IN THE
APPELLATE COURT OF MARYLAND

SEPTEMBER TERM, 2023

NO. 1795

ROLAND BRANCH,

Appellant

v.

STATE OF MARYLAND,

Appellee

APPEAL FROM THE CIRCUIT COURT FOR BALTIMORE CITY
(THE HONORABLE JEANNIE HONG, MOTIONS JUDGE)

APPELLANT'S BRIEF AND APPENDIX

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APPELLANT'S BRIEF

STATEMENT OF THE CASE

On January 10, 2023, Baltimore City police officers stopped Appellant Roland Branch, Jr. for failing to stop at a stop sign. A subsequent search of the vehicle revealed firearms and drugs. On February 1, 2023, the State indicted Mr. Branch in the Circuit Court for Baltimore City on six counts of possession-related firearm and drug offenses.

On May 23, 2023, Mr. Branch filed a motion to suppress the evidence. Following a hearing on July 31, 2023, before Judge Jeannie Hong, Mr. Branch's

motion was denied. On November 8, 2023, Mr. Branch appeared before Judge Dana Middleton and entered a conditional guilty plea to possession of a firearm in relation to drug trafficking (Crim. Law § 5-621(b)(1)). The court sentenced him to 5 years' imprisonment, without the possibility of parole. This appeal followed.

QUESTIONS PRESENTED

Did the motions court err in denying Mr. Branch's motion to suppress?

STATEMENT OF FACTS

At the suppression hearing, the State's only witness was Officer Nevin Nolte, a member of the Baltimore City Police Department's East Side Initiative. (T.5-6).[1] Nolte explained that his general duties are the same as patrol except he's "more focused on areas that are experiencing an uptick in crime" and that he is to "be present, be visible, conduct traffic stops, walk foot" in those areas. (T.7).

On January 10, 2023, Nolte and his partner, Officer Matthew Banocy, were driving around a residential neighborhood as part of their duties. (29-30). At approximately 5:45 p.m., Nolte and his partner encountered Mr. Branch as their patrol vehicle and Mr. Branch's vehicle approached a four-way intersection. (T.30). Mr. Branch's vehicle approached the stop sign on Ashland Avenue and Nolte's patrol vehicle approached the stop sign on North Kenwood Avenue. (T.8, 30). After Mr. Branch stopped and turned right onto Kenwood, Nolte immediately activated

[1] Transcript references are to the July 31, 2023, suppression hearing. Body-worn camera footage was admitted during the hearing and has also been transcribed for the record. References to the page numbers of those transcripts are included alongside the videos' timestamps.

his lights and sirens and stopped Mr. Branch's vehicle. (T.33).

Nolte's body-worn camera footage, which begins at the point where the vehicles approach the intersection, was admitted as State's Exhibit 1 and played for the court.[2] Nolte testified that he made the stop because he observed Mr. Branch's vehicle "fail[] to come to a complete stop while traveling [] eastbound on Ashland Avenue approaching Kenwood Avenue." (T.8).

Nolte approached the driver's side of the vehicle and Banocy approached the passenger side of the vehicle, which was occupied by Mr. Branch's brother, Christopher Wright. Nolte advised Mr. Branch of the reason for the stop and "that he nearly struck my patrol vehicle as he came into the intersection." (T.8, 12; State's Ex. 1 at 1:10-1:15 & p.2). After viewing his body-worn camera (State's Exhibit 1) footage during the hearing, Nolte confirmed that Mr. Branch's vehicle stopped and then turned right. (T.33; *see also* State's Ex. 1 at 0:00 to 0:11). After he advised Mr. Branch of the reason for the stop, Nolte requested Mr. Branch's license and vehicle registration, which Mr. Branch provided. (T.9). Mr. Branch also provided the rental agreement for the vehicle and an inspection certificate from the Virginia State Police, which provided the vehicle's identification number (VIN). (T.37, 50; State's Ex. 1 at 1:16-1:35 & p.2). Nolte then returned to his patrol vehicle, placed all the

[2] State's Exhibit 1 was transmitted to this Court on a damaged disk. The entire video is approximately 1 hour and 7 minutes and is the subject of an Unopposed Motion to Correct the Record filed on April 26, 2024. Based on the transcript, it appears that the first 16 minutes were played during the suppression hearing. (*See* T.25).

paperwork for the vehicle on the dashboard, and called for a K-9. (T.38, 40-41, 50).

When asked by the prosecutor why he called for a K-9 at that time, Nolte explained that he "requested a K9 to do a scan of the vehicle" because Mr. Branch "was much more nervous than what is a general nervousness" during a traffic stop. (T.13). The video shows that had asked Mr. Branch: "You all right, man? Anything illegal in the car or anything like that? . . . Your hands are shaking. You're nervous?" To which Mr. Branch responded, "No, no, I'm good." (State's Ex. 1 at 1:54-2:00 & p.3; T.9). According to Nolte, Mr. Branch was "visibl[y] shaking, his chest was visible coming in and out of being able to be seen on the outside of his shirt as I was observing him." (T.9). Although Nolte had not observed "any drug activity," he explained that he and his partner had "heightened suspicion that there could be something in the vehicle" due to the nervousness. (T.43, 45).

When asked on cross-examination if he was "trying to figure out a way to get into the car," Nolte testified that "it's common practice for a K-9 if we have our heightened nervousness, anything like that, and the vehicle." (T.44). On State's Exhibit 1, Banocy can be heard telling another officer on the radio the reason they requested a K-9: "Because we don't have anything to get into the car with right now." (State's Ex. 1 at 3:30-3:46; & p.4). Banocy also said: "[W]ell if we'd smelt something, we wouldn't have bothered to call for the drug dog[.]" (T.49). Nolte confirmed that he heard Banocy's explanations. (T.44-45, 49).

While requesting the K-9, Nolte verified Mr. Branch's license, the VIN, and the tags using NCIC.[3] (T.13). There were no problems with Mr. Branch's license and driving privileges. (T.49). According to Nolte, running the vehicle's tags yielded no results. (T.14). After learning that the K-9 was in the Northwest District of the City, Nolte abandoned the K-9 request remarking, "I ain't going to be able to draw it out that long." (T.46-47). Then Banocy said: "Last chance. . . . Just ask him." (State's Ex. 1 at 4:33-4:36 & p.5).

Nolte then told Banocy to return to the car to "check [Mr. Branch] out a little bit . . . see how he's acting." (State's Ex. 1 at 5:10-5:40 & p.6). At that point, Banocy went to the driver's side to check the VIN on the front windshield while Nolte stood at the passenger side. (T.16). Nolte then asked the passenger, Mr. Wright, whether there was anything illegal in the car, specifying guns and drugs. (State's Ex. 1 at 6:30-6:40 & p.7; T.17-18). Mr. Wright told him no. (*Id*.).

Nolte and Banocy walked away from the vehicle. Banocy handed Nolte a notebook on which Banocy had written the VIN. (T.18). Nolte immediately shared his observations of Mr. Wright with Banocy. (State's Ex. 1 at 6:50-7:10 & p.8). Nolte testified that he noticed that Mr. Wright was "in a heightened nervous manner" with "his chest [] coming out of his shirt, he's breathing heavy, he's shaking as well." (T.17-18). According to Nolte, when Mr. Wright responded that there were no drugs or guns in the car, he "immediately look[ed] down and look[ed]

[3] NCIC stands for the National Crime Information Center's computerized criminal justice information system operated by the Federal Bureau of Investigation.

back up" both the first and second time he was asked. (T.18). Banocy then returned to the passenger side of the vehicle while Nolte went back to his patrol vehicle.

