APPENDIX

APPENDIX TABLE OF CONTENTS

Table of Contents

DECISIONS BELOW

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ORDER
Rehearing and Rehearing En Banc

FILED: April 29, 2025

No. 24-1845
(1:20-cv-02568-ELH)

VERONICA W. OGUNSULA
Plaintiff - Appellant
v.
TFC MICHAEL WARRENFELTZ
Defendant – Appellee

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge King, Judge Quattlebaum, and Senior Judge Traxler.

For the Court

/s/ Nwamaka Anowi, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ORDER and OPINION

UNPUBLISHED

No. 24-1845

VERONICA W. OGUNSULA,
Plaintiff - Appellant,

v.

TFC MICHAEL WARRENFELTZ,
Defendant - Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
Ellen Lipton Hollander, Senior District Judge.
(1:20-cv-02568-ELH)

Submitted: February 27, 2025 Decided: March 6, 2025

Before KING and QUATTLEBAUM, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Veronica W. Ogunsula, Appellant Pro Se. Amy Elizabeth Hott, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Pikesville, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Veronica W. Ogunsula appeals the district court's order granting the Defendant's motion for summary judgment on Ogunsula's 42 U.S.C. § 1983 complaint. We have reviewed the record and discern no reversible error. Accordingly, we deny Ogunsula's motions to reverse on appeal and to amend her informal brief and affirm the district court's order. Ogunsula v. Warrenfeltz, No. 1:20-cv-02568-ELH (D. Md. July 30, 2024). We dispense with oral argument because the facts and legal contentions are adequately

presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ORDER
Motion to Amend or Alter Judgment

VERONICA W. OGUNSULA, Plaintiff,

v.

MICHAEL WARRENFELTZ, Defendant.

Civil Action No. ELH-20-2568

ORDER

For the reasons set forth in the accompanying Memorandum Opinion, it is this 30th day of July 2024, by the United States District Court for the District of Maryland, hereby ORDERED:

1. The "Motion to Amend or Alter Judgment" (ECF 131; ECF 132) is DENIED.

2. The Clerk shall CLOSE the case.

/s/
Ellen Lipton Hollander
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Memorandum Opinion
Motion to Amend or Alter Judgment

VERONICA W. OGUNSULA, Plaintiff,

v.

MICHAEL WARRENFELTZ, Defendant.

Civil Action No. ELH-20-2568

MEMORANDUM OPINION

Veronica Ogunsula, the self-represented plaintiff, filed suit pursuant to 42 U.S.C. § 1983 against Trooper First Class Michael Warrenfeltz, a Maryland State Police ("MSP") officer. ECF 60 ("Second Amended Complaint" or "SAC"). Plaintiff, "an African American woman," id. at 3, claimed, inter alia, that Warrenfeltz violated her Fourth Amendment rights by conducting a traffic stop without reasonable, articulable suspicion that plaintiff had

committed a traffic violation. Id.[1] Warrenfeltz filed a post-discovery motion to dismiss the Second Amended Complaint or, in the alternative, for summary judgment. ECF 96. It was supported by a memorandum (ECF 96 1) (collectively, "Summary Judgment Motion") and exhibits. ECF 96-2 to ECF 95-5. Plaintiff did not respond to the Summary Judgment Motion. See Docket. By Memorandum Opinion and Order of May 14, 2024, I construed defendant's motion as one for summary judgment and granted it. See ECF 129; ECF 130.

On June 11, 2024, plaintiff filed a "Motion to Amend or Alter Judgment." ECF 131 ("Motion"). The next day, plaintiff filed a "corrected" version of the Motion. ECF 132; ECF 132-1. She asserts that the "Motion provides new evidence regarding certain facts th[e] Court considered in its Memorandum" Opinion of May 14, 2024. ECF 132 at 4.

---

[1] Initially, in addition to Warrenfeltz, plaintiff sued the Maryland State Police; Colonel Woodrow Jones, III, Superintendent of the MSP; and Michael Capasso, Warden of the Harford County Detention Center. See ECF 1. As a result of the Court's earlier rulings, discussed infra, Warrenfeltz is the only remaining defendant.

The Motion is supported by 36 pages of exhibits. See id. at 20–44; ECF 131-1. Defendant opposes the Motion. ECF 133 ("Opposition"). Plaintiff has replied. ECF 134 ("Reply"). The Reply is supported by ten pages of exhibits. See ECF 134-1. No hearing is necessary to decide the Motion. See Local Rule 105.6. For the reasons that follow, I shall deny the Motion.

I. Procedural Background

Plaintiff filed suit on August 31, 2020. ECF 1 ("Complaint"). In addition to naming Warrenfeltz as a defendant, plaintiff asserted claims against the MSP; Colonel Woodrow Jones, III, Superintendent of the MSP; and Michael Capasso, Warden of the Harford County Detention Center. See id. With respect to Warrenfeltz, plaintiff asserted: "TFC Warrenfeltz while acting under color of Maryland law, violated Ms. Ogunsula's rights under the Fourth Amendment to the U.S. Constitution . . . ." Id. at 6.

Warrenfeltz, Jones, and the MSP (the "MSP Defendants") moved to dismiss or, in the alternative, for summary judgment. ECF 23; ECF 23-1 to ECF 23-3. Capasso also moved to dismiss or, in the alternative, for summary judgment. ECF 31; ECF 31-1 to ECF 31-4. Plaintiff opposed both motions. ECF 28; ECF 34. While the motions were pending, plaintiff filed a motion to amend her Complaint. ECF 37; ECF 37-1. With respect to Warrenfeltz, plaintiff sought to add a claim under the Equal Protection Clause of the Fourteenth Amendment. See ECF 37-1 at 2.

By Memorandum Opinion (ECF 41) and Order (ECF 42) of December 23, 2021, I construed Capasso's motion as a motion to dismiss and granted it. However, I granted plaintiff leave to amend the Complaint to include facts that, if proven, would establish that Capasso was personally involved in the alleged deprivation of plaintiff's constitutional rights. ECF 41 at 64. In addition, I construed the MSP Defendants' motion as a motion to

dismiss and granted it, also with leave to amend the Complaint to include facts that, if proven, would establish that Warrenfeltz initiated the traffic stop on the basis of plaintiff's race, in violation of the Equal Protection Clause of the Fourteenth Amendment. See ECF 41 at 67; ECF 42 at 1. I dismissed the MSP and Jones from the suit. See ECF 42.

On February 10, 2022, plaintiff moved for leave to file the Second Amended Complaint. ECF 48. She also filed a "Memorandum in Support of Plaintiff's Motion to Alter or Amend Judgment," requesting reconsideration of the Court's ruling of December 23, 2021 (ECF 48-1, "Motion for Reconsideration")[2]; a First Amended Complaint (ECF 48-2); and a "Second Amended Complaint." ECF 48-3 (underlining in original). The proposed SAC alleged, inter alia, that Warrenfeltz's stop of plaintiff was unlawful under

[2] Although plaintiff styled ECF 48-1 as a "Memorandum in Support of Plaintiff's Motion to Alter or Amend Judgment," plaintiff's filing of February 10, 2022, did not include a separate motion to alter or amend. (Emphasis added). Nevertheless, in the Memorandum Opinion of August 11, 2022 (ECF 58), I construed ECF 48-1 as a motion to alter or amend. See ECF 58 at 4.

the Fourth Amendment and racially discriminatory, in violation of the Equal Protection Clause of the Fourteenth Amendment. See ECF 48-3 at 2. And, it asserted claims against the MSP and Jones, even though they had already been dismissed from the suit. Id. at 1–2, 7.

Thereafter, Capasso filed a "Motion to Dismiss First and Second Amended Complaint, or in the Alternative, Motion for Summary Judgment." ECF 49; ECF 49-1. In addition, the MSP Defendants filed a combined motion requesting dismissal of the Second Amended Complaint and opposing plaintiff's "Motion to Alter or Amend." ECF 51; ECF 51-1.

By Memorandum Opinion (ECF 58) and Order (ECF 59) of August 11, 2022, I denied the Motion for Reconsideration (ECF 48-1) and granted, in part, plaintiff's motion for leave to file the SAC. In particular, I concluded that plaintiff had not alleged that Capasso was personally involved in any deprivation of plaintiff's constitutional rights. ECF 58 at 17–18. Therefore, I granted Capasso's

motion and dismissed him from the suit. Id. at 32; ECF 59, ¶2.

