Circuit Court for Baltimore City
Case No. 116348003

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1132

September Term, 2017

WAYNE COLEMAN

v.

STATE OF MARYLAND

Meredith,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: May 2, 2018

Appellant, Wayne Coleman, was indicted in the Circuit Court for Baltimore City, Maryland, and charged with illegal possession of a regulated firearm after having been convicted of a crime of violence, and related offenses. After his motion to suppress was denied, appellant entered a not guilty plea on an agreed statement of facts. He was found guilty by the court of illegal possession of a regulated firearm and sentenced to five years without possibility of parole. Appellant timely appealed to this Court and asks us to consider the following question:

> Did the motions court err in denying Mr. Coleman's motion to suppress?

Finding no error, we shall affirm.

BACKGROUND

The following evidence was elicited at the hearing on appellant's motion to suppress. At approximately 11:00 a.m. on November 16, 2016, Baltimore City Police Detectives Steven Mahan and Glenn Peters were on patrol in an unmarked vehicle, in the 6200 block of Boston Street, when they encountered a 2004 black GMC Yukon being driven by the appellant. Detective Mahan was driving westbound in the right-hand lane of Boston Street, at around 25 to 30 miles per hour, as appellant was driving next to him in the left lane. According to the detective, while they were travelling side by side, "Mr. Coleman swerved into my lane, almost striking my vehicle." Detective Mahan explained that, although the Yukon did not strike his vehicle, the two cars came within three feet of one another. Detective Mahan slowed down after the Yukon came into his lane and initiated a traffic stop.

When Detective Mahan approached the Yukon, he told appellant "You almost hit me," to which appellant replied, "Yeah, I'm sorry. I was putting my drink down." At this point, the detective testified that he smelled the odor of marijuana. He also saw small flakes of marijuana on appellant's lap.[1] In response to questioning about the marijuana, appellant conceded that he and his passenger, Michael Mercer, had "just got done smoking[.]"

Appellant was ordered to exit the vehicle. During an ensuing search of his person, appellant produced two plastic baggies of marijuana that were secreted in his front waistband area. A search of the vehicle resulted in the recovery of a loaded Taurus .40 caliber semi-automatic handgun under the center console. A digital scale was secreted inside a "Chuckie" doll, located in the back seat. In addition, eighteen (18) gel caps of heroin, thirteen (13) containers of cocaine, and $1,951 in U.S. currency were recovered from the front waistband of appellant's passenger, Mercer.[2] Appellant was arrested and charged with illegal possession of the handgun. Detective Mahan issued appellant a traffic citation for the unsafe lane change.

After hearing argument on appellant's motion to suppress the fruits following the traffic stop, which argument primarily concerned the parties' interpretation of the Court of Appeals' opinion in *Lewis v. State*, 398 Md. 349 (2007), the court denied the motion, finding as follows:

[1] Detective Mahan was accepted by the court as an expert in firearms and the packaging and distribution of controlled dangerous substances.

[2] The court granted co-defendant Mercer's motion to suppress.

> What we're looking at in this case is a [sic] automobile in a lane of traffic, which on the basis of testimony I heard thus far, swerved and made an unsafe lane change. Now, I know a certain amount of discretion goes into a law enforcement officer's decision to prepare a citation for unsafe lane change. And I guess the real unsafe lane change if you had a sliding scale, the collision would be 100 percent.
>
> What we have, however, is the testimony of the officer that he had to slow down, and they almost hit his car, and I don't think that this is the same thing as a near miss from a car with left blinkers on that's pulling away from the curb. So there's a distinction between our scenario and the scenario in *Lewis*.
>
> Now, what do we have? We have the testimony of Officer -- or Detective Mahan that he was going to -- he stopped the vehicle because of a traffic violation. Unlike the *Lewis* case, in this case, there was a citation written for unsafe lane change. And under those circumstances, even though it's not a serious offense -- it's a minor offense -- it's still an offense. And this gave the police officer reasonable cause to stop the vehicle and issue the citation.