Using Banocy's notebook, Nolte entered the VIN into NCIC, but the car did not come back registered. (T.18-19). Nolte then re-approached Mr. Branch's vehicle to get the VIN from another location—inside of the driver's door. (T.19). Nolte described this as "a second way to verify the VIN." (T.19). He confirmed that the VIN on the door matched the VIN that Banocy had copied from the windshield. (T.20). Nolte then tried checking the VIN using "KGA, which is Baltimore Police dispatch to have them run the VIN through their system." (T.20). At that point, approximately 11 minutes had elapsed. (T.61). While waiting for dispatch to respond, Nolte looked at the registration and inspection certificate that he placed on the dashboard at the beginning of the stop. (T.61-62). Dispatch then responded that they "[d]idn't get anything back with that VIN." (T.21).

Banocy then returned to the patrol vehicle and informed Nolte that he "made observations that he believed the passenger of the vehicle was armed." (T.22). Specifically, Banocy "said that there was an object in [the passenger's] dip area around [] where the seatbelt line was." (T.22). Nolte testified that the passenger displayed the "[c]haracteristics of an armed person," that being "actions that he's making, he's nervousness, his looking down at his dip when he was asked if there was anything illegal, and then followed by Banocy's observations of an object that he believed to be a handgun in his waistband." (T.66). But Banocy had not told Nolte that he (Banocy) believed the passenger had a handgun. (T.66).

Based on Banocy's observations of Mr. Wright, Nolte and Banocy called for backup and decided to have Mr. Wright step out of the vehicle for a weapons pat down. (T.22-23, 64-65, 70). Another officer arrived and stood by Mr. Branch's window as Banocy pulled Mr. Wright out of the vehicle for a pat down. (State's Ex. 1 at 12:48-13:55 & pp.12-14). There was nothing in Mr. Wright's dip and nothing illegal was found on him. (T.67). Nolte was no longer "fearful that [Mr. Wright was] armed and dangerous." (T.67).

Nolte then instructed Mr. Wright to sit down on the curb or the stoop of the home he was in front of. (State's Ex. 1 at 13:55-14:05 & p.14). Instead of sitting, Mr. Wright ran away and both Nolte and Banocy chased him on foot until he was "placed in custody about a block and a half away." (T.24, 68-69). After Mr. Wright was arrested, officers still did not find anything illegal on him, nor did they find anything illegal along the path that he took. (T.69).

Mr. Branch remained in the vehicle while officers pursued Mr. Wright. (T.71). At that point, Nolte still had not returned Mr. Branch's license and registration. (T.26, 68). According to Nolte, the traffic stop was still ongoing at that time because he was not able to verify the VIN. (T.27).

Defense's Exhibit 1 (Officer Bell's[4] body-worn camera footage) was admitted into evidence and a portion of it was played for the court. The video shows that Bell arrived at Mr. Branch's vehicle and Mr. Branch was ordered out of the

[4] Bell's full name is not disclosed in the record.

vehicle shortly thereafter. (Def's Ex. 1 at 0:00-2:00). Bell then patted Mr. Branch for weapons. (T.72). Mr. Branch then ran away. (T.73; *see* Def's Ex. 1 at 0:00-2:45 & pp. 2-3). Nolte had not instructed Bell to do the pat down. (T.73).

Nolte next saw Mr. Branch when he was handcuffed on the ground. (T.74). According to Nolte, Mr. Branch had been arrested for "[f]leeing from a traffic stop on foot." (T.74). But Mr. Branch was not cited for that offense. (T.74).

Mr. Branch was approximately 30 to 40 feet from the vehicle when he was arrested, and Mr. Wright was also "far from the car" at that point. (T.75). No one else was in the vehicle. (T.75). After both Mr. Branch and Mr. Wright were "placed into custody," officers searched the car. (T.26, 75). Two firearms and narcotics were discovered. (T.26). One firearm was beneath the driver's seat and the second was beneath the passenger's seat. (T.26).

Banocy's body-worn camera (Defense's Exhibit 2) captured Banocy and Nolte recapping the traffic stop. Thirty-two seconds of the footage was played for the court. In Defense's Exhibit 2, Banocy asked Nolte: "So how did – so how did this VIN come back?" Nolte told him, "The VIN doesn't come back anything. . . . The tag does, but the VIN doesn't." (Def's Ex. 2 at 0:00-0:32 & pp.2-3; T.78). At the suppression hearing, Nolte realized that Banocy had written down the VIN incorrectly—it was missing one digit. (T.61). Nolte never read the VIN from the paperwork Mr. Branch had given him. (T.61).

ARGUMENT

THE MOTIONS COURT ERRED IN DENYING MR. BRANCH'S MOTION TO SUPPRESS.

Nolte stopped Mr. Branch for allegedly failing to stop at a stop sign. Instead of issuing Mr. Branch a traffic citation, Nolte and his partner pursued a criminal investigation at the stop's inception citing Mr. Branch's and Mr. Wright's "heightened nervousness" as the justification. This traffic stop is the quintessential pretextual traffic stop[5]—one where the officers used a minor traffic infraction to pursue a criminal investigation into the contents of the vehicle and its occupants. The traffic stop's classification as pretextual is appropriate given the record and the constitutional violations that resulted from the officers' relentless focus on gaining access to the vehicle.

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[5] The term "pretextual traffic stop" is often used to describe traffic stops that are permitted by *Whren v. United States*, 517 U.S. 806 (1996). However, the term is often used too broadly and is rarely placed in its proper context. When placed in its proper context, a pretextual traffic stop is an "investigatory traffic stop"—one that is executed to investigate the vehicle's occupants and is unrelated to traffic enforcement. *See* Charles R. Epp, Steven Maynard-Moody, & Donald P. Haider-Markel, Pulled Over: How Police Stops Define Race And Citizenship 8 (2014) ("The investigatory stop is made not to enforce traffic laws or vehicle codes but to investigate the driver. . . . Because officers are not supposed to stop a driver without a legal justification, most investigatory stops are nominally justified by minor violations: a burned-out license-plate light, failing to signal a lane change, driving 2 miles per hour over the speed limit, and the like.") [hereinafter "Pulled Over"]; *see also id.* at 59-64 (distinguishing traffic-safety stops from investigatory stops).

Accordingly, this Brief uses the term pretextual traffic stop to describe an investigatory traffic stop that was initiated under the guise of enforcing a low-level or minimal traffic infraction that posed no threat to safety (*e.g.*, expired registration, tinted windows, a broken taillight, momentarily crossing a marked line, stopping over the stop line at a stop sign, etc.).

First, the record demonstrates that there was neither probable cause nor reasonable, articulable suspicion for the traffic stop where Nolte's only justification for the stop was that Mr. Branch failed to come to a complete stop at a stop sign and the evidence demonstrates that Mr. Branch's vehicle stopped at the intersection. But, even if Mr. Branch's alleged traffic violation generated probable cause for the stop, merely driving over the stop line at a stop sign is far too trivial to justify the traffic stop. Second, the continued detention of Mr. Branch while the officers pursued their criminal investigation constituted a second stop that lacked the reasonable articulable suspicion that was required to justify it. Third, the search of the vehicle was unlawful where Mr. Branch and Mr. Wright were arrested far from the vehicle for fleeing a traffic stop. Notwithstanding the Fourth Amendment violations, the pretextual traffic stop constituted grievous and oppressive police conduct that violated Article 26 of the Maryland Declaration of Rights. Accordingly, the evidence discovered during the search of the vehicle should have been suppressed as the fruits of an unlawful stop, search, and seizure.

A. Standard of Review

Appellate review of a circuit court's denial of a motion to suppress evidence "is limited to the record developed at the suppression hearing," which is assessed "in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress." *Pacheco v. State*, 465 Md. 311, 319 (2019). The trial court's factual findings are accepted unless they are clearly erroneous, but the application of law to the findings of fact is reviewed *de novo*. *Lewis v. State*, 470

Md. 1, 17 (2020). Indeed, an appellate court makes its "own independent, constitutional appraisal of the police conduct at issue." *Henderson v. State*, 416 Md. 125, 144 (2010).