In addition, I concluded that plaintiff had failed to allege that Warrenfeltz violated plaintiff's rights under the Equal Protection Clause of the Fourteenth Amendment. See ECF 58 at 20. But, I determined that plaintiff had sufficiently alleged that Warrenfeltz stopped her without reasonable, articulable suspicion of wrongdoing, in violation of the Fourth Amendment. ECF 58 at 32. I otherwise concluded that plaintiff had not stated a claim against any of the MSP defendants. See ECF 59, ¶ 4. Therefore, I granted the MSP Defendants' motion, "except as to plaintiff's reasonable suspicion claim against Warrenfeltz." ECF 58 at 32; ECF 59, ¶ 4. As a result of my ruling, the "sole claim that plaintiff [could] advance [was] her Fourth Amendment reasonable suspicion claim against Warrenfeltz." ECF 58 at 32.

The SAC was docketed at ECF 60. Warrenfeltz answered the suit on September 1, 2022. ECF 61. Under a

Scheduling Order entered on September 7, 2022 (ECF 62), discovery was to close on February 17, 2023. Id. at 3. However, five extensions to the deadline followed. See ECF 68; ECF 69; ECF 70; ECF 76; ECF 77; ECF 85; ECF 87; ECF 89; ECF 90. Discovery finally closed on September 9, 2023. ECF 90.3[3] Thereafter, on September 22, 2023, defendant filed an "Amended Motion for Sanctions" (ECF 92) ("Sanctions Motion"), claiming that plaintiff had substantially failed to respond to written discovery requests served on March 31, 2023. Id. at 3.

On November 2, 2023, Warrenfeltz filed the Summary Judgment Motion. ECF 96. Then, on November 15, 2023, plaintiff filed a "Request for Clarification on the Deadline to Respond to Defendant's Motion to Dismiss or Summary Judgment." ECF 99. She stated: "The Plaintiff, Veronica W. Ogunsula, files this Motion to request guidance from the Court regarding the deadline for

[3] The Memorandum Opinion of January 19, 2024 (ECF 110) recounts in detail the discovery proceedings in this case. Id. at 5–11. I incorporate that discussion here.

Plaintiff to respond to the Defendant's Motion to Dismiss and or Summary Judgment (ECF #96)." Id. The Court responded to plaintiff's request for clarification by letter of November 22, 2023. ECF 100. The letter stated, in part: "Local Rule 105.2(a) provides: 'Unless otherwise ordered by the Court, all memoranda in opposition to a motion shall be filed within fourteen (14) days of the service of the motion and any reply memoranda within fourteen (14) days after service of the opposition memoranda.'" Id. Plaintiff never sought an extension of the deadline to respond to the Motion. Indeed, as noted, plaintiff never responded. See Docket.

By Memorandum Opinion (ECF 110) and Order (ECF 111) of January 19, 2024, I granted the Sanctions Motion in part and denied it in part. In particular, to compensate defendant for costs incurred when plaintiff failed to appear for her scheduled deposition, I awarded costs of $412.18 to defendant. ECF 110 at 32. I also noted that "plaintiff's continued evasion of [her] discovery

responsibilities is unacceptable." Id. at 2. Nonetheless, "mindful that plaintiff is self-represented" and that she had to that "point not been subject to a discovery order entered by the Court," I afforded "her a final opportunity to provide adequate responses to defendant's written discovery requests." Id. at 2–3. And, I denied the defendant's request to dismiss the case. Id. at 3. Instead, I ordered plaintiff to provide, by February 5, 2024, adequate responses to the interrogatories and requests for production propounded by defendant. Id. at 32–33; ECF 111, ¶ 3. I otherwise denied the Motion for Sanctions. ECF 111, ¶ 2.

On February 3, 2024, plaintiff filed a "Motion for Reconsideration" of the Court's disposition of the Sanctions Motion. ECF 114. In defendant's response (ECF 115), he asserted that plaintiff had failed to cure her various discovery defaults, notwithstanding the Court's Order directing her to do so by February 5, 2024. See id. However, defendant did not file a new motion for sanctions.

On March 12, 2024, plaintiff filed a "Motion to the Court" (ECF 119), asking the Court to direct the Clerk to issue four subpoenas. See ECF 118; ECF 118-1. Plaintiff also moved to seal the requested subpoenas. See ECF 117 ("Motion to Seal Subpoenas").

By Memorandum Opinion (ECF 121) and Order (ECF 122) of March 20, 2024, the Court granted plaintiff's request for subpoenas, in part. In particular, the Court directed the Clerk to issue a subpoena addressed to the "'T-Mobile, Legal and Emergency Response Team'" in Parsippany, New Jersey, requesting "'call detail and text for 240-486-1427 from 8/12/2017 to 9/1/2017.'" ECF 121 at 4 (quoting ECF 118 at 7–8); see ECF 121 at 5. I otherwise denied plaintiff's request for the issuance of subpoenas. See ECF 121 at 5.

Plaintiff renewed her request for the issuance of certain subpoenas in a "Motion Regarding Subpoenas," filed on April 16, 2024. ECF 128.

By Memorandum Opinion (ECF 129) and Order (ECF 130) of May 14, 2024, I granted the Summary Judgment Motion (ECF 96), denied the Motion to Seal Subpoenas (ECF 117), denied the Motion Regarding Subpoenas (ECF 128), and denied, as moot, the Motion for Reconsideration (ECF 114). See ECF 129 at 2; ECF 130. I also directed the Clerk to close the case. ECF 130. Plaintiff's Motion to Alter or Amend followed on June 11, 2024. And, she filed a "corrected" version of the Motion on June 12, 2024. ECF 132.

II. Factual Background[4]

On the morning of August 30, 2017, plaintiff was driving a rental car on Interstate 95 in Maryland, on her way to New Jersey. ECF 96-5 (Ogunsula Deposition) at 6, 7, 26. The rental car was a "sedan" or "hatchback" with

[4] The presentation of facts first derives largely from my Memorandum Opinion of May 14, 2024. ECF 129 at 5–8. Here, as there, I view "the facts and all reasonable inferences drawn therefrom . . . in the light most favorable to the nonmoving party," the plaintiff. Aleman v. City of Charlotte, 80 F.4th 264, 283–84 (4th Cir. 2023).

"four seats and a trunk." Id. at 15. [5] It did not have tinted windows. Id. While driving, plaintiff was receiving directions from the speaker on her cell phone, which was "[i]n the right passenger seat." Id. at 23.

After plaintiff paid a toll at "the only tunnel [where] you pay leaving Maryland," id. at 6, she "noticed that there was a car to [her] right," which "seemed to be tracking" her. Id. at 13. The car was a sedan, id. at 19, with "dark tinted windows." Id. at 18. Plaintiff was driving in the "far left lane," and the sedan was traveling in the adjacent lane to her right. Id. at 20. The sedan with tinted windows drove beside plaintiff for "between 5 and 15 seconds." Id. at 18.

During this time, plaintiff did not "move" her phone, which remained "[i]n the right passenger seat." Id. at 25. However, she was "trying to put a headphone in [her] ear," id. at 28, because she "was going to make a call." Id. at 26; see id. at 30. In particular, she "picked up the [e]arbud

[5] At her deposition, plaintiff identified the rental car as a "Kia Sportage." ECF 96-5 at 7. However, in a document provided to defense counsel on November 29, 2023, plaintiff identified the car as a "Santa Fe, Hyundai." ECF 107-9.

from [her lap," and "[l]ooked at it briefly" to determine whether it was intended for the left or the right ear. Id. at 29; see id. at 28. Plaintiff "eventually put [the earbud] in [her] ear." Id. at 29. However, she did not plug the earbud into her phone. Id. at 30.

After driving alongside plaintiff for five to fifteen seconds, the sedan with tinted windows "pulled ahead of" plaintiff while remaining in the lane to plaintiff's right. Id. at 19. At that point, plaintiff noticed that the sedan was mounted with antennas. Id. Therefore, plaintiff "assumed [the driver] was a police officer." Id. at 19–20. After realizing that the driver of the sedan with tinted windows was a police officer, plaintiff "checked [her] speed to make sure [she] wasn't speeding," but did not stop her car. Id. at 21. Plaintiff did not move her phone while the sedan was in front of her. Id. at 25.

"[E]ventually," the police sedan "ended up behind" plaintiff. Id. At some point after the police car "moved behind" plaintiff, she "briefly picked up the phone and put

it in [her] lap." Id. Because plaintiff "thought [the police] car might have wanted to speed ahead of" her, she "pulled over to the third lane." Id. But, "[t]he police car pulled over behind" her and "within 10 or 15 seconds turned on [its] lights." Id. at 22.

Thereafter, plaintiff stopped her car "on the right shoulder" of the highway. Id. at 34. Warrenfeltz, who was dressed in a police uniform, approached plaintiff's car on the passenger's side. Id. at 37. Defendant "asked plaintiff if she was on her cell phone." Id. at 38. In response, plaintiff "told him that she had moved her cell phone from the passenger's seat to her lap." Id. Defendant requested plaintiff's license and registration, which plaintiff provided. Id. at 40.

