Circuit Court for Baltimore City
Case No. 116047020

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1888

September Term, 2019

MA'RYAN BURLEY-CARTER

v.

STATE OF MARYLAND

Graeff,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: July 12, 2021

Ma'Ryan Burley-Carter, appellant, was convicted in the Circuit Court for Baltimore City after entering a conditional plea of guilty to one count of possession of heroin pursuant to Maryland Rule 4-242(d), preserving his right to appeal the denial of his pre-trial motion to suppress the evidence seized by the police. Appellant presents one question for our review:

> "Did the trial court err in ruling that the evidence recovered pursuant to the search of 108 South Payson Street was admissible?"

We shall hold that the police search of 108 South Payson Street was unlawful, violative of the Fourth Amendment to the United States Constitution, because the search warrant justifying the search of that property was the fruit of the poisonous tree, *i.e.*, the unlawful search of appellant's vehicle. Any evidence seized from 108 South Payson Street was illegal and inadmissible in evidence. We shall reverse.

I.

Appellant was indicted by the Grand Jury for Baltimore City of ten counts related to possession and distribution of controlled dangerous substances ("CDS") recovered from 108 South Payson Street, Baltimore, Maryland. Following the trial court's denial of his motion to suppress the search of his automobile and the South Payson residence, he entered a conditional guilty plea to one count of possession of heroin. The court imposed a term of incarceration of eight years.

At about 9:20 a.m. on January 18, 2016, Detective Frank Friend of the Baltimore City Police Department stopped a champagne-colored Acura SUV for a window tint

violation. Appellant was the driver, and the detective engaged appellant in a conversation about the windows. Appellant advised the detective that he had received a repair order for the windows the week before and that he was on his way to have it corrected. Detective Friend asked for and received appellant's license and registration, and he issued a citizen contact form as a written warning, before letting appellant leave.

The following morning, January 19, 2016, Detective Friend observed appellant at 3:00 a.m. and at 3:40 a.m. in front of appellant's residence on Payson Street. Detective Friend recited in an affidavit supporting an application for a search warrant as follows: "This Officer knows Mr. Carter from prior encounters in the area. Each and every encounter with Mr. Carter, Mr. Carter gives this Officer a Maryland license which listed his address as 108 S. Payson Street."

At around 5:55 a.m. on that same morning, January 19, 2016, Detective Friend was helping to execute an unrelated search warrant on South Calverton Street. After completion of that search, he observed the same Acura MDX SUV about half a block away, near the corner of South Calverton and Highland. He pulled in front of the SUV and activated his emergency equipment. Detective Friend testified that he noticed that the vehicle had "very dark tint" and was parked more than twelve inches from the curb.

Detective Friend testified that a person has ten days to make repairs after receipt of a safety repair order, and possibly longer for removing tint. He stated that when he stopped appellant on January 19, 2016, for the second time in less than twenty-four hours, he saw

a Black male in the driver's seat and recognized him as the same person he had talked to the day before.[1]

At the 5:55 a.m. stop on January 19, the detective asked for appellant's license and registration again, as he had the day before. He concluded that appellant's movements when retrieving them were "suspicious," and he ordered appellant out of the vehicle.[2]

Another officer on the scene, Officer Villafane, called for a K-9 unit. After the request for the K-9 unit, Detective Friend notified the police dispatcher that he had stopped a vehicle at 100 South Calverton. He asked the dispatcher to run the tags on appellant's SUV. The dispatcher said that the tags came back to "a Maryan Carter." According to Detective Friend, he "didn't really recognize that." Detective Friend said to the dispatcher, "There's somebody else driving," and he asked her to "run a Soundex and see what he's about."[3] The dispatcher ran appellant's license number and then said, "Mr. Carter is valid."

The delay from the start of the stop until the K-9 unit arrived was sixteen minutes, from 5:55 a.m. until 6:11 a.m. Detective Friend testified that he was running the license and registration and filling out a citizen contact form when the K-9 officer arrived. He said that the K-9 scan occurred while he was communicating with dispatch. The K-9 officer

[1] The State conceded at the suppression hearing that the initial traffic stop was a *Whren* stop, *i.e.*, pretextual. In *Whren v. United States*, 517 U.S. 806 (1996), the Supreme Court held that a pretextual stop based on an actual traffic violation was not prohibited by the Fourth Amendment. There, the officers immediately saw cocaine in plain view upon approaching the vehicle.

