Circuit Court for Worcester County
Case No.: C-23-CR-17-0224

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 410

September Term, 2019

KEITH SHAUNTE SIDNEY

v.

STATE OF MARYLAND

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*Meredith,
Arthur,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: September 8, 2020

*Meredith, J., now retired, participated in the conference of this case while an active member of the Court; after being recalled pursuant to Maryland Constitution, Article IV, Section 3A, he also participated in the decision and adoption of this Opinion.

**This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal stems from the Circuit Court for Worcester County's denial of Keith Sidney's motion to suppress evidence recovered during a traffic stop. In this case, there is no dispute that the initial traffic stop was legal. The questions are rather, (1) whether the "mission" of that initial traffic stop was complete, and (2) if it was, whether there was either (a) fresh articulable suspicion, or (b) consent to begin a second search and seizure. We hold that the "mission" of the first stop was complete when the police officer walked back to Sidney's car to hand him written warnings for his infractions. Thereafter, the police officer began a second search and seizure for which there was neither fresh articulable suspicion nor consent. As a result, we hold that the second search violated the Fourth Amendment and any evidence seized as a result of the second search must be suppressed. In the absence of that evidence, Sidney's conviction must be reversed.

BACKGROUND

At approximately 4:00 p.m. on March 19, 2017, Detective First Class Shane Musgrave of the Worcester County Sherriff's Office was conducting a routine road patrol on Route 113 when he observed a gray 2017 Nissan Sentra with New York tags. Detective Musgrave noticed that the car appeared to be speeding and used his radar equipment to confirm that the car was going 56 miles per hour in a 45 mile per hour zone. He also noticed, as the vehicle drove past his location, that the driver and sole occupant of the vehicle, later identified as Sidney, was wearing headphones in violation of Maryland law. *See* MD. TRANSPORT. ANN. CODE ("TR") §§ 21-801, 801.1 (concerning speeding); TR § 21-1120 (prohibiting headsets while driving).

Detective Musgrave stopped the vehicle, approached the car, identified himself, and asked Sidney if he knew why he was stopped. Sidney replied that he knew he was speeding. Detective Musgrave then asked for Sidney's license and registration. As Sidney obtained these documents, Detective Musgrave observed three cellular phones on the front passenger seat. He then asked Sidney about his travel plans and Sidney replied that he was traveling from Virginia to Pennsylvania. Detective Musgrave testified that he did not notice any luggage in the passenger compartment of the Sentra.[1]

After stopping Sidney, Detective Musgrave returned to his patrol vehicle to process the paperwork for the traffic stop. When he ran Sidney's name through his electronic system, he learned that Sidney had been stopped twice before in Maryland. Detective Musgrave admitted that he did not know the reason for those stops. The license, vehicle registration, and warrant checks revealed that there were no problems and no open warrants against Sidney.

Detective Musgrave wrote two traffic warnings for speeding and wearing headphones and returned to Sidney's vehicle with the written warnings and Sidney's license and registration. Rather than deliver the written warnings, however, Detective Musgrave asked Sidney to step out of the vehicle to "initiate a conversation with him … and ultimately issue him that written warning."

[1] At the hearing on the motion, Detective Musgrave testified that the lack of luggage in the passenger compartment "by itself" was not suspicious and agreed there was nothing illegal about the fact that Sidney had three cellular phones on the front seat

Sidney got out of his car and walked, as instructed, to the rear of his vehicle. Detective Musgrave asked Sidney if he could pat him down because, he testified, Sidney was wearing "very bulky" clothing and a hooded sweatshirt. Sidney consented to the pat down. Detective Musgrave patted Sidney down for weapons and noticed a large bulge in his front left pants pocket. At the hearing on the motion to suppress, Detective Musgrave testified that he "determine[d] that it was like a cellophane-type bag" that he recognized as "contraband."

After patting him down, Detective Musgrave asked Sidney what was in his pocket, and Sidney's demeanor "immediately shifted." According to the detective, Sidney asked "why is this necessary?," his voice "started to crack," he "started breathing heavily[,] and then actually started backing away." Sidney then took several steps backward, towards the driver's side of his own vehicle, and Detective Musgrave attempted to coax him back towards his patrol car. By this point, another officer, Deputy Bisman arrived at the scene, and the two officers tried to get Sidney to comply with their requests to return to the rear of the vehicle.

