Circuit Court for Caroline County
Case No. C-05-CR-16-000109

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2713

September Term, 2016

CHAD PASSWATERS

v.

STATE OF MARYLAND

Meredith,
Berger,
*Eyler, Deborah S.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: April 2, 2019

* Deborah S. Eyler participated in the conference of this case while an active member of this Court; and participated in the adoption of this opinion as a specially assigned member of this Court.

Chad Passwaters, appellant, was charged in the District Court of Maryland for Caroline County with failure to obey the directions of a traffic control device, negligent driving, driving while impaired by alcohol, and driving while under the influence of alcohol. Following transfer of his case to the Circuit Court for Caroline County, appellant's motion to suppress evidence obtained during the traffic stop was denied, and he was convicted of driving while impaired by alcohol; he was acquitted of the remaining charges. After he was sentenced to one year, with all but 60 days suspended, appellant timely appealed to this Court, asking us to consider the following question:

Did the circuit court err in denying Appellant's motion to suppress?

For the following reasons, we shall affirm.

BACKGROUND

On July 24, 2016, at 1:49 a.m., Maryland State Trooper First Class Daniel Tilghman was traveling eastbound on Maryland Route 404 in Caroline County when he spotted a 2003 green Nissan Altima being driven by appellant in the same direction. Appellant's vehicle was traveling in the slow lane, also known as "lane two" of the divided highway. Trooper Tilghman testified that he made the following observations:

> As I was behind him, I noted his right tires go over the solid white line approximately two tire lengths for four seconds, I would estimate and he returned back to lane two, a short time later he, his right tires drifted over the same solid white line, again approximately by two tire lengths for three seconds at that time, after the three seconds he made an abrupt left turn back into lane two. Um, a short time after that, he is, the vehicle's right tire crossed the solid white line one more time by about one tire length, traveled for about three seconds and then finally [the vehicle] pulled over to the right shoulder of Eastbound 404, west of Harmony Road[, and came to a complete stop].

Trooper Tilghman opined that he thought appellant's driving was "unsafe," but, in response to questioning by the court, he agreed that appellant's vehicle never crossed over into lane one of the divided highway. The trooper testified that, after appellant's vehicle came to a complete stop, Trooper Tilghman activated his emergency lights and pulled in behind the vehicle.

When the trooper approached the vehicle and spoke to appellant, the trooper noticed "a strong odor of alcohol, or alcoholic beverage coming from [appellant's] breath as he spoke." Appellant's "eyes were bloodshot and glassy," had "a glazed appearance," and appellant's "speech was slurred as he spoke[.]" The trooper also noticed that, when appellant reached for his registration, "he appeared to be slow, uncoordinated, what people call lethargic, is another term for that."

Trooper Tilghman then told appellant that he stopped him because he "observed his right tires cross the solid white line multiple times." In response, appellant admitted that he was driving home from a pub where he had consumed "a couple beers." At some point during this encounter, Trooper Tilghman observed a box of Natural Light beer inside appellant's vehicle. Appellant then became upset, started crying, and told the trooper "he was trying to get home."

The trooper ordered appellant to exit his vehicle, and, during the administration of standardized field sobriety tests, appellant exhibited several indicators of intoxication. Appellant was placed under arrest for suspicion of driving under the influence of alcohol, and transported to a local barrack, where he refused to submit to a breathalyzer test.

The trial on merits was conducted simultaneously with the hearing on appellant's motion to suppress evidence acquired from the traffic stop. After the testimony from Trooper Tilghman concluded, appellant testified and agreed that he was driving in the area at the time, but stated that he pulled over to the shoulder only after the trooper activated his emergency lights. Appellant admitted that he "probably" crossed the white shoulder line while driving, but he insisted that he never hit the rumble strips near the edge of the roadway.

