Circuit Court for Wicomico County
Case No. C22-CR-18-000338

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2699

September Term, 2018

STATE OF MARYLAND

v.

ROBERT F. LOWE

Nazarian,
Friedman,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: May 14, 2019

Robert Frederick Lowe was charged with multiple felony drug crimes in the Circuit Court for Wicomico County. He moved to suppress evidence of controlled dangerous substances found on his person and in his car on the ground that the evidence was obtained through an illegal stop of Mr. Lowe's vehicle. The circuit court granted the motion and the State appeals.[1] We hold that the police had reasonable suspicion to stop Mr. Lowe's vehicle based on information provided by a confidential informant, and we reverse and remand for further proceedings consistent with this opinion.

I. BACKGROUND

At the suppression hearing, Deputy First Class Andrew Riggin of the Wicomico County Sheriff's Office testified that on February 16, 2018, he received a phone call from a confidential informant with whom he had worked before. The informant had encountered someone selling drugs from a Home Depot parking lot, and he provided Deputy Riggin with details:

- The man was in a "newer model Chevy Tahoe with out of state plates parked in the Home Depot parking lot";
- The car was parked "in front of the entrance, middle way through the aisle";
- "[I]nside [the] vehicle [] was a shorter black male with a large beard, stocky in stature";
- "[The] individual showed him an amount of what the informant believed to be crack cocaine";
- The individual asked the informant if he was "interested [] in the purchase of the narcotics"; and

[1] The State appealed under Maryland Code, (1974, 2013 Repl. Vol., 2018 Cum. Supp.) § 12-302(c)(4) of the Courts and Judicial Proceedings Article ("CJ"), which permits the State to file an interlocutory appeal of the decision of a trial court excluding evidence offered by the State.

- The individual gave the informant his telephone number.

At the time of the call, Deputy Riggin had known the confidential informant for approximately eighteen months, and the officer testified that he believed the informant's tips to be reliable based on: "Prior investigations. Prior arrests. Prior search warrant affidavits that are signed by judges. Prior cooperation." Deputy Riggin testified that this informant provided information to law enforcement "[f]or the betterment of the community" because the informant "was tired of drug activity and wanted drugs off the street."

Deputy Riggin testified that after the call, he went to the Home Depot parking lot to "try and validate all the information" from the informant. He was "operating in a covert capacity, in a covert unmarked car." He saw "a newer model Chevy Tahoe with . . . Virginia tags." He "made one pass by it, [and] confirmed that there was a black male with a beard inside" before parking behind it. A few minutes later, he "observed a marked Maryland State Police Ford Explorer pull in the parking lot and park in front of the Chevy Tahoe one lane of parking spots over," and that "[a]t this time the Tahoe immediately left." He went on to describe how he followed the Tahoe and then contacted another officer (Corporal Tyler Bennett), and told him "everything that [he] knew," including the license plate number:

> I followed the Tahoe out, contacted [Corporal] Bennett with the Wicomico County Community Action Team, told him everything I knew, that I was, that I confirmed through my surveillance. I believe that I gave him the tag number. It was a rental car.
>
> So, when we came out of Home Depot we went down North

> Point towards U.S. Route 13, and then a left on U.S. Route 13 southbound. At this time [Corporal] Bennett advised he was close and could see my vehicle. So, at this time I verified the tag to him, let him know what lane of travel the Tahoe was in. It was in the fast lane, what we call the number one lane, I was in the number two lane. As he approached and could see the vehicle, then I drove past the vehicle, again confirming that there was a black male with a large beard in the vehicle as the only occupant.

Corporal Bennett also testified at the suppression hearing. He recounted that he saw a car that fit Deputy Riggin's description as it drove out of the Home Depot parking lot. He testified that he followed the vehicle for a period of time on Route 13, and saw the vehicle cross over the solid median line by "a tire width" on two occasions. He activated his emergency lights and pulled Mr. Lowe over. Corporal Bennett asked Mr. Lowe to get out of the vehicle, which Mr. Lowe did, then proceeded to "take[] off running," at which point it became a "foot pursuit." Corporal Bennett ultimately detained Mr. Lowe.