Defendant "identified the driver [of the car he had stopped] as Veronica Ogunsula." ECF 96-3 (Warrenfeltz Declaration), ¶ 4. When defendant "ran [plaintiff's] information through the National Crime Information Center" database, he "learned that [plaintiff] had an active

warrant against her in the State of Virginia." Id. ¶ 5. The warrant was issued on March 30, 2017, by a Magistrate of the General District Court for Arlington, Virginia, to the Metropolitan Washington Airports Authority Police ("MWAAP"). ECF 96-4 at 15.[6] It alleged that plaintiff had failed to return a vehicle that she had rented on January 19, 2017, which was due for return on February 10, 2017. Id. Of relevance, defendant obtained confirmation from the MWAAP that plaintiff was "still listed as wanted by [the] agency for theft by bailee." Id. at 9 (typeface altered). "As a result of the warrant," defendant "arrested [plaintiff] at 11:39 a.m." and "transported [her] to the Harford County Detention Center." ECF 96-3, ¶ 7

In the Incident Report (ECF 96-4), defendant provided an "Original Narrative," dated September 7, 2017, describing the circumstances of plaintiff's arrest, as follows, id. at 4:

[6] The pages displaying the warrant are not imprinted with electronic page numbers. The cited page is the fifteenth page in the submission docketed at ECF 96-4.

> On 08/30/2017, at approximately 1119 hours, I (TFC Warrenfeltz #6510) was on patrol operating unmarked MSP vehicle M-33. I was traveling in lane three on northbound I-95 at the 76 mile marker in Harford County, Maryland, when I observed a gray Hyundai Santa Fe, with Maryland registration 2CF1641, traveling in lane one. As I passed the vehicle, I observed the operator of the vehicle to be holding a cell phone in [her] right hand. The operator of the vehicle was manipulating the screen with her right thumb. I initiated a traffic stop on the vehicle, and it came to a complete stop on northbound I-95 at the 77 mile marker.
>
> I made contact with the operator and sole occupant of the vehicle via the passenger side window. The driver was identified via her Maryland driver's license as Veronica Wynona Ogunsula (1/F, [redacted]/1965).
>
> A NCIC check of Ogunsula revealed a warrant through Reagan National Airport Police, Virginia. The warrant was confirmed, and the Reagan National Airport Police advised that they would extradite Ogunsula. Ogunsula was arrested at 1139 hours, and transported to the Harford County IPC to await extradition.

The Incident Report indicates that defendant charged plaintiff with being a fugitive. See ECF 96-4 (Incident Report) at 20. However, defendant did not charge plaintiff with a traffic violation. See id.

Plaintiff was detained until September 2, 2017. See ECF 48-3. Records previously filed by plaintiff in this case indicate that the warrant for her arrest was later withdrawn and that the Office of the State's Attorney for Harford County entered a nolle prosequi with respect to the charge that she was a fugitive. See ECF 28-3.

III. Legal Standard

Plaintiff states: "Veronica Ogunsula, the Plaintiff, files this Motion under Federal Rules of Civil Procedure Rule 59(d) and (e) to respectfully move the Court's set aside [sic] and vacate its order and judgment of May 14, 2024." ECF 132 at 1. In addition, plaintiff states: "This Motion may alternatively be reviewed under Rule 60(b)." Id. at 5.

Fed. R. Civ. P. 59(e) is captioned "Motion to Alter or Amend a Judgment." It provides: "A motion to alter or amend a judgment must be filed no later than 28 days after the entry of judgment." Fed. R. Civ. P. 60(b) is captioned "Relief From a Judgment or Order." Fed. R. Civ. P. 60(c)(1) provides: "A motion under Rule 60(b) must be made within

a reasonable time—and for [the] reasons [identified in Fed. R. Civ. P. 60(b)(1)–(3)] no more than a year after the entry of judgment or order or the date of the proceeding."

As an initial matter, I must determine whether to evaluate the Motion under Rule 59(e) or, instead, Rule 60(b). "[A] motion filed under both Rule 59(e) and Rule 60(b) should be analyzed only under Rule 59(e) if it was filed no later than [28] days after entry of the adverse judgment and seeks to correct that judgment." Robinson v. Wix Filtration Corp., LLC, 599 F.3d 403, 411 (4th Cir. 2010) (citations omitted). Judgment was entered on May 14, 2024. See ECF 130. The last day in the 28-day period for the filing of a motion under Rule 59(e) was June 11, 2024. Plaintiff filed the Motion on June 11, 2024. ECF 131. However, on June 12, 2024, plaintiff filed a "corrected" version of the Motion. ECF 132. Nevertheless, because plaintiff filed the initial version of the Motion on June 11, 2024, I shall review the Motion under Fed. R. Civ. Proc. 59(e). See Robinson, 599 F.3d at 411–12.

The purpose of Rule 59(e) is to "give[] a district court the chance to rectify its own mistakes in the period immediately following its decision." Banister v. Davis, 590 U.S. 504, 508 (2020) (citation and internal quotation marks omitted); see Zinkand v. Brown, 478 F.3d 634, 637 (4th Cir. 2007); Pac. Ins. Co. v. American Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). Allowing the district court this opportunity helps to "spar[e] the parties and the appellate courts the burden of unnecessary appellate proceedings." Pac. Ins. Co., 148 F.3d at 403. Nonetheless, "'reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." Id. (quoting 11 Wright et al., Federal Practice and Procedure § 2810.1 at 124 (2d ed. 1995) ("Wright and Miller 1995"). Indeed, "because of the narrow purposes for which they are intended, Rule 59(e) motions typically are denied." 11 Wright et al., Federal Practice and Procedure § 2810.1 at 171 (3d ed. 2012).

Rule 59(e) does not provide a standard by which to evaluate a motion to alter or amend a judgment. However, Fourth Circuit "case law makes clear [] that Rule 59(e) motions can be successful in only three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Zinkand, 478 F.3d at 637 (citation and internal quotation marks omitted); see Ingle ex rel. Estate of Ingle v. Yelton, 439 F.3d 191, 197 (4th Cir. 2006); U.S. ex rel. Becker v. Westinghouse Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002), cert. denied, 538 U.S. 1012 (2003); EEOC v. Lockheed Martin Corp., 116 F.3d 110, 112 (4th Cir. 1997).

The Fourth Circuit has cautioned that other uses of Rule 59(e) are inappropriate. For example, a party may not use a Rule 59(e) motion to "raise arguments [that] could have been raised prior to the issuance of the judgment" or to "argue a case under a novel legal theory that the party had the ability to address in the first instance." Pac. Ins.

Co., 148 F.3d at 403; see also Matter of Reese, 91 F.3d 37, 39 (7th Cir. 1996) ("A motion under Rule 59(e) is not authorized to enable a party to complete presenting his case after the court has ruled against him.") (citation and internal quotation marks omitted). Nor may a party use a Rule 59(e) motion to "'relitigate old matters.'" Pac. Ins. Co., 148 F.3d at 403 (quoting Wright and Miller 1995 § 2810.1 at 127–28).

The decision whether to alter or amend a judgment is firmly within a court's discretion. See, e.g., Bogart v. Chapell, 396 F.3d 548, 555 (4th Cir. 2005). However, "[t]o justify reconsideration on th[e] basis" that a court committed a clear error of law, it is not enough for a plaintiff to show that the court's judgment was "'just maybe or probably wrong.'" Fontell v. Hassett, 891 F. Supp. 2d 739, 741 (D. Md. 2012) (quoting TFWS, Inc. v. Franchot, 572 F.3d 186, 194 (4th Cir. 2009)). Instead, the error identified by the plaintiff "must strike [the court] as wrong with the force of a five-week-old, unrefrigerated dead fish.

It must be dead wrong." U.S. Tobacco Coop. Inc. v. Big South Wholesale of Va., LLC, 899 F.3d 236, 258 (4th Cir. 2018).

In other words, "[m]ere disagreement" with a court's ruling is not a proper basis for a Rule 59(e) motion. Hutchinson v. Staton, 994 F.2d 1076, 1082 (4th Cir. 1993). Without these "restraint[s]," "there would be no conclusion to motions practice, each motion becoming nothing more than the latest installment in a potentially endless serial that would exhaust the resources of the parties and the court—not to mention its patience." Pinney v. Nokia, 402 F.3d 430, 452–53 (4th Cir. 2005); see also Jackson v. Sprint/United Mgmt. Co., 633 F. Supp. 3d 741, 746 (D. Md. 2022).