During the ensuing argument on the motion to suppress evidence, appellant primarily relied on *Rowe v. State*, 363 Md. 424 (2001), and contended that any crossing of the white shoulder lines was "momentary," and not a sufficient basis for a traffic stop. Accordingly, because the line crossings were the only reason articulated by the trooper for the traffic stop, appellant argued the court should suppress all evidence obtained as a result of the stop.[1]

After hearing from the State, the court denied the motion to suppress. The court found this case distinguishable from *Rowe*, in that, here, "Mr. Passwaters goes across [the line] twice, comes back, and the third time he goes back and after a couple seconds then he pulls over and stops." The court made the additional comments on the evidence:

> [T]here really was not a whole lot, sort of nothing that would have been open at two o'clock in the morning on that stretch of [Route] 404 back in July of

[1] As noted, appellant's motion and trial on the merits were heard by the court simultaneously during this same hearing. Our discussion herein is limited to the argument and rulings pertinent to the Fourth Amendment suppression issue raised on appeal. However, we note that, as part of the simultaneous trial proceedings, the court granted appellant's motion for judgment of acquittal on the charge of failing to obey a designated traffic control device, which the court called the "unsafe lane change."

> 2016. And so, it's not like there were houses right there and he may have been stopping to go visit somebody or walking to his own house. So, it's sort of a ah [sic] those three odd driving movements coupled with the fact that he then stopped for no apparent reason. And again, under this scenario I'm going to accept the testimony of the police officer, that he pulled over and stopped before any lights were turned on. Ah, and again, that's just a call I have to make that I believe the officer. . . . I find that the officer's testimony is creditable. So, with that basis I'm going to find that additional odd move of pulling over and stopping on a shoulder on a divided highway when there's no businesses or anything open or any other apparent reason for that adds to the reasonable articulable suspicion that the officer had that there was some criminal activity afoot. May even be, as may have been as simple as finding out that ah, this distractive [sic] driving, I think he said could have been caused besides from alcohol, but it could have been from talking on the telephone or some, maybe medical thing or something, but in any event I think for the brief attention [sic] that a traffic stop typically takes place I think he had adequate reasonable articulable suspicion to make a stop.

The court then ruled that, based on the totality of the circumstances, it was going to deny the motion to suppress. The court concluded the hearing by finding appellant guilty of driving while impaired by alcohol.

DISCUSSION

Appellant contends that the court erred in denying the motion to suppress on the grounds that the stop was unlawful because he did not make an unsafe lane change, making this case indistinguishable from *Rowe*. The State disagrees, noting that, in contrast to the facts in *Rowe*, in this case, appellant crossed over onto the shoulder three separate times and "then stopped for no apparent reason."

The standard of review for a ruling that denies a motion to suppress evidence has been described as follows by the Court of Appeals:

> Appellate review of a motion to suppress is "limited to the record developed at the suppression hearing." *Moats v. State*, 455 Md. 682, 694 (2017). "We view the evidence and inferences that may be drawn therefrom

> in the light most favorable to the party who prevails on the motion," here, the State. *Raynor v. State*, 440 Md. 71, 81 (2014). "We accept the suppression court's factual findings unless they are shown to be clearly erroneous." *Id*. We give "due weight to a trial court's finding that the officer was credible." *Ornelas v. United States*, 517 U.S. 690, 700 (1996). "[W]e review legal questions *de novo*, and where, as here, a party has raised a constitutional challenge to a search or seizure, we must make an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case." *Grant v. State*, 449 Md. 1, 14–15 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)).

State v. Johnson, 458 Md. 519, 532-33 (2018).

The issue presented implicates the Fourth Amendment to the United States Constitution, which is applicable to the states via the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). "A traffic stop for a suspected violation of law is a 'seizure' of the occupants of the vehicle and therefore must be conducted in accordance with the Fourth Amendment." *Heien v. North Carolina*, __ U.S. __, 135 S. Ct. 530, 536, 190 L. Ed. 2d 475 (2014) (citing *Brendlin v. California*, 551 U.S. 249, 255-259 (2007)). 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, 363 Md. at 433; *see also State v. Williams*, 401 Md. 676, 687 (2007) (observing that a traffic stop may be justified under reasonable articulable suspicion standard).

As the Supreme Court has also explained:

> The Fourth Amendment permits brief investigative stops - such as the traffic stop in this case - when a law enforcement officer has "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. Cortez*, 449 U.S. 411, 417-418, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981); *see also Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The "reasonable suspicion" necessary to justify such a stop "is dependent upon both the content of information possessed by police and its degree of reliability." *Alabama v. White*, 496 U.S. 325, 330, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990). The standard takes into account "the totality of the circumstances - the whole picture." *Cortez, supra*, at 417, 101 S.Ct. 690. Although a mere "'hunch'" does not create reasonable suspicion, *Terry, supra*, at 27, 88 S.Ct. 1868, the level of suspicion the standard requires is "considerably less than proof of wrongdoing by a preponderance of the evidence," and "obviously less" than is necessary for probable cause, *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989).

