UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0360

September Term, 2015

DEANDRE THOMAS BALLARD

v.

STATE OF MARYLAND

Meredith,
Nazarian,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by, Meredith, J.

Filed: July 19, 2016

Deandre Thomas Ballard, appellant, was convicted by a jury in the Circuit Court for Wicomico County of possession of heroin with the intent to distribute, and simple possession of heroin. He was sentenced to twenty years' imprisonment for the possession with intent to distribute conviction, and the simple possession conviction merged. In this direct appeal, Ballard challenges the pretrial denial of his motion to suppress the heroin that was found on his person as a consequence of a search incident to an arrest that followed a traffic stop. He raises a single question for our review:

Did the motions court err in denying the motion to suppress?

For the reasons discussed herein, we find no error and affirm.

FACTS AND LEGAL PROCEEDINGS

At a pretrial suppression hearing, Corporal Richard Hagel, Jr. of the Maryland State Police, Gang Enforcement Unit, testified that, prior to December 4, 2014, he was involved in an active investigation of a person who was using the nickname "D.T." and selling heroin in Wicomico County. On December 4, 2014, Corporal Hagel received information from a known confidential informant who had a history of reliability that "a black male," known by the name "D.T.," would imminently be "on the corner of Pyle Street and Jefferson Street waiting for a ride," and that he "would be in possession of a large amount of heroin."

Corporal Hagel testified that, approximately fifteen minutes after receiving this information from the confidential informant, he and Trooper Michael Porta arrived in the area, which he described as a "high drug, high crime area." The officers set up surveillance. They promptly observed a lone black male, later identified as appellant, at that intersection,

"pacing back and forth." The officers watched appellant "for about five minutes before a pickup pulled up and he jumped in." The pickup truck was driven by a white male, who was later identified as David Lineweaver, and was also occupied by a white male passenger. As the truck passed the officers' location, they observed that the driver was not wearing a seatbelt, and the officers initiated a traffic stop of the vehicle for that violation.

The front seat of the truck was a bench seat. At the time of the traffic stop, appellant was seated on the right side of the bench seat, and the white male passenger was seated in the middle, between the driver and appellant. As Corporal Hagel approached the stopped vehicle, he observed that the driver appeared to be "extremely nervous, [and] his hands were shaking when he was handing over his documents." Corporal Hagel further noted that the driver "failed to make eye contact," and "his voice was cracking." After brief conversation with the driver and other occupants of the truck, Corporal Hagel returned to his vehicle and attempted to locate a K-9 unit to respond to the location of the stop. Corporal Hagel called the Wicomico Sheriff's Office, the Salisbury Police Department, and the Maryland State Police Barrack E Salisbury before confirming that a K-9 unit from the Princess Anne Barrack was immediately available to respond to the location. Before the K-9 arrived, Corporal Hagel conducted a license check of the driver, and a warrant check of all the occupants. He then prepared to issue the driver a warning citation for the seatbelt violation.

Corporal Hagel testified that Trooper Tebbens (whose first name is not in the record) and his K-9 partner — "Ozzy" — arrived on scene approximately thirteen to fourteen

minutes after appellant's vehicle was stopped. Corporal Hagel testified that he was "close" to completing the warning citation, and "may have printed it out around the same time" Trooper Tebbens and Ozzy arrived.

Trooper Tebbens testified that he was dispatched to the traffic stop at 12:35 p.m., and arrived at 12:43 p.m. When Trooper Tebbens arrived, Corporal Hagel was inside of his vehicle. Once on the scene, Trooper Tebbens requested that the occupants exit the vehicle. Appellant and the other occupants were patted down for weapons after they exited the vehicle. No weapons were found. Trooper Tebbens then had Ozzy conduct the scan. Ozzy was certified to locate "marijuana, hash, cocaine, heroin, black tar heroin, meth [sic], methamphetamine and ecstasy." During the scan, "Ozzy alerted to the presence of a narcotic odor emitting from inside the vehicle." Corporal Hagel then conducted a search of the vehicle. A small white plastic container was located "near the seatbelt buckle area in the driver's seat," which was in an area between where the driver and the white male passenger had been seated. Inside the container were "six individually wrapped pieces of suspected crack cocaine."