IV. Discussion

Much of plaintiff's Motion is devoted to presenting arguments in rebuttal to defendant's contentions in his Summary Judgment Motion (ECF 96). See ECF 132 at 10–

15. As noted, plaintiff did not respond to the Summary Judgment Motion. See Docket.

Nevertheless, plaintiff's failure to respond to the Summary Judgment Motion played no part in my assessment of defendant's entitlement to summary judgment. See ECF 129 at 14–15. Indeed, I noted that a "'failure to respond . . . does not fulfill the burdens imposed on moving parties by [Fed. R. Civ. P.] 56.'" Id. at 14 (quoting Custer v. Pan Am. Life Ins. Co., 12 F.3d 410, 416 (4th Cir. 1993)). Therefore, I wrote, ECF 129 at 15:

> [N]otwithstanding plaintiff's failure to respond, I must first determine whether the evidence that defendant has submitted in support of the Motion [for Summary Judgment] "shows that there is no genuine dispute as to any material fact." Fed. R. Civ. P. 56(a). And, if I conclude that the evidence shows that there is no genuine dispute of material fact, I must then determine whether the undisputed facts establish that "the movant is entitled to judgment as a matter of law." Id.

Applying this standard, I concluded that there was no genuine dispute of material fact "that plaintiff handled her phone while operating her motor vehicle in defendant's vicinity, and that defendant observed her handling her

phone." ECF 129 at 17. And, I determined that defendant was entitled to judgment as a matter of law because the undisputed facts established that Warrenfeltz's "stop of plaintiff was justified by reasonable, articulable suspicion that she was using her phone in a manner prohibited by" Md. Code (2020 Repl. Vol., 2023 Supp.), § 21-1124.1 and § 21-1124.2 of the Transportation Article ("Transp."). ECF 129 at 24.

In particular, Transp. § 21-1124.1(b) states, in relevant part, that "an individual may not use a text messaging device to write, send, or read a text message or an electronic message while operating a motor vehicle in the travel portion of the roadway." And, Transp. § 21-1124.2(d)(2) provides: "A driver of a motor vehicle that is in motion may not use the driver's hands to use a handheld telephone other than to initiate or terminate a wireless telephone call or to turn on or turn off the handheld telephone."

Rule 59(e) is not a means by which a plaintiff may present a belated response to a motion for summary judgment. See Pac. Ins. Co., 148 F.3d at 403 (recognizing that a party may not use a Rule 59(e) motion to "raise arguments [that] could have been raised prior to the issuance of the judgment"); see also Matter of Reese, 91 F.3d at 39 ("A motion under Rule 59(e) is not authorized to enable a party to complete presenting his case after the court has ruled against him.") (citation and internal quotation marks omitted). Plaintiff's Rule 59(e) Motion is little more than an attempt to do so. For that reason, it is improper.

Plaintiff also contends that "new evidence regarding certain facts this Court considered in its Memorandum" Opinion of May 14, 2024 (ECF 129) . . . without doubt refute the Court's basis for granting Summary Judgment to the Defendant." ECF 132 at 4–5. The "new evidence" plaintiff refers to consists of the following: a "[p]icture of a type Four (4) Lane Highway with lane demarcations," id.

at 20; a photograph of earbuds, id. at 21; a photograph of a "Portion of JFK Memorial Highway at Mile Marker 75 near Exit 74 Route 152 Fallston Joppa," id. at 22; excerpts from plaintiff's deposition, id. at 23–24, ECF 132-1; "Photos of actual 2017 Hyundai Santa Fe SUV taken from a Gaithersburg, Maryland dealership on October 23, 2024," ECF 132 at 25–28; "pics . . . from an online sale listing of a used Santa Fe Sport," id. at 29–33 (emphasis in ECF 132); a "Bill for Towing Budget Rental Car that was originally rented to Plaintiff, Veronica Ogunsula," id. at 34; a "VIN Vehicle Verification from the National Highway Transportation Safety Administration," id. at 34–36; a "Budget Rental Care Reservation and Receipt," id. at 37; a table that appears to include certain call records, id. at 38–40; an email from "Petr Stretka," a "Senior Specialist" in "Legal & Emergency Response" at T-Mobile, id. at 41; a statement by the "Custodian of Records" at T-Mobile, id. at 42; a document labeled "Call log from SMSRestore Android Application For V. Ogunsula Cellphone," id. at 43; and

charts labeled "WARRENFELTZ TOTAL TRAFFIC STOPS" and "Warrenfeltz Harford County Traffic Stops." Id. at 44.

Plaintiff does not contend that the exhibits were not available to her before the entry of judgment. See Wright and Miller 1995 § 2810.1 ("The Rule 59(e) motion may not be used to . . . present evidence[] that could have been raised prior to the entry of judgment."). Nor has she "produce[d] a legitimate justification for not presenting the evidence during the earlier proceeding." Pac. Ins. Co., 148 F.3d at 403 (citations and internal quotation marks omitted). In effect, plaintiff seeks to use Rule 59(e) to excuse the belated submission of certain information that she believes could have affected the Court's assessment of the Summary Judgment Motion. This is plainly an impermissible use of the Rule.

In sum, plaintiff has not identified any basis for relief after judgment pursuant to Fed. R. Civ. P. 59(e).

V. Conclusion

The Court recognizes that plaintiff experienced an unfortunate ordeal after being stopped by Trooper Warrenfeltz. But, the evidence, even when considered in the light most favorable to plaintiff, demonstrates that Trooper Warrenfeltz lawfully performed his job duties. He had a legal basis to stop plaintiff and, during the stop, he learned that there was a warrant for plaintiff's arrest. Therefore, he had a duty to take her into custody. See Utah v. Strieff, 579 U.S. 232, 241 (2016) ("'A warrant is a judicial mandate to an officer to conduct a search or make an arrest, and the officer has a sworn duty to carry out its provisions.'") (quoting United States v. Leon, 468 U.S. 897, 920 n.21 (1984)). That there was an out-of-State warrant for plaintiff's arrest—later withdrawn—was not the fault of Trooper Warrenfeltz.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

ORDER
Summary Judgment

VERONICA W. OGUNSULA,
Plaintiff,

Civil Action No. ELH-20-2568

v.

MICHAEL WARRENFELTZ,
Defendant.

ORDER

For the reasons set forth in the accompanying Memorandum, it is this 14th day of May 2024, by the United States District Court for the District of Maryland, hereby ORDERED:

1. The "Motion to Dismiss or in the Alternative, Motion for Summary Judgment" (ECF 96) is GRANTED; Judgment is entered in favor of defendant, Michael Warrenfeltz.
2. The Motion for Reconsideration (ECF 114) is DENIED, as moot.
3. The Motion to Seal (ECF 117) is DENIED.
4. The Motion Regarding Subpoenas (ECF 128) is DENIED.
5. The Clerk is directed to CLOSE the case.

/s/
Ellen Lipton Hollander
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Memorandum Opinion
Summary Judgment

VERONICA W. OGUNSULA,
Plaintiff,

Civil Action No. ELH-20-2568

v.

MICHAEL WARRENFELTZ,
Defendant.

MEMORANDUM OPINION

The self-represented plaintiff, Veronica Ogunsula, has filed a civil rights suit against Trooper First Class Michael Warrenfeltz, a Maryland State Police ("MSP") officer. ECF 60. Plaintiff claims that defendant violated her Fourth Amendment rights by conducting a traffic stop without reasonable suspicion that plaintiff had committed a traffic violation. Id.[1]

[1] Initially, in addition to Warrenfeltz, plaintiff sued the Maryland State Police; Colonel Woodrow Jones, III, Superintendent of the MSP; and Michael Capasso, Warden of the Harford County Detention Center. See ECF 1. As a result of the Court's earlier rulings, discussed infra, Warrenfeltz is the only remaining defendant.

Warrenfeltz has filed a motion to dismiss or, in the alternative, motion for summary judgment. ECF 96. The Motion is supported by a memorandum (ECF 96-2) and three exhibits: a "Declaration of Michael Warrenfeltz" (ECF 96-3, "Warrenfeltz Declaration" or "Declaration"); an MSP "incident report" (ECF 96-4) ("Incident Report"); and excerpts from plaintiff's deposition. ECF 96-5 ("Ogunsula Deposition") (collectively, the "Motion").[2] Plaintiff did not respond to the Motion. See Docket.

Several other motions are pending. In particular, plaintiff has filed a motion for reconsideration of the Court's ruling on defendant's motion for sanctions (ECF 114, "Motion for Reconsideration"); a motion to keep under seal certain subpoenas that plaintiff has asked the Court to issue (ECF 117, "Motion to Seal"); and a motion renewing plaintiff's request for the issuance of those subpoenas (ECF 128, "Motion Regarding Subpoenas").