Mr. Lowe moved to suppress the evidence of controlled dangerous substances that was recovered from him. In their arguments and discussions with the court, both Mr. Lowe and the State focused on the crossing of the solid median line as the basis for a lawful stop under *Whren v. U.S.*, 517 U.S. 806 (1996).[2] Mr. Lowe argued that crossing the line is not sufficient grounds to support a lawful traffic stop under the Court of Appeals's holding in *Rowe v. State*, 363 Md. 424 (2001).[3] The State argued that the crossing of the median line,

[2] In *Whren*, the United States Supreme Court held that a police officer may conduct a traffic stop—even if pretextual—if the officer has reasonable articulable suspicion that a traffic law has been violated. *See State v. Williams*, 401 Md. 676, 690 (2007).

[3] In *Rowe*, the Court of Appeals held that the defendant's crossing over "by about eight inches, the white edge-line separating the shoulder from the traveled portion of the

combined with the information from the confidential informant, was sufficient to establish reasonable articulable suspicion to support the stop. The circuit court granted Mr. Lowe's motion to suppress in a November 16, 2018 order, holding that the crossing of the line was not sufficient to support a lawful traffic stop, and declining to "accept" the State's arguments concerning the confidential informant:

> Following oral argument on Defendant's Motion to Suppress, . . . the Court finds that the facts as recited by Deputy Tyler Bennett are almost identical to those set forth in *Rowe v. State*, 363 Md. 424 (2001). Each case involved a "momentary crossing of the edge line of the roadway and later touching of that line." In *Rowe,* the Court of Appeals held that such conduct did not constitute the basis of a lawful traffic stop.
>
> The State argues that this was a *Whren* stop and that, under the totality of the circumstances, especially when conjoined with the information provided by the confidential informant some minutes before, there was a reasonable articulable suspicion supporting the stop. The Court declines to accept this argument.
>
> Therefore, Defendant's Motion to Suppress is GRANTED . . . .

Additional facts will be supplied as necessary below.[4]

II. DISCUSSION

The State raises a single question on appeal, which we rephrase as follows: Did the

highway, return to the travel portion and, a short time later, touch[ing] the white edge line," 363 Md. at 427, did not amount to unsafe lane change or unsafe entry onto the roadway as prohibited by Maryland Code, § 21-309 of the Transportation Article, and therefore did not support reasonable suspicion to conduct a traffic stop. *Id.* at 441.

[4] In addition to a motion to suppress, Mr. Lowe filed a motion for disclosure of confidential informant. The court never ruled on that motion, and that question is not before us.

circuit court err in granting Mr. Lowe's motion to suppress?[5] Mr. Lowe didn't challenge his arrest, which came after he fled the scene—he challenged the officer's decision to stop his car in the first place. In reviewing a trial court's decision on a suppression motion, we "view[] the evidence in the light most favorable to the prevailing party and defer[] to the motions court with respect to its first level factual findings." *Elliott v. State*, 417 Md. 413, 427 (2010) (*quoting Belote v. State*, 411 Md. 104, 120 (2009)). But whether a constitutional violation occurred is a question of law that we review *de novo*. *Id.* (*quoting Belote*, 411 Md. at 120) ("The ultimate determination of whether there was a constitutional violation [] is an independent determination that is made by the appellate court alone, applying the law to the facts found in each particular case.").

The Fourth Amendment of the United States Constitution protects people against "unreasonable searches and seizures." U.S. CONST., amend. IV. Under *Terry v. Ohio*, 392 U.S. 1 (1968), the U.S. Supreme Court "established that police may conduct brief investigatory stops if 'there is a *reasonable and articulable suspicion* that the person is involved in criminal activity.'" *State v. Rucker*, 374 Md. 199, 212 (2003) (*quoting Nathan v. State*, 370 Md. 648, 660 (2002)) (emphasis added). Reasonable and articulable suspicion is a "less demanding standard than probable cause." *Rucker*, 374 Md. at 212 (quotations and citation omitted).