[2] Detective Friend testified that he did not ask appellant about removal of the tint and he did not check the date of the repair order during the second stop (*i.e.*, the one on January 19).

[3] The Soundex referred to appellant's driver's license number.

advised Detective Friend that the dog alerted at the driver's side of the car near the front and rear doors. Another officer searched the vehicle while Detective Friend continued "dealing with the license." Officer Villafane told Detective Friend that the K-9 unit found a gun concealed in the back of the center console. The officers arrested appellant and Detective Friend then issued citations for the window tint and the excessive distance from the curb.

Officer Berry, the K-9 officer, testified that when he arrived at the scene, *all* of the officers, including Detective Friend, were standing outside of the car waiting for him. He stated that he did not see any of them writing tickets or measuring the tint of appellant's vehicle.[4]

[4] The circuit court judge sequestered the officers during the suppression hearing. Officer Berry testified that he found all the officers standing outside the vehicle waiting for him when he arrived, and that none of them were taking any action in furtherance of issuing citations. On direct examination, Officer Berry testified as follows:

> "I got out the car, I walked over to the officers to see what they had going on. Everybody was standing outside the car waiting for me. I always get out the car and make sure it safe, you know, make sure people are away from the vehicle when I scan. Make sure there's no needles, anything sharp around the car so the dog won't get hurt."

On cross-examination, Officer Berry testified as follows:

> Q: And you said when you arrived you saw all the officers standing outside the vehicle, isn't that correct?
> A: Yes, sir.
> Q: And that includes the officer who was here earlier today, wasn't that correct?
> A: I don't particularly remember his face.
> Q: But you saw all the officers that were there standing outside the vehicle, correct?
> A: Yes, sir. That's correct.
> Q: And you didn't see anybody writing any tickets or doing anything with the tint or anything like that, correct?
> A: No, sir.

The police charged appellant with unlawful possession of a firearm found concealed in the center console.[5] Based upon the discovery of the firearm, they obtained a warrant to search appellant's home for evidence that he owned the firearm and for ammunition. During the search of the home, the police seized evidence of CDS and distribution of CDS, which led to the charges in the instant case.

Appellant filed a motion to suppress the evidence seized by the police, raising several bases for the motion. He alleged that the search of his vehicle was an unlawful warrantless search and that the police unlawfully detained him beyond the time that was necessary to complete the traffic violation. He argued that the search warrant was based upon the unlawful search of his vehicle, and as such was the fruit of an unlawful vehicle search. In addition, he maintained that the affidavit and facts supporting the warrant lacked any nexus to his residence, and that the warrant was so deficient on its face that the good-faith exception should not apply.

The motions court found that Detective Friend's stop of appellant on January 19 began at 5:55 a.m. and the canine scan took place between 6:11 a.m. and 6:13 a.m. The court noted a delay of five minutes from Detective Friend's initial call to dispatch until information came back. The court found that there was probable cause for the traffic stop

[5] Appellant proceeded to trial separately before a jury on the firearm charge and was acquitted.

because of the window tint and the vehicle appearing to be more than twelve inches from the curb, "skimpy as it is."[6]

As to the vehicle stop and the vehicle search, the motions court reasoned as follows:

> "Well, what I'm just going to hang my hat on here, I think it was justified that the officer before completing a traffic stop had a right to get back information under the circumstances, and there's a little bit of confusion with the dispatcher and the name and so forth, and I take into consideration he had seen the name the day before and the license, but people run around with somebody else's license or what have you, you know.
>
> Checking it in the database, it seems to me, on the tinting aspect, you know, is appropriate. So when he gets back—on page 4 of Defendants 1, came back to—you could read it Maryan, I think that was his testimony that she said Maryan and it seemed to be—he says—Friend, at line 5 page 4, 'I got a'—you know, and then he says, 'There's somebody else driving. Can you run a Soundex number and see what he's about? 10-4.' He comes back and it comes—Mr. Carter's valid under that, et cetera.
>
> So I think that this is, you know, valid, what otherwise would not make this a valid prolongation of the processing of the traffic stop. I, you know, up until that point they've got no indicia of guns or drugs, et cetera, in the car. It's only the dog scan. The dog certified for narcotics, that does a hit, which I fully understand, but, nevertheless, the case law and a number of cases that I think were cited earlier here is that a valid—qualified dog sniff furnishes valid probable cause to search your vehicle.
>
> So for those reasons, and based on a number of cases that were cited, I will deny the motion to suppress the seizure of the weapon in the vehicle. Close decision, I will concede, at any rate."

