Circuit Court for Baltimore City
Case No. 118184003

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2815

September Term, 2018

TRAVIS GARY

v.

STATE OF MARYLAND

Fader, C.J.,
Wright,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: October 9, 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.

On November 20, 2018, appellant Travis Gary appeared in the Circuit Court for Baltimore City seeking to suppress a gun found on his person following a stop of his vehicle. When the court denied appellant's motion to suppress, he proceeded with a conditional guilty plea, pleading guilty to possession of a handgun after having been convicted of a disqualifying crime. The court sentenced appellant to the mandatory minimum sentence of five years without the possibility of parole. Appellant timely appealed and presents the following question for our review: "Did the circuit court err in denying appellant's motion to suppress?"

We answer appellant's question in the negative and affirm.

BACKGROUND

On the afternoon of June 4, 2018, Trooper Charles Tittle of the Maryland State Police was patrolling in Baltimore City as part of his assignment with the Baltimore City Enhanced Visibility Patrol Initiative. That day, Trooper Tittle was patrolling alone in an unmarked Maryland State Police SUV, which was equipped with license plate recognition ("LPR") scanners. These particular LPR scanners scanned the license plates of other vehicles and then ran those license plate numbers through a recognition system using Trooper Tittle's in-vehicle computer. Specifically, the LPR scanners accessed METERS, a local Maryland system for warrants and Maryland Motor Vehicle Administration ("MVA") issues, and NCIC, a national crime database for wanted or missing persons, stolen vehicles, and stolen license plates.

During his patrol on Russell Street, Trooper Tittle's LPR scanners registered a "hit"

on a black Acura sedan. In response to the alert, Trooper Tittle slowed down so that he could position himself behind the vehicle. Trooper Tittle then ran the vehicle's registration information through the NCIC and METERS systems, and saw that the registered owner—appellant—had an outstanding warrant with the Baltimore County Police Department. The system indicated that the arrest warrant pertained to a "violation of pretrial release conditions relating to a CDS charge." Trooper Tittle was also able to access a picture of appellant's face by viewing his driver's license.

In addition to the outstanding arrest warrant, Trooper Tittle's MVA check revealed a compulsory insurance registration violation dated December 1, 2017, as well as several unpaid fees related to city parking violations. Furthermore, Trooper Tittle observed several objects hanging from the vehicle's rearview mirror, which Trooper Tittle believed to be a violation of Maryland's Transportation Article.

In light of these circumstances, Trooper Tittle activated his vehicle's emergency equipment and initiated a stop of the vehicle. At the time, Trooper Tittle could see two occupants in the vehicle's front seats, but could not discern their genders or races. As he approached the driver's side of the vehicle, Trooper Tittle identified appellant as the front seat passenger. The female driver provided her Maryland driver's license which identified her as Felicia Griffin. Trooper Tittle told Ms. Griffin that he had stopped her based on the compulsory insurance violation, the objects hanging from the rearview mirror, and for unpaid fees related to registration.

Trooper Tittle then returned to his vehicle to request that the Golden Ring Barrack,

a Maryland State Police barrack located in Baltimore County, confirm the active arrest warrant for appellant. Although Golden Ring confirmed that its system indicated an active warrant, the dispatcher still needed to contact the Baltimore County Police Department directly to confirm that the warrant was active and that it wanted appellant in custody. While awaiting those results, Trooper Tittle began processing the alleged Transportation Article violations using the electronic citation warning database. During this processing, another trooper arrived to provide backup.[1]

Approximately twenty minutes after Trooper Tittle requested confirmation of the status of the arrest warrant, Golden Ring verified that the warrant was active. Upon receiving that information, Trooper Tittle electronically submitted the warning for the traffic violations and printed a copy for Ms. Griffin. Trooper Tittle and the other trooper then approached the vehicle to arrest appellant. Trooper Tittle ordered appellant to exit the vehicle, and informed him that he was under arrest. As Trooper Tittle attempted to place appellant in handcuffs, appellant "flung his hand" and began to flee. The other trooper then tackled appellant to the ground, at which point both troopers placed him in handcuffs. The troopers then immediately searched appellant incident to arrest and discovered a handgun in his left rear pocket. After arresting appellant, Trooper Tittle provided the printout of the warning to Ms. Griffin.