[2] Defendant also submitted a proposed order. ECF 96-2.

No hearing is necessary to decide the motions. See Local Rule 105.6. For the reasons that follow, I shall construe the Motion as one for summary judgment and grant it. And, I shall deny the Motion to Seal and the Motion Regarding Subpoenas. I shall also deny, as moot, the Motion for Reconsideration.

I. Procedural Background

Plaintiff filed suit on August 31, 2020. ECF 1 (the "Complaint"). In addition to naming Warrenfeltz as a defendant, plaintiff asserted claims against the MSP; Colonel Woodrow Jones, III, Superintendent of the MSP; and Michael Capasso, Warden of the Harford County Detention Center. See id. Warrenfeltz, Jones, and the MSP (the "MSP Defendants") moved to dismiss or, in the alternative, for summary judgment. ECF 23; ECF 23-1 to ECF 23-3. Capasso also moved to dismiss or, in the alternative, for summary judgment. ECF 31; ECF 31-1 to ECF 31-4. Plaintiff opposed both motions. ECF 28; ECF

34. While the motions were pending, plaintiff filed a motion to amend her Complaint. ECF 37; ECF 37-1.

In a Memorandum Opinion (ECF 41) and Order (ECF 42) of December 23, 2021, I construed Capasso's motion as a motion to dismiss and granted it. However, I granted plaintiff leave to amend the Complaint to include facts that, if proven, would establish that Capasso was personally involved in the alleged deprivation of plaintiff's constitutional rights. ECF 41 at 64. In addition, I construed the MSP Defendants' motion as a motion to dismiss and granted it, with leave to amend the Complaint to include facts that, if proven, would establish that Warrenfeltz initiated the traffic stop of plaintiff on the basis of her race. See ECF 41 at 67; ECF 42 at 1.

On February 10, 2022, plaintiff moved for leave to file a second amended complaint ("SAC"). ECF 48. She also submitted a First Amended Complaint (ECF 48-2) and a "Second Amended Complaint". ECF 48-3 (underlining in original). Capasso filed a "Motion to Dismiss First and

Second Amended Complaint, or in the Alternative, Motion for Summary Judgment." ECF 49; ECF 49-1. And, the MSP Defendants filed a "Motion to Dismiss Second Amended Complaint and Opposition to Plaintiff's Motion to Alter or Amend." ECF 51; ECF 51-1.

By Memorandum Opinion (ECF 58) and Order (ECF 59) of August 11, 2022, I granted, in part, plaintiff's motion for leave to file the SAC. I also granted Capasso's motion and dismissed him from the suit. ECF 58 at 32; ECF 59, 2. In addition, I granted the MSP Defendants' motion, except insofar as the SAC alleged that Warrenfeltz stopped plaintiff without reasonable suspicion of wrongdoing, in violation of the Fourth Amendment. ECF 58 at 32; ECF 59, ¶ 4. In sum, I determined that the "sole claim that plaintiff [could] advance is her Fourth Amendment reasonable suspicion claim against Warrenfeltz." ECF 58 at 32.

The SAC, which is now the operative complaint, is docketed at ECF 60. On September 1, 2022, Warrenfeltz answered the suit. ECF 61. Under a Scheduling Order

entered on September 7, 2022, discovery was to close on February 17, 2023. ECF 62 at 3. However, five extensions to the deadline followed. See ECF 68; ECF 69; ECF 70; ECF 76; ECF 77; ECF 85; ECF 87; ECF 89; ECF 90. And, discovery finally closed on September 9, 2023. ECF 90. Thereafter, on September 22, 2023, defendant filed an "Amended Motion for Sanctions" (ECF 92) ("Sanctions Motion"), claiming that plaintiff had substantially failed to respond to written discovery requests served on March 31, 2023. Id. at 3.

On November 2, 2023, defendant filed the instant Motion. ECF 96. On November 15, 2023, plaintiff filed a "Request for Clarification on the Deadline to Respond to Defendant's Motion to Dismiss or Summary Judgment." ECF 99. It stated: "The Plaintiff, Veronica W. Ogunsula, files this Motion to request guidance from the Court regarding the deadline for Plaintiff to respond to the Defendant's Motion to Dismiss and or Summary Judgment (ECF #96)." Id. The Court responded to plaintiff's request

for clarification by letter of November 22, 2023. ECF 100. In the letter, the Court stated: "Local Rule 105.2(a) provides: 'Unless otherwise ordered by the Court, all memoranda in opposition to a motion shall be filed within fourteen (14) days of the service of the motion and any reply memoranda within fourteen (14) days after service of the opposition memoranda.'" Id. However, as noted, plaintiff never responded to the Motion. See Docket.

By Memorandum Opinion (ECF 110) and Order (ECF 111) of January 19, 2024, I granted the Sanctions Motion in part and denied it in part. In particular, to compensate defendant for costs incurred when plaintiff failed to appear for a scheduled deposition, I awarded costs of $412.18 to defendant. ECF 110 at 32. I also noted that "plaintiff's continued evasion of [her] discovery responsibilities is unacceptable." Id. at 2. "Nonetheless, mindful that plaintiff is self-represented and ha[d] to [that] point not been subject to a discovery order entered by the Court, I . . . afford[ed] her a final opportunity to provide

adequate responses to defendant's written discovery requests," id. at 2–3, and denied the request to dismiss the case. Id. at 3. Therefore, I ordered plaintiff to provide, by February 5, 2024, adequate responses to the interrogatories and requests for production propounded by defendant. Id. at 32–33; ECF 111, ¶ 3. I otherwise denied the Motion for Sanctions. ECF 111, ¶ 2.

On February 3, 2024, plaintiff filed the Motion for Reconsideration of the Court's disposition of the Sanctions Motion. ECF 114. In a response (ECF 115), defendant asserted that plaintiff had failed to cure her various discovery defaults, notwithstanding the Court's Order directing her to do so by February 5, 2024. See id. However, defendant did not file a new motion for sanctions. The Motion for Reconsideration remains pending. See Docket.

On March 12, 2024, plaintiff filed a "Motion to the Court" (ECF 119) requesting that the Court direct the Clerk to issue four subpoenas. See ECF 118; ECF 118-1.

Plaintiff also moved to seal the requested subpoenas. See ECF 117. The Motion to Seal is pending. See Docket.

By Memorandum Opinion (ECF 121) and Order (ECF 122) of March 20, 2024, the Court granted plaintiff's request, in part. In particular, the Court directed the Clerk to issue a subpoena addressed to the "'T-Mobile, Legal and Emergency Response Team'" in Parsippany, New Jersey, requesting "'call detail and text for 240-486-1427 from 8/12/2017 to 9/1/2017.'" ECF 121 at 4 (quoting ECF 118 at 7–8); see ECF 121 at 5. I otherwise denied plaintiff's request for the issuance of subpoenas. See ECF 121 at 5. On April 16, 2024, plaintiff filed the Motion Regarding Subpoenas (ECF 128), which is pending.

II. Factual Background

On the morning of August 30, 2017, plaintiff was driving a rental car on Interstate 95 in Maryland, on her way to New Jersey. ECF 96-5 (Ogunsula Deposition) at 6, 7, 26. The rental car was a "sedan" or "hatchback" with

"four seats and a trunk." Id. at 15.[3] It did not have tinted windows. Id. While driving, plaintiff was receiving directions from the speaker on her cell phone, which was "[i]n the right passenger seat." Id. at 23.

After plaintiff paid a toll at "the only tunnel [where] you pay leaving Maryland," id. at 6, she "noticed that there was a car to [her] right," which "seemed to be tracking" her. Id. at 13. The car was a sedan, id. at 19, with "dark tinted windows." Id. at 18. Plaintiff was driving in the "far left lane," and the sedan was traveling in the adjacent lane to her right. Id. at 20. The sedan with tinted windows drove beside plaintiff for "between 5 and 15 seconds." Id. at 18.

During this time, plaintiff did not "move" her phone, which remained "[i]n the right passenger seat." Id. at 25. However, she was "trying to put a headphone in [her] ear," id. at 28, because she "was going to make a call." Id. at 26; see id. at 30. In particular, she "picked up the [e]arbud

[3] At her deposition, plaintiff identified the rental car as a "Kia Sportage." ECF 96-5 at 7. However, in a document provided to defense counsel on November 29, 2023, plaintiff identified the car as a "Santa Fe, Hyundai." ECF 107-9.

from [her lap," and "[l]ooked at it briefly" to determine whether it was intended for the left or the right ear. Id. at 29; see id. at 28. Plaintiff "eventually put [the earbud] in [her] ear." Id. at 29. However, she did not plug the earbud into her phone. Id. at 30.