"Whether [Mr. Branch] was effectively stopped twice for constitutional purposes is not a question of fact, but one of constitutional analysis. Accordingly, the trial court's conclusion in that regard is not entitled to deference." *Munafo v. State*, 105 Md. App. 662, 672 (1995). *See also Charity v. State*, 132 Md. App. 598, 609 (2009) ("[T]he determination of whether there was one detention or two is a conclusory or constitutional fact with respect to which the reviewing court must make its own independent, *de novo* determination."). With respect to the question of whether there was reasonable, articulable suspicion to believe that criminal activity was afoot, this Court reviews the motions court's findings of fact under a clearly erroneous standard, but reviews under a *de novo* standard whether, under the circumstances, there was reasonable, articulable suspicion. *Ferris v. State*, 355 Md. 356, 368 (1999).

The State has the burden of proving the legality of a warrantless search and seizure. *Bailey v. State*, 412 Md. 349, 363 (2010). "When the police obtain evidence through a search or seizure that violates the Fourth Amendment, then exclusion of evidence obtained in violation of these provisions is an essential part of the Fourth Amendment protections." *Id.*

B. The initial traffic stop was unlawful.

The Fourth Amendment to the United States Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," and provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation." U.S. Const. amend. IV. A traffic stop is considered "a 'seizure' within the meaning of the Fourth Amendment, even though the purpose of the stop is limited and the resulting detention is brief." *Nathan v. State*, 370 Md. 648, 661 (2002). A traffic stop is lawful under the Fourth Amendment when there is probable cause to believe that the driver has committed a violation of the vehicle laws, *Brice v. State*, 225 Md. App. 666, 695-96 (2015) (citing *Whren*, 517 U.S. at 810), or when an officer has reasonable, articulable suspicion that "criminal activity may be afoot[.]" *Id.* (quoting *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). *See also Lewis v. State*, 398 Md. 349, 362 (2007) (quoting *Delaware v. Prouse*, 440 U.S. 648, 650 (1979) ("[A] traffic stop violates the Fourth Amendment where there is no reasonable suspicion that the car is being driven contrary to the laws governing the operation of motor vehicles or that either the car or any of its occupants is subject to seizure or detention in connection with the violation of any other applicable laws.")

Here, the motions court found (and the State argued) that the initial traffic stop was supported by reasonable, articulable suspicion. (T.91-92, 106; App.2). "[T]he reasonable suspicion standard requires the police to possess 'a particularized and objective basis' for suspecting legal wrongdoing." *Lewis*, 398 Md. at 362. But

Nolte's testimony contained no indication that he initiated the traffic stop because Mr. Branch was suspected of any legal wrongdoing. Nolte did not observe or suspect that Mr. Branch had been involved in criminal activity when he initiated the traffic stop. *See Cartnail v. State*, 359 Md. 272, 289 (2000) (quoting 4 Wayne R. LaFave, Search and Seizure § 9.4(g), at 195 (3d ed. 1996 & 2000 Supp.)) (explaining the factors that satisfy the reasonable suspicion standard, including "observed activity by the particular person stopped" and "knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation").

Instead, Nolte testified that he initiated the traffic stop because Mr. Branch's vehicle "failed to come to a complete stop" at the stop sign and "nearly struck [his] patrol vehicle as he came into the intersection[.]" (T.8, 12; State's Ex. 1 at 1:10-1:15 & p.2). The motions court credited this testimony in finding that the stop was supported by reasonable, articulable suspicion. (T.106; App.2). But "there was no evidentiary basis whatsoever" for those findings of fact because Nolte's testimony is at odds with what his body-worn camera footage (State's Ex. 1) shows. *State v. Brooks*, 148 Md. App. 374, 399 (2002). State's Exhibit 1 shows Mr. Branch stop at a stop sign on Ashland Avenue and turn right onto Kenwood Avenue. (State's Ex. 1 at 0:00 to 0:11). When confronted with State's Exhibit 1, Nolte confirmed that Mr. Branch stopped and then turned right. (T.33).

But even if the evidence had supported Nolte's version of the events, it still would be insufficient to support a finding of reasonable suspicion. In *Lewis*, the

Supreme Court of Maryland made clear that "'[a]lmost' committing a traffic violation . . . does not justify a traffic stop." 398 Md. at 367. There, the officers' reason for stopping Lewis was that he "almost" hit the back of their police cruiser when he activated his left turn signal and pulled into the street from a stopped position. 398 Md. at 355, 369. The Court rejected that explanation and concluded that "almost" hitting the police car constituted neither a traffic infraction nor illegal activity. *Id*. at 369. Similarly, here, had Mr. Branch "nearly struck" Nolte's patrol vehicle, that conduct would not have constituted a traffic infraction or any illegal activity and, thus, would not have supported a finding of reasonable suspicion for the traffic stop.

Furthermore, the traffic stop was not supported by probable cause that Mr. Branch committed a traffic infraction. Section 21-707(a) of the Transportation Article ("Transp.") is the vehicle law that governs compliance with stop signs.[6] Transp. § 21-707(a) provides:

> Unless otherwise directed by a police officer or traffic control signal, the driver of a vehicle approaching a stop sign at an intersection shall stop at the near side of the intersection at a clearly marked stop line.

[6] There are no traffic citations in the record; therefore, it is unclear which provision(s) of Md. Code Ann., Transp. § 21-707 Nolte sought to enforce. In addition, Nolte never testified as to whether there was a clearly marked stop line at the intersection. Nonetheless, the motions court's finding that Nolte pulled over Mr. Branch for "failing to stop at the stop sign that was *well over the marked stop line*" corresponds with the subsection (a). (T.106; App.2) (emphasis added).

"The primary purpose of the statute is to speed the growing volume of traffic." *Lilly v. State*, 212 Md. 436, 442 (1957).

Nolte testified that Mr. Branch "[p]assed the stop sign in the middle of the intersection," which suggests that Mr. Branch failed to stop at the stop sign at a clearly marked stop line. (T.33). But Nolte never testified as to whether there was a clearly marked stop line on Ashland Avenue at that intersection and State's Exhibit 1 did not capture a stop line. Nonetheless, the motions court found that Mr. Branch drove "well over the marked stop line at Ashland and Kenwood." (T.106; App.2). As discussed above, Nolte's testimony is at odds with what the video in State's Exhibit 1 shows. Considering the video evidence that shows Mr. Branch stop at the intersection and Nolte's testimony, there is no evidence demonstrating whether Mr. Branch's vehicle actually drove over a clearly marked stop line and, if so, how far. Therefore, the motions court's findings were clearly erroneous and there was no probable cause for the traffic stop.

Even if the evidence could be interpreted as demonstrating that Mr. Branch drove over a clearly marked stop line in violation of Transp. § 21-707(a), that conduct was far too trivial to justify the traffic stop. In *Rowe v. State*, 363 Md. 424 (2001), the Supreme Court of Marland concluded that a trivial violation of a traffic law was too insignificant to justify the traffic stop. There, an officer stopped Rowe for momentarily crossing over the edge line of the roadway, citing a violation of Transp. § 21-309. *Id*. at 433. The Court considered that the "purpose of the statute is to promote safety on laned roadways" and concluded that "much more egregious"

conduct than "a momentary crossing or touching of an edge or lane line" is required for a violation of Transp. § 21-309. *Id*. at 438-39, 441. Accordingly, the traffic stop was not justified. *Id*. at 441.

