

Circuit Court for Anne Arundel County
Case No. C-02-CR-001138

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2417

September Term, 2018

DARIUS FRANCIS GREEN, IV

v.

STATE OF MARYLAND

Wright,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 1, 2019

*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.

Following a bench trial on an agreed upon statement of facts in the Circuit Court for Anne Arundel County, Darius Francis Green, IV, appellant, was convicted of possession of cocaine with the intent to distribute. Mr. Green’s sole contention on appeal is that the trial court erred in denying his motion to suppress the cocaine that was recovered from his person. We shall affirm.

SUPPRESSION HEARING

On May 2, 2018, Detective Luis Gonzales and Detective Thomasson (whose first name does not appear in the record), of the Anne Arundel County Police Department, were investigating drug activity at Motel 6 in Laurel. They received information “that there [were] two males going to a target room.” According to Detective Gonzales, the two men entered the “target room[,]” then immediately left the room, got into a vehicle, and drove away.

Detective Gonzales and Detective Thomasson followed the vehicle in their unmarked police cruiser and conducted a traffic stop after they observed that the vehicle had an inoperable brake light. The vehicle contained two occupants: Lewis DeMarso, the driver, and Mr. Green, the front seat passenger.

Detective Gonzales approached the driver’s side of the vehicle and spoke to Mr. DeMarso, who was “extremely nervous” and “real hesitant” to answer questions about his license status. Mr. DeMarso then “blurted out” that his driving privileges were suspended, at which time Detective Gonzales asked him to step out of the vehicle. Detective Gonzales asked Mr. DeMarso if he had anything illegal on his person or in the car. In response, Mr. DeMarso gave Detective Gonzales consent to search the vehicle. Detective Gonzales

immediately informed Detective Thomasson, who was on the passenger side of the vehicle, that Mr. DeMarso had consented to a search of the vehicle.

Detective Thomasson stated that, while Detective Gonzales first approached the driver, he approached the passenger side of the vehicle and asked Mr. Green for identification. Mr. Green produced a Maryland identification card, which Detective Thomasson held onto while Detective Gonzales spoke to Mr. DeMarso. According to Detective Thomasson, Mr. DeMarso was asked to exit the vehicle within two minutes after Detective Gonzales first made contact with him.¹ “No more than a minute” after that, Detective Gonzales informed Detective Thomasson that Mr. DeMarso consented to a search of the vehicle.

Detective Thomasson then asked Mr. Green to exit the vehicle so that it could be searched. As Mr. Green was opening the car door to get out, Detective Thomasson observed a plastic baggie “sticking up out of” the “right coin pocket” of Mr. Green’s blue jeans. Detective Thomasson testified that he “could see within the clear plastic” that the baggie had “other smaller plastic bags inside of it” that contained an “off-white, rock-like substance” that Detective Thomasson suspected was crack cocaine. After conducting a quick pat-down for weapons, Detective Thomasson placed Mr. Green under arrest. Mr. Green was then searched. Recovered from Mr. Green’s coin pocket was “a large plastic bag with two small plastic bags[,]” each containing suspected cocaine. In other pockets of

¹ Detective Gonzales testified, consistent with Detective Thomasson, that it was “within a couple [of] minutes” between the time he first made contact with Mr. DeMarso that Mr. DeMarso admitted that his driving privileges were suspended.

Mr. Green’s pants Detective Thomasson found additional suspected cocaine and \$333 in cash. The search of the vehicle yielded a digital scale with white residue.

After searching the vehicle and both occupants, Detective Gonzales ran an MVA warrant check and learned that Mr. DeMarso had an open warrant for his arrest for violating probation. Mr. DeMarso was taken into custody on that warrant and was not cited for any traffic violations.

In closing argument, defense counsel conceded that the initial stop was valid, but argued that the police unlawfully abandoned the “initial purpose for the traffic stop in order to conduct a drug investigation[,]” and that “the entire detention was unlawful once they did that.” Defense counsel further argued that Mr. Green’s testimony that the contents of the plastic bag were not visible should be credited over Detective Thomasson’s testimony to the contrary.

At the conclusion of the suppression hearing, the court denied the motion to suppress, stating as follows:

So the court has to determine whether there was in fact an unreasonable extension of this stop under the circumstances and I think there was not. I think that it is certainly within the general investigatory right in any kind of stop for the officers, again for their protection, to ask a simple question, “Is there anything in the vehicle that’s illegal,” because that encompasses weapons as well as other kind[s] of contraband and I think that’s for officer safety.

And if as part of that they get a consent to search and at that point remove a passenger for safety as they could have done earlier in this stop, they could have done it the moment they stopped the vehicle, asked the passenger to get out and may have had the same result, I think it of such minimal intrusion or extension that it is within the investigatory duty of the officer in the stop and is not one for which [Mr. Green] can claim that there’s been an abandonment of the initial investigatory effort.

