Circuit Court for Frederick County
Case No. 10-K-14-054425

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 424

September Term, 2016

ALAN D. NEWLIN

v.

STATE OF MARYLAND

Wright,
*Krauser,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Krauser, J.

Filed: October 10, 2017

*Krauser, Peter B., J., now retired, participated in the hearing of this case while an active member of this Court, and as its Chief Judge; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

Charged with possession of heroin and cocaine, recovered by police during a traffic stop of his vehicle, Alan D. Newlin, appellant, filed a pretrial motion, in the Circuit Court for Frederick County, to suppress evidence of the drugs seized and the inculpatory statements he made to police before his arrest. After that motion was denied and the State nolle prossed his possession of cocaine charge, Newlin proceeded to trial on an agreed statement of facts. Based upon that statement of facts, the circuit court found Newlin guilty of possession of heroin. Newlin thereafter noted this appeal, challenging the court's denial of his motion to suppress, on the grounds that the drugs seized and the statements he made to police were the result of the commencement of a second stop unsupported by a reasonable suspicion of criminal activity. Because we conclude that the circuit court did not err in denying Newlin's motion to suppress, we affirm.

Suppression Hearing

At Newlin's suppression hearing, only two witnesses testified: Deputy First Class Chad Atkins and Corporal Channing Hillman of the Frederick County Sheriff's Office. The following recitation of facts is based upon their testimony.

On the evening of December 12, 2013, Deputy Atkins, accompanied by his drug-detection dog, Rango, was conducting a "drug interdiction" patrol along Interstate 70, in Frederick County, in a marked police vehicle. At approximately 7:30 p.m. that evening, the deputy observed a "purple Jeep Cherokee," with Virginia license plates, change lanes "for no apparent reason." Based upon his knowledge, training, and experience, he believed that such a maneuver was an "indicator" of possible illegal activity because, in his words, "an individual . . . involved in illegal activity," upon "first notic[ing] the presence of a

police officer," will "begin to change lanes for no apparent reason, to try to distance themselves" from what they perceive to be a "threat." Further fueling that suspicion was the fact that the Jeep was traveling from the direction of Baltimore, which is, in the deputy's words, "the central hub for heroin coming . . . westbound" into Frederick County. As the deputy drove alongside Newlin's vehicle, he saw that Newlin "was talking on his cell phone . . . while he was driving the vehicle," in violation of Maryland's traffic laws.[1] Deputy Atkins then activated his emergency lights and initiated a traffic stop of the Jeep.

After the Jeep came to a stop, the officer exited his patrol car and approached the Jeep on foot. The Jeep contained two occupants, Newlin, who was sitting in the driver's seat of the vehicle, and a front-seat passenger. As Deputy Atkins was explaining to Newlin the reason for the traffic stop, the deputy noticed that Newlin had what appeared to be a "track mark" on his hand. The deputy described the "track mark" as a "raised and red" vein. He stated that if it was "very fresh," it will have either "blood" or "a scab on top," which it appeared to have, and which suggested recent use of narcotics. He then observed a "little dab" of blood on Newlin's pants, indicating that Newlin may have recently wiped his hand on his pants, which the officer said was a practice of drug users.

When the deputy asked Newlin where he was coming from and where he was going. Newlin replied that he had come from "the I-95 area," where he had been "working on his

[1] Maryland Code (1977, 2012 Repl. Vol.), Transportation Article, § 21-1124.2(d)(2), provides: "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 to turn on or turn off the handheld telephone."

truck." Deputy Atkins noted, however, that there were no tools inside Newlin's Jeep. Then, he further observed that Newlin was nervous and lit a cigarette, apparently, to calm his nerves.

After obtaining and reviewing Newlin's driver's license, registration, and proof of insurance, Deputy Atkins, "believing that there was a drug crime, possibly, afoot," contacted another officer, Corporal Hillman, "a mile away" in another patrol vehicle. At that time, Deputy Atkins had not yet "started" his "paperwork."

