No.

IN THE

Supreme Court of the United States

KWUAN MONTRELL BAKER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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June 26, 2024

APPENDIX

TABLE OF APPENDICES

1-A

[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 22-13937

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KWUAN MONTRELL BAKER,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 2:22-cr-14012-AMC-1

Before BRASHER, ABUDU, and MARCUS, Circuit Judges.

PER CURIAM:

Kwuan Montrell Baker appeals his convictions for possession with intent to distribute fentanyl and possession of a firearm in furtherance of a drug trafficking crime, challenging the district court's denial of his motion to suppress evidence obtained following a traffic stop of a vehicle in which he was a passenger. After thorough review, we affirm.

We review the denial of a motion to suppress evidence under a mixed standard, reviewing the court's factfinding for clear error and its application of the law to those facts *de novo*. *United States v. Lewis*, 674 F.3d 1298, 1302–03 (11th Cir. 2012). We grant substantial deference to the credibility determinations of the district court, construing all facts in the light most favorable to the prevailing party. *Id.* at 1303. We must accept the version of events adopted by the district court "unless it is contrary to the laws of nature[] or is so inconsistent or improbable on its face that no reasonable factfinder could accept it." *United States v. Ramirez-Chilel*, 289 F.3d 744, 749 (11th Cir. 2002) (quotations omitted).

The Fourth Amendment protects against unreasonable searches and seizures. U.S. Const. Amend. IV. Under the exclusionary rule, evidence cannot be used against a defendant in a criminal trial where that evidence was obtained via an encounter with police that violated the Fourth Amendment. *United States v. Perkins*, 348 F.3d 965, 969 (11th Cir. 2003). A traffic stop is a seizure

within the meaning of the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809–10 (1996). The Supreme Court previously set forth a probable cause standard for determining whether a traffic stop based on a traffic violation is valid. *Id.* at 810. However, it has since made clear that an officer needs only reasonable suspicion, not probable cause, to justify an automobile stop that is based on a traffic violation. *Heien v. North Carolina*, 574 U.S. 54, 57, 60 (2014); *see also United States v. Campbell*, 26 F.4th 860, 880 n.15 (11th Cir. 2022) (*en banc*) (stating that "the Supreme Court has . . . made clear that reasonable suspicion is all that is required" to justify a traffic stop based on a traffic violation (citing *Heien*, 574 U.S. at 60)).

The reasonableness of a seizure, including a traffic stop, "depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law [enforcement] officers." *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975). "[R]easonable suspicion, like probable cause, is not readily, or even usefully, reduced to a neat set of legal rules." *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (quotations omitted). Reasonable suspicion is "considerably less than proof of wrongdoing by a preponderance of the evidence" and less than probable cause, which is "a fair probability that contraband or evidence of a crime will be found." *Id.* (quotations omitted). When deciding if reasonable suspicion exists, we must review the "totality of the circumstances" to ascertain whether an officer had a "particularized and objective basis for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quotations omitted). In so doing, we must give due weight to an officer's experience. *United*

States v. Briggman, 931 F.2d 705, 709 (11th Cir. 1991). None of the suspect's actions, however, need be criminal on their face to provide a trained officer with reasonable suspicion. *United States v. Lee*, 68 F.3d 1267, 1271 (11th Cir. 1995).

An arresting officer's state of mind, except for the facts he knows, is irrelevant to the existence of probable cause. *Devenpeck v. Alford*, 543 U.S. 146, 153 (2004). An officer's "subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause." *Id.* "A traffic stop based on an officer's incorrect but reasonable assessment of facts does not violate the Fourth Amendment." *United States v. Chanthasouxat*, 342 F.3d 1271, 1276 (11th Cir. 2003). Officers may rely on "common sense conclusions" in assessing the facts. *United States v. Cortez*, 449 U.S. 411, 418 (1981). Reasonable suspicion is determined from the collective knowledge of all officers involved in the stop. *United States v. Tapia*, 912 F.2d 1367, 1370 (11th Cir. 1990).

A pretextual stop occurs when an officer, hoping to find evidence of a greater offense, pursues a lesser offense that he normally would not. *United States v. Smith*, 799 F.2d 704, 710 (11th Cir. 1986). However, in *Whren*, the Supreme Court held that an officer's subjective motivations have no bearing on whether a traffic stop is reasonable under the Fourth Amendment. 517 U.S. at 813. So, in *United States v. Holloman*, we held that, because the officers had probable cause to believe a traffic violation occurred in connection with a traffic stop, they did not violate the Fourth Amendment, "notwithstanding their subjective desire to intercept any

narcotics being transported." 113 F.3d 192, 194 (11th Cir. 1997). In other words, while the Fourth Amendment requires courts to "weigh the governmental and individual interests implicated in a traffic stop," the "result of that balancing is not in doubt where the search or seizure is based upon probable cause." *Whren*, 517 U.S. at 816–17. Thus, a detailed "balancing" analysis -- that weighs the governmental and individual interests implicated in a traffic stop -- is necessary only in "rare" situations that "involve[] seizures without probable cause" or "searches or seizures conducted in an extraordinary manner, unusually harmful to an individual's privacy or even physical interests." *Id.* at 817–18.