Following his indictment for possession of a handgun after having been convicted

[1] The record only identifies this other trooper as "TFC Watson."

of a disqualifying crime, and other related charges, appellant moved to suppress the gun. At the hearing on appellant's motion to suppress, defense counsel informed the circuit court that, if appellant were to lose his motion to suppress, he would enter a conditional guilty plea. The hearing proceeded with Trooper Tittle testifying on behalf of the State, and Ms. Griffin[2] testifying on appellant's behalf.

The suppression court denied appellant's motion to suppress. The court found that, due to the warrant alert, Trooper Tittle possessed "more than an articulable suspicion" to stop the vehicle. Additionally, the court found that the stop was justified due to both the lapse in insurance, which the court noted, "is in fact an incarcerable offense and a serious one," as well as the obstruction on the rearview mirror. Following the denial of his motion to suppress, appellant entered a conditional guilty plea to possession of a handgun after having been convicted of a disqualifying crime. We shall provide additional facts as necessary.

DISCUSSION

Our Court has succinctly described the appropriate standard of review for the denial of a motion to suppress evidence.

> In reviewing a trial court's denial of a motion to suppress evidence, we base our decision solely upon the "facts and information contained in the record of the suppression hearing." *Longshore v. State,* 399 Md. 486, 498, 924 A.2d 1129 (2007). We then extend great deference to the suppression judge with respect to the determination and weighing of first-level findings

[2] Although not fully clarified at the hearing, Ms. Griffin went by the name "Ms. Gary" during the suppression hearing. She apparently married appellant and took his name at some point prior to the hearing.

> of facts, which we will not disturb unless clearly erroneous, and we view all facts in the light most favorable to the State as the prevailing party. *Williamson v. State,* 413 Md. 521, 531-32, 993 A.2d 626 (2010). We also apply a *de novo* standard of review, making our "own independent constitutional appraisal by reviewing the law and applying it to the facts of the case." *Bailey v. State,* 412 Md. 349, 362, 987 A.2d 72 (2010) (Citations omitted), *Grymes v. State,* 202 Md. App. 70, 80, 30 A.3d 1032 (2011).

Brewer v. State, 220 Md. App. 89, 99 (2014). Accordingly, we must make our own independent constitutional appraisal of the suppression court's denial of appellant's suppression motion.

The Fourth Amendment to the United States Constitution states that,

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV. "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 (2014) (citing *Brendlin v. California*, 551 U.S. 249, 255-59 (2007)). For such a seizure to comply with the Fourth Amendment, an officer must have at least reasonable articulable suspicion of unlawful conduct. *Id.*; *see also State v. Williams*, 401 Md. 676, 690 (2007). Our Court has described reasonable articulable suspicion as follows:

> Reasonable articulable suspicion has been described as "'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Id.* (quoting *Illinois v. Wardlow*, 528 U.S. 119, 128, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000)). It has also been described as a "'common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act.'" *Id.* at 460, 78 A.3d

> 415 (quoting *Crosby v. State,* 408 Md. 490, 507, 970 A.2d 894 (2009)) (quotation marks and citation omitted). The required level of suspicion is less demanding than that for probable cause, but "nevertheless embraces something more than an 'inchoate and unparticularized suspicion or hunch.'" *Id*. (quotation marks and citations omitted).

Williams v. State, 231 Md. App. 156, 179 (2016).

The suppression court concluded that Trooper Tittle possessed reasonable articulable suspicion to stop appellant's vehicle due to appellant's outstanding arrest warrant. The court also found that, even had there been no association between appellant's outstanding warrant and the vehicle, the lapsed insurance alert provided a separate and independent source of reasonable articulable suspicion to stop the vehicle. As we shall explain, the lapsed insurance and the outstanding arrest warrant each provided an independent source of reasonable articulable suspicion to justify the stop. Finally, in the alternative, even if the stop were unlawful, the attenuation doctrine would have rendered the gun admissible.