"[L]ess than two minutes" after speaking with Deputy Atkins, Corporal Hillman arrived at the scene. Then, after Deputy Atkins asked Newlin and his passenger to get out of the Jeep, he conducted a "canine sniff" around the perimeter of the Jeep. That canine inspection occurred, according to the court's calculation, "six minutes" after the stop.[2]

When, moments later, Rango gave a positive alert near the bottom portion of the passenger's side door, indicating "a narcotic odor coming from" Newlin's vehicle, Deputy Atkins informed Newlin and his passenger of the alert and "asked them if there was anything illegal in the vehicle." According to Deputy Atkins, "they" replied that "there was a spoon and, possibly, a needle inside the car." The deputy then proceeded to search the interior of the Jeep. During that search, he found two spoons, each "containing a

[2] The circuit court made the following findings regarding the timing of the events during the traffic stop and ensuing investigation:

> Deputy, uh, Atkins said he talked -- spoke to the inhabitants perhaps three minutes -- the, the occupants, excuse me, three minutes. [Corporal] Hillman gets there in less than two. We are at five. Maybe I give them a, a minute to get the dog out of the car. We are at six minutes.

suspected residue . . . of heroin," and a glass vial, which appeared to contain "a residue" of either "cocaine or heroin," but no needle was found.

Wishing to avoid being stuck by a hidden, possibly contaminated needle, Deputy Atkins "went back" to Newlin and his passenger and "asked them, again, if there was anything else in the vehicle." Newlin replied, "no," and Deputy Atkins resumed his search of the vehicle.

While the search was underway, Newlin "stepped up to" Corporal Hillman and asked if he "could speak to" him. Corporal Hillman said, "[s]ure," and, after Newlin had "stepped away from his friend," he told Hillman, "in a low voice," that he, Newlin, was concealing a bag of narcotics in his buttocks. When Corporal Hillman then informed Deputy Atkins of that statement, the deputy asked Newlin to retrieve the contraband from that part of his anatomy. Newlin then reached "into his pants" and produced a bag, containing capsules of heroin and vials of cocaine, whereupon Deputy Atkins placed Newlin under arrest and, moments later, issued a warning ticket for the traffic infraction that had triggered the encounter.

The circuit court denied Newlin's motion to suppress, reasoning as follows:

> [T]he police officer had reasonable articulable suspicion to stop the vehicle. He has articulated a suspicion which was reasonable. He was behind the vehicle. He saw the light -- he -- Deputy Atkins testified that he saw the light from the phone when it was behind him. And then he got up on the side of him, and saw him holding the phone. That is a reasonable suspicion, and he articulated why it was reasonable.
>
> Turns out -- he -- it gives him the right to pull the car over. Turns out it's a GPS, or something else, oh well, he

doesn't get a ticket. It doesn't mean the officer didn't have a reasonable articulable suspicion to stop the vehicle.

* * *

So when I look at the totality of the circumstances of this case, I see Deputy Atkins, nine and a half years on the job doing this work, seeing, first thing, car changes lanes. Is that enough to pull him over? No. But it gets his attention, and that's okay. Then he sees, uh, the light from the phone, from behind. Then he sees, when he is next to him, the phone. That gives him the right to pull the car over.

Once he pulls the car over, he sees what, based on his training and experience, he believes is not just a small wound, or a bump somebody is scratching, but what this officer described as a track mark. He described it as an initial wound that either has blood or a -- or a scab on it, and a raised red vein. It was -- we are not just talking about scratching at your hand or scratching at a scab.

Thereafter, he testified he saw blood on his pants. Thereafter, he has a conversation with Mr. Newlin, who tells him he is -- was down working on a truck. There are no tools in the car. He observes nervousness. In, in and of itself, perhaps not enough. But certainly can add to the totality of the circumstances. And then he starts smoking a cigarette. All of this gives him the right to allow him, I, I believe -- I, I think he can run the dog around the car at that point, whether he has any of this, or not, because the dog is there, and there is no unreasonable delay.

* * *

[Corporal] Hillman, gets there in less than two minutes, he says.

Officer said -- or Deputy, uh, Atkins said he talked -- spoke to the inhabitants perhaps three minutes -- the, the occupants, excuse me, three minutes. [Corporal] Hillman gets there in less than two. We are at five. Maybe I give them a, a minute to get the dog out of the car. We are at six minutes. I think he has the right to do that.