[6] In the court's summation, the judge stated: "So…it's a factor here about him not using his tint meter until afterwards and not measuring, but in looking at the picture here I have, you know, it appears to be more than twelve inches from the curb….As minor as that is and as skimpy as it is, nevertheless, in my judgment, you know, it furnishes probable cause that a traffic—that a parking and whatever—equipment violation, you know, has occurred to make a stop."

The court ruled separately on the motion to suppress the evidence seized at the residence, addressing the challenge to the warrant. As is the ordinary procedure, no witnesses were called at the motions hearing, the parties entered the search warrant into evidence and presented argument to the court. Appellant argued that the warrant was not supported by probable cause that evidence of a crime would be found at appellant's residence. Appellant noted that the affiant Detective Friend's background was in drugs as opposed to guns, and the detective's assertion that drug traffickers maintain firearms and ammunition in connection with drug trafficking was irrelevant because the warrant did not connect appellant with drug trafficking activities or allege that he was a drug trafficker. Appellant's counsel argued that there was no nexus between appellant's possession of the gun and his residence; the police never conducted an investigation in this case; and that there was no substantial basis for issuing the warrant because there was no nexus to suggest that the police would find another gun or anything involving criminal activity in the house.

The State argued that the purpose in searching the house was to search the house for evidence to prove the gun possession charge, such as ammunition and evidence of gun purchase. The State points to the time-space proximity between appellant's arrest and his home in that the police saw appellant standing in front of his home at 3 a.m. and he was arrested three hours later, two blocks away. The police knew of his criminal history of two prior arrests within the past five years, for two narcotic offenses and a firearm offense, and the police had recovered a firearm and ammunition belonging to appellant from the same

location in the past. In addition, the State argued the good-faith exception to the exclusionary rule of the Fourth Amendment to the United States Constitution.

The motions court denied the motion to suppress, finding that the police stop of appellant's automobile was justified and there was substantial basis for the District Court judge to issue the warrant, reasoning as follows:

> "We've got no evidence here, you know. [In cases w]e're going to use other firearms, and a bank robbery, terrorism, gang activity. There's nothing like that here. There's just a gun in the console under the circumstances of someone disqualified to have a gun which could lead one to say, well, perhaps he's got another gun in the house, but at any rate, what I hang my hat on very specifically besides that to a degree, but even more so is that the fact that there may be some, you know, to prove ownership of this gun that was in a console, you know, perhaps arguably in his car, I think it's appropriate under these circumstances, sighting less than three hours before, in front of his house on the license and so forth, that that generates a reasonable inference that there's likely some evidence . . . maybe there's a bill of sale or some evidence or cleaning equipment, something of that nature, that I would find to be appropriate evidence when it came to trial as to whether or not, you know, he would be in possession of that gun, you know, when somebody borrowed his car two hours before."

Following appellant's conditional guilty plea, the court sentenced appellant and appellant noted a timely appeal. Because no appellant's brief was filed, this Court dismissed the appeal. Appellant filed a petition for post-conviction relief in April 2019, and the circuit court granted his petition to file a belated appeal. This appeal followed.

II.

Before this Court, appellant reiterates his arguments made below, arguing that the evidence seized from his home was not admissible because the information in the search

warrant application lacked any nexus to his home, and that the deficiency was so apparent on the face of the warrant that the good-faith exception does not apply. He argues that the search warrant was based upon the discovery of a firearm during an unlawful search of his car, and therefore the evidence recovered pursuant to the search warrant is inadmissible, as fruit of the poisonous tree. He does not contest the basis for the stop, or that the stop may have been pretextual, but instead argues that traffic stops "cannot become a convenient occasion for an officer to delay the travels of an ordinary motorist so that the officer may dispel a mere hunch that the motorist has committed a past crime or present crime." Appellant Br. at 23. He recognizes that, in Maryland, a scan by a drug detection dog is permissible without any additional justification, so long as the purpose of the stop is not prolonged for the purpose of conducting the scan. Here, he argues, detention of appellant lasted longer than was necessary to effectuate the purpose of the stop.