Under Florida law, a person is guilty of driving under the influence if he is driving or in actual physical control over a vehicle and is affected by a substance to the extent that his normal faculties are impaired. Fla. Stat. § 316.193 (2021). In addition, Florida law prohibits driving with side windows tinted beyond certain limits; *i.e.*, "[a] sunscreening material is authorized for such windows if, when applied to and tested on the glass of such windows on the specific motor vehicle, the material has a total solar reflectance of visible light of not more than 25 percent as measured on the nonfilm side and a light transmittance of at least 28 percent in the visible light range." Fla. Stat. § 316.2953 (2021). A suspected violation of Florida's window-tint law "provides a valid basis for a traffic stop." *United States v. Pierre*, 825 F.3d 1183, 1192 (11th Cir. 2016).

Florida law also makes it "unlawful for the operator of any vehicle, having knowledge that he or she has been ordered to stop

such vehicle by a duly authorized law enforcement officer, willfully to refuse or fail to stop the vehicle in compliance with such [an] order." Fla. Stat. § 316.1935(1) (2021). Florida caselaw interpreting this provision has found that a high-speed chase or other drawn-out form of fleeing is not required to trigger the attempted eluding provision of Fla. Stat. § 316.1935(1). *Steil v. State*, 974 So. 2d 589, 589–90 (Fla. 4th Dist. Ct. App. 2008). Moreover, because it is suggestive of wrongdoing, unprovoked flight may serve as the basis for a reasonable suspicion that the person fleeing is involved in criminal activity. *Illinois v. Wardlow*, 528 U.S. 119, 124–25 (2000).

Here, Baker moved to suppress evidence of a firearm, ammunition, and drugs that were obtained by law enforcement during a traffic stop of Jordan Kane's vehicle, in which Baker was a passenger. This evidence was used to charge Baker with possession with intent to distribute fentanyl and possession of a firearm in furtherance of a drug trafficking crime. In arguing that the evidence obtained during the traffic stop should have been suppressed, Baker claims that no alleged traffic violation occurred, that law enforcement otherwise lacked probable cause to stop Kane's vehicle, and that the stop was pretextual. Thus, Baker urges us to review the reasonableness of the traffic stop based on the circumstances that surrounded it, including the officers' subjective motivations for the stop. However, as we've explained, an arresting officer's state of mind, except for the facts that he knows, is irrelevant to the existence of probable cause, and an officer's "subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause." *Devenpeck*, 543 U.S. at 153.

In other words, so long as officers had a reasonable suspicion of a traffic violation by Kane, it is irrelevant whether the stop was pretextual or that officers did not arrest Kane based on any or all these grounds. *Id.*; *Holloman*, 113 F.3d at 194; *see also Campbell*, 26 F.4th at 880 n.15.

The district court found that the officers had reasonable suspicion to stop Kane based on three grounds: (1) driving under the influence, (2) an illegal window tint, and (3) attempting to flee from officers. As we'll explain, Deputy Evan Ridle and the other deputies of the St. Lucie County Sheriff's Office ("SLCSO") had more than enough reasonable suspicion to stop Kane based on the first ground -- driving under the influence -- so we'll address that issue in detail, and need not address the others.

As the record reflects, at the time of the traffic stop, Deputy Ridle had knowledge of Kane from previous arrests for drug cases in St. Lucie County, some of which he had personally performed, and Ridle knew that Kane had recently failed a drug test, failed to show up for a drug test on the day prior to the traffic stop, and had a roommate believed to be selling narcotics. As for Deputy Tomaszewski, he initially saw Kane stop that day at a smoke shop that was known to sell detox-related products to help pass drug tests. After Kane finished an appointment at the courthouse, Tomaszewski observed Kane's head lean out the side of his vehicle and saw "the vomit coming down and splattering on the asphalt there" and reported this over radio to other deputies. Kane then left the parking lot and drove toward an area known for "gun

violence, drug sales, prostitution, and gang members" where he stopped at a residence and remained in the driveway for five minutes. After Kane departed from the residence, Deputy Ridle saw Kane drifting over the center line and failing to maintain his lane. Ridle said that he believed that Kane's failure to maintain his single lane was because the narcotics that Kane had consumed were taking effect.[1]