In describing the size of the passenger compartment of the pickup truck, Corporal Hagel testified that appellant, who was seated on the far right side of the bench seat, and the driver, who was seated on the far left side, could have reached out and touched one another. None of the occupants of the vehicle, including appellant, claimed the cocaine when

Corporal Hagel asked to whom the cocaine belonged. All three were placed under arrest and transported to the police barrack.

Once at the station, Corporal Hagel told appellant that he was going to be searched, whereupon appellant advised that he had "heroin hidden between his butt cheeks." A subsequent search revealed a "glassine baggie" containing three bags of heroin in appellant's "buttocks cheeks." Two cell phones and $1,342 in U.S. currency were also found on appellant's person.

The State filed a criminal information charging appellant with possession of heroin with intent to distribute, simple possession of heroin, possession of cocaine with intent to distribute, and simple possession of cocaine. Prior to trial, the appellant moved to suppress the heroin found on his person after a traffic stop, and, as noted above, the motions judge denied the motion. At the conclusion of the motions hearing, the court made the following findings:

> Well, number one, I don't believe there is any evidence that the officer was blocking the Defendant from leaving. And I don't believe the Defendant's testimony that he told the officer I want to leave because you're violating my Fourth Amendment rights. I do not find that testimony credible.
>
> The evidence is that the police officers received information from a confidential informant that there would be a black male at a certain corner in possession of, I believe the confidential informant said heroin. It was in a high crime area. Surveillance was set up. When they arrived they see the Defendant in the area where the CI indicated there would be someone in possession of drugs. **The officers have cause for a traffic stop, which they make. They also have reasonably articulable suspicion for a Terry stop.** They stop the vehicle; while they are in the process of checking for warrants and writing a

> warning, a drug dog is called to the scene. **Before they are finished the administrative procedures for the traffic stop the drug dog alerts.**
>
> The Court believes there was probable cause then to search the vehicle. And upon the finding of the drug, even though it was a different drug than that indicated by the CI, the Court believes there was probable cause for the arrest of the Defendant at that point. The Court finds that both the stop, the search and the arrest were valid. I'm going to deny your motion to suppress.

(Emphasis added.)

At the beginning of the trial, the State nol prossed the counts charging possession of cocaine with intent to distribute and the simple possession of cocaine. At trial, Corporal Lee Stevens of the Wicomico County Sheriff's Office was called by the State as "an expert in the area of narcotics evaluation, identification, [and] investigations, as well as common practices of users and dealers of CDS." Corporal Stevens testified that appellant's possession of the heroin coupled with other factors, including the manner in which it was secreted on his person, his possession of a large amount of currency, and the area in which he was found, were consistent with "street level distribution of heroin." As noted above, the jury convicted appellant of possession of heroin with the intent to distribute, as well as simple possession of heroin.

STANDARD OF REVIEW

Our review of a circuit court's ruling with regard to a suppression motion is based "solely on the record of the suppression hearing." *State v. Cabral*, 159 Md. App. 354, 371 (2004). We review the suppression court's factual findings using the clearly erroneous standard, and consider the evidence and the inferences fairly deduced therefrom "in the light

most favorable to the State." *Ferris v. State*, 355 Md. 356, 368 (1999). This Court accepts the "trial court's findings as to disputed facts" unless those rulings are "found to be clearly erroneous after having given due regard to the lower court's opportunity to assess the credibility of the witnesses." *McMillian v. State*, 325 Md. 272, 282-83 (1992). With respect to legal issues, however, we are required to "make an independent review of the legal questions presented at the suppression hearing by applying the law to the facts." *Smith v. State*, 161 Md. App. 461, 473 (2005). *Accord Corbin v. State*, 428 Md. 488, 497-98 (2012).