The State argues that the evidence seized by the police pursuant to a search warrant was admissible for several reasons: (1) there exists a substantial basis for probable cause and this Court decides only whether the magistrate had a substantial basis for finding probable cause; (2) the executing officers relied on the search warrant in good faith; and (3) the police did not illegally detain and search appellant's vehicle.

As to appellant's lack-of-nexus argument, the State offers two arguments to support its view: first, the time-space proximity (two blocks away) between appellant's arrest location and his home provided some nexus, and second, appellant's criminal history and the detective's experience in firearm recovery gave the police cause to suspect the home.

The State maintains that it was reasonable that appellant, who was at his home before the arrest, and near his home after the arrest, would have firearm-related evidence such as ammunition and bill of sale in his home. In the alternative, the State relies on the good-faith exception enunciated by the United States Supreme Court in *United States v. Leon,* 468 U.S. 897 (1984), and its progeny.

As to the validity of the automobile search, the State maintains that the police did not prolong the traffic stop and presents the following timeline: that a second officer called for the K-9 scan three minutes after Detective Friend began the traffic stop, that the K-9 officer arrived three to five minutes later, conducted the scan and received the dog alert less than two minutes after he arrived at the scene and no more than ten minutes after the stop began.

The motions judge denied the motion to suppress the evidence.

III.

We review the court's denial of a motion to suppress evidence based on the record developed at the suppression hearing. *Pacheco v. State*, 465 Md. 311, 319 (2019). We review the record in the light most favorable to the prevailing party, in this case the State. *Norman v. State*, 452 Md. 373, 386. We accept the motion court's factual findings unless they are clearly erroneous, and defer to the lower court's findings of facts and credibility determinations. *Charity v. State,* 132 Md. App. 598, 605–06 (2000).

An appellate court, in reviewing a search pursuant to a warrant, determines whether the magistrate/issuing judge had a *substantial basis* to conclude that the warrant was supported by probable cause, a standard different from whether the warrant in the first instance is supported by probable cause. *State v. Amerman,* 84 Md. App. 461, 463–64 (1990). In doing so, we do not apply a *de novo* standard of review, but rather a deferential one. This is an important distinction. "The evidence necessary to demonstrate a 'substantial basis' is less than that which is required to prove 'probable cause.'" *Moats v. State,* 230 Md. App. 374, 391, 148 A.3d 51 (2016).

As to the constitutionality of a warrantless search or seizure under the Fourth Amendment, we review the issue *de novo* and perform an independent constitutional evaluation by reviewing the relevant law and applying it to the facts and circumstances of the particular case. *Grant v. State*, 449 Md. 1, 15 (2016). Whether the proper scope of a "*Whren* stop" was exceeded, and whether there was one detention or two, "is not a finding of fact . . . [on] which the appellate court will give deference to the hearing judge but is, instead, a conclusory or constitutional fact with respect to which the reviewing court must make its own independent *de novo* determination." *Charity,* 132 Md. App. at 609.

IV.

Appellant argues that the search warrant was the product of an unlawful search and seizure of appellant's automobile, the fruit of the poisonous tree, and that therefore any evidence seized must be suppressed. The Fourth Amendment guarantees the right of

individuals "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; *Mapp v. Ohio,* 367 U.S. 643 (1961). Generally, searches and seizures conducted without a warrant are *per se* unreasonable, subject only to a few specific, well-delineated exceptions. *Minnesota v. Dickerson*, 508 U.S. 366 (1993). If no exceptions to the exclusionary rule apply, evidence must be suppressed. *Wong Sun v. United States,* 371 U.S. 471, 484–85 (1963). In addition, evidence discovered through exploitation of an illegal search or seizure must also be suppressed as "fruit of the poisonous tree." *Id*. at 488.