I. Reasonable Articulable Suspicion

We first address the compulsory insurance violation. Md. Code (1977, 2012 Repl. Vol., 2018 Supp.), § 17-103(a)(1) of the Transportation Article ("TA") generally requires Maryland vehicles to possess "a vehicle liability insurance policy written by an insurer authorized to write these policies in this State." TA § 17-107(a) prohibits Maryland vehicle owners from driving or allowing others to drive a vehicle they know or have reason to know is not covered by the required insurance. Should someone violate this section, TA § 17-107(d) carries a penalty of imprisonment not to exceed one year or a fine not to exceed

$1,000, or both, for the first offense; for a subsequent offense, the maximum period of imprisonment increases to two years.

During the suppression hearing, Trooper Tittle testified that his LPR scanner indicated that appellant's vehicle's compulsory insurance had lapsed on December 1, 2017, seven months before the June 4, 2018 vehicle stop. At the hearing, Ms. Griffin confirmed that the insurance had previously lapsed, but told the suppression court that she and appellant had paid fines and obtained insurance by the time Trooper Tittle stopped appellant's vehicle. She did concede, however, that during the stop she could not produce an insurance card for Trooper Tittle.

On appeal, appellant argues that Trooper Tittle lacked reasonable articulable suspicion to stop appellant's vehicle for the lapse in insurance because, "If there was a lapse on December 1, 2017, this by law would have triggered a suspension of the registration within 60 days of the MVA learning of the lapse, which could not be lifted until insurance coverage was reinstated and any assessed penalty paid." Appellant claims that "There was no suggestion by the officer that the registration was suspended at the time of the stop, indicating that the insurance coverage problem must have previously been resolved."

That the MVA took no action to suspend the vehicle's registration does not vitiate or contradict Trooper Tittle's testimony that his LPR scanners indicated that appellant's insurance had lapsed. The fact remains that Trooper Tittle's LPR scanners indicated that, at the time of the stop, appellant's vehicle did not have the required insurance coverage—

a violation of TA § 17-107 and an incarcerable offense. Accordingly, Trooper Tittle possessed "a particularized and objective basis for suspecting the particular person stopped of criminal activity," *Williams*, 231 Md. App. at 179, namely, that appellant's vehicle was being operated in violation of TA § 17-107(a). Additionally, Trooper Tittle's reasonable suspicion concerning the status of appellant's insurance coverage was apparently vindicated when Ms. Griffin was unable to produce her insurance card, yet another violation of the Transportation Article.[3] We conclude that Trooper Tittle had reasonable articulable suspicion to stop appellant's vehicle based on the lapsed insurance.

Next, we turn to whether Trooper Tittle had reasonable articulable suspicion to stop the vehicle based on appellant's outstanding arrest warrant. In his brief, appellant argues that there was no reasonable articulable suspicion to stop his vehicle because: 1) "as the trooper acknowledged, the information in his car's system was not necessarily accurate, current and up-to-date"; and 2) "the trooper, prior to stopping the vehicle, could not identify the race, sex or size of the occupants." We address these arguments in turn.

Regarding the reliability of the information available to the officer in his police cruiser, Trooper Tittle conceded that his computer system "may not" have been as accurate as that of the Golden Ring Barrack. Despite this concession, Trooper Tittle also testified that his system ultimately proved to be correct in "[a] hundred percent" of the

[3] Transportation Article § 17-104.2(b) requires the operator of a motor vehicle to possess or carry evidence of the required insurance, and must present evidence of that required security upon the request of a law enforcement officer.

approximately thirty stops he had made based on LPR alerts. Finally, we note that an officer generally has reasonable articulable suspicion to stop a vehicle based on electronic information, even if that information ultimately proves to be inaccurate. *See McCain v. State*, 194 Md. App. 252, 273 (2010) (stating that "the officers' reliance on the MVA records was reasonable and that reliance was sufficient, without regard to the records' ultimate accuracy, to insulate the evidence . . . from the operation of the exclusionary rule").