> But I think he has already, at that point, developed a reasonable articulable suspicion that there may be, uh, drug usage in this vehicle based upon those issues. He certainly has the right to, um, allow the dog to scan the vehicle. The dog gives an alert on the vehicle.
>
> But there -- but during that time, the Court's interpretation from the testimony, was it seems that it's, uh, uh, contemporaneous with the sniff is Corporal Hillman talking to Mr. Newlin, who makes an admission to him. Certainly at that point gives the officer that, now, they have got probable cause to place him under arrest.
>
> So the Court does not -- the Court does not find this is an illegal stop of the vehicle. I find that it is, um, a, a lawful stop of the vehicle. I find it's a lawful canine scan of the vehicle. And I find that, thereafter, that led to reasonable -- excuse me, that led to probable cause, because I do not find that Mr. Newlin was illegally detained at that point. Once he made a statement, I think they have -- thereafter, have probable cause to place him under arrest. Certainly, after he gets back in his car, and retrieves the CDS, and hands it to Deputy Atkins.
>
> Um, I do not find that there is, uh, any problem with Mr. Newlin's statement. Certainly, he is, arguably, in custody. But it's not interrogation. Corporal Hillman testified that Mr. Newlin came up, and said, "Can I tell you something? I have got CDS on my person." So I do not find, uh, that there is any, um, problem with the statement.
>
> So, uh, the Court denies as to the evidence as well as the statement. . . .

DISCUSSION

I.

"Our review of a circuit court's denial of a motion to suppress evidence under the Fourth Amendment, ordinarily, is limited to the information contained in the record of the

suppression hearing and not the record of the trial." *Grant v. State*, 449 Md. 1, 14 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)). In performing that review, we accept the circuit court's factual findings unless clearly erroneous and "view the evidence adduced at the suppression hearing, and the inferences fairly deductible therefrom, in the light most favorable to the party that prevailed on the motion," which, in this case, would be the State. *Crosby v. State*, 408 Md. 490, 504 (2009) (quoting *State v. Williams*, 401 Md. 676, 678 (2007)). As for the circuit court's ultimate legal conclusions, however, "we 'make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case.'" *Id.* at 505.

II.

A.

Newlin contends that the circuit court erred in denying his motion to suppress. He does not claim, however, that the initial traffic stop was unlawful—and for good reason, given Deputy Atkins's testimony that he had observed Newlin talking on his (hand-held) cell phone while driving, in violation of Maryland Code (1977, 2012 Repl. Vol.), Transportation Article ("TR"), § 21-1124.2. *See Whren v. United States*, 517 U.S. 806, 808, 819 (1996) (holding that the Fourth Amendment permits "the temporary detention of a motorist who the police have probable cause to believe has committed a civil traffic violation").

What he does claim is that the police officers unlawfully extended the duration of the traffic stop—and thereby, in effect, created a "second stop"—which was not supported by reasonable, articulable suspicion of criminality—so that they could perform an

investigation into whether he possessed a controlled dangerous substance. Although we agree with Newlin that there was a "second stop" in this case, we conclude, for the reasons that follow, that that "second stop" was not unlawful and affirm.

B.

"A seizure for a traffic violation justifies a police investigation of that violation." *Rodriguez v. United States*, 575 U.S. __, 135 S. Ct. 1609, 1614 (2015). Indeed, such a seizure is "analogous to a *Terry* stop," *Knowles v. Iowa*, 525 U.S. 113, 117 (1998) (citation and quotation omitted), and, "[l]ike a *Terry* stop, the tolerable duration of police inquiries . . . is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop, and attend to related safety concerns[.]" *Rodriguez*, 135 S. Ct. at 1614 (citations omitted). Consequently, a traffic stop "may 'last no longer than is necessary to effectuate'" its purpose, and "[a]uthority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Id.* (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion)). On the other hand, so long as a traffic stop is not "prolonged beyond the time reasonably required to complete that mission," a police officer may use a drug-detection dog to sniff the vehicle during a "legitimate traffic stop," without offending the Fourth Amendment. *Illinois v. Caballes*, 543 U.S. 405, 407-08 (2005).