Here, the primary purpose of Transp. § 21-707 is to regulate the flow of traffic at intersections. *Lilly*, 212 Md. at 442. The evidence demonstrates that Mr. Branch stopped at the intersection, which fulfilled the purpose of the law. However, it remains unclear whether he drove over the stop line, as the court found and Nolte suggested. (T.33, T.106; App.2). But even if Mr. Branch actually drove over the stop line when he stopped at the intersection, that conduct hardly amounts to the conduct prohibited by Transp. § 21-707. State's Exhibit 1 demonstrates that Mr. Branch did not drive into the middle of the intersection and obstruct traffic. (State's Ex. 1 at 0:00-0:10). Nor does it show that he nearly struck Nolte's or any other vehicle. Therefore, as in *Rowe*, the traffic stop here could not be justified by such a trivial violation if there was a violation.

Since the traffic stop was unlawful, the evidence discovered as a result of the stop should have been suppressed. *State v. Funkhouser*, 140 Md. App. 696, 703 (2001).

C. There was a second stop and the officers lacked reasonable, articulable suspicion to justify it.

The motions court found that reasonable, articulable suspicion developed during the course of the traffic stop and that the processing of the traffic infraction and the *Terry* investigation for guns and drugs was appropriate. (T.108; App.4). The

court credited Nolte's claims that Mr. Branch and Mr. Wright were nervous and that Mr. Wright had "something in his waistband that [was] consistent to [sic] characteristics of an armed person." (*Id*.).

"[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop and attend to related safety concerns." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (citation omitted). "Authority for the seizure … ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Id*. "Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention." *Nathan*, 370 Md. at 661 (quoting *Ferris*, 355 Md. at 372). "Absent … independent justification, any further detention, even if very brief, violates the detainee's protections against unreasonable seizures." *Carter v. State*, 236 Md. App. 456, 469 (2018).

"The right to make a forcible stop does not justify a subsequent unreasonable detention." *Henderson*, 416 Md. at 144. The continued detention of the driver is constitutionally permissible "only if either (1) the driver consents to the continuing intrusion or (2) the officer has, at a minimum, a reasonable, articulable suspicion that criminal activity is afoot." *Ferris*, 355 Md. at 372 (citation omitted). Reasonable, articulable suspicion exists when an "officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot." *Washington v. State*, 482 Md. 395, 405 (2022) (quoting *Terry*, 392 U.S. at 30). Because "[w]arrantless searches and seizures are

presumptively *per se* unreasonable under the Fourth Amendment," "the State has the burden to demonstrate that an officer has reasonable articulable suspicion for a stop." *Id.* at 436.

Applying these principles to the circumstances of this case, it is clear that there was a second stop requiring independent justification. Nolte testified that he pulled over Mr. Branch for failing to stop at a stop sign. At the stop's inception, Nolte obtained all the information that he needed to address the traffic violation and fulfill the purpose of the stop. Mr. Branch had provided Nolte with his license, the vehicle's registration, and an inspection certificate that provided the VIN. (T.37, 50). But, instead of beginning the process of writing a ticket for the traffic infraction, Nolte called for a K-9 and placed the documents on the dashboard of his cruiser and never looked at them again until 11 minutes into the traffic stop. (T.38, 42, 61).

"[T]he purpose of the justifying traffic stop may not be conveniently or cynically forgotten and not taken up again until after an intervening narcotics investigation has been completed or has run a substantial course." *Charity*, 132 Md. App. at 614-15. But here, it is clear that the purpose of the traffic stop was conveniently or cynically forgotten when the officers began investigating Mr. Branch and Mr. Wright due to their "heightened nervousness." (T.44). Nolte and his partner returned to Mr. Branch's vehicle three times to "check [Mr. Branch] out a little bit" to "see how he's acting" and to observe the passenger, Mr. Wright. (T.16, 17-18, 22; State's Ex. 1 at 6:30-7:10 & pp.7-8). This had no relationship to the purpose of the traffic stop.

The officers also began a ruse of verifying the VIN two different ways by handwriting the number even though the official documents were available to them. (T.16, 19-20). This extended the stop well beyond the time that would have been required to issue Mr. Branch a warning or ticket using the information on the official documents that Mr. Branch provided.

Although Nolte testified that he ran the tags and that he only began to verify the VIN because the VIN did not match the tags, (T.80-81), the evidence demonstrates that the primary goal of the traffic stop was to search the vehicle. Recall that two minutes into the traffic stop, Banocy disclosed that they had requested a K-9 because they did not "have anything to get into the car with" at that point. (State's Ex. 1 at 3:30-3:46; & p.4). He also suggested that if they had "smelt something" (likely the odor of cannabis), they would not have bothered to call for the K-9. (T.49).

Banocy's admissions place the circumstances of this case squarely in line with those in *Whitehead v. State*, 116 Md. App. 497 (1997). In *Whitehead*, this Court concluded that the detention of Whitehead while the officer "attempted to search out suspicious behavior to confirm his suspicion that Whitehead or his passenger possessed drugs was constitutionally impermissible." 116 Md. App. at 506. The officer stopped Whitehead for speeding and began questioning Whitehead and the passenger to determine whether their stories about their whereabouts were consistent. *Id*. at 503. The officer then asked for consent to search the vehicle to judge Whitehead's reaction. *Id*. at 499. The officer testified that when he asked for

consent to search the vehicle, "Whitehead became nervous, began to stutter, and refused to sign the [consent] form." *Id*. At that point, a report came over the radio that Whithead's driving privileges were valid, he was not wanted on any outstanding warrants, and he was not driving a stolen car. *Id*. Nonetheless, the officer conducted a K-9 scan of the car. *Id*.

Based on these facts, this Court concluded that the officer had stopped Whitehead to look for violations of the State's drug laws. *Id*. at 501.

> [The officer], in stopping Whitehead, did not have, as his primary purpose, the detaining of a motorist to issue a warning or a citation, as the law enforcement officers may have had in *Snow* and *Munafo*. Instead, as the record shows, he candidly admitted he was observing the occupants to see if his hunch was correct that they may have been carrying illegal narcotics in the car. *He did not set about to issue a citation or warning but, instead, from the beginning, actively sought to determine whether, in his mind, there were sufficient circumstances and facts that would then allow him to proceed to search for narcotics, the primary law enforcement task for which he was using the traffic laws.* We observe from the record that part of his activity was to engage the two occupants of the automobile in conversation about the details of their journey to determine whether they were consistent.

Id. at 503 (emphasis added). In addition, the Court concluded that the officer's observations did not amount to reasonable suspicion of drug activity, even considering the nervousness and inconsistencies in their stories. *Id.* at 503-06.

Here, as in *Whitehead*, the record is clear that Nolte did not intend to issue a citation or warning to Mr. Branch but, instead, from the beginning, actively sought to determine whether there were sufficient circumstances and facts that would allow him and his partner to search the vehicle—the primary law enforcement task for

which he used the traffic law. Similar to the officer in *Whitehead,* Nolte and his partner engaged Mr. Branch and the passenger in questioning on three occasions.

When Nolte first approached the vehicle, he asked Mr. Branch whether there was "[a]nything illegal in the car," and observed that Mr. Branch's hands were shaking and he was nervous. (State's Ex. 1 at 1:54-2:00 & p.3; T.9). He also testified that Mr. Branch was "visibl[y] shaking, his chest was visible coming in and out of being able to be seen on the outside of his shirt as I was observing him." (T.9). On Nolte's second approach, he observed Mr. Wright and asked him whether there was anything illegal in the car. (State's Ex. 1 at 6:30-6:40 & p.7; T.17-18). Nolte had asked Banocy to check out Mr. Branch simultaneously. (State's Ex. 1 at 5:10-5:40 & p.6). Nolte then claimed that he observed nervousness, shaking, and heavy breathing from Mr. Wright as well. (T.18). Banocy then returned to the vehicle to observe Mr. Wright again. After observing Mr. Wright that time, Banocy told Nolte that he had made observations that made him believe Mr. Wright was armed. (T.22). The officers then ordered Mr. Wright out of the car for a pat down. (T.22-23, 64-65, 70).