Appellant then entered a not guilty plea on an agreed statement of facts and was found guilty of illegal possession of a regulated firearm after having been convicted of a crime of violence. He was sentenced to five years without the possibility of parole.

DISCUSSION

Appellant contends that the court erred in denying his motion to suppress because his "momentary *de minimus* crossing of the lane divider, by an unspecified amount, absent any evidence that Mr. Coleman endangered himself, Detective Mahan, or others" did not provide either reasonable articulable suspicion or probable cause to warrant a traffic stop under the Fourth Amendment. The State responds that there was reasonable articulable suspicion to support the traffic stop and the court properly denied the motion to suppress. We agree with the State.

"When reviewing the denial of a motion to suppress, the record at the suppression hearing is the exclusive source of facts for our review." *Darling v. State*, 232 Md. App. 430, 445, *cert. denied*, 454 Md. 655 (2017). We consider the evidence and all reasonable inferences drawn from that evidence in the light most favorable to the party prevailing on the motion, in this case, the State. *Barnes v. State*, 437 Md. 375, 389 (2014); *Grimm v. State*, 232 Md. App. 382, 396, *aff'd,* ___ Md. ___, No. 37, Sept. Term, 2017 (filed April 20, 2018). Ordinarily, we give great deference to a hearing judge's factual findings, and we will not disturb them unless they are clearly erroneous. *Henderson v. State*, 416 Md. 125, 143-44 (2010); *Darling*, 232 Md. App. at 445. We review the motions court's factual findings for clear error, but we make our own independent constitutional appraisal of the record, "reviewing the relevant law and applying it to the facts and circumstances of th[e] case." *State v. Luckett*, 413 Md. 360, 375 n.3 (2010); *accord Moore v. State*, 422 Md. 516, 528 (2011).

The Fourth Amendment to the United States Constitution, applicable to the States through the Fourteenth Amendment, protects against unreasonable government searches and seizures. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). The Court of Appeals has explained what should be considered in evaluating a traffic stop under the Fourth Amendment of the United States Constitution:

> Where the police have probable cause to believe that a traffic violation has occurred, a traffic stop and the resultant temporary detention may be reasonable. *See Whren v. United States*, 517 U.S. 806, 810, 116 S.Ct. 1769, 1772, 135 L.Ed.2d 89, 95 (1996). A traffic stop may also be constitutionally permissible where the officer has a reasonable belief that "criminal activity is afoot." *Terry v. Ohio*, 392 U.S. 1, 30, 88 S.Ct. 1868, 20 L.Ed.2d 889, 911 (1968). Whether probable cause or a reasonable articulable suspicion exists

> to justify a stop depends on the totality of the circumstances. *See United States v. Cortez*, 449 U.S. 411, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981).

Rowe v. State, 363 Md. 424, 433 (2001); *see also Heien v. North Carolina*, __ U.S. __, 135 S. Ct. 530, 536 (2014) (recognizing that officers need only "reasonable suspicion" -- that is, "a particularized and objective basis for suspecting the particular person stopped" of breaking the law) (citing *Navarette v. California*, __ U.S. __, 134 S.Ct. 1683, 1687-88 (2014) (internal quotation marks omitted); *State v. Williams*, 401 Md. 676, 687 (2007) (observing that traffic stops may be justified by probable cause or, at a minimum, by reasonable articulable suspicion).

Appellant was issued a citation for violating Section 21-309 (b) of the Transportation Article, which provides:

> (b) 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 or bikeway into a lane until the driver has determined that it is safe to do so.

Md. Code (1977, 2012 Repl. Vol.) § 21-309 of the Transportation ("Trans.") Article.

