Circuit Court for Wicomico County
Case No.: C-22-CR-21-000304

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0186

September Term, 2022

MARVELOUS ISRAEL TERRELL

v.

STATE OF MARYLAND

Graeff,
Zic,
Eyler, James R.,
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: October 5, 2022

Following trial in the Circuit Court for Wicomico County, a jury found Marvelous Israel Terrell, appellant, guilty of driving while impaired by alcohol.[1] Thereafter, the court sentenced him to sixty days' imprisonment.

Appellant noted an appeal. In it, he claims that the court erroneously denied his pre-trial motion to suppress evidence. We disagree and shall affirm.

BACKGROUND

Prior to trial, appellant filed a motion to suppress evidence claiming that the police officer who stopped his vehicle violated his rights under the Fourth Amendment to be free from unreasonable seizure because, according to appellant, the police officer lacked sufficient justification to stop him.

During a hearing held on appellant's motion to suppress evidence, the police officer who stopped appellant's vehicle testified about the traffic stop of appellant and the State played a video recording from the officer's dash camera depicting that stop. That evidence, which appellant does not dispute, demonstrated that, on February 22, 2021, at about 1:30 a.m., the police officer conducted a traffic stop of appellant after he observed appellant's car straddle, for approximately 900 feet, a dashed white line separating the right-hand travel lane of a three-lane highway from a dedicated right-turn only lane.

DISCUSSION

We review the denial of a motion to suppress based upon the record of the

[1] The jury deadlocked on charges of driving while under the influence of alcohol and failing to obey a properly placed traffic control device.

suppression hearing. *See In re Tariq A-R-Y*, 347 Md. 484, 488 (1997). Moreover, we view the evidence in favor of the party who prevailed at the motions hearing, in this case, the State. In addition, we defer to the motions court's first-level factual findings unless they are clearly erroneous. *Longshore v. State*, 399 Md. 486, 498 (2007). The motions court's legal conclusions, however, are reviewed *de novo*. *Id*. at 499. "When the question is whether a constitutional right, such as, as here, a defendant's right to be free from unreasonable searches and seizures, has been violated," we make our own "independent constitutional appraisal, by reviewing the law and applying it to the peculiar facts of the particular case." *Stokes v. State*, 362 Md. 407, 414 (2001) (quotation marks and citation omitted).

Appellant's argument that the police officer who stopped him lacked the authority to do so relies heavily on the Court of Appeals' decision in *Rowe v. State*, 363 Md. 424 (2001).[2] In *Rowe*, the Court of Appeals determined that the police officer lacked the authority to effectuate a traffic stop under the circumstances where the police officer observed a driver cross a solid white line while driving at about 1:00 a.m. on Interstate 95. At issue in that case was section 21-309(b) of the Transportation Article of the Maryland Code ("TR") which provides that "[a] vehicle shall be driven as nearly as practicable entirely within a single lane and may not be moved from that lane or moved from a shoulder

[2] Appellant argues that the police lacked *probable cause* to effectuate a traffic stop of appellant. The law is clear, however, that a police officer need only have *reasonable articulable suspicion* of a violation of traffic law to support such a stop. *Baez v. State*, 238 Md. App. 587, 594 (2018). Because this distinction is, as it turns out, immaterial to our resolution of this case, we need not dwell on it further.

or bikeway into a lane until the driver has determined that it is safe to do so." The Court of Appeals determined that TR § 21-309(b) not only required proof that a driver failed to stay in a lane, but also required an element of a lack of safety when doing so. *Rowe*, 363 Md. at 433-34. The Court found that the State had not established that Rowe had acted unsafely and reversed the decision to deny his motion to suppress evidence.

Appellant claims that because there was no evidence to support a finding that he acted unsafely when straddling the dashed white line in this case[3], according to *Rowe*, the police officer who conducted the traffic stop lacked the authority to do so.

In *Stephens v. State*, 198 Md. App. 551 (2011), we found the evidence legally sufficient to support a conviction for a violation of TR § 21-201(a) in the situation where the evidence demonstrated that a driver swerved between lanes of travel several times. TR § 21-201(a) prohibits a driver from failing to obey a "traffic control device." In *Stephens*, we determined that a "traffic control device" includes "pavement markings designating lanes of travel." 198 Md. App. at 568. Appellant acknowledges *Stephens* but dismisses it because, according to appellant, "*Stephens* addressed the sufficiency of the evidence; whereas, *Rowe*, like this case, addressed whether the police had justification to conduct a traffic stop."

We are not persuaded by appellant's endeavor to ignore the impact of *Stephens* on his case. In *Rowe*, the Court interpreted TR § 21-309(b) and not TR § 21-201(a) which

[3] To the extent that the motions court found that appellant acted unsafely, appellant claims that such a factual finding is clearly erroneous. Given our resolution of this case, we need not address this aspect of appellant's argument.

this Court addressed in *Stephens*. TR § 21-309(b), by its very terms, contains an element of safety as it requires a driver to not change lanes "until the driver has determined that it is safe to do so." TR § 21-201(a) contains no such element of safety, *vel non*. Appellant's attempt to dismiss *Stephens* because it addressed the sufficiency of the evidence rather than probable cause to arrest is unavailing because the State's burden to establish probable cause is lower than its burden to establish the legal sufficiency of the evidence. *See State v. Suddith*, 379 Md. 425, 443 (2004) (pointing out that *Maryland v. Pringle*, 540 U.S. 366 (2003) addressed "the lower threshold standard of probable cause and not the greater burden applicable to the sufficiency of the evidence"). Hence, a determination of legally sufficient evidence to support a charge of criminal conduct *ipso facto* establishes probable cause that a crime has been committed, just as a determination of probable cause *ipso facto* establishes reasonable suspicion.