"The nervousness, or lack of it, of the driver pulled over by a [police officer] is not sufficient to form the basis of police suspicion that the driver is engaged in the illegal transportation of drugs." *Whitehead,* 116 Md. App. at 505. The Supreme Court of Maryland has cautioned against "placing too much reliance upon a suspect's nervousness when analyzing a determination of reasonable suspicion" and reiterated that "a claim that ordinary nervousness indicates complicity in criminal

activity must be treated with caution."[7] *Nathan*, 370 Md. at 665 n.5 (quoting *Ferris*, 355 Md. at 389). There is simply nothing in the video evidence (State's Ex. 1) that shows objective evidence of a significantly increased level of nervousness to suggest a crime was being committed. And there are no concrete articulable facts here, but at most Nolte's subjective impression of "heightened nervousness." *See Ferris*, 355 Md. at 389 ("[T]he statement that an individual appeared unusually nervous is an extremely subjective evaluation."). Furthermore, "the record does not demonstrate that [Nolte] had any prior interaction with [Mr. Branch] and therefore he could not reasonably gauge [Mr. Branch]'s behavior during the traffic stop with his usual demeanor." *Ferris*, 355 Md. at 389.

In sum, Mr. Branch's license privileges were verified and the vehicle's tags had been verified at approximately four minutes into the traffic stop. (T.49, 65). At that point, the purpose of the traffic stop should have been completed. Nolte "was under a duty expeditiously to complete the process of either issuing a warning or a traffic citation for whatever traffic offenses that he had observed." *Whitehead*, 116 Md. App. at 503. But approximately 14 minutes elapsed while the officers

[7] It also should be noted that the test for determining whether there was an objective basis for an officer's suspicions, which gives deference to the officer's experience and training that allows them to "[draw] inferences and [make] deductions that might well elude an untrained person" is traced to *United States v. Cortez*, 449 U.S. 411, 418 (1981). *Cortez* predates the *Whren* decision. Thus, in the post-*Whren* era, giving such deference to police may be inappropriate because, in a pretextual stop, the officer is looking for evidence to support a preexisting suspicion, not engaging in a neutral evaluation of the facts. In other words, the claim of nervousness under these circumstances should be viewed with skepticism. This appears to be the premise in *Whitehead*.

continually observed Mr. Branch and Mr. Wright. Thus, as in *Whitehead*, the extended detention while Nolte and Banocy attempted to search out suspicious behavior to confirm their suspicion that Mr. Branch or his passenger possessed drugs or guns was constitutionally impermissible.

D. The search of the vehicle was unlawful.

The motions court seemingly concluded that the officers were authorized to search the vehicle as an incident to Mr. Branch's arrest and, even if Mr. Branch had not been arrested, the officers had probable cause or reasonable articulable suspicion to believe that there was evidence of crime or contraband in the vehicle. (T. 109; App.5). This finding is likewise flawed.

"Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." *Arizona v. Gant*, 556 U.S. 332, 351 (2009). "[F]or the exception to apply, there must first exist probable cause to arrest before conducting the search." *Rodriguez v. State*, 258 Md. App. 104, 119-20 (2023). "[T]wo scenarios will trigger the application of the search incident to arrest exception: where an arrestee is within reaching distance of the vehicle and where the police have reason to believe the vehicle contains evidence of the crime of arrest." *Id*. at 120. The arrest must be in conjunction with the search and be supported by probable cause. *Id*. In addition, the search must be supported by reasonable suspicion that the vehicle contains evidence

of a crime, it must be "limited to evidence of the offense for which the defendant is arrested," and it must be limited to the passenger compartment. *Id*.

Applying these principles to this case, it is clear that the search of the vehicle was unlawful. It is undisputed that Mr. Branch had been arrested for fleeing a traffic stop at the time that the officers searched the vehicle. (T.26). Mr. Branch's arrest for fleeing a traffic stop—a misdemeanor traffic offense—could not have triggered a search into the passenger compartment of the vehicle. But even if it could, it is difficult to fathom the type of evidence of the fleeing and eluding offense that could be discovered by searching a vehicle.

Furthermore, neither Mr. Branch nor Mr. Wright were within reaching distance of the vehicle at the time that it was searched. Nolte testified that Mr. Branch was "30 to 40 feet" away from the vehicle and Mr. Wright was far from the vehicle at that time. (T.75). Thus, the arrest was in conjunction with the vehicle search but both recent occupants of the vehicle were not within reaching distance of the vehicle at the time it was searched.

Besides citing Mr. Branch's and Mr. Wright's nervousness, Nolte did not testify to any particularized reasons or any belief that the vehicle contained evidence of a crime. Rather, Nolte and Banocy merely believed that Mr. Wright may have been armed after continually observing him. But their search of his person turned up nothing. (T.67). And prior to Mr. Branch's arrest, the officers had nothing more than a mere hunch that there may be evidence of a crime in the vehicle and, as in *Whitehead*, that hunch drove the events of the traffic stop. But an "unparticularized

suspicion or 'hunch'" fails to meet the requisite constitutional standard of reasonable suspicion. *Sellman v. State*, 449 Md. 526, 545 (2016). The search was unlawful.

E. Regardless of whether the traffic stop was unlawful under the Fourth Amendment, this Court should suppress the evidence as a violation of Article 26.

Mr. Branch invoked his Article 26 protections in his written motion to suppress. (R.47). At the suppression hearing, defense counsel argued that there was "bias at play" during the traffic stop, that this would not have happened to him (a white man in a suit), and that "the officers diverted their attention away from the traffic infraction and decided to call the drug dog because they had 'two black guys that are, in their words, nervous.'" (T.95, 98). He also reminded the court that the officers' continued investigation of Mr. Branch and Mr. Wright is "not[] what traffic stops are for" and that "this was an unreasonable set of events that [led] to multiple stops . . . , none of which are supported by probable cause." (T.93-94, 97).

As defense counsel argued below, the real problem with the traffic stop is that it and the events that followed happened. Nolte felt empowered to make the stop, regardless of whether Mr. Branch had actually committed the trivial traffic infraction that he relied on to justify the stop. *Whren* is often rightly cited as granting officers wide discretion to make traffic stops like the one in this case. Like Nolte and Banocy, police officers engage drivers in pretextual traffic stops daily; these are unwarranted intrusions and arbitrary invasions on the privacy and security of drivers. This grievous and oppressive policing practice has caused untold harms and

the continued endorsement of the practice in court opinions proliferates those harms. Accordingly, these principled reasons should counsel Maryland's departure from federal precedent on the issue of pretextual traffic stops.[8]

1. Article 26 protects citizens from "grievous and oppressive" government action whereas the Fourth Amendment is concerned with the "reasonableness" of government action.

Article 26 provides:

> That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.

Md. Const. Decl. of Rts. art. 26. "While Article 26 antedates the Fourth Amendment by a number of years, both grew out of the same historical background, having as a part of their common purpose to proscribe unrestricted searches and seizures by general warrant and thus to safeguard the privacy and security of individuals against unwarranted intrusions and arbitrary invasions by governmental officials." *Salmon v. State*, 2 Md. App. 513, 518 (1967). Although Maryland courts reflexively interpret Article 26 *in pari materia* with the Fourth Amendment, *e.g.*, *Washington*,

[8] This argument involves a recurring issue of public importance that should not rise and fall on whether this particular argument was raised below. Under Maryland Rule 8-131(a), this Court has the power to reach this argument, regardless of whether it was preserved exactly as it is raised herein.