Taking into account the collective knowledge the SLCSO officers involved in the stop and their "commonsense conclusions," law enforcement had a sufficient "particularized and objective basis" for suspecting legal wrongdoing by Kane -- that is, they reasonably could have concluded from Kane's activities shortly before the traffic stop that he was intoxicated by narcotics while driving and was therefore in violation of Fla. Stat. § 316.193. *Cortez*, 449 U.S. at 418; *Arvizu*, 534 U.S. at 273; *Tapia*, 912 F.2d at 1370. Moreover, nothing in the record suggests that this case amounted to a "rare" situation involving a "seizure[] without probable cause" or a "search[] or seizure[] conducted in an extraordinary manner, unusually harmful to an individual's privacy or even physical interests." *Whren*, 517 U.S. at 817–18. Rather, as we've explained, the officers

[1] In considering Baker's claim, we must give due weight to Ridle's experience with users of narcotics as an SLCSO Deputy for approximately five years and a member of the Special Investigations Section, Narcotics, Vice Division. *Briggman*, 931 F.2d at 709. We add that the district court found Ridle's testimony credible, and we must accept this version of the events because his testimony was not "improbable on its face" and the government prevailed in the district court. *Ramirez-Chilel*, 289 F.3d at 749; *Lewis*, 674 F.3d at 1302–03.

had reasonable suspicion to stop Kane based upon driving under the influence, which means that this case "is governed by the usual rule that probable cause to believe the law has been broken 'outbalances' private interest in avoiding police contact." *Id*. at 818. Accordingly, the initiation of the traffic stop of Kane's vehicle -- which led to the seizure of the evidence that was used against Baker -- did not violate the Fourth Amendment, and we affirm the district court's denial of Baker's motion to suppress.

AFFIRMED.

1-B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

CASE NO. 22-14012-CR-CANNON

UNITED STATES OF AMERICA,

Plaintiff,

v.

KWUAN MONTRELL BAKER,

Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS [ECF No. 20]

THIS CAUSE comes before the Court upon Defendant's Motion to Suppress Unlawfully Obtained Evidence and Request for Evidentiary Hearing [ECF No. 20], filed on April 25, 2022. The Government opposes the Motion [ECF No. 22]. The Court has reviewed the Motion and the Government's Response. The Court also held an evidentiary hearing on the Motion on May 20, 2022 [ECF No. 27], after which the Court ordered supplemental briefing on the validity of the subject traffic stop [ECF No. 27]. The parties then filed supplemental briefs [ECF Nos. 33–34], which the Court has reviewed, along with the full evidentiary record pertinent to the Motion. Following review, Defendant's Motion [ECF No. 20] is **DENIED**.

PARTIES' ARGUMENTS AND SUMMARY OF RULING

Defendant is charged in a three-count indictment with possession of a firearm and ammunition by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) (Count 1); possession with intent to distribute a detectable amount of fentanyl, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C) (Count 2); and possession of a firearm in furtherance of the drug trafficking crime alleged in Count 2, in violation of 18 U.S.C. § 924(c)(1)(A)(i) (Count 3) [ECF No. 1].

In the Motion to Suppress, Defendant seeks to suppress "any and all evidence illegally seized, both physical and testimonial, and the fruits thereof, following a traffic stop conducted in violation of the Fourth Amendment on April 6, 2021" [ECF No. 20 p. 1]. The physical evidence includes (1) a .22 caliber pistol and ammunition as charged in Count 1 (found on the left side waistband of Defendant's pants following the traffic stop) and (2) approximately 1.9 grams of fentanyl and $1,314 in cash, also found on Defendant's person following a patdown [ECF No. 20 p. 2]. In support of the Motion, and as argued in a Supplemental Brief [ECF No. 34], Defendant contends that the traffic stop of the vehicle in which he was a passenger violated the Fourth Amendment because it was not supported by reasonable suspicion or probable cause of any traffic violation or criminal activity [ECF Nos. 20, 34]. More specifically, Defendant argues that the officers lacked an objective basis for the stop because the reason given for the stop during the pretrial detention hearing and in the Government's initial opposition to the Motion—that the driver of the vehicle (an uncharged individual by the name of Kane) violated Fla. Stat. § 316.089(1) by failing to maintain a single lane—lacks evidentiary support in light of Florida case law applying that statute [ECF No. 20 pp. 4–5; ECF No. 34 pp. 9–13; ECF No. 39 p. 79].