As the parties recognize, this subsection was at issue in *Rowe, supra*. In that case, a Maryland State Trooper on patrol on Interstate 95 in Cecil County followed Rowe's van as it travelled southbound in the far-right lane for approximately 1.2 miles. *Rowe*, 363 Md. at 427. At one point, the van "crossed the white edge line on the right side of the shoulder, about eight inches over that white edge line on to the shoulder" and hit the rumble strips before swerving back into the slow lane. *Id*. at 427-28. After the van touched the white edge-line again, the State Trooper pulled the van over for "failing to drive in a single lane" and for suspicion of drunk driving. *Id*. at 428.

The Court of Appeals considered whether Rowe's conduct amounted to a violation of Trans. § 21-309 (b). The Court looked to the plain language of the statute and stated:

> [T]o be in compliance, a vehicle must be driven as much as possible in a single lane and movement into that lane from the shoulder or from that lane to another one cannot be made until the driver has determined that it can be done safely. Thus, more than the integrity of the lane markings, the purpose of the statute is to promote safety on laned roadways.

Rowe, 363 Md. at 434.

The Court of Appeals held:

> We conclude that the petitioner's momentary crossing of the edge line of the roadway and later touching of that line did not amount to an unsafe lane change or unsafe entry onto the roadway, conduct prohibited by § 21-309, and, thus, cannot support the traffic stop in this case.

Rowe, 363 Md. at 441.

The Court's holding in *Rowe* is primarily one of statutory interpretation that recognizes that the overall purpose of Section 21-309 (b) is to promote traffic safety. The Court's holding was not, as appellant seems to suggest, that *de minimus* statutory violations are insufficient grounds to support a traffic stop. Indeed, *Rowe* has since been distinguished by several other cases. *See Blasi v. State*, 167 Md. App. 483, 499 (2006) (holding that police had probable cause to stop Blasi because he drove onto the shoulder, then crossed back from the slow lane into the passing lane, while speeding up to 65 m.p.h. and back down to 45 m.p.h.); *Dowdy v. State*, 144 Md. App. 325, 330 (2002) (holding that police had probable cause to stop Dowdy because he crossed the line between two travel lanes twice, for a tenth of a mile, first crossing it with his tires and, then, again with a quarter of his vehicle); *Edwards v. State*, 143 Md. App. 155, 171 (2002) (holding that

police had probable cause to stop Edwards because he, at least once, crossed the center line of an undivided two-lane road by as much as a foot); *see also Fries v. Brakenridge*, 256 Md. 678, 683 (1970) (holding, under the predecessor statute, that Fries was contributorily negligent when she made an unsafe lane change and cut off another vehicle on the Baltimore-Washington Parkway "at a time when a person exercising reasonable care for their own safety would not have done so"); *Ayala v. Lee*, 215 Md. App. 457, 469 (2013) (concluding that driver of truck was negligent and violated Trans. § 21-309 (b) when he drove from the right hand lane of Route 50 and crashed into a truck parked on the right shoulder, observing that "[i]t was plainly not safe to do so, given that there was a vehicle in Lee's path and he crashed into it").

In the case before us, unlike in *Rowe,* in which there was no unsafe lane change, appellant crossed into Detective Mahan's lane of traffic. Indeed, appellant conceded as much when he responded to the detective's initial statement that "You almost hit me," by replying, "Yeah, I'm sorry. I was putting my drink down." Nevertheless, appellant maintains that it is the detective's inclusion of the qualifier "almost" that makes this case on point with *Lewis, supra*, and that this similarity requires reversal.

In *Lewis*, several Baltimore City police officers were on patrol, in a marked police vehicle, in an area described as an "open air drug market" and "known for violent crime and drug distribution activity." *Lewis*, 398 Md. at 353. The officers were looking for a rape suspect when they observed a sports utility vehicle ("SUV") parked on the side of a road with a man in the driver's seat and a woman in the front passenger seat. *Id.* Believing that the occupants were "acting nervously" and concerned that a rape could be in progress,

the police officers stopped the patrol car in the street, slightly in front of the SUV. *Id.* At that point, the driver of the SUV activated his left turn signal and started to pull into the street, "almost striking the back of the police cruiser." *Id.* at 355.