482 Md. at 454-55, pretextual traffic stops warrant a departure from that traditional interpretation.

The United States Supreme Court has made clear that the "[t]he touchstone of [its] analysis under the Fourth Amendment is always 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'" *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09 (1977) (quoting *Terry*, 392 U.S. at 19). The *Whren* holding rests squarely on this principle. In *Whren*, the Court explained: "An automobile stop is . . . subject to the constitutional imperative that it not be 'unreasonable' under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." 517 U.S. at 810 (citing *Prouse*, 440 U.S. at 659; *Mimms*, 434 U.S. at 109). Therefore, the Court held that "[t]he temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws *does not violate the Fourth Amendment's prohibition against unreasonable seizures*, even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective." *Id*. at 806 (emphasis added).

This Court has observed that, "[i]n contrast to the Fourth Amendment, Article 26 does not expressly prohibit 'unreasonable searches and seizures.'" *Padilla v. State*, 180 Md. App. 210, 225 n.8 (2008). This suggests that an "unreasonable search and seizure" claim should be evaluated solely on federal constitutional grounds, not Maryland constitutional law. *See* Dan Friedman, *Tracing*

the Lineage: Textual and Conceptual Similarities in the Revolutionary-Era State Declarations of Rights of Virginia, Maryland, and Delaware, 33 Rutgers L.J. 929, 970 (2002) ("It is my view that in a case in which a defendant alleges an 'unreasonable search and seizure,' a Maryland court must evaluate the claim solely on federal constitutional grounds, because there are no state constitutional grounds for doing so."). This distinction is key. Whereas the Fourth Amendment's proscription against general warrants is concerned with reasonableness, Article 26 is concerned with grievous and oppressive government conduct.

Constitutional scholars suggest that the clause, which was adapted from the Virginia Declaration of Rights, "clearly established that general warrants were 'grievous and oppressive[.]'" *Laura K. Donohue*, The Original Fourth Amendment, 83 U. Chi. L. Rev. 1181, 1265-69, 1300 (2016). "A general warrant, broadly defined, is one which fails to sufficiently specify the place or person to be searched or the things to be seized, and is illegal since, in effect, it authorizes a random or blanket search in the discretion of the police[.]" *Frey v. State*, 3 Md. App. 38, 46 (1968). A general warrant is essentially what has been granted to police officers who single out drivers for investigation by arbitrarily enforcing vehicle laws and then exploiting the opportunity by finding another means to gain access to the vehicle (*i.e.*, using a K-9, asking for consent, generating reasonable, articulable suspicion, etc.).

To be sure, "[t]he Latin phrase '*in pari materia*,' or 'in the same matter,' simply means '[o]n the same subject' or 'relating to the same matter'" *Marshall v.*

State, 415 Md. 248, 259 n.4 (2010) (quoting Black's Law Dictionary (8th ed. 2004) at 807). With this in mind, the Fourth Amendment and Article 26 may share a common purpose but "each provision is independent, and a violation of one is not necessarily a violation of the other." *Andrews v. State*, 291 Md. 622, 626-27 (1981) (quoting *Attorney General v. Waldron*, 289 Md. 683, 714 (1981)). Thus, while government conduct may be *reasonable* under the Fourth Amendment, it may still be deemed *grievous and oppressive* under Article 26.

2. Due to their arbitrariness, pretextual traffic stops constitute grievous and oppressive government intrusions.

Whren was spawned by a policing practice that was established by the Drug Enforcement Administration in 1984 called "Operation Pipeline," which was later enlisted in the federal government's War on Drugs. The program was established as a highway drug interdiction program that focuses on private vehicles traveling on highways and interstates that are believed to be commonly used to transport drugs. *See DEA, History: 1980-1985* at 54, https://www.dea.gov/sites/default/files/2021-04/1980-1985_p_49-58.pdf. The program taught state and local officers how to use minor traffic infractions as a pretext to stop drivers, how to lengthen traffic stops and leverage them into searches for drugs, how to obtain consent to search, and how to use drug-sniffing dogs to generate probable cause. Michelle Alexander, The New Jim Crow: Mass Incarceration In the Age of Colorblindness 89-90 (2012) [hereinafter "Jim Crow"]. By 2000, the DEA had trained more than 25,000 officers in forty-eight states on those tactics. *Id.*

"The program's efficacy requires stopping "staggering" numbers of people, particularly [B]lacks and Hispanics, in shotgun fashion. A huge number of innocent people fitting the profile must be stopped and searched for every cache of drugs or money that is discovered." Ricardo J. Bascuas, *Fourth Amendment Lessons from the Highway and the Subway: A Principled Approach to Suspicionless Searches*, 38 Rutgers L.J. 719, 763 (2007) [hereinafter "Lessons from the Highway"]; *see also* Alexander, Jim Crow at 90 ("This 'volume' approach to drug enforcement sweeps up extraordinary numbers of innocent people. As one California Highway Patrol Officer said, 'It's sheer numbers.... You've got to kiss a lot of frogs before you find a prince.'"). In Charles Remsberg's book, *Tactics for Criminal Patrol: Vehicle Stops, Drug Discovery & Officer Survival*—a leading authority on policing—he recommends that officers "seek [] to maximize the number of citizen contacts in vehicle stops during each shift and, through specific investigative tactics, to explore the full arrest potential of each." Epp *et al.*, Pulled Over at 36. Another police training book suggests that certain drivers should be stopped, while others are ignored to increase the odds of discovering a crime. Steven Varnell, Criminal Interdiction 42 (2013).

Justice Jackson's observation seventy-five years ago is still true today due to *Whren's* enduring empact: "I am convinced that there are ... many unlawful searches of homes and automobiles of innocent people which turn up nothing incriminating, in which no arrest is made, about which courts do nothing, and about which we

never hear." *Brinegar v. United States*, 338 U.S. 160, 181 (1949) (Jackson, J., dissenting).

This policing tactic has been criticized as inherently arbitrary. *See, e.g.*, Tracey Maclin, *Race and the Fourth Amendment*, 51 Vand. L. Rev. 333, 362 (1998) ("Absent a race-neutral explanation, this evidence shows that police officers are targeting black and other minority motorists in an arbitrary and biased fashion . . . ."); Jonathan Witmer-Rich, *Arbitrary Law Enforcement Is Unreasonable: Whren's Failure to Hold Police Accountable for Traffic Enforcement Policies*, 66 Case W. Res. L. Rev. 1059, 1063 (2016) ("It represents a failure by the Court to hold police to the standards that police create themselves, resulting in a clear practice of arbitrary--and thus unreasonable--policing."); *see also Maryland v. Wilson*, 519 U.S. 408, 423 (1997) (Kennedy, J., dissenting) ("When *Whren* is coupled with today's holding, the Court puts tens of millions of passengers at risk of arbitrary control by the police. If the command to exit were to become commonplace, the Constitution would be diminished in a most public way."). As one scholar explained, this "is exactly what the Framers meant to prohibit: a federally-run general search program that targets people without cause for suspicion, particularly those who belong to disfavored groups." Bascuas, *Lessons from the Highway*, 38 Rutgers L.J. at 763.

3. Due to public attitudes toward pretextual traffic stops and the harms they cause, this Court should reject *Whren's* application to pretextual traffic stops.