According to Detective Musgrave, Sidney then "pulled away from [the officers] and actually pushed off of his vehicle" and fled around the front of the Sentra, over the guardrail towards the nearby wooded area. During the ensuing pursuit, Detective Musgrave noticed Sidney reaching into the same pocket where he had previously felt the bag. Detective Musgrave testified that, because Sidney was "actively resisting … arrest" and was "trying to … flee the location," he drew his taser and "ended up deploying it into Mr. Sidney's back." Sidney was placed under arrest and a subsequent search of the nearby area, assisted

by a K-9 unit, resulted in the recovery of a clear plastic bag.[2] A video of the encounter, recorded from Detective Musgrave's vehicle, was admitted into evidence and played for the court during the motions hearing.

On cross-examination, Detective Musgrave stated that, when he first approached Sidney's vehicle at the beginning of the encounter, Sidney was polite, did not show any signs of nervousness, and did not make any furtive movements. Detective Musgrave then confirmed that he did not return Sidney's license and registration or issue the written warnings after he ran the license, vehicle registration, and warrant checks. Instead, Detective Musgrave asked Sidney to exit his vehicle and testified that he was going to verbally explain the potential penalties associated with the written warnings.

In his testimony, Detective Musgrave claimed that, at the point he asked Sidney to exit his vehicle, the traffic stop was not complete. He testified to his opinion that Sidney was not free to leave because he had not issued the warnings or explained those documents. Detective Musgrave also confirmed that at the time of the incident, he and Deputy Bisman were in uniform and were armed. The detective also maintained that Sidney consented to the pat down, despite the fact that he could not leave. With respect to the frisk itself, Detective Musgrave agreed that the bulge did not feel like a weapon, only a plastic bag.

[2] Although not before us on appellate review, we note that the agreed upon statement of facts in support of the not guilty plea provides that the bag contained 88.09 grams of heroin. Sidney also had $2,399 on his person when he was arrested. These agreed facts also provide that, after he was given his *Miranda* warnings, Sidney told the deputies "I'm a mule just to make money."

The court found that the initial stop for speeding and wearing headphones was lawful. The court then found that after running the license, vehicle registration and warrant checks, as well as writing the warnings, Detective Musgrave could permissibly ask Sidney to exit the vehicle. Next, finding Detective Musgrave to be credible, the motions court found that he had reason to pat Sidney down for purposes of officer safety, in light of his "bulky clothing." At that point, and relying on the video evidence admitted during the hearing, the motions court found that Sidney consented to the pat down, stating that "the video clearly shows that he puts his arms up and acquiesces, if you will, to the frisk." The motions court agreed, however, that Sidney was not free to go because the stop was not over at this point.

The motions court then addressed the detective's discovery of the clear plastic bag. The court disagreed with Sidney's argument that the item's incriminating nature was not immediately apparent because the detective had to ask Sidney to identify the item. Instead, the court found that the detective merely asked Sidney a question to confirm that the item was contraband. The court also found that, based on the video evidence, Sidney resisted the traffic stop and that his conduct amounted to "fleeing and eluding," thereby triggering "a new traffic offense" that also supported Sidney's arrest. Furthermore, according to the court, Sidney's act of pushing away from the officers was physical resistance, supporting "at least … a colorable claim that he assaulted the officer."

Ultimately, the court found that the traffic stop was not unreasonably prolonged and that there was no second stop in this case because Sidney had not received his license and registration back from the officer, nor had he received the warnings for the moving

violations. The court also concluded that Sidney consented to the pat down, which did not have to be supported by reasonable articulable suspicion. The court, therefore, denied the motion to suppress. Sidney was convicted and timely appealed.

DISCUSSION

Traffic stops are lawful under the Fourth Amendment where there is probable cause to believe that the driver has committed a violation of the vehicle laws, or if there is reasonable, articulable suspicion that "criminal activity may be afoot[.]" *Brice v. State*, 225 Md. App. 666, 695-96 (2015) (quoting *Terry v. Ohio*, 392 U.S. 1, 30 (1968)); *see also Maryland v. Pringle*, 540 U.S. 366, 371 (2003) ("[T]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt, and that the belief of guilt must be particularized with respect to the person to be searched or seized.").