DISCUSSION

The Fourth Amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The stop of an automobile and the detention of its occupants is a "seizure" within the meaning of the Fourth Amendment "even though the purpose of the stop is limited and the resulting detention quite brief." *Delaware v. Prouse*, 440 U.S. 648, 653 (1979). "As its plain language indicates, the Fourth Amendment protects the public from *unreasonable* searches and seizures." *Wilkes v. State*, 364 Md. 554, 570 (2001) (emphasis in original).

Appellant does not contest the initial stop of the vehicle, but alleges that the "traffic stop was unreasonably prolonged by the K-9 scan." The State counters that, "[b]ecause the traffic stop was ongoing by the time of the canine alert, [appellant's] detention was justified" by the same reasonable suspicion that "justified the initiation of the traffic stop." Appellant

further argues that there was "no independent reasonable articulable suspicion to detain Appellant pursuant to a Terry stop."

The motions judge expressly found as a fact: "Before [the police officers] are finished the administrative procedures for the traffic stop[,] the drug dog alerts." That finding regarding the conclusion of the traffic stop is not clearly erroneous. Accordingly, because the clearly-justified traffic stop was not completed at the time the drug dog alerted to drugs in the vehicle, the continued detention of appellant was reasonable, and his arrest was supported by the discovery of contraband within reach of the location he was seated. In the alternative, we also affirm the motions judge's conclusion that the detention was reasonable because "[the officers] also have reasonably articulable suspicion for a *Terry* stop."

The Purpose of the Traffic Stop Had Not Yet Concluded at the Time the K-9 Alerted

A traffic stop "does not initially violate the federal Constitution if the police have probable cause to believe that the driver has committed a traffic violation." *Ferris v. State*, 355 Md. 356, 369 (1999). Further, detention of the passengers (as well as the driver) for the duration of the traffic stop is permitted. *Arizona v. Johnson*, 555 U.S. 323, 327, 129 S.Ct. 781, 784 (2009) ("For the duration of a traffic stop, we recently confirmed, a police officer effectively seizes 'everyone in the vehicle,' the driver and all passengers. *Brendlin v. California*, 551 U.S. 249, 255, 127 S.Ct. 2400, 168 L.Ed.2d 132 (2007). Accordingly, we hold that, in a traffic-stop setting, the first *Terry* condition—a lawful investigatory stop—is met whenever it is lawful for police to detain an automobile and its occupants pending

inquiry into a vehicular violation."). And, in *Maryland v. Wilson*, 519 U.S. 408, 415, 117 S.Ct. 882 (1997), the Supreme Court held that "an officer making a traffic stop may order passengers to get out of the car pending completion of the stop."

Ballard's primary argument is that the drug dog's scan of the vehicle did not begin until the police officers had fully concluded all of the work that was properly attendant to a traffic stop for a seatbelt violation. The Court of Appeals held in *Ferris, supra*, 355 Md. at 372, that the purpose of "an ordinary traffic stop is to enforce the laws of the roadway, and ordinarily to investigate the manner of driving with the intent to issue a citation or warning. Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention." *Id.* at 372. Similarly, the Court of Appeals has held that, once the purpose of a traffic stop has been fulfilled, "waiting for the K–9 unit to arrive amount[s] to an unjustified second detention" unless that further detention is supported by additional reasonable articulable suspicion. *Wilkes*, 364 Md. at 575. Nevertheless, the courts do not impose rigid time limitations on traffic stops, but instead determine their reasonableness by applying "common sense and ordinary human experience." *Id.* at 576 (quoting *U.S. v Sharpe*, 470 U.S. 675, 685 (1985)).