Finally on this point, appellant argues that Trooper Tittle lacked reasonable articulable suspicion to stop the vehicle based on the outstanding arrest warrant because he admitted at the suppression hearing that he could not discern the race or gender of the vehicle's occupants. According to appellant, because Trooper Tittle could not identify whether appellant was in the vehicle, he could not rely on the active arrest warrant as a basis for the stop.

We recognize that courts throughout the country are split on the issue of whether it is reasonable to infer that the registered owner of a vehicle is in that vehicle for purposes of a stop. The majority rule appears to be that the inference is reasonable unless there is evidence to the contrary. *See United States v. Pyles*, 904 F.3d 422, 424-25 (6th Cir. 2018) (holding that, "It is fair to infer that the registered owner of a car is in the car absent information that defeats the inference"); *United States v. Chartier*, 772 F.3d 539, 543 (8th Cir. 2014) (holding that reasonable articulable suspicion does not require the officer to "affirmatively identify the sex of the driver or further investigate the driver's physical appearance before initiating a traffic stop"); *Armfield v. State*, 918 N.E.2d 316, 321-22

(Ind. 2009) (holding that an officer has reasonable articulable suspicion to initiate a stop when "(1) the officer knows that the registered owner of a vehicle has a suspended license and (2) the officer is unaware of any evidence or circumstances which indicate that the owner is not the driver of the vehicle").

Nevertheless, at least one state, Kansas, has rejected the "owner-is-the-driver presumption," instead holding that the State bears the burden of proving that the officer had reasonable suspicion. *State v. Glover*, 422 P.3d 64, 72 (Kan. 2018), *cert. granted*, 139 S. Ct. 1445 (2019).[4] Although the United States Supreme Court will not hear argument on this issue until November 4, 2019, we agree with the majority of jurisdictions that it is reasonable to infer, absent information to the contrary, that the owner of the vehicle is in the vehicle. Accordingly, Trooper Tittle possessed reasonable articulable suspicion to stop the vehicle despite not being able to identify the occupants' genders or races prior to the stop.

II. <u>The Attenuation Doctrine</u>

Assuming *arguendo* that Trooper Tittle lacked reasonable articulable suspicion to stop appellant's vehicle, we would nevertheless affirm the suppression court's decision not to suppress the gun pursuant to the attenuation doctrine. We explain.

[4] We note that *Glover* is distinguishable from the instant case because the basis for stopping the vehicle owned by Mr. Glover was the officer's knowledge that Mr. Glover's license was revoked. Under those circumstances, the officer would have no basis for suspecting a traffic violation if Mr. Glover were merely a passenger in his vehicle. Here, reasonable suspicion for the compulsory insurance violation and arrest warrant did not require that appellant be the *driver* of the vehicle.

The exclusionary rule generally "requires trial courts to exclude unlawfully seized evidence in a criminal trial." *Utah v. Strieff*, __ U.S. __, 136 S. Ct. 2056, 2061 (2016). The attenuation doctrine is an exception to the exclusionary rule. *Id*. It provides that "Evidence is admissible when the connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance, so that 'the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained.'" *Id*. (quoting *Hudson v. Michigan*, 547 U.S. 586, 593 (2006)).

Strieff, a case directly on point, provides helpful guidance. There, Officer Fackrell, who had been conducting intermittent surveillance of suspected drug activity at a home, observed Strieff exit the home and walk toward a nearby convenience store. *Id*. at 2059-60. "In the store's parking lot, Officer Fackrell detained Strieff, identified himself, and asked Strieff what he was doing at the residence." *Id*. at 2060. During the stop, Officer Fackrell obtained Strieff's identification card, and then relayed Strieff's information to a police dispatcher, who stated that Strieff had an outstanding arrest warrant. *Id*. Officer Fackrell then arrested Strieff and discovered drug paraphernalia incident to that arrest. *Id*. Strieff unsuccessfully attempted to suppress the evidence, and proceeded to conditionally plead guilty, reserving his right to appeal the denial of his suppression motion. *Id*. After the Utah Supreme Court reversed appellant's conviction, the United States Supreme Court granted the State's petition for a writ of certiorari. *Id*.