During the hearing, and in its Supplemental Brief, the government preserves its initial view that probable cause existed to support the stop based on the driver's failure to maintain a single lane, *see* Fla. Stat. § 316.089(1) [ECF No. 33 p. 1 n.1 (incorporating arguments raised in ECF No. 22)]. But the government offers various additional reasons to deny the Motion rooted in the evidence presented during the suppression hearing [ECF No. 33; *see* ECF No. 30 pp. 80–81, 84–85]. As the government urges, (1) law enforcement had reasonable suspicion to stop the driver (Kane) for driving under the influence, in violation of Fla. Stat. § 316.193(1)(a); (2) law enforcement had probable cause to stop the driver for violating Florida's window tint law, *see* Fla.

Stat. § 316.2953; (3) law enforcement had probable cause to stop the driver for texting while driving, in violation of Fla. Stat. § 316.305(3)(a); and (4) even if law enforcement ultimately lacked a lawful basis to stop the car, any such failure amounts at most to a reasonable mistake not warranting the exclusionary rule, which is generally reserved for deliberate, reckless, or grossly negligent disregard for the Fourth Amendment, *see Davis v. United States*, 564 U.S. 229, 238 (2011) [ECF No. 33; ECF No. 30 p. 85]. The government also contends that Defendant was not seized within the meaning of the Fourth Amendment until the driver of the car tried to speed away from police cars in an attempt to flee, at which point law enforcement had reasonable suspicion to detain the vehicle for attempted fleeing or eluding a law enforcement officer, in violation of Fla. Stat. § 316.1935(1) [ECF No. 33 pp. 13–14; ECF No. 30 pp. 84–85].

Upon a full review of the evidentiary record and the cited authorities, the Court concludes that suppression is not warranted. The Court accepts and agrees with Defendant that the evidence does not support a traffic stop based on a violation of Fla. Stat. § 316.089(1). But that is not the end of the inquiry under the Fourth Amendment. An officer's subjective reason for making a stop need not be the criminal activity for which the objective facts furnish reasonable suspicion or probable cause. *See Devenpeck v. Alford*, 543 U.S. 146, 153 (2004) ("'[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.'" (quoting *Whren v. United States*, 517 U.S. 806, 813 (1996)); *Lee v. Ferraro*, 284 F.3d 1188, 1196 (11th Cir. 2002) ("'[W]hen an officer makes an arrest, which is properly supported by probable cause to arrest for a certain offense, neither his subjective reliance on an offense for which no probable cause exists nor his verbal announcement of the wrong offense vitiates the arrest.'" (citing *United States v. Saunders*, 476

F.2d 5, 7 (5th Cir. 1973)); *see also United States v. Lopez-Moreno*, 420 F.3d 420, 431–32 (5th Cir. 2005) (citing *Whren*, *Devenpeck*, *Scott v. United States*, 436 U.S. 128, 138 (1978), and *Goodwin v. Johnson*, 132 F.3d 162, 173 (1997), and rejecting argument that traffic violation could not support reasonable suspicion for stop because it was "post hoc rationalization"); *see also* 1 Wayne R. Lafave, Search & Seizure § 1.4(d) pp. 169–74 (6th ed. 2020). In this case, based on the credible testimony of Deputy Evan Ridle and the supporting exhibits, and regardless of the initial subjective reason for conducting the stop, officers had reasonable suspicion to stop the driver of the vehicle for driving under the influence and for attempted fleeing and eluding, and to a lesser extent (although sufficiently present), illegal tints.[1] Alternatively, the Court agrees with the government as to the officers' good faith; the evidence shows that law enforcement acted with an objectively reasonable, good-faith belief that their conduct in stopping the car was lawful, rendering inapplicable the sanction of exclusion.

FACTUAL FINDINGS

St. Lucie County Sheriff's Office (SLCSO) Deputy Evan Ridle testified as the sole witness during the evidentiary hearing [ECF No. 30 (transcript)]. The Court found Deputy Ridle's testimony to be credible. The government also introduced three exhibits into evidence [ECF No. 28 (GX1 through GX3)]: an audio recording of the police radio traffic from the April 6, 2021 traffic stop [ECF No. 28-1 (GX1); ECF No. 30 pp. 19–20], a video recording from Defendant's cell phone taken during the stop [ECF No. 28-2 (GX2); ECF No. 30 p. 40], and a sample photograph of the intersection of Okeechobee Road and South 25th Street in Fort Pierce, Florida [ECF No. 28-3 (GX3); ECF No. 30 pp. 67–68]. The following represents the Court's

[1] The Court does not reach the Government's separate argument with respect to Deputy Ridle's assumption that Kane was texting while driving, in violation of Fla. Stat. § 316.305(3)(a) [ECF No. 33 p. 13; ECF No. 30 p. 56].

factual findings based on the evidence presented.