During the course of routine traffic stop, an officer "may request a driver's license, vehicle registration, and insurance papers, run a computer check, and issue a citation or a warning." *Nathan v. State*, 370 Md. 648, 661-62 (2002) (citations omitted). "[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop … and attend to related safety concerns." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (citation omitted). "Authority for the seizure … ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Id.*

"[A] traffic stop 'can become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing" a ticket or a warning. *Rodriguez*, 575 U.S. at 354-55 (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). In that instance,

extension of the encounter "is constitutionally permissible only if *either* (1) the driver consents to the continuing intrusion *or* (2) the officer has, at a minimum, a reasonable, articulable suspicion that criminal activity is afoot." *Ferris v. State*, 355 Md. 356, 372 (1999) (emphasis added, citation omitted). Thus, the questions we must consider are whether the police officer's "mission" was completed and, if it was, whether there was either consent to the continuing intrusion or reasonable, articulable suspicion of criminal activity.

I. One Traffic Stop or Two?

We begin by considering whether the original purpose of the traffic stop initiated by Detective Musgrave was complete before he ordered Sidney out of his car. Sidney directs our attention to *Munafo v. State*, 105 Md. App. 662 (1995), and *Whitehead v. State*, 116 Md. App. 497 (1997).[3]

In *Munafo*, the deputy obtained Munafo's license and registration after pulling him over for speeding. 105 Md. App. at 666. After the license and registration check revealed no problems, the deputy then wrote out a warning for the traffic violation. *Id.* Several

[3] "Our review of a circuit court's denial of a motion to suppress evidence is limited to the record developed at the suppression hearing." *Pacheco v. State*, 465 Md. 311, 319 (2019) (quoting *Moats v. State*, 455 Md. 682, 694 (2017)). We examine the record "in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress." *Norman v. State*, 452 Md. 373, 386 (2017). The trial court's factual findings are accepted unless they are clearly erroneous, however, when there is a constitutional challenge to a search or seizure under the Fourth Amendment, this Court performs an "'independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.'" *Grant v. State*, 449 Md. 1, 15 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)); *accord Pacheco*, 465 Md. at 319-20.

minutes later, another officer, a sergeant, arrived to assist with the stop. The deputy shared with the sergeant his hunch that Munafo had drugs in the vehicle. *Id*. at 667. The deputy returned to the driver's side of Munafo's car, with Munafo's license and registration in hand**.** *Id*. at 667-68. At the same time, the sergeant approached the vehicle from the rear, shined his flashlight inside the car, and noticed a plastic "baggie" containing a "dark colored" substance that he suspected was marijuana. *Id.* at 668. Munafo was then asked to exit the vehicle, which he did, and the sergeant seized the bag. *Id.*

We held that the facts showed that the "mission" of the initial traffic stop had ended and that there was an unlawful second stop, reasoning:

> Once [the deputy] learned that [Munafo's] license and registration were in order, he was required to end the stop promptly and send [Munafo] on his way. Instead, he waited two to three minutes for [another officer] to arrive, and spent an additional minute or two discussing the situation with [that officer] before [they] approached the car together.

Id. at 673.We also held that the deputy's belief that Munafo appeared to be hiding something under his arm while in the car did not amount to reasonable articulable suspicion to warrant the second detention because "[a] hunch, without more, does not rise to the level of reasonable suspicion." *Id.* at 676.

In *Whitehead,* a state trooper stopped Whitehead for speeding. 116 Md. App. at 498. Whitehead provided his registration but did not have his driver's license with him. *Id.* Because he did not have a license, the state trooper ordered Whitehead out of the car and questioned him and the passenger separately about their trip, receiving inconsistent stories. *Id.* at 498-99. Based on this, the state trooper ordered Whitehead to wait inside his patrol

car and asked him to sign a consent to search form. Whitehead became nervous at that point and declined to sign the form. *Id.* at 499.

