplemental Motion to Suppress" and an accompanying memorandum of law. In his motion, Heath argued that based on the factors articulated in *Cartnail v. State*, 359 Md. 272 (2000), police did not have reasonable articulable suspicion to support a traffic stop. Heath therefore urged that any observations, statements, or other evidence obtained by the police from the stop should be suppressed under Maryland law and the Fourth Amendment to the United States Constitution.

Suppression Hearing

On July 21, 2023, the suppression court held a hearing on Heath's motion to suppress. Two witnesses testified at the hearing: Officer Gary Bratten, and Detective Corporal Jessica Collins. The court took judicial notice of the geography of the surrounding area. Ofc. Bratten testified to the events leading up to the traffic stop, including the check fraud investigation and pursuit of the silver vehicle. Ofc. Bratten also authenticated a portion of his body camera footage, which covered about eight minutes of the traffic stop.[2] When asked how frequently he sees Florida license plates in the area

[2] Because reasonable suspicion is assessed when a stop is initiated, *see Stokes v. State*, 362 Md. 407, 416 (2001), the body camera footage is only relevant here to establish (Continued)

where the traffic stop occurred, Ofc. Bratten responded that "[t]hey pass through," but that Maryland, Virginia, and Delaware license plates are more common. On cross-examination, Ofc. Bratten testified that Bethea told him there was no one else in the vehicle with Heath. Ofc. Bratten also testified that at one point, Bethea told him that the vehicle he arrived in was a Honda Pilot. Ofc. Bratten later clarified that Bethea "only described a Honda Pilot, but also later said a silver square body style vehicle." Ofc. Bratten agreed that the highway on which the vehicle was stopped is a "fairly heavily traveled corridor" during the summer.

Det. Collins testified about her role in the events of August 1, 2022. She stated that she was contacted by Ofc. Bratten to assist in the check fraud investigation, and that she helped set up the controlled meet. Det. Collins recounted that Bethea described a "silver . . . box style vehicle" with Florida registration, and that Bethea "couldn't remember the make and model of the vehicle." She did not recall Bethea stating that he had driven to the bank in a Honda Pilot. She said Bethea didn't initially mention anyone with him other than Heath, and that she couldn't "recall when that actually came out that there was another person." Det. Collins explained that she saw a vehicle matching Bethea's description after he left the bank, and it caught her attention because "it sped off a little bit faster than the normal vehicles in that area for that intersection. . . . and we were also looking for a silver box looking vehicle."

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that the traffic stop began at about 3:06 PM and to corroborate Ofc. Bratten's testimony describing his observations prior to the stop.

After Det. Collins' testimony, the State rested and the suppression court heard argument on Heath's motion. Defense counsel argued that, based on the facts as applied to the six *Cartnail* factors, Ofc. Bratten did not have reasonable suspicion to stop the Kia Soul. The prosecution countered that, based on the totality of the circumstances, Ofc. Bratten had reasonable suspicion to support a traffic stop. After both parties made their argument, the suppression court rendered an oral decision. First, the court explained the legal standard for a motion to suppress. The court then summarized the facts and explained its reasoning:

> The information given to officers either directly from Mr. Bethea or information that is gleaned from listening to the phone call that occurs in the bank with the person who's been identified as you, Mr. Heath, leads them to believe a couple of things.
>
> Number one, that the vehicle that's going to be involved, at one point is described as a Honda Pilot, which this is not. But it is also described as a boxy silver four-door with Florida tags.
>
> The officer's testimony was that the information he had was that you were the only other person in the car. Detective Collins, her recollection was that at some point prior to the stop there was a mention of another person involved.
>
> * * *
>
> During the phone call there was concern about whether or not the check was cashed. There was concern about the presence of police in the parking lot of the bank. And then there was an agreement once Mr. Bethea says, I've cashed the check, there was an agreement to meet in the Food Lion parking lot so that he could be picked up.
>
> * * *
>
> So law enforcement arranged for this pick up to occur in the Food Lion parking lot. They stage in at least two locations. . . .

And what is obvious that didn't need to be testified is that they both could see a silver boxy four-door vehicle at the intersection of 113 and Old Ocean City Boulevard. And if they could see you, then you could see them.

And in my mind what probably happened is that if the allegations are true that you were involved in this check cashing endeavor, you got spooked because you already knew the police were in the parking lot at the bank, and then you may have seen the police, the marked unit, staged at the Rite Aid. And instead of continuing across the intersection to go into the Food Lion parking lot to pick up Mr. Bethea, a left turn was made instead. There was some testimony about an accelerated speed coming out of the intersection. I don't really place a whole lot of weight, but it was something I noted.