After driving alongside plaintiff for five to fifteen seconds, the sedan with tinted windows "pulled ahead of" plaintiff while remaining in the lane to plaintiff's right. Id. at 19. At that point, plaintiff noticed that the sedan was mounted with antennas. Id. Therefore, plaintiff "assumed [the driver] was a police officer." Id. at 19–20. After realizing that the driver of the sedan with tinted windows was a police officer, plaintiff "checked [her] speed to make sure [she] wasn't speeding," but did not stop her car. Id. at 21. Plaintiff did not move her phone while the sedan was in front of her. Id. at 25.

"[E]ventually," the police sedan "ended up behind" plaintiff. Id. At some point after the police car "moved behind" plaintiff, she "briefly picked up the phone and put

it in [her] lap." Id. Because plaintiff "thought [the police] car might have wanted to speed ahead of" her, she "pulled over to the third lane." Id. But, "[t]he police car pulled over behind" her and "within 10 or 15 seconds turned on [its] lights." Id. at 22.

Thereafter, plaintiff stopped her car "on the right shoulder" of the highway. Id. at 34. Warrenfeltz, who was dressed in a police uniform, approached plaintiff's car on the passenger's side. Id. at 37. Defendant "asked plaintiff if she was on her cell phone." Id. at 38. In response, plaintiff "told him that she had moved her cell phone from the passenger's seat to her lap." Id. Defendant requested plaintiff's license and registration, which plaintiff provided. Id. at 40.

Defendant "identified the driver [of the car he had stopped] as Veronica Ogunsula." ECF 96-3 (Warrenfeltz Declaration), ¶ 4. When defendant "ran [plaintiff's] information through the National Crime Information Center" database, he "learned that [plaintiff] had an active

warrant against her in the State of Virginia." Id. ¶ 5. The warrant, which was issued to the Metropolitan Washington Airports Authority Police ("MWAAP") on March 30, 2017, alleged that plaintiff had failed to return a vehicle that she had rented on January 19, 2017, which was due for return on February 10, 2017. ECF 96-4 at 15.[4] Defendant obtained confirmation from the MWAAP that plaintiff was "still listed as wanted by [the] agency for theft by bailee." Id. at 9 (typeface altered). "As a result of the warrant," defendant "arrested [plaintiff] at 11:39 a.m." and "transported [her] to the Harford County Detention Center." ECF 96-3, ¶ 7.

In the Incident Report (ECF 96-4), defendant provided an "Original Narrative," dated September 7, 2017, describing the circumstances of plaintiff's arrest, as follows, id. at 4:

> On 08/30/2017, at approximately 1119 hours, I (TFC Warrenfeltz #6510) was on patrol operating

[4] The pages displaying the warrant are not imprinted with electronic page numbers. The cited page is the fifteenth page in the submission docketed at ECF 96-4.

> unmarked MSP vehicle M-33. I was traveling in lane three on northbound I-95 at the 76 mile marker in Harford County, Maryland, when I observed a gray Hyundai Santa Fe, with Maryland registration 2CF1641, traveling in lane one. As I passed the vehicle, I observed the operator of the vehicle to be holding a cell phone in [her] right hand. The operator of the vehicle was manipulating the screen with her right thumb. I initiated a traffic stop on the vehicle, and it came to a complete stop on northbound I-95 at the 77 mile marker.
>
> I made contact with the operator and sole occupant of the vehicle via the passenger side window. The driver was identified via her Maryland driver's license as Veronica Wynona Ogunsula (1/F, [redacted]/1965).
>
> A NCIC check of Ogunsula revealed a warrant through Reagan National Airport Police, Virginia. The warrant was confirmed, and the Reagan National Airport Police advised that they would extradite Ogunsula. Ogunsula was arrested at 1139 hours, and transported to the Harford County IPC to await extradition.

The Incident Report indicates that defendant charged plaintiff with being a fugitive. See ECF 96-4

(Incident Report) at 20. However, defendant did not charge plaintiff with a traffic violation. See id.

Plaintiff was detained until September 2, 2017. See ECF 48-3. Records previously filed by plaintiff in this case indicate that the warrant for her arrest was later withdrawn and that the Office of the State's Attorney for Harford County entered a nolle prosequi with respect to the charge that she was a fugitive. See ECF 28-3.

III. Standard of Review

A.

The Motion is styled as a motion to dismiss under Fed. R. Civ. P. 12(b)(6) or, in the alternative, for summary judgment under Fed. R. Civ. P. 56. See ECF 96; ECF 96-2 at 6–7. A motion styled in this manner implicates the Court's discretion under Rule 12(d) of the Federal Rules of Civil Procedure. See Kensington Vol. Fire Dep't, Inc. v. Montgomery Cnty., 788 F. Supp. 2d 431, 436–37 (D. Md. 2011).

Ordinarily, a court "is not to consider matters outside the pleadings or resolve factual disputes when ruling on a motion to dismiss." Bosiger v. U.S. Airways, Inc., 510 F.3d 442, 450 (4th Cir. 2007). Under Rule 12(d), however, a court, in its discretion, may consider matters outside of the pleadings. If the court does so, "the motion must be treated as one for summary judgment under Rule 56," but "[a]ll parties must be given a reasonable opportunity to present all the material that is pertinent to the motion." Fed. R. Civ. P. 12(d); see Adams Hous., LLC v. City of Salisbury, Md., 672 F. App'x 220, 222 (4th Cir. 2016) (per curiam).

A court may not convert a motion to dismiss to one for summary judgment sua sponte, unless it gives notice to the parties that it will do so. See Laughlin v. Metro. Washington Airports Auth., 149 F.3d 253, 261 (4th Cir. 1998) (stating that a district court "clearly has an obligation to notify parties regarding any court-instituted changes" in the posture of a motion, including conversion

under Rule 12(d)); Finley Lines Joint Protective Bd. Unit 200 v. Norfolk So. Corp., 109 F.3d 993, 997 (4th Cir. 1997) ("[A] Rule 12(b)(6) motion to dismiss supported by extraneous materials cannot be regarded as one for summary judgment until the district court acts to convert the motion by indicating that it will not exclude from its consideration of the motion the supporting extraneous materials."); see also Adams Hous., LLC, 672 F. App'x at 222 (citation omitted) ("The court must give notice to ensure that the party is aware that it must 'come forward with all of [its] evidence.'"). However, when the movant expressly captions its motion as one for summary judgment "in the alternative," and submits matters outside the pleadings for the court's consideration, the parties are deemed to be on notice that conversion under Rule 12(d) may occur; the court "does not have an obligation to notify parties of the obvious." Laughlin, 149 F.3d at 261. A district judge has "complete discretion to determine whether or not to accept the submission of any material

beyond the pleadings that is offered in conjunction with a Rule 12(b)(6) motion and rely on it, thereby converting the motion, or to reject it or simply not consider it." 5 C WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE § 1366 (3d ed. 2004, April 2022 update). But, this discretion "should be exercised with great caution and attention to the parties' procedural rights." Id. In general, courts are guided by whether consideration of extraneous material "is likely to facilitate the disposition of the action" and "whether discovery prior to the utilization of the summary judgment procedure" is necessary. Id.

In my view, it is appropriate to construe the Motion as one for summary judgment. Discovery closed on September 9, 2023 (ECF 90), after five extensions of the deadline. See ECF 68; ECF 69; ECF 70; ECF 76; ECF 77; ECF 85; ECF 87; ECF 89; ECF 90. The parties have had ample opportunity to "to present all the material that is pertinent to the motion." Fed. R. Civ. P. 12(d). Because discovery is complete, construing the Motion as a motion to

dismiss would delay rather than "facilitate" the "disposition of the action." WRIGHT & MILLER, § 1366. Therefore, I shall construe the Motion as one for summary judgment, and apply the standard provided by Rule 56(a) of the Federal Rules of Civil Procedure.

B.