At around this same time, "a report came over the police radio that [Whitehead's] driving privileges were in order, he was not wanted on any outstanding warrants, and the car he was driving was not stolen." *Id.* Despite this information, the state trooper continued to detain both Whitehead and his passenger and conducted a K-9 search of the vehicle, which revealed a quantity of cocaine. *Id.*

On appeal, we observed that once the state trooper learned that Whitehead's driving privileges were in order and that the car was not stolen, he "was under a duty expeditiously to complete the process of either issuing a warning or a traffic citation for whatever traffic offenses that he had observed." *Whitehead*, 116 Md. App. at 503. Thus, we held that the "mission" of the initial traffic stop was over. We then rejected the State's argument that the state trooper "perceived nervousness" when Whitehead was confronted with the consent to search form justified the further detention and search. *Id.* at 503-04. Moreover, we stated that there was "nothing that [the trooper] observed that even remotely indicates an involvement in the transportation of drugs" and nothing that "could give rise to a permissible inference that criminal narcotic activity [was] afoot." *Id.* at 504. Accordingly, we reversed the suppression court's denial of the motion to suppress evidence. *Id.* at 508.

We agree with Sidney that *Munafo* and *Whitehead* are persuasive authority in this case. Both cases stand for the proposition that a search and seizure incident to a traffic stop is constitutional only until the "mission" of the traffic stop is concluded. After the mission is completed, the police may not prolong the initial search unless there is either consent or

fresh articulable suspicion for a new search and seizure. *Munafo*, 105 Md. App. at 673; *Whitehead*, 116 Md. App. at 503. We hold that the initial traffic stop in Sidney's case was over after Detective Musgrave prepared and delivered the written warnings. At that point, just as in *Munafo* and *Whitehead*, Detective Musgrave should have handed the written warnings, drivers' license, and registration to Sidney and let him proceed on his way.[4]

II. WAS THE SECOND STOP CONSTITUTIONAL?

A. Lack of Fresh Articulable Suspicion of Illegal Activity

Once we have determined that the mission of the initial traffic stop had concluded, we turn next to see whether Detective Musgrave had fresh articulable suspicion to justify a second search and seizure. *Gadson v. State*, 341 Md. 21 (1995) (holding that, once the purpose of an initial detention is achieved, prolonging the detention is only lawful if there is reasonable, articulable suspicion). Again, *Munafo* and *Whitehead* are helpful. Just as the deputy's "hunch" in *Munafo* and the trooper's "perceived nervousness" of Whitehead were

[4] Moreover, we reject Detective Musgrave's contention that the first stop was not complete "[b]ecause I hadn't returned [the] documents or issued that warning at that point." Fourth Amendment jurisprudence, including the law on second stops, does not depend on the officer's subjective justification or reasoning, but rather, whether objectively, the purpose of the traffic stop was complete. *See Sellman v. State*, 449 Md. 526, 542 (2016) ("The test is objective: 'the validity of the stop or the frisk is not determined by the subjective or articulated reasons of the officer; rather, the validity of the stop or frisk is determined by whether the record discloses articulable objective facts to support the stop or frisk.'") (quoting *Ransome v. State*, 373 Md. 99, 115 (2003) (Raker, J., concurring)); *see also Whren v. United States*, 517 U.S. 806, 813 (1996) ("Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis"). *But see Lockard v. State*, ---- Md. App. -----, No. 3289, Sept. Term, 2018 (filed July 29, 2020) (slip op. at 20) (holding that "an officer's subjective belief whether the suspect is armed and dangerous is a relevant consideration in the 'totality of circumstances' calculus").

insufficient to support a second stop in those cases, so too was Detective Musgrave's belief here.[5] Our review of the record reveals insufficient facts to justify a second traffic stop. During the initial stop, Sidney was cooperative and did not appear nervous, at least prior to the pat down, and there was no evidence of any suspicious odors. Additionally, other than the fact that Sidney had been stopped in Maryland on two prior occasions for unknown reasons, his license and registration were in order and his record was clean. We have already dealt with the facts that Sidney had multiple cellphones and no luggage in the passenger compartment of his car. *See supra* n.1. In our view, the facts adduced at the suppression hearing do not suggest that Sidney was anything other than a routine traveler on a Maryland highway. *Cf. Turkes v. State*, 199 Md. App. 96, 119 (2011) (concluding that a number of factors, including but not limited to defendant's nervous and furtive movements during the course of the stop, "in the aggregate, justified further detention"). There was no fresh articulable suspicion to justify the second stop.