And a decision was made by Officer Bratten to stop the Kia Soul, which was determined to be a Kia Soul with Florida registration, and determine whether or not Adam Heath was in the vehicle, having been identified as the person involved with the check cashing scheme, for lack of a better term.

So the stop is made, activated. And once . . . the driver acknowledges law enforcement authority, that is a seizure. So a seizure has occurred. That seizure must be supported by reasonable articulable suspicion. . . . [T]o satisfy the reasonable suspicion standard, the above factors considered must serve to eliminate a substantial portion of innocent travelers.

And while Florida tags -- if you saw a Florida tag on U.S. 113, it would not be uncommon, but it also would not be something that you see frequently. We are bordered -- Maryland is bordered by Delaware and Virginia. Those are the more -- if you're going to see out-of-state tags, those are more frequent ones that you see. But it would not be unusual to see a Florida tag.

But to see a Florida tag on a silver four-door boxy style vehicle within minutes of this investigation initiating and within minutes of -- actually probably within seconds of when the meet was supposed to happen at the Food Lion, I believe does just that. It eliminates a substantial portion of innocent travelers. You wouldn't stop a Florida tag F150. You wouldn't stop a Florida tag convertible. You would only stop a Florida tag silver boxy style vehicle, one, maybe four -- I mean two or four doors, maybe that would be appropriate.

But I find that the investigation was -- the stop of your vehicle is not a hunch. It was suspicion. It was articulated. And I find that the suspicion to be reasonable under the totality of the circumstances and after applying the

> factors established by the Cartnail case. I thought it -- it strikes me as good police work and appropriate under the circumstances.
>
> I also note that . . . the behavior that was complained of or objected to by your counsel, is the stopping of the vehicle and the asking you of what your name is. And once the name is given that corroborated what Mr. Bethea said, that elevated the level of the stop to probable cause and justified any additional behavior beyond that.
>
> * * *
>
> [Defense counsel], again, an excellent job, but your motion is denied.

Plea Hearing

At a separate hearing on September 5, 2023, Heath pled not guilty to Count 8, forgery of a private document, on an agreed statement of facts. After the prosecution read the statement of facts and the defense agreed to them, the circuit court found a sufficient factual basis to find Heath guilty of Count 8. The State then entered a *nolle pros* on the remaining charges. The court postponed sentencing to a future hearing.

Sentencing Hearing

On December 1, 2023, the circuit court held a sentencing hearing on Count 8, forgery of a private document. Pursuant to the plea agreement, the State deferred to the court on sentencing and advised the court of Heath's criminal history. The State advised that "[i]f it were a guidelines case, the overall guidelines range would be three months to three years." Defense counsel then argued for a sentence within the guidelines range, although he acknowledged that "it's not a guidelines case." After defense counsel concluded his argument and Heath made some brief remarks, the circuit court rendered an

oral decision. Among other factors, including Heath's criminal history and the facts of the case, the court explained that it considered Heath's degree of premeditation:

> And you know, Mr. Heath, you are not from Worcester County. I don't recall how long you had to drive to get here, if it was from across the bridge and you had several hours to think about what it was that you were about to engage in. And every moment, every minute, every rotation of the tire was an opportunity for you to change your mind.

The court then sentenced Heath to ten years of incarceration with five years suspended, and three years of probation. On December 18, 2023, Heath timely noted this appeal.

DISCUSSION

Heath raises two contentions in this appeal: *first*, that the trial court erred in denying his motion to suppress because the traffic stop was not supported by reasonable suspicion; and *second*, that the trial court abused its discretion in imposing his sentence. We first address Heath's motion to suppress, and then his sentence.

I.

MOTION TO SUPPRESS

A. Parties' Contentions

Heath argues that the suppression court erred in denying his motion to suppress because police lacked a reasonable articulable suspicion that the vehicle in which he was a passenger either committed a traffic infraction or had been involved in criminal activity. Heath contends that the suppression court erroneously relied on facts not in evidence in its oral ruling when it mentioned that the silver vehicle could see the police and "got spooked" into turning away from the Food Lion. Heath argues that this finding was not supported

by the testimony of any witness and was therefore clearly erroneous.

Heath next argues that, based on the six factors referenced in *Cartnail v. State*, 359 Md. 272 (2000), police did not have reasonable suspicion to stop the vehicle in which he was a passenger. Specifically, Heath contends that (1) the description of the vehicle given by Bethea was either non-specific or inaccurate; (2) the Kia Soul was not found in the Food Lion parking lot, the anticipated location of the controlled meet; (3) the stop occurred in a "fairly heavily traveled corridor"; (4) there was no indication of flight; (5) the vehicle did not behave in a suspicious manner; and (6) neither Heath nor the Kia Soul were known to have been involved in prior criminal activity.