As a result, in this case, we are persuaded that the police officer had, at the very least, reasonable suspicion that appellant had violated a traffic law (TR § 21-201(a)) when he watched appellant straddle, for about 900 feet, the dashed white line separating the travel lane from the designated turn lane. The police officer was therefore justified in stopping appellant and the court did not err in denying appellant's motion to suppress the evidence.[4]

[4] In denying appellant's motion to suppress evidence, the court stated, with slight alterations for readability, the following:

> [T]he facts that I've received through the testimony in this case were on February 22, 2021, Trooper Ramsey was traveling northbound on Route 13 in the area that's near – that's near the Centre in Salisbury. It's an area that nearly everybody in town has to be familiar with, especially, we just

(continued)

complete[d] the holiday season. I don't think anybody survives the holiday without at least making one stop somewhere northbound Route 13 in Salisbury.

And it's at night. And the officer, the trooper observes a vehicle which turns out to be the vehicle operated by the defendant to be in a lane ahead of him and to the right. And that lane is marked with lines dotted and – and possibly solid.

I wasn't positive that it was just completely dotted lines. But even assuming they're just all dotted lines, I still think there's an issue with the defendant's driving.

There is a truck that the officer passes. The truck is on its left. It's an industrial type truck, multi-wheel truck on the roadway that was a few hundred yards behind the defendant's vehicle. Again, that truck was in a lane to the left of the trooper, and extreme left of the defendant's vehicle.

I note this because it is nighttime, and the officer, and the trooper that's involved in this case, and really any case, is charged with making a split second decision to investigate or enforce or not enforce traffic violations. And at that moment, he has to make a split second decision that may or may not have grave public safety consequences.

In this instant case, he sees a vehicle. It's the defendant. He sees that vehicle with his own human eyes using his own sense of sight. All of that information, of course, is perceived by his nervous system and his brain. And what he sees and perceives is not a vehicle that would – that I would fairly call a momentar[y] movement over a line.

He sees the defendant's vehicle in two lanes. You can call it straddling. You can describe different adjectives or words to what the defendant was doing, but he was – he was actually in two lanes. About a half of his vehicle to one-third of his vehicle were in two lanes.

Whether they were dotted or solid, I think he reached the same conclusion. It just would cause a dangerous condition if drivers could determine unilaterally because if they make their own call that that's – that that's a safe thing to do to just drive in two lanes for a hundred yards, 200 or 300 – 300 yards.

(continued)

In this case, the officer's testimony was it was 300 yards. And the video largely corroborates the officer's testimony as to what he perceived. But you can clearly see the defendant[] in two lanes at one point in the video. And then the resolution of the video is not so great where you can't really tell if he's in one or two, but he's certainly – it[] certainly seems to be – he certainly seems to be from my perspective, which I came off the bench, got as close to the TV as possible to see, he was in two lanes for a good period of time. And I would not call that momentary.

Bear with me.

So [TR §] 21-201 prohibits, which I observed and what the officer observed, and to really bring this back to the constitutional context, the officer in my opinion, hearing from him, watching the video, made a reasonable call and reasonable stop because he had reasonable articulable suspicion that because he observes the defendant drive 300 yards approximately in two lanes, that that's a violation of 21-201.

And, again, that testimony of the officer that that's what the defendant did is largely corroborated by the video. The public can often be critical of officers at times. Officers are often in a no-win situation. But the Constitution and my understanding of the jurisprudence does not require officers to be perfect a ton or a tonnes. All that it requires of our officers is that the officer be reasonable and make a reasonable call under the totality of the circumstances.

And I believe under the totality of the circumstances including time of night, the observable conduct of the defendant, the fact that there's another vehicle on the road, the fact that the defendant's in these two lanes that that's reasonable for him to effectuate a traffic stop to investigate that – that violation of that statute.

I also note that this truck, and the reason why I note that is because in getting back to the point of the public being criticizing officers, so everything's recorded. This officer observes a defendant vehicle in two lanes. He has a truck, industrial-sized truck on the left side of his vehicle. I mean, that officer doesn't have to wait and is not tethered by the Constitution to wait to intervene in what he perceives to be a violation of the law which is codified to prevent all of us from be[ing] safe on the roadways.

(continued)

Consequently, we affirm the judgment of the circuit court.

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

He doesn't have to wait for that vehicle to then decide to take up two other lanes on the left side, one of which would be impeding the tractor trailer. That's not what the Constitution requires.

And I also believe that the ultimate request of the defendant in this case is for suppression. And the suppression alternatively – so I deny your motion, sir, because I find that the officer had RAS, reasonable articulable suspicion to effectuate the traffic stop. That it was reasonable under the totality of the circumstances that the officer testified to before me including the video that I observed.

But I also believe that the suppression remedy that you're requiring that – this remedy was put into place to prohibit improper police conduct, unreasonable police conduct. And I believe, again, alternatively, just under the totality of the circumstances that suppression isn't warranted because this officer made a perfectly reasonable call based upon his observations of this defendant vehicle being in two lanes. And, therefore, I … deny your motion to suppress.

* * *

[This case is] closer to the *Stephens* case than it is the *Rowe* case. But even with the truck being on the roadway, I just think that there – you know, we don't second guess our officers when they explain all of which they're seeing, perceiving and making those split second decisions. I could see if the officer took no action and then something happened, I could see the officer being criticized, well, why didn't you stop this vehicle? He was clearly going 300 yards in two lanes in violation of that article. We cannot be unfair to our officers in that regard.