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1. On April 6, 2021, Deputy Ridle and various other members of SIS were conducting surveillance on an individual named Jordan Kane.
2. As of that day, Deputy Ridle had worked for the SLCSO for approximately four years, the last year and a half as a member of the Special Investigations Section (SIS) [ECF No. 30 p. 29; *see* ECF No. 30 p. 5]. The SIS investigates narcotics and other "vice"-related crimes and has approximately eight total members [ECF No. 30 p. 5].
3. Kane was driving a Silver Chevy Silverado pick-up truck with a passenger later determined, upon execution of the traffic stop, to be Defendant [ECF No. 30 pp. 6, 33].
4. Deputy Ridle and other members of the SIS Division (including Deputies Tomaszewski and Osteen) previously had arrested Kane for drug-related offenses in St. Lucie County; specifically, on January 20, 2021, when Kane was arrested for possession of narcotics and narcotics paraphernalia in his vehicle; then on January 22, 2021, during which Kane attempted to flee in his vehicle from law enforcement but was "boxed in"; and then on February 2, 2021, during which law enforcement arrested Kane pursuant to an arrest warrant and found drugs and drug paraphernalia in his car [ECF No. 30 pp. 7–14, 62–63].
5. On both the January 20 and 22, 2021 arrests, Deputy Ridle personally observed Kane to be under the influence of narcotics [ECF No. 30 p. 17].
6. As a result of Kane's drug-related arrests, and as reported by Kane's probation/pre-trial services officer, Kane was required to get drug tested [ECF No. 30 p. 15]. Kane's probation officer relayed to SLCSO officers (including Deputies Ridle and Tomaszewski) that Kane had been scheduled to take a drug test on April 5, 2021, but had failed to show

up for the test, and that she believed someone with whom Kane was living was selling narcotics [ECF No. 30 pp. 15–16].

7. On April 6, 2021, the day of the traffic stop, around 4:00 or 4:30 p.m., Deputy Tomaszewski alerted Deputy Ridle and other members of the SIS that he had begun surveillance on Kane's vehicle [ECF No. 30 p. 17]. Approximately five members of SIS joined in the surveillance (including Deputies Tomaszewski, Osteen, and Ridle, and Detective Mondragon), all driving unmarked vehicles and attempting to set up a perimeter from various angles to see where Kane was going and what he was doing [ECF No. 30 pp. 18, 23, 27; ECF No. 28-1 (police radio transmissions roughly 45 minutes in actual duration as explained)].
8. Kane was on the radar of SLCSO as a result of his various drug-related arrests and pattern of possessing narcotics in his car [ECF No. 30 p. 17 ("[K]nowing that Jordan Kane frequently uses narcotics, knowing that he had recently failed a drug test, we believed that he would be either going to pick up narcotics or doing—doing—every time we have dealt with him, he has had narcotics in his vehicle, so he is somebody that is on our radar.")].
9. Kane's first stop as reported during the surveillance was a "smoke shop," described by Deputy Ridle as a place that sells tobacco products and also detox-related products to help pass drug tests [ECF No. 30 pp. 21–22]. Kane remained in the smoke shop for about five minutes [ECF No. 30 p. 22].
10. After the smoke shop, Kane drove and parked his car in a parking lot near the state courthouse, inside of which is a state drug-testing facility [ECF No. 30 pp. 23–25]. Kane's probation officer had reported to SIS deputies that Kane was required to report for a drug test no later than April 6, 2021 (that day), or else have his probation revoked [ECF No. 30

pp. 24–25]. Kane remained in the courthouse for a few minutes, after which deputies saw Kane exit the courthouse and re-enter his vehicle [ECF No. 30 pp. 25–26]. Kane stayed in his car for about five to ten minutes and then moved parking spots within the same parking lot [ECF No. 30 p. 26].

11. During the time in which Kane was parked, Deputy Tomaszewski saw Kane, still operating his car, leaning out of the car and vomiting [ECF No. 30 pp. 26–27, 53–54].

12. Kane stayed in the parking lot for another five minutes or so and then started driving west on Orange Avenue toward an area of Fort Pierce known for gun violence, drug sales, prostitution, and gang members [ECF No. 30 pp. 28–29].

13. Kane eventually parked in the driveway of a residence on Avenue E and stayed in the driveway for approximately five minutes or less [ECF No. 30 p. 30].

14. Kane then left the Avenue E address driveway and continued driving, still under surveillance, as he proceeded south on 25th Street (a busy road) for about 1.5 to 2 miles until four to five unmarked police cars managed essentially to encircle Kane with their cars on the road [ECF No. 30 pp. 30–32, 37, 39, 43, 64].