Under Rule 56(a) of the Federal Rules of Civil Procedure, summary judgment is appropriate only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." See Celotex Corp. v. Catrett, 477 U.S. 317, 322–24 (1986); see also Cybernet, LLC v. David, 954 F.3d 162, 168 (4th Cir. 2020); Variety Stores, Inc. v. Wal-Mart Stores, Inc., 888 F.3d 651, 659 (4th Cir. 2018); Iraq Middle Mkt. Dev. Found v. Harmoosh, 848 F.3d 235, 238 (4th Cir. 2017). "Applying that standard, the facts and all reasonable inferences drawn therefrom must be viewed in the light most favorable to the nonmoving party." Aleman v. City of Charlotte, 80 F.4th 264, 283–84 (4th Cir. 2023);

see Lujan v. Nat'l Wildlife Fed., 497 U.S. 871, 888 (1990); Dewberry Eng'rs Inc. v. Dewberry Grp., Inc., 77 F.4th 265, 277 (4th Cir. 2023); Knibbs v. Momphard, 30 F.4th 200, 206 (4th Cir. 2022); Walker v. Donahoe, 3 F.4th 676, 682 (4th Cir. 2021); Hannah P. v. Coats, 916 F.3d 327, 336 (4th Cir. 2019); Lee v. Town of Seaboard, 863 F.3d 323, 327 (4th Cir. 2017). The nonmoving party may avoid summary judgment by demonstrating that there is a genuine dispute of material fact that precludes the award of summary judgment as a matter of law. Ricci v. DeStefano, 557 U.S. 557, 585–86 (2009); Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 585–86 (1986); Gordon v. CIGNA Corp., 890 F.3d 463, 470 (4th Cir. 2018).

Pursuant to Fed. R. Civ. P. 56(c)(1), where the moving party bears the burden of proof on the issue at trial, he must support his factual assertions by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . admissions,

interrogatory answers, or other materials . . . ." But, where the nonmovant bears the burden of proof at trial, the moving party may show that it is entitled to summary judgment by citing to evidence in the record, or "by 'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case." Celotex Corp., 477 U.S. at 325; see also Fed. R. Civ. P. 56(c)(1)(B).

The Supreme Court has clarified that not every factual dispute will defeat a summary judgment motion. "By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247–48 (1986) (emphasis in original). A fact is "material" if it "might affect the outcome of the suit under the governing law." Id. at 248.

A dispute of material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id.; see CTB, Inc. v. Hog Slat, Inc., 954 F.3d 647, 658 (4th Cir. 2020); Variety Stores, Inc., 888 F.3d at 659; Sharif v. United Airlines, Inc., 841 F.3d 199, 2014 (4th Cir. 2016); Libertarian Party of Va. v. Judd, 718 F.3d 308, 313 (4th Cir. 2013). On the other hand, summary judgment is appropriate if the evidence "is so one-sided that one party must prevail as a matter of law." Anderson, 477 U.S. at 252; see McAirlaids, Inc. v. Kimberly-Clark Corp., 756 F.3d 307, 310 (4th Cir. 2014).

"A party opposing a properly supported motion for summary judgment 'may not rest upon the mere allegations or denials of [its] pleadings,' but rather must 'set forth specific facts showing that there is a genuine issue for trial.'" Bouchat v. Balt. Ravens Football Club, Inc., 346 F.3d 514, 522 (4th Cir. 2003) (quoting former Fed. R. Civ. P. 56(e)), cert. denied, 541 U.S. 1042 (2004); see Celotex Corp., 477 U.S. at 322–24. The nonmovant "must rely on more

than conclusory allegations, mere speculation, the building of one inference upon another, or the mere existence of a scintilla of evidence." Humphreys & Partners Architects, L.P. v. Lessard Design, Inc., 790 F.3d 532, 540 (4th Cir. 2015) (internal quotation marks omitted); see also Anderson, 477 U.S. at 252; Thompson v. Virginia, 878 F.3d 89, 97 (4th Cir. 2017). "Fanciful inferences and bald speculations of the sort no rational trier of fact would draw or engage in at trial need not be drawn or engaged in at summary judgment." Local Union 7107 v. Clinchfield Coal Co., 124 F.3d 639, 640 (4th Cir. 1997) (citations omitted). In short, "[u]nsupprted speculation is not sufficient to defeat a summary judgment motion." Felty v. Graves-Humphreys Co., 818 F.2d 1126, 1128 (4th Cir. 1987); see also Reddy v. Buttar, 38 F.4th 393, 403–04 (4th Cir. 2022); CTB, Inc., 954 F.3d at 659; Harris v. Home Sales Co., 499 F. App'x 285, 294 (4th Cir. 2012).

The district court's "function" is not "to weigh the evidence and determine the truth of the matter but to

determine whether there is a genuine issue for trial." Anderson, 477 U.S. at 249; accord Guessous v. Fairview Prop. Invs., LLC, 828 F.3d 208, 216 (4th Cir. 2016). Therefore, in considering a summary judgment motion, the court may not weigh the evidence or make credibility determinations. Brown v. Lott, No. 21-6928, 2022 WL 2093849, at *1 (4th Cir. June 10, 2022) (per curiam); Knibbs, 30 F.4th at 207, 213; Betton v. Belue, 942 F.3d 184, 190 (4th Cir. 2019); Wilson v. Prince George's Cnty., 893 F.3d 213, 218–19 (4th Cir. 2018); Jacobs v. N.C. Administrative Office of the Courts, 780 F.3d 562, 569 (4th Cir. 2015); Mercantile Peninsula Bank v. French, 499 F.3d 345, 352 (4th Cir. 2007). In the face of conflicting evidence, such as competing affidavits, a court must deny summary judgment, because it is the function of the factfinder to resolve factual disputes, including matters of witness credibility. See Black & Decker Corp. v. United States, 436 F.3d 431, 442 (4th Cir. 2006); Dennis v. Columbia Colleton Med. Ctr., Inc., 290 F.3d 639, 64445 (4th Cir. 2002).

"[S]elf-serving affidavits offered by the non-movant can sometimes defeat summary judgment." Pfaller v. Amonette, 55 F.4th 436, 450 (4th Cir. 2022); see Harrell v. DeLuca, 97 F.4th 180, 187 (4th Cir. March 27, 2024) (recognizing that the self-serving declaration of a nonmovant "can defeat summary judgment"); Mann v. Failey, 578 F. App'x 267, 273 n.2 (4th Cir. 2014) (per curiam) (unpublished but orally argued) ("[T]he record could defeat summary judgment even if the evidence consisted exclusively of so-called 'self-serving' declarations from [the nonmovant] himself."); see also Fed. R. Civ. P. 56(c)(1)(A), (4). In contrast, self-serving statements made by the movant are not sufficient. Pfaller, 55 F.4th at 450 ("[H]ere it is the movant . . . who offers his own statements as the key evidence in support of summary judgment. That is insufficient.") (emphasis in original); Knibbs, 30 F.4th at 222 (stating that "the dissent, like the district court, contravenes Rule 56 by accepting [the movant's] self-

serving statements and reading the evidence in the light most favorable to him.") (emphasis in original).

"Courts in the Fourth Circuit may not consider inadmissible evidence on a motion for summary judgment." Giles v. Nat'l R.R. Passenger Corp., 59 F.4th 696, 704 (4th Cir. 2023) (citing Md. Highways Contractors Ass'n, Inc. v. Maryland, 933 F.2d 1246, 1251 (4th Cir. 1991)). Therefore, to the extent that evidence amounts to inadmissible hearsay, it "cannot create a factual dispute" for purposes of summary judgment. Stanton v. Elliott, 25 F.4th 227, 237 n.7 (4th Cir. 2022) (citing Md. Highways Contractors Ass'n, 933 F.3d at 1251); see also Graves v. Lioi, 930 F.3d 307, 326 n.15 (4th Cir. 2019) (observing that "hearsay, like other evidence inadmissible at trial, is ordinarily an inadequate basis for summary judgment") (citation and internal quotation marks omitted).

However, "[i]f a party fails to object to the inadmissibility of evidence submitted by its opponent in the

summary judgment proceedings, the court may consider the evidence." 11

Moore's Federal Practice – Civil § 56.91[7] (2024). This is because "[t]he failure to raise the issue . . . constitutes a waiver of the objection for purposes of summary judgment." Id.; accord Munoz v. Int'l Alliance of Theatrical Stage Emp. and Moving Picture Machine Operators, 563 F.2d 205, 214 (5th Cir. 1977) ("Inadmissible material that is considered by a district court without challenge may support a summary judgment."); Peterson v. State Farm Ins. Co., ___ F. Supp. 3d ___ , 2023 WL 8792147, at *2 (N.D. Ala. Dec. 19, 2023) (stating that, "in the absence of an objection," inadmissible "evidence could and, if material, should be factored into a summary judgment decision") (citation and internal quotation marks omitted); see also Desrosiers v. Hartford Life and Acc. Co., 515 F.3d 87, 92 (1st Cir. 2008); Jones v. Owens-Corning Fiberglas Corp. and Amchem Prods., Inc., 69 F.3d 712, 718 (4th Cir. 1995); Glenn v. United States, 271 F.2d 880, 883

(6th Cir. 1959); Campbell v. Hanover Ins. Co., 457 B.R. 452, 459 (W.D.N.C. 2011).

