Circuit Court for Prince George's County
Case No. CT181233X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 960

September Term, 2019

RONALD AUSTIN CARSON

v.

STATE OF MARYLAND

Berger,
Arthur,
Wilner, Alan M. (Senior Judge),
Specially Assigned,

JJ.

Opinion by Wilner, J.

Filed: October 20, 2020

Appellant was convicted by a jury in the Circuit Court for Prince George's County of possession of cocaine, for which he was given a suspended sentence of one year of imprisonment and three years of probation. The conviction arose from the discovery of the cocaine in appellant's car following a traffic stop conducted by Prince George's County Police Officer Jason Swope. Appellant contends that the stop was without reasonable articulable suspicion and therefore constituted an unlawful seizure. In denying appellant's motion to suppress evidence of the cocaine, the court found the stop to be lawful. That is the sole issue before us.

BACKGROUND

At the time of the event, Officer Swope had been with the Prince George's County Police Department for over 12 years and had been assigned to the Narcotics Enforcement Division for the past seven. He personally had made 25 to 30 hand-to-hand drug purchases as an undercover officer and "wouldn't be able to count" the overall number of transactions he had witnessed but said they were in the "hundreds."

On the evening of August 17, 2018, around 9:30 p.m., Officer Swope was off-duty, sitting in his department-issued silver Chevy Silverado pick-up truck on a shopping center parking lot while waiting for a fellow officer with whom he planned to have dinner at a restaurant in the shopping center. Suddenly, appellant approached the passenger side of Officer Swope's vehicle and tried to open the door but was unable to do so because the door was locked. Officer Swope cracked the window and asked what appellant was

doing. Appellant looked at Swope, apologized, said " Sorry, wrong truck," and walked away. Officer Swope saw him get in a red Toyota Scion, sit there for a few minutes, and then move the car a few spaces away.

Shortly thereafter, the fellow officer, Officer Hannin, arrived. Officer Swope walked over to meet him. Just then he saw appellant drive to a different part of the lot and park next to a white Chevy Silverado pick-up truck similar in appearance to Officer Swope's truck. There were no other vehicles within eight or nine spaces of the truck. That activity struck Officer Swope as "odd, just from [his] prior experiences." He saw appellant get out of his car and get into the passenger seat of the white Silverado. Looking through the passenger side window of the Silverado, he observed appellant turn toward the center console and saw "movement inside between the driver of the pick-up truck and the Defendant" that "looked similar to other drug transactions I have seen in my prior experiences."[1]

Within a "minute or two," appellant got back into his car and the pick-up truck drove off. Appellant then pulled away as well. The two officers got back into Officer Hannin's car and intercepted appellant's car.

Upon the stop, Officer Swope identified himself as a police officer and asked appellant to step out of the vehicle. As appellant was opening the door, Officer Swope

[1] Officer Swope acknowledged that it was dark at the time – 9:30 at night – and that he was six to eight parking spaces away from the white pick-up truck but said that the lot was "fairly well lit."

noticed in the upholstery of the door – what he referred to as a "pocket" just below the door handle – what appeared to him to to be a glass crack pipe. As appellant moved away from the car, Officer Swope conducted a search and found in the door pocket a large white rock-like substance that, from his training and experience, he suspected was crack cocaine.[2]

On this evidence, the suppression judge found reasonable articulable suspicion to make the stop and, upon observing the glass crack pipe, probable cause to conduct a search of the interior of the car.

DISCUSSION

Appellant's focus is on the stop, which he contends lacked reasonable articulable suspicion. He views the conduct that served as the basis for Officer Swope's decision to stop him as conduct that could be perfectly innocent – the initial mistaking Swope's vehicle for the one he was looking for, waiting on the parking lot for someone to arrive, just as Officer Swope was doing, parking his car away from other cars, a one or two-minute meeting with someone – and the lack of anything incriminatory, such as nervousness or air fresheners, or knowledge that the person in the white truck was a known drug dealer. He relies on the holding in *Ferris v. State*, 355 Md. 356, 387 (1999) that "it is not enough that law enforcement officials can articulate reasons why they

[2] During the suppression hearing, an objection to what the specimen tested for was sustained, but at trial, it was agreed that it was cocaine.

stopped someone if those reasons are not probative of behavior in which few innocent people would engage." Rather, "the factors together must serve to eliminate a substantial portion of innocent travelers before the requirement of reasonable suspicion will be satisfied." *Id.*

The standards and the analysis required for determining whether reasonable articulable suspicion exists for a stop were well set out in *Holt v. State*, 435 Md. 443 (2013). They begin with the fact that "[t]here is no standardized test governing what constitutes reasonable suspicion" other than that it "embraces something more than an 'inchoate and unparticularized suspicion or hunch.'" *Id.* at 459-460. We assess the evidence "through the prism of an experienced law enforcement officer, and 'give due deference to the training and experience of the . . . officer who engaged the stop at issue." *Id.* at 461. We examine the "totality of the circumstances" to determine whether the detaining officer had a "particularized and objective basis for suspecting legal wrongdoing." *Id*. at 460.

Appellant's attempt to enter Officer Swope's vehicle was an innocent mistake that anyone could make and was hardly incriminatory, but it did legitimately pique the officer's interest to the point of continuing to observe appellant. Appellant's moving his car around the lot twice and eventually parking next to the white pick-up truck when it arrived furthered that inquisitive interest – nothing criminal about it but unusual, not something people ordinarily do. Getting into the truck, having what appeared to be a very brief transaction of some sort with the driver, and within a minute or two leaving the

truck, getting back in his own car, and he and the other person then immediately departing crossed the line. That kind of conduct Officer Swope had seen many times before as indicating a drug transaction.

As the Court noted in *Holt*, quoting from *United States v. Arvizu*, 534 U.S. 266, 277 (2002), "[a] determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct," and, as in *Holt*, although "the series of acts the detective[ ] observed were by themselves innocent, *taken together*, those acts supported the [detective's] suspicion that criminal activity was afoot." 435 Md. at 467. It was reasonably evident that what Officer Swope observed was a pre-arranged meeting for the sole purpose of conducting a transfer of some kind in the privacy of a vehicle and not just through an open window of the vehicle in public view.

JUDGMENT AFFIRMED; APPELLANT TO PAY THE COSTS.