The State argues that "[c]onsidering the totality of the information available to the officers at the time they initiated the stop, the officers had reasonable articulable suspicion to believe that Heath was involved in criminal activity[.]" Regarding Heath's contention that the trial court relied on facts not in evidence, the State responds that "[t]he court prefaced its statement by indicating that it was hypothesizing as to why Heath did not continue to the controlled meet location." But the State argues that in any case, "the court did not rely on this in denying Heath's motion to suppress."

The State points to various facts which it contends support a finding of reasonable suspicion:

> At the suppression hearing, the court credited Officer Bratten and Detective [Corporal] Collins's testimony and reliance on the information they obtained from Bethea. Officer Bratten knew, based on the information provided by Bethea, that Heath was in a silver box style vehicle with Florida license plates. When a boxy silver vehicle sped away from an intersection, it caught Officer Bratten's attention because it matched the vehicle he saw leaving the

> Shop Kwik earlier. Officer Bratten confirmed the vehicle had a Florida license plate and identified a tall, black male passenger. Those observations matched the description given by Bethea. The vehicle was also in the proximity of the controlled meet location. And as the suppression court noted, seeing a "Florida tag on a silver four-door boxy style vehicle within minutes of this investigation . . . eliminate[d] a substantial portion of innocent travelers."

The State therefore urges that Ofc. Bratten had reasonable suspicion that a person in the vehicle committed a crime, and Heath's suppression motion was properly denied.

B. Standard of Review

"When an appellate court reviews a trial court's grant or denial of a motion to suppress evidence under the Fourth Amendment, it will consider only the facts and information contained in the record of the suppression hearing." *Longshore v. State*, 399 Md. 486, 498 (2007). We view all evidence in the light most favorable to the party prevailing on the motion—in this case, the State. *Id.* We accept the suppression court's findings of fact unless clearly erroneous. *Id.* "Finally, we review the [suppression court]'s legal conclusions *de novo*, making our own independent constitutional evaluation as to whether the officer's encounter with the defendant was lawful." *Sizer v. State*, 456 Md. 350, 362 (2017).

C. *Legal Framework*

The Fourth Amendment to the Unites States Constitution guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" U.S. Const. amend. IV. Article 26 of the Maryland Declaration of Rights, "like the Fourth Amendment of the United States

Constitution, protects a person's right to be free from *unreasonable* searches and seizures." *Rovin v. State*, 488 Md. 144, 175 (2024).

A traffic stop constitutes a seizure of both the driver and any passengers in the vehicle. *Brendlin v. California*, 551 U.S. 249, 257 (2007); *Henderson v. State*, 416 Md. 125, 144 (2010). "To justify a traffic stop under the Fourth Amendment, an officer is required to have reasonable suspicion, which is defined as 'a particularized and objective basis for suspecting the particular person stopped' of breaking the law." *Jamsa v. State*, 248 Md. App. 285, 313 (2020) (quoting *Heien v. North Carolina*, 574 U.S. 54, 60 (2014)). To assess whether an officer had reasonable suspicion to make a stop, we look to the totality of the circumstances known to the officer. *Sizer*, 456 Md. at 366 (citing *Cartnail*, 359 Md. at 288). Individually innocent factors may add up to reasonable suspicion only when there are concrete and objective reasons to interpret them as suspicious in combination with each other. *Cartnail*, 359 Md. at 294 (citing *United States v. Wood*, 106 F.3d 942, 948 (10th Cir. 1997)). In other words, it is not enough that police "simply assert that innocent conduct was suspicious[.]" *Washington v. State*, 482 Md. 395, 422 (2022) (alteration in original) (quoting *Trott v. State*, 473 Md. 245, 257 (2021)).

The Supreme Court of Maryland has adopted the following factors to evaluate whether an officer had reasonable suspicion:

> (1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender's flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been

involved in other criminality of the type presently under investigation.

Cartnail, 359 Md. at 289 (quoting 4 Wayne R. LaFave, Search and Seizure § 9.4(g), at 195 (3d ed. 1996 & 2000 Supp.). All these variables, considered as a whole, "must serve to eliminate a substantial portion of innocent travelers before the requirement of reasonable suspicion will be satisfied." *Cartnail*, 359 Md. at 289-91 (internal quotations omitted); *see also Washington*, 482 Md. at 452.