[5] Mr. Lowe agrees with the State's phrasing of the question presented: "Did the lower court err in finding no reasonable suspicion to stop Lowe's vehicle where police had a detailed tip from a registered informant with a history of providing accurate information that Lowe was selling narcotics?"

We agree with Mr. Lowe that under *Rowe*, 363 Md. at 427, his occasional breaches of the median line did not constitute a traffic violation, and that the decision to stop him had to be supported independently by reasonable suspicion generated elsewhere. But reasonable suspicion "may arise from information provided by an informant." *Rucker*, 374 Md. at 213. To determine whether such information is sufficiently reliable to support reasonable suspicion, we look at the "totality of the circumstances," which requires consideration of "an informant's 'veracity, reliability,' and his or her 'basis of knowledge.'" *Rucker*, 374 at 213 (*quoting Alabama v. White*, 496 U.S. 325, 332 (2000)). The "totality of the circumstances" analysis allows for a deficiency in one of those considerations to be compensated for by another:

> Rather than being treated independently, these factors must be viewed 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 at 213–14 (*quoting Illinois v. Gates*, 462 U.S. 213, 233 (1983)).

We find that the confidential tip gave rise to reasonable suspicion that Mr. Lowe was engaged in criminal activity. Deputy Riggin testified that he had worked with this particular confidential informant in the past on prior investigations, arrests, search warrant affidavits, and that he found the tips the informant provided to be reliable. In addition, the informant described Mr. Lowe with particularity: he was "a shorter black male with a large beard, stocky in stature" who was driving a "newer model Chevy Tahoe with out of state plates." The informant described Mr. Lowe's location with particularity as well: the car

was parked "in front of the entrance [of Home Depot], middle way through the aisle." Finally, when Deputy Riggin arrived, he verified much of the information the informant provided and, "through [his] own observations, [he] gained additional information." *Smith v. State*, 161 Md. App. 461, 477 (2005). He observed for himself a newer model Chevy Tahoe with Virginia license plates, he observed a black male with a beard inside, and he saw Mr. Lowe drive away as soon as a marked police car entered the parking lot.

Because of the past reliability of the informant, the accuracy of the information given, and Deputy Riggin's independent observations, Corporal Bennett had reasonable articulable suspicion to stop Mr. Lowe. *Smith*, 161 Md. App. at 477; *see also Rucker*, 374 Md. at 214–15 (officers had reasonable articulable suspicion to stop defendant where known, reliable informant told police details about his physical appearance and that he would be at a specific shopping center parking lot); *see also Elliott*, 417 Md. at 423, 432–33 (stating, in dicta, that tip from a reliable confidential informant that "a slim, black male, approximately five feet, eight inches tall, with a heavy Jamaican accent" would be delivering "a large quantity of marijuana" to a certain location in a specific type of car "most assuredly provided articulable, reasonable suspicion sufficient to justify a brief investigative detention").

Mr. Lowe argues that the tip was not sufficient to support reasonable articulable suspicion because it did not contain "true predictions of future behavior," but the cases he cites don't support that position. In *Elliott*, 417 Md. at 433, the Court did observe that the tip lacked specific information "regarding future behavior," but it made that observation in

the context of holding that there was no *probable cause* to arrest. The showing required to establish reasonable articulable suspicion is less demanding than that for probable cause, *Rucker*, 374 Md. at 213, and the Court observed in *Elliot* that the tip *was* sufficient to support reasonable articulable suspicion. 417 Md. at 432–33. Indeed, unlike an *anonymous* tip, the tip of a known and reliable confidential informant need not contain predictive information about future behavior that officers subsequently verify to be sufficient to establish reasonable suspicion. *Cf. Florida v. J.L.*, 529 U.S. 266, 268, 271 (2000) (an *anonymous* tip that a person carrying a gun is, without more, insufficient to support an officer's stop and frisk of that person).

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY REVERSED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLEE TO PAY COSTS.