Here, the motions judge found that the administrative procedures for the traffic stop were not fully completed before the drug dog alerted. When considered in a light most favorable to the State, the evidence presented at the suppression hearing supports that finding. Corporal Hagel testified that, after making contact with the occupants of the truck,

he returned to his vehicle and conducted a license check of the driver and a warrant check of all the occupants. Corporal Hagel further testified that he was "close" to completing the warning citation when the K-9 unit arrived, and "may have printed it out around the same time" Trooper Tebbens and Ozzy arrived. Corporal Hagel was still in his vehicle when the K-9 unit arrived. According to Corporal Hagel, it took only thirteen minutes for the K-9 to arrive after the initial stop of the pickup truck. Following the arrival of the K-9 unit, Corporal Hagel exited his vehicle and spoke to Trooper Tebbens, who then requested that all three occupants exit the truck. Trooper Tebbens testified that, after he arrived on the scene, it took Ozzy "maybe two minutes" to alert.

Although the fifteen minute stop in this case was somewhat lengthy, the length of the stop is not determinative of its reasonableness. *See Byndloss v. State*, 391 Md. 462 (2006) (finding a thirty minute stop reasonable). "It is established that a records check of a driver's license, registration, and outstanding warrants is an integral part of any traffic stop." *Id.* at 489. At the time the K-9 arrived, the traffic stop had not concluded because Corporal Hagel was merely "close" to completing the warning citation, and "may have printed it out around the same time." Corporal Hagel had not yet delivered the warning citation to the driver, an act which would normally signal the end of a traffic stop. This case is factually distinguishable from *Munafo v. State*, where it was held that the officer had impermissibly delayed the issuing of the completed citation to await the arrival of the K-9. 105 Md. App. 662 (1995). Here, there was no evidence of intentional delay and no finding of undue delay

on the part of officers Hagel and Porta. The motions judge was not persuaded that the police officers extended or delayed the traffic stop beyond the time necessary to reasonably complete the actions needed to resolve the initial purpose for the stop. *See Wilkes v. State*, 364 Md. 554, 570 (2001). As in *Wilkes*, *id*. at 573: "No warning or citation had been issued prior to the K–9 scan. At that point, it was a single, continuous stop — there was not an end of one stop and the beginning of another."

Accordingly, the motions court did not err in denying the motion to suppress.

The Stop of Appellant's Vehicle was a Valid *Terry* Stop

The motions court ruled alternatively that the stop of the vehicle was a valid "*Terry*-stop for drugs," *State v. Ofori*, 170 Md. App. 211, 251 (2006), and therefore, appellant's continued detention was justified by reasonable, articulable suspicion that criminal activity was afoot. In *Terry v. Ohio*, 392 U.S. 1, 30 (1968) "the Supreme Court held that a police officer may conduct a brief investigatory stop, without running afoul of the Fourth Amendment, if the officer has a reasonable, articulable suspicion that a person has committed or is about to commit a crime." *Dixon v. State*, 133 Md. App. 654, 672 (2000). The Supreme Court has described reasonable suspicion as "'a particularized and objective basis' for suspecting the person stopped of criminal activity." *Ornelas v. United States*, 517 U.S. 690, 696 (1996) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)). "[R]easonable suspicion can arise from information that is less reliable than that required to show probable cause." *Alabama v. White*, 496 U.S. 325, 330 (1990).