On appeal, the State conceded that Officer Fackrell lacked reasonable articulable

suspicion to stop Strieff. *Id*. at 2062. Accordingly, the Supreme Court was tasked only with determining whether, despite the constitutional violation, the attenuation doctrine would apply to permit admissibility of the drug paraphernalia. *Id*. at 2061-62. In determining "whether the discovery of a valid arrest warrant was a sufficient intervening event to break the causal chain between the unlawful stop and the discovery of drug-related evidence on Strieff's person[,]" the Supreme Court applied a three-factor test articulated in *Brown v. Illinois*, 422 U.S. 590 (1975). *Strieff*, 136 S. Ct. at 2061-62. The three *Brown* factors are: 1) "temporal proximity," which concerns "how closely the discovery of evidence followed the unconstitutional search"; 2) "the presence of intervening circumstances"; and 3) "the purpose and flagrancy of the official misconduct," which the Court considered "'particularly' significant." *Id*. at 2062.

The *Strieff* Court noted that the first factor, "the temporal proximity between the initially unlawful stop and the search," favored suppression. *Id*. The Court explained that its "precedents ha[d] declined to find that this factor favor[ed] attenuation unless 'substantial time' elapse[d] between an unlawful act and when the evidence is obtained." *Id*. (citing *Kaupp v. Texas*, 538 U.S. 626, 633 (2003)). Because Officer Fackrell discovered drugs "only minutes after the illegal stop[,]" this factor favored suppression. *Id*.

Although the first factor favored suppression, the second factor, "the presence of intervening circumstances" "strongly" favored attenuation. *Id*. The Supreme Court noted that "the warrant was valid, it predated Officer Fackrell's investigation, and it was entirely unconnected with the stop. And once Officer Fackrell discovered the warrant, he had an

obligation to arrest Strieff." *Id*.

Finally, the Court concluded that the third factor, "the purpose and flagrancy of official misconduct," "also strongly favor[ed] the State." *Id*. at 2063. In characterizing Officer Fackrell's illegal stop of Strieff, the Supreme Court noted that "While Officer Fackrell's decision to initiate the stop was mistaken, his conduct thereafter was lawful." *Id*. Furthermore, the Court noted that "there [was] no indication that this unlawful stop was part of any systemic or recurrent police misconduct. To the contrary, all the evidence suggest[ed] that the stop was an isolated instance of negligence that occurred in connection with a bona fide investigation of a suspected drug house." *Id*.

Appellant argues that the attenuation doctrine should not apply here. Regarding the first *Brown* factor, appellant claims that "the temporal proximity between the unlawful stop and the discovery of the evidence [] favors suppression because it was only about 25 minutes" from the illegal stop until Trooper Tittle discovered the gun. The State, in its brief, concedes that this factor weighs in favor of suppression.

As to the second *Brown* factor, "the presence of intervening circumstances," appellant concedes in his brief that, "In light of the confirmation of the pre-existing warrant, the second *Brown* factor weighs against suppression." Accordingly, we turn to the third and most significant *Brown* factor.

Regarding the "purpose and flagrancy of official misconduct," the record confirms that Trooper Tittle committed no official misconduct. Whereas Officer Fackrell "was at most negligent[,]" and made "good-faith mistakes" in stopping Strieff without reasonable

articulable suspicion, Trooper Tittle's behavior cannot even be classified as negligent. *Id*. Trooper Tittle reasonably relied on his LPR scanners' indication that appellant was wanted on an outstanding warrant. In Trooper Tittle's experience, when his LPR system indicated an outstanding warrant, it proved to be accurate every single time. Additionally, like in *Strieff*, there is no indication here that the stop "was part of any systemic or recurrent police misconduct." *Id*. at 2063. Accordingly, this factor weighs heavily in favor of attenuation.

Consistent with *Strieff*, we give greater weight to the third *Brown* factor. We therefore conclude that, even assuming Trooper Tittle lacked reasonable suspicion to justify the stop, the attenuation doctrine would apply, allowing evidence of the gun to remain admissible.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.