15. Deputy Ridle believed Kane was under the influence of drugs, although he did not personally see him buy or ingest narcotics [ECF No. 30 pp. 37–38 ("[Based on all of my previous interactions with Mr. Kane, he has been intoxicated while he has been behind the wheel, he has been nodding off and things like that. We watched him throw up while he was in the parking lot next to the courthouse, and it is common when people use opioids—I know this based on my training experience—that it has a delayed effect. So it might not initially hit you, but as time goes on, then you start to really feel the effects of the narcotic."); ECF No. 30 pp. 72–73 (explaining that, in his experience, it is common for

individuals required to take regular drug testing to consume drugs after a drug test knowing that they won't have to take another drug test right away); ECF No. 30 pp. 73–74 (testifying that Kane, having just completed a drug test after failing one a few days before, was believed to be purchasing drugs at the residence on Avenue E, in an area commonly known for drug sales); ECF No. 30 p. 76].

16. During this time, Deputy Ridle saw Kane failing to maintain his lane and going towards the center line and crossing over it [ECF No. 30 pp. 33–34 (testifying that "Silverado was leaving its lane of travel and going over into the right lane by approximately one to two feet before correcting and coming back into its lane"); ECF No. 30 p. 38 ("I believe that he had used narcotics and that the narcotics were taking effect and that is why he was failing to maintain his single lane.")]. Deputy Ridle did not, however, perceive Kane's crossing of the center lines as materializing into a palpable safety concern because officers were essentially boxing him in with their vehicles, preventing civilians from getting close to Kane's car [ECF No. 30 p. 39]. Nor did Kane's vehicle strike another car or cause other vehicles to move out of the way [ECF No. 30 p. 56].

17. Deputy Ridle also testified that Kane's window tints were so dark, leading him to believe they were illegal based on his experience conducting other stops. Deputy Ridle could not tell at that point that there was a passenger in the car. Deputy Tomaszewski also noted that Kane's tints were too dark to see inside the car [ECF No. 30 pp. 33, 36, 41; ECF No. 28-1 (GX1) (referencing dark tints)].

18. Consistent with Deputy Ridle's testimony, the video admitted as Government Exhibit 2 [ECF No. 28-2] is taken from Defendant's cell phone and shows, in a very quick single frame approximately ten seconds into the video, what appear to be dark tints on the bank

passenger window.

19. In addition to the tints, Deputy Ridle saw, through the un-tinted front windshield, what appeared to be Kane holding a cell phone in his hand while making a texting motion with his finger [ECF No. 30 pp. 35, 58].

20. Moments later, the SIS officers activated their lights to initiate a traffic stop, at which point Kane sped up in an attempt to flee and go around the unmarked car in front of him. A SIS officer managed to "box him in," however, preventing any escape (similar to what happened on January 22, 2021) [ECF No. 30 pp. 44, 63, 71; ECF No. 30 p. 52 ("He drove forward to try to turn to the left to go around the stop unmarked patrol vehicle that was in front of him; however, another unmarked patrol vehicle came from the side and stopped his vehicle where he was unable to continue without crashing into one of our vehicles.")].

21. About a half-mile down the road, roughly 45 minutes after the initial start of surveillance on Kane, officers conducted the traffic stop [ECF No. 30 pp. 69, 76].

22. Defendant was sitting in the passenger seat and denied having any weapons on him [ECF No. 28-2]. Deputies then ordered him out of the vehicle and patted him down, upon which they discovered a firearm in his pants area [ECF No. 28-2 (video of portion of stop)]. Defendant was a convicted felon at the time of the traffic stop.

23. Kane was arrested that day on felony drug charges. He appeared to be under the influence of opioids [ECF No. 30 pp. 46, 65–66]. SIS deputies did not issue Kane a citation for illegal tints or for attempted fleeing or eluding, and they did not conduct a DUI investigation on scene. As Deputy Ridle explained, Kane was being arrested for more serious felony drug charges; deputies did not deem it necessary to pursue lesser misdemeanor offenses under the circumstances; and Kane had a history of not assisting

law enforcement during stops [ECF No. 30 pp. 41–42, 47–50]. Kane was charged with misdemeanor resisting without violence, which Deputy Ridle explained addressed Kane's attempt to flee as described [ECF No. 30 p. 49].