To determine if reasonable suspicion exists, we look to the "totality of the circumstances," because "[r]easonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability." *White*, 496 U.S. at 330. An informant's tip may provide the police with reasonable suspicion. *State v. Rucker*, 374 Md. 199 (2003). The information provided by an "informant must be sufficiently reliable in order to provide reasonable suspicion justifying an investigatory stop." *Id.* at 213. "[L]ooking at the totality of the circumstances, we consider an informant's 'veracity, reliability,' and his or her 'basis of knowledge.'" *Id.* (quoting *White*, 496 U.S. at 328). We view these factors "as interacting components in the totality of the circumstances analysis: 'a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability.'" *Rucker, 374 Md.* at 448 (quoting *Illinois v. Gates*, 462 U.S. 213, 233 (1983)) "[I]ndependent corroboration by the police of significant aspects of the informer's predictions," may impart "some degree of reliability to the other allegations made by the caller." *White*, 496 U.S. at 332. A caller predicting "*future behavior*" demonstrates "inside information — a special familiarity with respondent's affairs." *Id.* (emphasis in original). It is therefore "reasonable for police to believe that a person with access to such information is likely to also have access to reliable information about that individual's illegal activities." *Id.*

In the present case, Corporal Hagel testified that, prior to the date of the stop in this case, he was conducting an investigation into a person unknown to him, who went by the

nickname "D.T.," and who was selling heroin in Salisbury. On December 4, 2014, Corporal Hagel received a tip from a confidential informant that forecast that a person known as D.T. would soon be waiting for a ride at a specific location, and he would be in possession of heroin. Corporal Hagel described the tip as follows:

> I received information from a confidential informant of mine, whom I've used regularly, received reliable information, all the person's information has been corroborated in prior cases. That person contacted me to let me know that there would be a black male on the corner of Pyle Street and Jefferson Street waiting for a ride, someone to pick him up. That black male would be known as quote unquote "D.T." and that D.T. would be in possession of a large amount of heroin.

Corporal Hagel and Trooper Porta both testified that the area where the informant said they would find "D.T." was a "high drug, high crime area." When the officers arrived at the intersection of Pyle Street and Jefferson Street, they observed a black male "standing in that intersection, and watched him for about five minutes before a pickup pulled up and he jumped in." When the officers stopped the vehicle for a seatbelt violation, Corporal Hagel observed the driver to be "extremely nervous, [and] his hands were shaking when he was handing over his documents for the traffic stop." Further, Corporal Hagel noticed that the driver "failed to make eye contact when I was speaking to him and his voice was cracking when he responded to my questions." During the stop, the troopers received identification from all three occupants, and confirmed that the black male they had seen on the corner was an individual whose first two initials were "D.T.," and whose full name was Deandre Thomas Ballard.

Not only was the tip in this case provided by a known and reliable informant, it correctly predicted future behavior. The troopers observed a black male standing at an intersection where the informant had said there would a black male. Then, just as the informant said he would, that person waited and then got into a vehicle. The officers then stopped the vehicle for a minor traffic violation, and noted the extreme nervousness of the driver. Finally, when they received identification from appellant, they discovered his name was Deandre Thomas Ballard. Appellant's initials were notable because the informant had said the individual who would be carrying heroin went by the nickname "D.T." Given all of these facts known to the officers, they continued to have a reasonable, articulable suspicion that the person they had seen enter the pickup truck was, as the informant had advised them, in possession of heroin.

The purpose of a *Terry* stop, "is investigative — to verify or to dispel the officer's suspicion surrounding the suspect." *Hardy v. State*, 121 Md. App. 345, 355-56 (1998). Even after the warrant check produced no pertinent information relative to the occupants of the vehicle, the purpose of the *Terry* stop had not yet been concluded because the officers had not ruled out their suspicion that appellant was in possession of heroin. In light of all the circumstances, the brief wait for the K-9 scan was reasonable so that the officers' suspicion regarding appellant could be either verified or dispelled. Whereas a "traffic stop, once completed, will not await the arrival of the dog for so much as 30 seconds[, t]he *Terry*-stop for drugs very deliberately and patiently does await the arrival of the dog." *Ofori*, 170 Md.

App. at 251. Consequently, even if the motions court erred in finding that the traffic stop had not finished by the time the drug dog alerted, the court's alternative conclusion that the officers were conducting a *Terry* stop would also support the continued detention of appellant until the drug scan was conducted. Accordingly, the motions court did not err in denying the motion to suppress.

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