Traffic stops are one of the most common ways that people interact with police officers. Erika Harrell & Elizabeth Davis, Bureau Of Just. Stat., Contacts Between Police and the Public 4, 6 (2020). In Maryland, Black drivers are stopped more often and are four times more likely to be subjected to a warrantless vehicle searches than drivers classified as white. *See* Dept. of Leg. Svcs., Racial Equity Impact Note, Senate Bill 396 (2024)[9]; *see also* Maryland Governor's Office of Crime Prevention and Policy, Race-Based Traffic Stop Data Dashboard, https://goccp.maryland.gov/data-dashboards/traffic-stop-data-dashboard/. This has a clear disproportionate impact on the Black people, mostly Black men, who are targeted as a result of the pretextual traffic stop policing strategy. This was a problem in Maryland prior to *Whren*. *See* ACLU, Driving While Black (Feb. 2, 2010), https://www.aclu.org/cases/driving-while-black-maryland.

It is no longer a secret that traffic stops turn violent and even fatal. The pretextual traffic stops that led to the deaths of Philando Castile (broken taillight), Sandra Bland (failure to use a turn signal), and Walter Scott (faulty brake light) taught us that. And Demonte Ward-Blake's brutal police encounter after being stopped for driving with expired tags in Prince Geroge's County brought the issue home. Courts should seek to minimize the risk cause by these traffic encounters.

Due to the harms caused by this policing practice, public attitudes lean toward curtailing their use. Courts in other jurisdictions have recognized the

[9] Available at https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2024RS-SB0396-REIN.pdf.

problem with pretextual traffic stops and have declared pretextual traffic stops unconstitutional. *See, e.g.*, *State v. Ladson*, 979 P.2d 833, 837-38, 842 (Wash. 1999); *State v. Ochoa*, 206 P.3d 143, 146, 153 (N.M. App. 2008); *State v. Gonzales*, 257 P.3d 894, 896, 898-99 (N.M. 2011); *People v. Dickson*, 690 N.Y.S.2d 390 (Sup. Ct. New York County 1998); *see also People v. Jones*, 210 A.D.3d 150 (2022) (holding that a defendant may seek suppression of evidence based on racial profiling during a traffic stop under the New York Constitution). At least five state's attorneys have implemented policies that decline to prosecute cases that involve evidence obtained during these traffic stops, several legislative bodies have passed laws to limit pretextual traffic stops, and at least 18 jurisdictions have limited pretextual traffic stops by police order. *See* Vera Institute of Justice, Sensible Traffic Ordinances for Public Safety (STOPS), "Progress across the country and Vera's role," https://www.vera.org/ending-mass-incarceration/criminalization-racial-disparities/public-safety/redefining-public-safety-initiative/sensible-traffic-ordinances-for-public-safety (last visited Apr. 19, 2024).

Furthermore, pretextual stops do not make us safer. In fact, studies show that they "turn up evidence of non-traffic crimes at abysmally low rates, and that they have no effect on crime rates." Max Carter-Oberstone, *America's Traffic Laws Give Police Way Too Much Power*, TIME (May 11, 2022), https://time.com/6175852/pretextual-traffic-stops/. And research demonstrates that, when police are permitted to engage in pretextual policing, drivers of color are stopped at higher rates than when they are not permitted to use pretexts to justify

traffic stops. *See generally* Stephen Rushin & Griffin Edwards, *An Empirical Assessment of Pretextual Stops and Racial Profiling*, 73 Stan. L.Rev. 637 (2021), https://review.law.stanford.edu/wp-content/uploads/sites/3/2021/03/Rushin-Edwards-73-Stan.-L.-Rev.-637.pdf.

Like the courts, prosecutors, police departments, and legislatures in other jurisdictions, this Court has the power to limit the use of pretextual traffic stops by holding that they are unconstitutional in Maryland. And to make the new law effective this Court must adopt an exclusionary rule for violations of Article 26 to deter police misconduct and abuse during pretextual traffic stops. As recognized by the Supreme Court of Maryland as "most persuasive," there is a "trend approaching unanimity among the states to recognize exclusionary rules." *Fitzgerald v. State*, 384 Md. 484, 507 (2004). This Court should do the same and exclude evidence that was obtained using this grievous and oppressive policing strategy.

CONCLUSION

For the foregoing reasons, Mr. Branch respectfully requests that this Court reverse the judgment of the court below.

Respectfully submitted,

Natasha M. Dartigue
Public Defender

Tia L. Holmes
Assistant Public Defender

Counsel for Appellant

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REQUEST FOR ORAL ARGUMENT

I request oral argument on behalf of the appellant.

/s/ Tia L. Holmes

_____

Tia L. Holmes

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 9,010 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ Tia L. Holmes

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Tia L. Holmes

PERTINENT AUTHORITY

United States Code Annotated
Constitution of the United States
Annotated
Amendment IV. Searches and Seizures; Warrants

U.S.C.A. Const. Amend. IV-Search and Seizure; Warrants

Amendment IV. Searches and Seizures; Warrants

Currentness

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.

<Historical notes and references are included in the full text document for this amendment.>

<For Notes of Decisions, see separate documents for this amendment.>

U.S.C.A. Const. Amend. IV-Search and Seizure; Warrants, USCA CONST Amend. IV-Search and Seizure; Warrants
Current through P.L. 118-41. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated Code of Maryland
Constitution of Maryland Adopted by Convention of 1867
Declaration of Rights

MD Constitution, Declaration of Rights, Art. 26

Article 26. Warrants for search and seizure

Currentness

That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.

MD Constitution, Declaration of Rights, Art. 26, MD CONST DECL OF RIGHTS, Art. 26
Current through legislation effective through April 9, 2023, from the 2024 Regular Session of the General Assembly. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated Code of Maryland
Transportation
Title 21. Vehicle Laws--Rules of the Road (Refs & Annos)
Subtitle 7. Special Stops Required (Refs & Annos)

MD Code, Transportation, § 21-707

§ 21-707. Stopping required at stop signs and at yield signs for safety purposes

Currentness

Stop signs with clearly marked stop lines

(a) Unless otherwise directed by a police officer or traffic control signal, the driver of a vehicle approaching a stop sign at an intersection shall stop at the near side of the intersection at a clearly marked stop line.

Stop signs without clearly marked stop lines

(b) Unless otherwise directed by a police officer or traffic control signal, the driver of a vehicle approaching a stop sign at an intersection shall stop at the near side of the intersection and, if there is no clearly marked stop line, before entering any crosswalk.

Stop signs without crosswalks

(c) Unless otherwise directed by a police officer or traffic control signal, the driver of a vehicle approaching a stop sign at an intersection shall stop at the near side of an intersection and, if there is no crosswalk, at the nearest point before entering the intersection that gives the driver a view of traffic approaching on the intersecting roadway.

Yield signs with clearly marked stop lines

(d) The driver of a vehicle approaching a yield sign at an intersection, if required for safety to stop, shall stop at the near side of the intersection at a clearly marked stop line.

Yield signs without clearly marked stop lines

(e) The driver of a vehicle approaching a yield sign at an intersection, if required for safety to stop, shall stop at the near side of the intersection and, if there is no clearly marked stop line, before entering any crosswalk.

Yield signs without crosswalks

(f) The driver of a vehicle approaching a yield sign at an intersection, if required for safety to stop, shall stop at the near side of the intersection and, if there is no crosswalk, at the nearest point before entering the intersection that gives the driver a view of traffic approaching on the intersecting roadway.

Credits

Added by Acts 1977, c. 14, § 2, eff. July 1, 1977. Amended by Acts 1986, c. 472, § 1.

Formerly Art. 66 ½, § 11-705.2.

MD Code, Transportation, § 21-707, MD TRANS § 21-707

Current through legislation effective through April 9, 2023, from the 2024 Regular Session of the General Assembly. Some statute sections may be more current, see credits for details.