B. Absence of Consent

Finally, we turn to the motion court's finding that Sidney consented to the second search. As noted above, in note 3, we defer to the motions court's factual findings, including that Sidney's gesture of putting his arms up, was a form of consent to the search.

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[5] Although the statement of probable cause, included with the record on appeal, provides that these facts led Detective Musgrave to suspect that criminal activity was afoot, Detective Musgrave was not identified as an expert and did not offer any opinion based on his knowledge, training and experience, regarding the significance of these facts. Again, our review is limited to the evidence admitted during the motions hearing. *See Pacheco*, 465 Md. at 319.

Under our independent constitutional appraisal, however, we note that consent, to be effective, must be knowing and voluntary:

> A critical factor bearing on voluntariness is the legal status of the appellant as of the moment the consent was requested and ostensibly given. If the appellant either 1) was not subject to any Fourth Amendment detention of his person or 2) was subject to lawful detention, the voluntariness standard of *Schneckloth v. Bustamonte*, 412 U.S. 218 … (1973), would apply. *If, on the other hand, the appellant was being subjected to unlawful restraint, the ostensible consent would be the tainted fruit of that Fourth Amendment violation.* The circumstances surrounding and preceding the ostensible granting of consent, therefore, loom large in our analysis.

Graham v. State, 146 Md. App. 327, 350-51 (2002) (emphasis added, citations omitted); *see also Charity v. State*, 132 Md. App. 598, 634 (2000) ("If the consent were sought and given during a period of unconstitutional detention, however, that factor alone, absent attenuation between the initial taint and the presumptively poisoned fruit, would be dispositive that the consent was not voluntary.") (citing *Wong Sun v. United States*, 371 U.S. 471, 488 (1963)).

In our view, Sidney could not freely or voluntarily give consent in the midst of an unlawfully continued detention. Indeed, not only was Sidney never told that he was free to leave after the initial traffic stop was complete, but in fact, according to Detective Musgrave, he was *not* free to leave. Additionally, the presence of two armed police officers for two minor traffic offenses added to the coercive nature of this stop and undermined any

suggestion that Sidney implicitly consented to the remainder of the encounter.[6] *Swift v. State*, 393 Md. 139, 155-56, 158 (2006) (holding that a seizure has occurred under the Fourth Amendment where a reasonable person does not feel free to leave in response to a show of police authority and that, under those circumstances, a person cannot voluntarily consent to a search). If there was consent, it was neither freely nor voluntarily given, and it was, therefore, invalid.

CONCLUSION

In sum, we hold that the "mission" of the traffic stop was complete once the checks on Sidney's license and registration came back negative and the written warnings were ready to be delivered. Absent fresh articulable suspicion that other criminal activity was afoot, and absent Sidney's knowing and voluntary consent to prolong the stop, we conclude that there was, in this case, an unlawful extension of the traffic stop amounting to an illegal second stop under the Fourth Amendment.

CONVICTION REVERSED. COSTS TO BE PAID BY WORCESTER COUNTY.

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[6] After the briefs were filed in this case, we decided *Scott v. State*, ---- Md. App. -----, No. 3351, Sept. Term, 2018 (filed July 29, 2020). There, Scott was a passenger in a vehicle stopped for speeding. We upheld the motion court's ruling denying his suppression motion because: (1) the vehicle had been lawfully stopped; (2) the purpose and processing of the traffic stop was not over at the time the police asked for and obtained consent to search Scott's person; and, (3) Scott's consent to that search was voluntarily obtained. *Scott*, slip op. at 6-9, 15, 21-30, 32-33, 38. *Scott* is distinguishable from this case in that, here: (1) the traffic stop was over and its purpose was complete when Sidney was ordered out of the car; (2) Detective Musgrave withheld Sidney's documentation and the warnings; and, (3) Detective Musgrave conceded that Sidney was not free to leave. Accordingly, as described above, Sidney's purported consent was tainted by the unlawful second stop.