One exception to the warrant requirement, relevant here, is a seizure based upon a traffic violation. *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). A traffic seizure is justified only if the officer diligently pursues the purpose of the stop; any deviations or delays for unrelated investigations violate the driver's Fourth Amendment right, unless supported by independent reasonable suspicion. *Id*. at 354–55. In addition, the automobile exception to the warrant requirement permits police to search a vehicle when the car is "readily mobile" and probable cause exists to believe it contains contraband. *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996); *California v. Acevedo*, 500 U.S. 565 (1991); *California v. Carney*, 471 U.S. 386, 390-391 (1985) (tracing the history of the exception); *Carroll v. United States*, 267 U.S. 132 (1925).

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*, *supra* note 1, 517 U.S. at 810. A traffic stop involving a motorist is a detention which implicates

the Fourth Amendment. *Id*. at 810 (1996); *United States v. Sharpe*, 470 U.S. 675, 682 (1985); *Berkemer v. McCarty,* 468 U.S. 420, 439 (1984) (analogizing the degree of intrusiveness of the usual traffic stop to the degree of restraint imposed by the typical *Terry* stop); *Ferris v. State,* 355 Md. 356, 369 (1999). Nonetheless, the Supreme Court has made it clear that the detention of a person "must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Florida v. Royer,* 460 U.S. 491, 500 (1983).

A seizure for a traffic violation is justified only if the officer pursues diligently the purpose of the stop; any deviation or delay for unrelated investigation violates the Fourth Amendment, unless the reason for the delay is supported by independent reasonable suspicion. *Rodriguez,*, 575 U.S. at 350, 357 (holding that a stop exceeding the time needed to resolve the matter for which the stop was made is an unreasonable seizure, and a delay of seven to eight minutes for a dog sniff is unconstitutional); *Royer,* 460 U.S. at 500; *Ferris,* 355 Md at 369. When detaining a motorist for a traffic violation, a law enforcement officer may delay a motorist to check on the driver's license, registration, license plates, and proof of insurance. *Id*. A traffic stop, however, may not be prolonged to conduct a dog sniff without a separate justification beyond the police-observed traffic violation. *Rodriguez,* 575 U.S. at 350–51, 355. A hunch amounts to inchoate and unparticularized suspicion and is insufficient justification. *Terry v. Ohio*, 392 U.S. 1, 27 (1968). In determining the reasonable duration of a stop, "it [is] appropriate to examine whether the police diligently pursued [the] investigation." *Rodriguez*, 575 U.S. at 354.

To prolong a traffic-stop detention, and to satisfy the Fourth Amendment, law enforcement officers need reasonable, articulable suspicion or probable cause that the person stopped has committed, is committing, or is about to commit a crime. The Supreme Court stated as follows:

> "Like a *Terry* stop, the 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. Because addressing the infraction is the purpose of the stop, it may last no longer than it is necessary to effectuate that purpose. Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed."

Rodriguez, 575 U.S. at 354 (cleaned up).

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 (1981); *Rowe v. State*, 363 Md. 424, 433 (2001); *State v. Williams*, 401 Md. 676, 687 (2007) (a traffic stop may be justified under reasonable articulable suspicion standard). In Maryland, and most other jurisdictions, a pretextual stop is permissible if the officer has objective, probable cause that a driver is violating a traffic law. *Charity,* 132 Md. App. at 598; *Whren*, 517 U.S. at 819. The officer's subjective motive for the stop is irrelevant so long as the circumstances justify the stop.

Objectively, appellant's initial stop was legal because the officer observed that his automobile window tint apparently exceeded the allowable limit and the vehicle was stopped more than twelve inches from the curb—both violations of Maryland motor

vehicle law. Appellant concedes the validity of the initial stop but instead focuses on the length of the detention.

Appellant argues that the police deviated from the purpose of the traffic stop—which was to investigate appellant for driving a vehicle with tinted windows and parking more than twelve inches from the curb—to facilitate an independent criminal investigation, and that the officers delayed issuing any citation or warning to allow time for the dog sniff. Moreover, appellant alleges that the officers did not have reasonable suspicion to justify any deviation from the purpose of the traffic stop, nor any justification for the delay.