CONCLUSIONS OF LAW

The Fourth Amendment provides 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[.]" U.S. Const. amend. IV. Evidence obtained in deliberate or reckless violation of the Fourth Amendment must be suppressed. *Davis v. United States*, 564 U.S. 229, 240 (2011). "Not all interactions between law enforcement and citizens, however, implicate the scrutiny of the Fourth Amendment." *United States v. Jordan*, 635 F.3d 1181, 1185 (11th Cir. 2011). "'Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may [a court] conclude that a 'seizure' has occurred.'" *Id*. (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968)). The focus remains on whether a person's freedom of movement was restrained by the application of physical force or by submission to a show of authority. *See California v. Hodari D*., 499 U.S. 621, 6262 (1991). And "[w]hen a suspect flees from the police, he is not submitting to their authority and therefore is not seized" within the meaning of the Fourth Amendment. *Jordan*, 635 F.3d at 1186; *see also Brower v. Cnty. of Inyo*, 489 U.S. 593, 596–97, (1989). Put another way, "an attempted seizure, without actual submission, is not a seizure for Fourth Amendment purposes." *United States v. Dolomon*, 569 F. App'x 889, 892 (11th Cir. 2014) (citing *Hodari D.*, 499 U.S. at 626 n.2).

The Fourth Amendment "seizure" is triggered at the point a suspect submits to a show of law enforcement authority or is physically restrained, and it is commonly understood that a "[a] traffic stop is a seizure within the meaning of the Fourth Amendment." *United States v. Purcell*,

236 F.3d 1274, 1277 (11th Cir. 2001). A decision to stop a car is reasonable where the police have probable cause to believe that a traffic violation occurred, or where there is reasonable suspicion that criminal activity is foot. *Whren*, 517 U.S. at 810; *United States v. House*, 684 F.3d 1173, 1199 (11th Cir. 2012); *United States v. Hawkins*, 934 F.3d 1251, 1259 (11th Cir. 2019); *United States v. Harris*, 526 F.3d 1334, 1337 (11th Cir. 2008). "Probable cause requires that the facts and circumstances within an officer's knowledge and of which the officer has reasonably trustworthy information be sufficient to warrant a prudent man in believing that the person seized is guilty of a crime." House, 684 F.3d at 1199 (internal quotation marks and brackets omitted). Probable cause deals with probabilities—not legal technicalities—and it requires a practical assessment of the totality of circumstances. *Illinois v. Gates*, 462 U.S. 213, 231 (1983). "[R]easonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence," but it still "requires at least a minimal level of objective justification for making the stop." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (quotations omitted); *Terry*, 392 U.S. at 19–20 (permitting law enforcement to seize a suspect for a brief investigative stop where officers have reasonable suspicion that suspect was involved in, or is about to be involved in, criminal activity, and stop is reasonably related in scope to circumstances that justified the stop in the first place). Finally, it is well-settled that an officer's motive in making the stop does not invalidate what is otherwise "objectively justifiable behavior under the Fourth Amendment." *Whren*, 517 U.S. at 812; *United States v. Chanthasouxat*, 342 F.3d 1271, 1276 (11th Cir. 2003) (citing *Ornelas v. United States*, 517 U.S. 690, 696 (1996)).

Applying these principles here in light of the Court's factual findings, suppression is unwarranted.

As a preliminary matter, the Court agrees with Defendant, based on the authorities cited

[ECF No. 34 pp. 9–11; ECF No. 20 pp. 4–5], that SIS officers lacked reasonable suspicion to stop Kane's car for failing to maintain a single lane, in violation of Fla. Stat. § 316.089(1). There is insufficient evidence in the record to indicate that Kane's lane-crossing conduct—focusing on that—put other vehicles in danger. The Court acknowledges Deputy Ridle's testimony that such a concern likely would have materialized toward civilian vehicles had officers not been surrounding Kane's car on the roadway [ECF No. 30 p. 39]. The Court also acknowledges the related fact that Kane reasonably appeared to law enforcement to be driving under the influence for various reasons, as further discussed below. *Cf. Green v.* State, 831 So. 2d 1243, 1243 (Fla. Dist. Ct. App. 2002) (referencing absence of evidence of intoxication or impairment). But the Court ultimately concludes, as to the Fla. Stat. § 316.089(1) issue specifically, that the record is insufficient to support the stop on that basis. The authorities applying Fla. Stat. § 316.089(1) focus mostly on a materialized safety concern from the swerving itself (such as forcing other vehicles to brake suddenly to avoid a collision), *see State v. Wilson*, 268 So. 3d 927, 929 (Fla. Dist. Ct. App. 2019), and that degree of lane-swerving safety risk is not manifest here.

Nevertheless, the Court denies the Motion because SIS officers had reasonable suspicion to conduct the stop for driving under the influence; violating Florida's window-tint law; and attempted fleeing after they activated their lights and Kane sped up to get away through a gap in the cars. Under *Devenpeck v. Alford*, 543 U.S. 146 (2004), and the related cases cited above, *supra* pp. 3–4, it is well settled that an officer's subjective reason for making a stop need not be the criminal activity for which the objective facts furnish reasonable suspicion or probable cause. Thus, even assuming officers relied subjectively *only* on the crossing-lane issue—a proposition inconsistent with the evidentiary record adduced on the Motion—there still would be no Fourth Amendment problem with examining the objective validity of the action on other grounds. And

here, three such grounds exist that satisfy the reasonable suspicion threshold under the totality of circumstances. *See generally United States v. Arvizu*, 534 U.S. 266 (2002).