In *Cartnail*, police received a report of a robbery at 1:49 A.M. 359 Md. at 277. Information supplied by "unidentified sources was that three black male suspects had fled from the scene in an unknown direction driving a gold or tan Mazda." *Id.* Just over an hour later, police observed a gold Nissan, occupied by two black males, driving approximately two miles from the scene of the robbery. *Id.* at 277-79. Despite not observing any traffic violations, police stopped the gold Nissan. *Id.* at 278, 296. The driver was later arrested for driving with a revoked license. *Id.* at 278.

Applying the above six factors to evaluate reasonable suspicion, the Court stated that "[t]he only factors present that matched [the driver]'s circumstances were gender, race, and arguably the color of the car." *Id.* at 293. The Court found that Mazda and Nissan vehicles were not similar enough to narrow the group of innocent travelers,[3] and that the

[3] The Court rejected the State's claim that they are similar because both are Japanese vehicles, noting that this category would include "seemingly infinite combinations of drivers," including "any gold or tan . . . vehicle, be it early model or late model; two door, four door, or five door; sub-compact, compact, convertible, sedan, station wagon, van, SUV, pick up truck, or sport car[.]" *Cartnail*, 359 Md. at 294.

robbery suspects' "range of possible flight" was "relatively enormous . . . particularly because the suspects escaped in no known direction[.]" *Id.* at 294-95. The Court acknowledged that the stop occurred during early morning hours, when fewer people were out in public, but observed that "early morning hours may also provide police with more opportunity to observe a motorist suspected of criminal activity before initiating a *Terry* stop since there is less public activity to divide their attention." *Id.* at 295-96. Based on these facts, the Court held that "the factors considered in their totality were [no] more suspicious than their individual components[,]" and the police lacked reasonable suspicion to stop the driver. *Id.* at 293-94.

D. Analysis

Based on our independent constitutional evaluation of the factual circumstances adduced at the suppression hearing, we hold that Ofc. Bretton had reasonable articulable suspicion that justified pulling over Heath's vehicle.[4] Three of the *Cartnail* factors are particularly relevant here: the particularity of the description of the offender or the vehicle in which he fled; the size of the area in which the offender might be found; and the known or probable direction of the offender's flight.

[4] In making this determination, we do not consider any finding by the suppression court that Heath saw the police and "got spooked" into turning away from the Food Lion. Reasonable suspicion is based on all circumstances known to the officer at the time of the seizure. *See Sizer*, 456 Md. at 365. Thus, it would be clear error for the suppression court to rely on a conclusion that could only be reached by the officer in hindsight, with the knowledge that Heath was a passenger in the vehicle. Regardless, we do not believe that the court made this finding—instead, it couched the supposition that Heath "got spooked" as a hypothetical aside.

Ofc. Bratten gathered information about Heath's vehicle from Jason Bethea, an alleged check fraud co-conspirator who cooperated with police as the conspiracy was underway. Bethea described Heath's vehicle as a "square silver four-door vehicle." Bethea told the officers that the vehicle had Florida license plates—distinct from most other vehicles on the road. Although at one point Bethea stated that the vehicle was a Honda Pilot, at another point he "couldn't remember the make and model of the vehicle." Ofc. Bratten himself saw a vehicle matching Bethea's description pull out of the Shop Kwik parking lot, where Bethea said the vehicle was parked. Ofc. Bratten also knew that Heath was described as a black male and was likely talking on his cell phone, as Bethea was calling him to coordinate the controlled meet. When Ofc. Bratten pulled up behind the silver Kia Soul, he could see that the passenger was a black male talking on his cell phone. Although it is true, as the trial court noted, that it would not be that unusual to see a Florida tag, we agree with the trial court's determination that it was unusual "to see a Florida tag on a silver four-door boxy style vehicle within minutes of this investigation initiating and within minutes of -- actually probably within seconds of when the meet was supposed to happen at the Food Lion. . . . . It eliminates a substantial portion of innocent travelers."

The field of innocent travelers was further narrowed by the expected area in which Heath would be found. Although Ofc. Bratten did not know the direction in which Heath fled,[5] police had set up a controlled meet between Heath and Bethea at the Food Lion

[5] The record does not include any testimony about the precise time when Ofc. Bratten saw a vehicle matching Bethea's description pull out of the Shop Kwik parking lot. (Continued)

during the time that Ofc. Bratten was in the bank. Ofc. Bratten therefore had a strong reason to expect that Heath would be found in the vicinity of the Food Lion. The silver Kia Soul turned away from the Food Lion at a nearby intersection, but this did not exclude it from reasonable suspicion.