The first question we address is whether the police delayed appellant's traffic stop by acting outside of the purpose for the stop—the tinted windows and the excessive distance from the curb. Then, if there was such a delay, we address whether the delay—effectively a second stop—was justified by reasonable suspicion of criminal activity afoot. We must therefore determine whether Detective Friend's execution of the traffic stop complied with the standard for temporary detentions set forth in *Terry* and its progeny.

The permissible duration of police inquiries in a traffic stop context is determined by the seizure's "mission." *Rodriguez,* 575 U.S. at 354. This "mission" is limited to "address[ing] the traffic violation that warranted the stop" and "attending to related safety concerns." *Id*. "Authority for the seizure thus ends," the *Rodriguez* Court held, "when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Id*. Tasks not related to the traffic mission, such as dog sniffs, are unlawful if they "add time" to the

stop and are not otherwise supported by independent reasonable suspicion of wrongdoing. *Id*. at 357.

A dog sniff is not "an ordinary incident of a traffic-stop." *Id*. at 355–56. Consequently, a dog sniff that "prolongs [the stop] beyond the time reasonably required to complete the mission of issuing a warning ticket" for the traffic offense, violates the Constitution's shield against unreasonable seizures unless the officer had independent reasonable suspicion to support such a prolongation. *Id*. at 354–55 (cleaned up). Accordingly, inquiries or actions (such as a dog sniff) that measurably extend the duration of the stop and that are outside of the purpose of the stop's mission must be justified by reasonable suspicion independent of the traffic investigation. *Arizona v. Johnson*, 555 U.S. 323, 333 (2009); *Ferris*, 355 Md. at 372.

To qualify as a reasonable seizure under the Fourth Amendment, *Terry* detentions must be "limited in scope and duration." *Florida v. Royer*, 460 U.S. 491, 500 (1983). Under *Terry's* duration prong, a stop "must . . . last no longer than is necessary to effectuate the purpose of the stop." *Id*. at 500. Under its scope prong, "the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." *Id.*; *United States v. Sharpe,* 470 U.S. 675, 68 (1985) (stating that stop must be "reasonably related in scope to the circumstances which justified the interference in the first place.").

Any prolongation beyond "the time reasonably required to complete the mission" is an unreasonable seizure. *Rodriguez*, 575 U.S. at 350–51 (2015). We can find no bright

line to answer the question of how much "unrelated investigation" amounts to a "measurable extension" of a traffic stop, *see Rodriguez*, 575 U.S. at 355, or exactly how long is too long. Courts have struggled with that question and have provided no clear answer. Courts and commentators are mostly silent, and commentators have noted the difficulty in formulating a principled rule. *See also* Wayne R. LaFave, *The "Routine Traffic Stop" from Start to Finish: Too Much "Routine," Not Enough Fourth Amendment*, 102 Mich. L. Rev. 1843, 1871 (2004). The *Rodriguez* Court did, however, make a murky situation clearer in 2015 by establishing that *any* prolongation beyond the time reasonably required to complete the initial mission is an unreasonable seizure, and by clarifying that the critical question is whether conducting the dog sniff adds time to the stop, *Rodriguez*, 575 U.S. at 357.

Because the touchstone of the Fourth Amendment analysis is reasonableness, courts conduct a fact-bound, context-dependent inquiry in each case, considering the totality of the circumstances. The Supreme Court has provided some guidance, albeit abstract, noting that "[i]n assessing whether a [stop] is too long in duration . . . , we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly . . . ." *Sharpe*, 470 U.S. at 686.

In sum, there must be reasonable suspicion, based on objective facts, to prolong any seizure; otherwise, law enforcement's actions must not prolong the duration of the seizure beyond the time required to complete the mission. As it relates to a dog sniff, the act must

either not delay the traffic stop at all, or if it does, there must be a reasonable suspicion of criminal activity for the delay to be justified.