Navarette v. California, 572 U.S. 393, 396-97 (2014); *see also Illinois v. Wardlow*, 528 U.S. 119, 126 (2000) (acknowledging that even seemingly innocent behavior, under the circumstances, may permit a brief stop and investigation).

Appellant was charged with violating Section 21-309(d) of the Transportation Article, which provides:

> (d) The driver of a vehicle shall obey the directions of each traffic control device that directs specified traffic to use a designated lane or that designates those lanes to be used by traffic moving in a particular direction, regardless of the center of the roadway.

Md. Code (1977, 2012 Repl. Vol., 2017 Supp.), § 21-309 (d) of the Transportation Article ("Trans."). *See generally Stephens v. State*, 198 Md. App. 551, 561 (2011) (holding, pursuant to a similar statute, that lane markings qualify as "traffic control devices").

Although it does not appear that there is a case specifically addressing § 21-309(d), we agree with the parties that *Rowe*, *supra*, is instructive. *Rowe* concerned an alleged violation of Trans. § 21-309(b), 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**.

(Emphasis added.)

The pertinent facts with respect to the traffic stop in *Rowe* were as follows:

> Having pulled into a median cross-over on Interstate 95 in Cecil County, in order to go south, Trooper Stephen Jones of the Maryland State Police observed the petitioner's van, "the only one in the area," proceeding southbound in the far right lane, the slow lane, traveling at a speed slower than the 65 mph speed limit. He indicated that the petitioner could not have missed seeing him in the crossover as he passed. Trooper Jones followed the van and observed it for approximately 1.2 miles. During that time, Trooper Jones paced the van, determining it to be traveling at between 50 and 54 miles per hour. He also observed it cross the white edge-line onto the shoulder:
>
> > "The vehicle crossed the white edge line on the right side of the shoulder, about eight inches over that white edge line on to the shoulder or rumble strips. It hit those rumble strips and at that time when he hit those rumble strips he swerved back into the slow lane."
>
> Trooper Jones later saw the van touch the white edge-line again. Describing what he saw as "the tires directly on the white edge line and came back into the slow lane once again," he characterized the van as having "swerved or weaved back onto the white shoulder edge line once again." Trooper Jones then made the traffic stop, giving the following reason for doing so:
>
> > "[f]or failing to drive in a single lane. And at that time it was one o'clock in the morning. For me, it's when people are coming home from the bars the person could have been possibly intoxicated. It's also a time, it's late in the evening when people start to get tired and a lot of our accidents are

> people falling asleep at the wheel. I checked on the benefit of the driver after he failed to drive in a single lane."

Rowe, 363 Md. at 427-28.

Upon examining the plain language of Trans. § 21-309(b), the Court focused upon the reference to safety in that provision of the Transportation Article:

> [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**.

Id. at 434 (emphasis added).

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.

Id. at 441.

In reaching this holding, the Court considered several out-of-state cases, interpreting similar statutes, and found that, in most of these cases, the determinative factor was not the mere crossing of the line itself, but the extent to which such crossing, under the circumstances of each case, evidenced "erratic" or "unsafe" driving. *Id.* at 436-39.

Rowe has since been distinguished by several other cases. *See, e.g.*, *Blasi v. State*, 167 Md. App. 483, 499 (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.), *cert. denied*, 393 Md. 245 (2006); *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, at least once, he crossed the center line of an undivided two-lane road by as much as a foot).

In *Rowe*, the driver crossed over the white shoulder line once, touching the rumble strips, and touched the line one more time. In contrast, here, appellant crossed over onto the shoulder three times, one of which included an abrupt return to lane two. According to the court's ultimate factual findings, appellant also stopped, without explanation, before the trooper activated his emergency lights. Under the totality of the circumstances, we are persuaded that there was reasonable articulable suspicion for the officer to conclude that appellant violated Trans. § 21-309(d) and the stop was therefore lawful. Accordingly, the court did not err in denying the motion to suppress.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.