First, SIS officers had reasonable suspicion to believe that Kane was driving under the influence. Reasonable suspicion is not a high threshold, and it deals with probabilities, not certainties. There are ample probabilities in this record to support law enforcement's objectively reasonable belief that Kane was under the influence of a controlled substance—including, the following as drawn from the Findings of Fact above:

- SIS officers were surveilling Kane based on particularized experience and knowledge that Kane was a user of controlled substances and possessed drugs and drug-related paraphernalia in his vehicle;
- Kane's probation officer had provided specific information to SIS deputies that Kane had failed to show up for a mandatory drug test the day before the stop;
- on the day of the stop, deputies saw Kane go to a "smoke shop" at which drug-testing products are sold, go to the courthouse for some time right before close of business on the day he was required to test, then return to his car for some time while he then proceeded to throw up outside the window of his car;
- next he went directly to an address on Avenue E in an area known by law enforcement for high narcotics sales drugs;
- Deputy Ridle testified about his experience electing to consume drugs soon after a drug test [ECF No. 30 p. 73]; and
- Deputy Ridle further noted that Kane was crossing the center line of the lane while driving, which again was consistent with Deputy Ridle's testimony that opioids do not kick in right away.

Under these circumstances, notwithstanding Defendant's argument that officers did not stop Kane earlier in the 45-minute surveillance period or conduct DUI/field-sobriety tests on scene following Kane's arrest for felony drug offenses, the Court concludes that officers had objectively reasonable suspicion to support the traffic stop.

Second, officers had reasonable suspicion to believe that Kane was violating Florida's window-tint law. *See* Fla. Stat. § 316.2953. It is true that officers did not issue a citation for this following arrest, but that is not legally dispositive under the Fourth Amendment's objective inquiry. What the record does show, moreover, is that Deputy Ridle's testimony about the dark tints is supported by the freeze-frame image of the lower-back window of the vehicle as depicted in GX2, and another deputy also referenced the tint issue on the car in the record radio transmissions at GX1 [ECF Nos. 28-1, 28-2]. Thus, considering Deputy Ridle's credible testimony and the surrounding record, the Court is satisfied that reasonable suspicion also existed to stop the car based on the tint issue, even though the record on that point is not as robust as it is with respect to the driving-under-the-influence issue.

Third, the record also supports the government's additional submission that SIS deputies had reasonable suspicion to believe that Kane attempted to flee in his car, albeit briefly, after officers activated their lights on the roadway to effectuate the stop. *See* Fla. Stat. § 316.1935(1). Deputy Ridle testified on this point during the hearing, noting that Kane sped up to try to flee the unmarked cars through a gap in the vehicles but ultimately was unable to flee because deputies quickly boxed him in, preventing any escape. Deputy Ridle also noted that Kane had made a similar attempt during an earlier arrest on January 22, 2021, involving SLCSO SIS deputies as well. The Court finds this testimony to be credible and relies on its factual findings as drawn from Deputy Ridle's testimony. Florida law does not require a high-speed chase or other drawn-out form of fleeing to trigger the attempted eluding provision of Fla. Stat. § 316.1935(1). *Compare* Fla. Stat. § 316.1935(1), *with* Fla. Stat. § 316.1935(3); *see also Steil v. State*, 974 So. 2d 589, 590 (Fla. Dist. Ct. App. 2008). And although the attempt here was stopped quickly by virtue of the officers' actions in preventing the escape, there is sufficient evidence in the record to satisfy the

reasonable suspicion threshold.

Finally, to the extent there remain any questions as to the particular bases justifying the stop in this case, the Court has carefully considered the record and finds that any such possibility would not warrant application of the exclusionary rule, which is designed fundamentally to deter reckless or grossly negligent violations of the Fourth Amendment. *See Davis*, 564 U.S. at 240. SIS deputies conducted surveillance of Kane based on specific instances of Kane's drug-related offenses. They proceeded to observe a series of actions by Kane that, under the totality of the circumstances, warranted an objectively reasonable belief that the stop of the car was lawful. The record does not support flagrant or reckless or grossly negligent misconduct.

CONCLUSION

Being fully advised, it is **ORDERED AND ADJUDGED** that Defendant's Motion to Suppress [ECF No. 20] is **DENIED**.

DONE AND ORDERED in Chambers at Fort Pierce, Florida, this 9th day of August 2022.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record