Moreover, "[t]he caselaw universally recognizes the possibility that by the time a legitimate detention for a traffic stop has come to an end, or more frequently while the legitimate traffic stop is still in progress, justification may develop for a second and independent detention." *State v. Ofori*, 170 Md. App. 211, 245, *cert. denied*, 396 Md. 13

(2006). That is to say, "[u]nfolding events in the course of the traffic stop may give rise to *Terry*-level articulable suspicion of criminality, thereby warranting further investigation in its own right and for a different purpose." *Id.*

However, if "the traffic stop winds down before the *Terry* stop [for suspicion of drug activity] has attained viability, it will be a choppy crossing for the prosecution if critical evidence has only been recovered in the course of the late-starting *Terry* stop." *Jackson v. State*, 190 Md. App. 497, 501 (2010) (citing *Ferris v. State*, 355 Md. 356 (1999), and *Whitehead v. State*, 116 Md. App. 497 (1997)). *See Rodriguez*, 135 S. Ct. at 1613 (vacating a drug conviction because, prior to the commencement of the canine sniff, the police officer had already taken "care of all the business" of the traffic stop). "If, on the other hand, the *Terry* stop bursts into bloom before the traffic stop has faded, so that their life cycles overlap even briefly, fortune's wheel will have turned against the defense." *Jackson*, 190 Md. App. at 501 (citing *Ofori*). *See Caballes*, 543 U.S. at 406-07 (finding no Fourth Amendment violation where a canine alert occurred "during a legitimate traffic stop," because one officer "was in the process of writing a warning ticket" while the other officer was conducting the canine sniff).

While the Supreme Court has not addressed a case, like the one before us, which presents the question of whether the "tasks tied to the traffic infraction . . . reasonably should have been . . . completed" and that the failure to do so rendered any further detention a second detention, *Rodriguez*, 135 S. Ct. at 1614, this Court has, in *Munafo v. State*, 105 Md. App. 662 (1995), a case upon which Newlin relies in support of his unlawful detention claim. That case, as Newlin contends, leads to the conclusion that there was, indeed, a

"second stop" in the case before us, although we believe that the "second stop" was, unlike *Munafo*, supported by a reasonable, articulable suspicion of criminal activity.

In *Munafo*, a Wicomico County deputy conducted a traffic stop of Munafo's vehicle for traveling "49 miles per hour in a 30 mile-per-hour zone." *Id.* at 666. Upon obtaining Munafo's driver's license and "the automobile's rental agreement," in lieu of the vehicle's registration, from Munafo, the deputy returned to his patrol car "and waited for the results of a license and registration check." *Id.* at 667. While awaiting those results, the deputy "radioed for assistance from his road supervisor." *Id.* "Shortly thereafter, the dispatcher informed [the deputy] that the license and rental agreement checked out." *Id.* But, "[d]espite receiving that information, [the deputy] did not immediately issue a ticket or warning for the speeding offense," choosing, instead, to wait for the arrival of his supervisor before doing so. *Id.* Upon the supervisor's arrival, which occurred "two to three minutes after" the deputy's radio call for assistance, the two law enforcement officers proceeded with a drug investigation, based upon the deputy's "hunch that [Munafo] had drugs in the car." *Id.* That "hunch" was subsequently borne out when the supervisor, shining his flashlight into Munafo's car, "observed a clear plastic 'baggie' containing" suspected drugs, "on the console between the seats." *Id.* at 668. Munafo was subsequently convicted of possession of cocaine with intent to distribute and possession of marijuana, convictions, which this Court ultimately reversed. *Id.* at 666, 669.

Noting that the deputy "did not actually issue a citation or warning [for speeding] after receiving word that Munafo's license and rental agreement were valid" but, instead, "waited for [his supervisor] to arrive on the scene before approaching [Munafo] a second

time," we found that the continued detention of Munafo, though "brief," amounted to a "second stop" because "it was entirely unjustified by the purpose of the original stop." *Id.* at 672-73. And, because that second stop was based upon what was, as the deputy acknowledged, a mere "hunch" that Munafo "was in possession of drugs," we held that the deputy's "hunch, without more, [did] not rise to the level of reasonable suspicion" and that Munafo's motion to suppress should have been granted. *Id.* at 676.

In the instant case, the circuit court found that no more than six minutes had passed from the initiation of the lawful traffic stop of Newlin's Jeep to the recovery of illicit drugs from his person. The first three minutes of that time interval were consumed, the court below found, by Deputy Atkins's initial contact with the Jeep's occupants and his collection of necessary documents, pertinent to that traffic stop, including Newlin's driver's license, registration, and proof of insurance. Then, no more than two minutes had passed, according to the calculations of the circuit court, when, in response to Deputy Atkins's call, Corporal Hillman arrived at the scene. The remaining minute of that six-minute period was attributed, by the court below, to the time it took to deploy the drug-detection dog.