Here, Detective Friend "stopped" appellant's vehicle at 5:55 a.m. for excessively tinted windows (a second time in two days) and the parking violation. The process of approaching the vehicle, requesting the license and registration, and retrieving the license and registration from appellant would have been brief; there is not a record finding of the duration, but we know from subsequent events that it took less than three minutes. Officer Villafane then radioed for K-9 support at 5:58 a.m. At 6:01, Officer Friend contacted dispatch and said only, "I got a vehicle stop, 100 South Calverton." He did not ask dispatch for anything, and he sat silently waiting for the dispatcher to respond to him until 6:06 a.m. At 6:06, the officer and the dispatcher connected, and Officer Friend asked the dispatcher to run the tags on appellant's vehicle. The dispatcher said that the registration was to "a Maryan Carter." Officer Friend testified that he "didn't really recognize that" and that it sounded like the dispatcher was pronouncing a female name; the officer then told the dispatcher that he believed somebody else was driving, and asked the dispatcher to run more information on the license number. The dispatcher ran it and responded, "Mr. Carter is valid." In the subsequent four or five minutes, according to Officer Friend, he worked on a citizen contact form, the Baltimore Police one-page form that is a record of a stop not resulting in an arrest, until the K-9 officer arrived at 6:11. The testimony of the K-9 officer, Officer Berry, contradicted Officer Friend's with respect to Officer Friend's activities at the time of the K-9 arrival. The K-9 "hit" occurred at 6:13 a.m.

Appellant thus waited eighteen minutes while the police officers sought a new basis to detain him or search him. Although a few of the eighteen minutes were reasonably spent, we are left with an unexplained gap in police activity between 5:58 and 6:01, a failure to do anything between 6:01 and 6:06 after reaching out to dispatch at 6:01 and waiting to hear back, and slow work on the citizen contact form between 6:06 and 6:11. In aggregate, these delays inexorably yield the conclusion that Detective Friend was slow-walking the stop to enable the dog to arrive and to sniff the automobile. The amount of time reasonably required to do the necessary checks and issue the citation, particularly given that the detective had gone through the same procedure the day before, was well less than the eighteen minutes expended.

In addition, the aggregate delay here exceeds the seven to eight minutes at issue in *Rodriguez*, under similar factual circumstances of officers waiting for a K-9 scan that they were seeking based on a hunch. A hunch, of course, does not amount to reasonable suspicion. *Terry*, 392 U.S. at 27. Nor does a vague sense that a driver moved "suspiciously" while retrieving a license and registration. *See id.* The case at bar lacks any independent reasonable suspicion that might have justified the additional detention.

We conclude that law enforcement prolonged the detention to allow the K-9 unit to arrive on the scene and sniff the automobile. There was no lawful justification for that delay; appellant was subject to a second detention without reasonable suspicion or probable cause. Any evidence seized from that unlawful search or as a result of the exploitation of that search, *i.e.*, any search pursuant to the search warrant that followed as a product of the

automobile search, should have been suppressed. *See Wong Sun*, 371 U.S. at 485. Applying *Rodriguez*, we hold that by delaying the issuance of any citation to await the dog sniff, conduct unrelated to the traffic violation for which Detective Friend stopped appellant, he "prolonged [the traffic stop] beyond the time reasonably required to complete" his traffic "mission,"[7] and thus violated the Fourth Amendment. Here, there was no independent reasonable suspicion or probable cause to justify the prolongation.

Critical here is the totality of the circumstances. Detective Friend had stopped appellant for the identical violation the day before. He knew who appellant was; he was aware that the vehicle was registered to appellant and that he had never seen anyone else driving the vehicle. Detective Friend had issued a written form to appellant as to the window tint, and appellant had at least ten days to correct the violation. That leaves the twelve inches from the curb violation. Detective Friend merely had to issue a citation or warning to appellant. Not only was the stop here pretextual, *albeit* permissible, but the prolonged detention was a pretext to await the dog sniff, a detention or prolongation of the initial stop which was not permissible. *See State v. Ofori,* 170 Md. App. 211, 242 (2006) ("If, on the other hand, [the officer] was deliberately stalling so that the K-9 unit could arrive before he sent the appellee on his way, the length of the detention was thereby unreasonable.").

Under the Fourth Amendment as expounded in *Rodriguez, Terry*, and elsewhere, the delay in the stop here was an unreasonable seizure. The evidence seized in the car

[7] 575 U.S. at 350–51.

search should have been suppressed as unconstitutionally obtained. Under *Wong Sun*, 371 U.S. at 485, the evidence obtained in the search of appellant's home was fruit of the poisonous tree and also must be suppressed.

JUDGMENT OF CONVICTION IN THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE CITY.