The court further found that, as Detective Thomasson had testified, the contents of the plastic bag that was sticking out of Mr. Green’s pocket were visible.

DISCUSSION

“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*, __ Md. __, No. 17, Sept. Term 2018, sl. op. at 4 (filed August 12, 2019) (citation and internal quotation marks omitted). “We assess the record in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress.” *Id.* (citation and internal quotation marks omitted). “We accept the trial court’s factual findings unless they are clearly erroneous, but we review de novo the court’s application of the law to its findings of fact.” *Id.* (citation and internal quotation marks omitted). “When a party raises a constitutional challenge to a search or seizure, this Court renders an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.” *Id.* (citations and internal quotation marks omitted).

As we have recently noted, the Fourth Amendment’s protections against unreasonable searches and seizures extends to investigatory traffic stops. *Carter v. State*, 236 Md. App. 456, 467, *cert. denied*, 460 Md. 9 (2018) (citations omitted). “In determining whether such stops violate an individual’s Fourth Amendment rights, courts examine the objective reasonableness of the stop.” *Id.* at 467-68 (citations omitted).

As Mr. Green concedes, stopping a vehicle based on reasonable suspicion that a traffic infraction has occurred does not violate the Fourth Amendment, even when the primary, subjective intention of the police is to look for narcotics violations. *Santos v.*

State, 230 Md. App. 487, 495 (2016). *See also Carter*, 236 Md. App. at 468 (“an otherwise-valid traffic stop does not become unconstitutional just because the actual purpose of the law enforcement officer making the stop was to investigate potential drug crimes.”)

As we have noted, however, such a “pretextual” stop “must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” *Id.* (citation omitted). The “investigation into the original traffic violation cannot ‘be conveniently or cynically forgotten and not taken up again until after [the other] investigation has been completed or has run a substantial course.’” *Id.* (citation omitted). “[A]uthority for the seizure ... ends when tasks tied to the traffic violation are – or reasonably should have been – completed.” *Id.* at 469 (citation omitted).

Mr. Green does not challenge the validity of the traffic stop but contends that he was unlawfully detained when police “abandoned the purpose of the initial traffic stop for an inoperable brake light in order to conduct a drug investigation.” He asserts that “any additional detention beyond the time it would take to process the traffic violation, even if it was short in duration, was not justified.”

We find no merit in Mr. Green’s contentions. As we have observed, when police simultaneously pursue investigation into a traffic violation and another crime, “each pursuit necessarily slow[s] down the other to some modest extent.” *Id.* at 471 (quoting *Charity v. State*, 132 Md. App. 598, 614 (2000)). Pausing investigation of the traffic violation to conduct a valid search of the vehicle (in this case, a search consented to by the driver of the vehicle) does not necessarily amount to an abandonment of the purpose of the traffic stop. *See id.* (“[the] contention that *any* break from tasks related solely to processing the

traffic violations constitutes abandonment of the traffic stop is both unreasonable and inconsistent with our prior decisions.”)

Here, Mr. DeMarso’s consent to search the vehicle led promptly to probable cause to arrest Mr. Green for possession of cocaine. After Mr. Green was placed under arrest and the vehicle was searched, Detective Gonzales resumed processing of the traffic stop by running an MVA check on Mr. DeMarso, at which time it was discovered that Mr. DeMarso had an open warrant for violation of probation and he was placed under arrest. That Mr. DeMarso was never issued a traffic citation or warning is inconsequential.

Nor do we agree that, prior to the point in time that police developed probable cause to arrest Mr. Green, he had been detained beyond the time it would take to process the traffic violation. According to the record, Mr. DeMarso gave consent to search the vehicle approximately three minutes after Detective Gonzales made contact with him, at which time Mr. Green was asked to exit the car and the suspected cocaine was spotted. We cannot conclude that tasks related to the initial reason for the stop should have been concluded in such a short amount of time. *See, e.g., Jackson v. State*, 190 Md. App. 497, 511-12 (2010) (“Even by the fast-moving stopwatch of a traffic stop, eight minutes does not come close to the outer permissible limits.”)

Mr. Green next contends that the “plain view” exception to the warrant requirement does not apply to the seizure of the cocaine from his person because, according to his own testimony at the suppression hearing, although a portion of the plastic bag itself was visible,

the contents of the bag were not.² The suppression court, however, credited Detective Thomasson’s testimony over Mr. Green’s, and we find no clear error in the court’s finding. *See State v. Green*, 375 Md. 595, 607 (2003) (when conflicting evidence is presented at a suppression hearing, we accept the facts as found by the suppression court unless those findings are clearly erroneous).

In sum, we conclude that the suspected cocaine recovered from Mr. Green’s person was not the fruit of an unlawful search or seizure. Accordingly, the court did not err in denying the motion to suppress.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

² The plain view doctrine permits police officers to seize items without a warrant if the items are in plain view and the police have probable cause to believe that the items are contraband or evidence of a crime. *Peters v. State*, 224 Md. App. 306, 352 (2015).