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APPENDIX

(Ruling on Motion to Suppress)

THE COURT: In this motion to suppress the only witness was Officer Nevin Nolte, who has been a police officer since, I believe, 2021, and when you first join the force after basic training he was assigned to southwestern patrol from October 2021 to January 2022, then to southeastern patrol from January 2022 to December 2022; and when you're assigned to patrol, you answer calls for service, traffic stops, business checks. However, he then transferred to the Eastside Initiative in December 2022. And part of his duties for that is, he's assigned to high crime areas or areas where an uptick in crime to conduct traffic stops, business checks, but not specifically for answering calls for service.

So on January 10th, 2023, around 5:45 p.m. Officer Nolte along with Officer Banocy were in uniform patrol assigned to Eastside Initiative in the 900 block North Kenwood Avenue, which is one of the uptick in crime areas. He was sitting at a stop sign at Kenwood and Ashland Avenue- He was about, facing and going southbound when he observes the a gray Chrysler van driving eastbound and you can clearly see. You can see at the bottom of his windshield the gray Chrysler van in the middle to the right of the intersection. And so,

Officer Nolte said, "If he had proceeded through that intersection, yes, he probably would've been broadsided because" and he said the reason why he lifted his hand like this it was to indicate to the other driver "What the heck? You're going into the intersection." So you can hear him and he testified that he felt like he was almost hit by the defendant's car. So, he pulled the car over for failing to stop at the stop sign that was well over the marked stop line at Ashland and Kenwood in the 800 block of North Kenwood Avenue, and, therefore, the officer activated his lights and siren on his marked patrol car to initiate a traffic stop. So, this court does find that there was reasonable articulable suspicion to justify the traffic stop.

Then Officer Nolte testified that he approached the driver's side. He observed Mr. Branch who was the driver of the vehicle and asked him for his ID, license, and registration, which the- Mr. Branch did produce; however, in Officer Nolte's observations, he said that Mr. Branch looked extremely nervous, he was shaking and he was breathing heavily through his chest. Officer Nolte also, along with Officer Banocy, observed that the co-defendant, Mr. Wright, the passenger, the front passenger, was also breathing heavy, nervous, and shaking. The officer, Officer Banocy is the one wrote

down the VIN number and Officer Nolte went back to the car, and he asked for K-9 because of the extreme heightened nervousness in his estimation of the driver and the passenger. And you can hear that they're saying that the K-9 is occupied in northwest and he said, he said it would take too long.

So then as Officer Nolte is trying run this information, he says he testified that there was no record of the tag and he did verify with Officer Banocy's written note that the windshield and the front door, and I think only today on your cross examination, Mr. Smith, when in on your cross examination you were saying, "You are missing the numb. You're missing the number 1." And then when we heard this VIN number repeated probably for three or four times, you got Mr. Officer Nolte to acknowledge it wasn't the 1, it was the C. So that VIN number was 2-C-4-R-C-1-B-G-7-M-R-5-2-8-6-4-5, I believe. Officer Nolte, I believe, today for the first time realized he did miss one digit, and it did not appear that it was feigned on the body cam. It looked like he legitimately believed he put the full information in and that he did legitimately believed that the car was not registered through KGA and then through NCIC, and he said that the tag did not match the VIN. I don't believe- I do agree I don't believe it was

in bad faith. He just missed the number. According to Officer Nolte, when a car is unregistered that vehicle will be towed. So on his estimation all along because of the error that car was going to be towed ultimately.

So, if a reasonable articulable suspicion develops in the course of a valid traffic stop, the processing of the traffic infraction and the Terry investigation for guns or drugs may proceed on simultaneously parallel tracks. So as Officer Nolte is trying to get this information about the VIN, and it coming back not registered but he's at the marked patrol car; Officer Banocy observes the front passenger, Mr. Wright, was something in his waistband that is consistent to characteristics of an armed person. Officer Banocy walks back to Officer Nolte and lets him know he thinks maybe that first, front passenger is possibly armed. So, then, they approach. They ask Mr. Wright to step out and at that time, yes, there's no bulge anymore. So, the bulge then possibly could be in the vehicle. I'm not sure, but that- they do a pat down because in their estimation- I'm sorry, before that. Mr. Officer Nolte had approached Mr. Wright and asked if there was anything illegal in the car. Mr. Wright again looked nervous. He says "No" but he looks down to, I guess, his feet area. Then Officer Nolte asks again if there's any drugs or guns in

the car and Mr. Wright again looks down at the same area and looks nervous, but says nothing like that. And then that's when they ask Mr. Wright to step out after Officer Banocy's observation of Mr. Wright's waistband area having a bulge, and they ask him to step put and they do a Terry pat down with negative results. They ask Mr. Wright just to step aside for officer's safety and that's when Mr. Wright just runs. He's ultimately apprehended and then the officers ask Mr. Branch to step out and exit the vehicle. And Mr. Branch then flees and is ultimately arrested about half a block away. Officer Nolte says that Mr. Branch and Mr. Wright are both arrested. Mr. Branch is arrested for fleeing a car stop and abandoning the car because this whole time the car's still running at the time both defendant's flee.

Under search incident to arrest, under the driver's seat is a loaded gun and there are narcotics and under the passenger's seat there's also another gun. Based on-the totality of the circumstances and under Johnson versus State, 254 Md. App. 359 2022 case, even if there wasn't an arrest, if there is probable cause to believe certain that certain evidence of crime or a certain type of contraband is somewhere in the vehicle, the police can search anywhere in the vehicle that such evidence of crime or such contraband must be found, including a

locked trunk.

So, even if the defendant was not arrested, based on the totality of the circumstances, Officer Nolte, in terms of his observations and interactions, believe that there was reasonable articulate suspicion that that vehicle had evidence of contraband or some evidence of a crime, and police can conduct warrantless searches of a lawfully stopped vehicle when there is probable cause to believe that vehicle does possess some sort of contraband and evidence of crime and even under all the totality of the circumstances I don't find the officer's testimony in bad faith or unreasonable and I don't believe this stop was overly prolonged. And in his estimation, even though, it was his error; he was ultimately going to tow the car that evening. So based on all- the totality of the circumstances I am going to deny your motion to suppress the evidence at this time.

So, do you have a trial date already?

MS. ADEKANYE: No, I believe, we would have go to reception court if that's still going on. Do you know? Is it on?

THE COURT: Okay, so I'll send you part 46 today.

MS. ADEKANYE: Yeah, it's still open.

THE COURT: Okay. It's still open? So, we'll

send you over to Judge Phinn this morning. Okay?

MS. ADEKANYE: Yes, Your Honor.

THE COURT: Thank you for your arguments and you had a very good cross, Mr. Smith, especially pointing out that error.

MS. ADEKANYE: I didn't even catch it.

THE COURT: I don't think anybody caught it.

MR. SMITH: Judge, just so the Court's- so that I'm clear, I mean, there's been no testimony about, and I want the record to reflect this, there's been no testimony about an inventory search in this case.

THE COURT: I know.

MR. SMITH: Okay. I just want that clear for the record cause that was not the State's position.

THE COURT: Right, I was just citing that case that you can look into.

MR. SMITH: I know. I just want it that that's not the State's position. It's an inventory search exception.

THE COURT: Right, right, this was only I believe a search under those seats. Alright thank you.

MS. ADEKANYE: Thank you.

THE CLERK: All rise.

(At 12:01:28 p.m. proceedings conclude.)

ROLAND BRANCH, Appellant v. STATE OF MARYLAND, Appellee	IN THE APPELLATE COURT OF MARYLAND September Term, 2023 No. 1795

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of April, 2024, a copy of the Appellant's Brief and Appendix in the captioned case was delivered via the MDEC system to:

Office of the Attorney General
Criminal Appeals Division
200 Saint Paul Place, 17th Floor
Baltimore, MD 21201

/s/ Tia L. Holmes

_____

Tia L. Holmes