The driver, Lamont Lewis, stopped the SUV and the police officers exited their cruiser and detained the driver. *Lewis*, 398 Md. at 355. When the officers asked the driver to exit the SUV, a plastic bag containing marijuana fell to the ground. *Id.* At trial, defense counsel moved to suppress the marijuana, arguing that "almost" hitting the police car did not provide reasonable articulable suspicion to effectuate a stop because there was no traffic violation. *Id.* at 356.

The trial court denied the motion and Lewis was subsequently convicted of possession of a controlled dangerous substance. *Lewis*, 398 Md. at 357-58. Lewis appealed. Prior to any ruling by this Court, the Court of Appeals issued a writ of certiorari, on its own initiative. *Id.* at 358.

Lewis contended that the motions court erred in denying his motion to suppress because "even if he 'almost' hit the police car, he did not violate any law" and there was no reasonable articulable suspicion justifying the traffic stop. *Lewis*, 398 Md. at 359. The State responded that there was reasonable suspicion to investigate whether Lewis was driving negligently or recklessly, in violation of Trans. § 21-901.1, driving under the influence, in violation of Trans. § 21-902, or under the community caretaking function as articulated in *Cady v. Dombrowski*, 413 U.S. 433 (1973). *Lewis*, 398 Md. at 359.

The Court of Appeals ultimately reversed the conviction, holding that the trial court erred in denying the motion to suppress "because the police did not have justification to

conduct the investigatory traffic stop based upon the fact that Lewis 'almost' hit the police car." *Lewis*, 398 Md. at 358. The Court recognized that "the police have the right to stop and detain the operator of a vehicle when they witness a violation of a traffic law," *id.* at 363, but " 'almost' committing a traffic violation," *id.* at 367, or "mere hunches that unlawful activity is afoot" are constitutionally insufficient to support a traffic stop. *Id.* at 364. The Court continued:

> What the State in the present case attempts to do, however, is "skirt" hunch, cruise past "almost" unlawful, and arrive at "almost" accident to permit investigatory traffic stops in situations in which a driver of a car is "almost" involved in a traffic accident. The State's attempt to do so runs afoul of Fourth Amendment jurisprudence because there is no basis for conducting an investigatory traffic stop when it is evident that the driver is lawfully operating his vehicle without any accompanying illegal activity. The State's proposed principle would permit the police to exercise unrestrained discretion when deciding to make a traffic stop, based upon a belief that the driver has "almost" been involved in a traffic accident. Such a standardless chimera practically destroys the objective basis of the reasonable suspicion requirement. Almost causing an accident could include driving less than the speed limit, passing another car appropriately or merely parallel parking.
>
> In the present case, Lewis was stopped on the road and pulled into the street, activating his left turn signal. That he "almost" hit the police car did not constitute a traffic infraction nor illegal activity.

Lewis, 398 Md. at 368-69.[3]

[3] The Court noted:

> An officer may, of course, initiate a stop upon observation of reckless or negligent driving that almost causes an accident, but the stop, in such case, is for reckless or negligent driving, not "almost" causing an accident. Neither officer ever suggested reckless or negligent driving as the basis for the stop.

Lewis, 398 Md. at 369 n. 9.

Lewis is distinguishable. Although Section § 21-309 was cited in *Lewis*, *see* 398 Md. at 367-68, there was no argument that Lewis made an unsafe lane change or entered a highway in an unsafe manner when he activated his turn signal and pulled away from the curb into the roadway. There was no traffic infraction. *Id.* at 369. Here, by contrast, appellant crossed over the dividing line, in traffic, while another vehicle was travelling in close proximity to him. Detective Mahan's observations that appellant came within three feet of hitting his vehicle, accompanied by the fact that the detective slowed down, at a minimum, provided a reasonable, articulable suspicion that appellant's conduct amounted to an unsafe lane change. We hold that the stop was lawful, and the motions court properly denied appellant's motion to suppress the fruits of that stop.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.