Applying *Munafo* to the facts of this case, we conclude that there was a "second stop" here as well. In *Munafo*, we noted that the "distinguishing fact" in that case was that the deputy "did not actually issue a citation or warning [for the traffic offense] after receiving word that Munafo's license and rental agreement were valid" but, instead, "waited for [his supervisor] to arrive on the scene before approaching [Munafo] a second time." *Id.* at 672. We therefore concluded that the continued detention of Munafo, though

"brief," amounted to a "second stop" because "it was entirely unjustified by the purpose of the original stop." *Id.* at 673. As in *Munafo*, the "distinguishing fact" in the case before us is Deputy Atkins's admission that, at the time he summoned Corporal Hillman to the scene, at approximately the three-minute mark of the traffic stop, he "believ[ed] that there was a drug crime, possibly, afoot" and did not, at that time, "start[] [his] paperwork right away." Indeed, Deputy Atkins acknowledged that he did not again "address the traffic violation that warranted the stop," *Rodriguez*, 135 S. Ct. at 1614, until after the illicit drugs had been recovered. Moreover, as in *Munafo*, the continued detention of appellant "was entirely unjustified by the purpose of the original stop." *Munafo*, 105 Md. App. at 673. We therefore conclude that, by the time Corporal Hillman arrived at the scene, Deputy Atkins had abandoned the "mission" of the traffic stop and, consequently, Newlin's continued detention constituted a "second stop." *Id.*

III.

We now consider whether the "second stop," in the instant case, was lawful, that is, whether Deputy Atkins had a reasonable, articulable suspicion that Newlin was in possession of drugs when he abandoned the traffic stop and began the canine scan of Newlin's vehicle.

In determining whether the officer had reasonable, articulable suspicion of criminal activity, we "look at the 'totality of the circumstances'" the case presents "to see whether the detaining officer [had] a 'particularized and objective basis' for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)). Here, we believe that the totality of circumstances,

when viewed in a light most favorable to the State, establishes that, in contrast with *Munafo*, the investigating officer had not just a "hunch," but a reasonable, articulable suspicion that Newlin possessed illicit drugs.

Initially, Deputy Atkins's "attention was drawn to" Newlin's Jeep when he observed it "changing lanes . . . for no apparent reason," an observation which, based on his training and experience in detecting illegal drug trafficking, the deputy believed might be "an indicator" of possible illegal activity. Then, driving alongside of the Jeep, Deputy Atkins observed Newlin talking on a cell phone while driving the Jeep, a clear infraction of Maryland traffic law. After stopping that vehicle, the deputy then observed what he believed, based upon his training and experience, to be, "potentially," a "very fresh" "track mark" on Newlin's hand, as well as a blood stain on his pant leg, all of which suggested to the officer that Newlin was recently involved in the consumption of drugs. Moreover, in response to Deputy Atkins's questioning, Newlin claimed that he had been working on a vehicle, yet the deputy observed that he had no tools with him or in his vehicle. And, finally, Newlin appeared to be nervous and lit a cigarette to calm his nerves.

Given the foregoing circumstances and Deputy Atkins's "own experience and specialized training to make inferences from and deductions about the cumulative information available to" him that "might well elude an untrained person," *Arvizu*, 534 U.S. at 407 (quoting *Cortez*, 449 U.S. at 418), we conclude that, when Deputy Atkins initiated the canine scan of Newlin's Jeep, he had reasonable, articulable suspicion of criminal activity. And that scan, and Newlin's subsequent admission to Corporal Hillman that he was, indeed, in possession of controlled dangerous substances, established probable

cause for his ensuing arrest. We therefore hold that the circuit court did not err in denying Newlin's motion to suppress the drugs recovered from his vehicle and his person.

IV.

Although Newlin appears to concede that his inculpatory statements to Deputy Atkins and Corporal Hillman, in which he admitted to possession of drugs, were not the product of a custodial interrogation, he contends that those statements should have been suppressed because, like the physical evidence at issue, they were, purportedly, "the fruits of an illegal detention." Because Newlin, as we have previously explained, was not illegally detained, the circuit court did not err in declining to suppress his inculpatory statements.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. COSTS ASSESSED TO APPELLANT.