The facts of this case are readily distinguishable from *Cartnail*, in which "unidentified sources" informed police "that three black male suspects had fled from the scene in an unknown direction driving a gold or tan Mazda." 359 Md. at 277. Here, police investigating a check fraud incident gathered specific information on a suspect from a named source and from their own observations. Police were searching for a black male talking on his phone, in a silver, square, four-door vehicle with Florida registration, near the Food Lion. The combination of these facially innocuous characteristics created a suspicious picture as a whole and eliminated a substantial portion of innocent travelers. Ofc. Bratten therefore had a reasonable articulable suspicion that justified the stop of Heath's vehicle.

II.

SENTENCING CONSIDERATIONS

A. Parties' Contentions

Heath argues that the trial court's comments during sentencing demonstrated bias against him for being from out-of-state. Heath points to the following passage from the

The record specifies only that Ofc. Bratten arrived at the bank at 2:13 PM and pulled over Heath's car at 3:06 PM.

sentencing decision:

> And you know, Mr. Heath, you are not from Worcester County. I don't recall how long you had to drive to get here, if it was from across the bridge and you had several hours to think about what it was that you were about to engage in. And every moment, every minute, every rotation of the tire was an opportunity for you to change your mind.

Heath contends that these comments "evidenced an appearance of impropriety and bias in sentencing" and violated his fundamental right to fairness in sentencing.

Heath argues that this objection was preserved, despite the lack of any objection at the sentencing hearing, because "trial counsel is in a challenging position when they are trying to appeal to the sympathies of the Court regarding their client by presenting mitigation, arguing for minimal sanctions and utilizing their advocacy skills to try to minimize the impact that a sentence has on their client." Heath urges that if he had objected during the sentencing hearing, "it would have angered the Court and undermined trial counsel's goal of minimizing Appellant's sentence."

The State argues that Heath's argument on sentencing was not preserved because he did not timely object during the sentencing hearing. The State contends that even if this argument is considered, a sentencing court is "vested with virtually boundless discretion," *Martin v. State*, 218 Md. App. 1, 44 (2014) (quoting *State v. Dopkowski*, 325 Md. 671, 679 (1992), and the circuit court's comment was merely highlighting that Heath's actions were calculated.

B. Legal Framework and Standard of Review

"[A] sentencing judge in a criminal proceeding is vested with virtually boundless

discretion." *Martin*, 218 Md. at 44 (quoting *Dopkowski*, 325 Md. at 679). "[A] judge should fashion a sentence based upon the facts and circumstances of the crime committed and the background of the defendant, including his or her reputation, prior offenses, health, habits, mental and moral propensities, and social background." *Ellis v. State*, 185 Md. App. 522, 550–51 (2009) (quoting *Jackson v. State*, 364 Md. 192, 199). "[O]nly three grounds for appellate review of sentences are recognized in this State: (1) whether the sentence constitutes cruel and unusual punishment or violates other constitutional requirements; (2) **whether the sentencing judge was motivated by ill-will, prejudice or other impermissible considerations;** and (3) whether the sentence is within statutory limits." *Id.* (emphasis in original) (quoting *Jackson*, 364 Md. at 200).

We review a trial court's sentencing decision for abuse of discretion. *Cruz-Quintanilla v. State*, 455 Md. 35, 41 (2017). We do not review a challenged comment in isolation, but instead "review the entirety of the judge's comments at sentencing and consider the challenged comments in that context." *Ellis*, 185 Md. App. at 552. "If a judge's comments during sentencing could cause a reasonable person to question the impartiality of the judge, then the defendant has been deprived of due process and the judge has abused his or her discretion." *Id.* at 551 (quoting *Jackson*, 364 Md. at 200).

C. Analysis

Assuming that Heath's objection to the trial court's "out-of-state" comment at sentencing was preserved, we hold that the comment could not cause a reasonable person

to question the judge's impartiality.[6] Although the court stated that Heath was "not from Worcester County[,]" based on the context of this comment, it is clear that the judge was referencing Heath's degree of premeditation and opportunity to withdraw from the crime. The court told Heath that "you had several hours to think about what it was that you were about to engage in[,]" and that "every moment, every minute, every rotation of the tire was an opportunity for you to change your mind." Heath's premeditation and opportunity to withdraw are circumstances of the crime committed and are expressly permissible for a court to consider in sentencing. *See Ellis*, 185 Md. App. at 550–51 (2009).

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

[6] Although Heath raises the issue that the sentence was above the top of the Maryland Sentencing Guidelines in his questions presented, he makes no argument that these guidelines were binding or that the sentence itself was illegal.