IV. Discussion

As noted, plaintiff did not respond to the Motion. See Docket. A "failure to respond, however, does not fulfill the burdens imposed on moving parties by [Fed. R. Civ. P.] 56." Custer v. Pan Am. Life Ins. Co., 12 F.3d 410, 416 (4th Cir. 1993); see Maryland v. Univ. Elections, Inc., 729 F.3d 370, 380 (4th Cir. 2013). The Fourth Circuit has explained, Custer, 12 F.3d at 416:

> Section (c) of Rule 56 requires that the moving party establish, in addition to the absence of a dispute over any material fact, that it is "entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Although the failure of a party to respond to a summary judgment motion may leave uncontroverted those facts established by the motion, the moving party must still show that the uncontroverted facts entitle the party to "a judgment as a matter of law." The failure to respond to the motion does not automatically accomplish this. Thus, the court, in considering a motion for summary judgment, must review the motion, even if unopposed, and determine from what it has before it whether the moving party is entitled to summary judgment as a matter of law. This duty of the court is restated in section (e) of the rule, providing, "if the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." Fed. R. Civ. P. 56(e) (emphasis [in Custer]).

Therefore, notwithstanding plaintiff's failure to respond, I must first determine whether the evidence that defendant has submitted in support of the Motion "shows that there is no genuine dispute as to any material fact." Fed. R. Civ. P. 56(a). And, if I conclude that the evidence shows that there is no genuine dispute of material fact, I must then determine whether the undisputed facts establish that "the movant is entitled to judgment as a matter of law." Id.

Warrenfeltz argues that he had reasonable suspicion to initiate a traffic stop of plaintiff's vehicle because the undisputed facts establish that he "observed Plaintiff manipulating the earbud and her cell phone" while driving, in violation of Md. Code (2020 Repl. Vol., 2023 Supp.), § 21 1124.1 and § 21-1124.2 of the Transportation Article ("Transp."). ECF 96-2 at 8. Transp. § 21-1124.1(b) provides, in part, that "an individual may not use a text messaging device to write, send, or read a text message or an electronic message while operating a motor vehicle in

the travel portion of the roadway." And, Transp. § 21-1124.2(d)(2) provides: "A driver of a motor vehicle that is in motion may not use the driver's hands to use a handheld telephone other than to initiate or terminate a wireless telephone call or to turn on or turn off the handheld telephone."

Alternatively, Warrenfeltz asserts that, even if the stop was not supported by reasonable suspicion, he is nonetheless entitled to qualified immunity. ECF 96-2 at 11–13. According to Warrenfeltz, an officer is "entitled to qualified immunity if '[he] reasonably but mistakenly conclude[d] that probable cause [or reasonable suspicion] was present.'" Id. at 12 (quoting District of Columbia v. Wesby, 583 U.S. 48, 54 (2018)) (additional citation and internal quotation marks omitted). And, in Warrenfeltz's view, based on his "observ[ation] [that] Plaintiff [was] handling both her earbud and her phone to some degree," it "was reasonable . . . to conclude [that] Plaintiff was

violating Maryland's prohibition on using mobile devices while driving." ECF 96-2 at 13.

As noted, I first consider whether there are any genuine disputes of material fact that would foreclose resolution of the case by way of summary judgment. In conducting this inquiry, I "need consider only the cited materials." Fed. R. Civ. P. 56(c)(3). Because plaintiff did not respond to the Motion, the only "cited materials" for my consideration are those cited by defendant in the Motion: the Warrenfeltz Declaration (ECF 96-3), the Incident Report (ECF 96-4), and the Ogunsula Deposition. ECF 96-5.[5]

In the Incident Report, Warrenfeltz wrote that he was in an unmarked police vehicle, traveling northbound on Interstate 95, when he "passed [Ogunsula's] vehicle."

---

[5] 5The Motion occasionally cites certain allegations in the SAC (ECF 60). See, e.g., ECF 96-2 at 10. But, it is well settled that "[a]llegations in a complaint are not evidence, and cannot defeat a motion for summary judgment." Cambridge Capital Grp. v. Pill, 20 Fed. App'x 121, 124–25 (4th Cir. 2001); see Celotex Corp., 477 U.S. at 324 ("Rule 56(e) permits a proper summary judgment motion to be opposed by any of the kinds of evidentiary materials listed in Rule 56(c), except the mere pleadings themselves . . . .").

ECF 96-4 at 4. At Of significance, Ogunsula's deposition testimony tends to confirm the veracity of defendant's statements in the Declaration and the Incident Report. At her deposition, plaintiff admitted that, when defendant's car "moved behind" her, she "briefly picked up [her] phone and put it in [her] lap." ECF 96-5 at 25. Plaintiff testified that she did so "to . . . attach [her] headphone," because she "was going to make a call." Id. at 26; see also id. at 30 ("I probably . . . was just going to make a quick call . . . ."). And, plaintiff acknowledged that, when defendant approached her car after effecting the stop and "asked her if she was on her cell phone," she "told him that she had moved her cell phone from the passenger's seat to her lap." Id. at 38.

The evidence before the Court demonstrates, without genuine dispute, that plaintiff handled her phone while operating her motor vehicle in defendant's vicinity, and that defendant observed her handling her phone. Therefore, I turn to consider whether, given these

undisputed facts, defendant "is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). This issue implicates the legality of the traffic stop. As noted, defendant argues that the traffic stop was lawful because it was based on reasonable suspicion that plaintiff had committed a traffic violation. ECF 96-2 at 8.

In general, a traffic stop begins when a car "is pulled over for investigation of a traffic violation." Arizona v. Johnson, 555 U.S. 323, 333 (2009). It is well settled that when a police officer stops an automobile and detains the occupant, the stop constitutes a seizure that implicates the Fourth Amendment. Kansas v. Glover, 589 U.S. 376, 380 (2020); United States v. Cloud, 994 F.3d 233, 241 (4th Cir. 2021); United States v. Drakeford, 992 F.3d 255, 262 (4th Cir. 2021); United States v. Curry, 965 F.3d 313, 319 (4th Cir. 2020) (en banc); see, e.g., Brendlin v. California, 551 U.S. 249, 255 (2007); Whren v. United States, 517 U.S. 806, 809–10 (1996); United States v. Sharpe, 470 U.S. 675, 682 (1985); Delaware v. Prouse, 440 U.S. 648, 653 (1979); that

time, he "observed the operator . . . to be holding a cell phone in [her] right hand." Id. Further, Warrenfeltz wrote: "The operator of the vehicle was manipulating the screen with her right thumb." Id. Warrenfeltz's statements in the Declaration are to the same effect. ECF 96-3, ¶ 3. United States v. Feliciana, 974 F.3d 519, 522 (4th Cir. 2020); United States v. Bowman, 884 F.3d 200, 209 (4th Cir. 2018); United States v. Sowards, 690 F.3d 583, 588–89 (4th Cir. 2012); United States v. Ortiz, 669 F.3d 439, 444 (4th Cir. 2012); United States v. Digiovanni, 650 F.3d 498, 506 (4th Cir. 2011), abrogated in part on other grounds by Rodriguez v. United States, 575 U.S. 348 (2015).

By its plain text, the Fourth Amendment "does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable." Florida v. Jimeno, 500 U.S. 248, 250 (1991); see Illinois v. Rodriguez, 497 U.S. 177, 183–84 (1990); Sharpe, 470 U.S. at 682; United States v. Mendenhall, 446 U.S. 544, 551 (1980). Therefore, "'the ultimate touchstone of the Fourth

Amendment is reasonableness.'" Riley v. California, 573 U.S. 373, 381 (2014) (quoting Brigham City v. Stuart, 547 U.S. 398, 403 (2006) (internal quotation marks omitted)); see also Fernandez v. California, 571 U.S. 292, 298 (2014); Maryland v. Wilson, 519 U.S. 408, 411 (1997); Jimeno, 500 U.S. at 250; United States v. Aigbekaen, 943 F.3d 713, 719–20 (4th Cir. 2019).

The "test of reasonableness under the Fourth Amendment is an objective one." Los Angeles County v. Rettele, 550 U.S. 609, 614 (2007) (citing Graham v. Connor, 490 U.S. 386, 397 (1989)).

Reasonableness is determined by balancing "the intrusion on the individual's Fourth Amendment interests against [the] promotion of legitimate governmental interests." Maryland v. Buie, 494 U.S. 325, 331 (1990). As the Supreme Court explained in Pennsylvania v. Mimms, 434 U.S. 106, 109 (1977) (per curiam): "Reasonableness, of course, depends 'on a balance between the public interest and the individual's right to personal security free from

arbitrary interference by law officers.'" (quoting United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975)); see United States v. Sokolow, 490 U.S. 1, 9 (1989); see also United States v. Lyles, 910 F.3d 787, 796 (4th Cir. 2018) ("The magnitude of the intrusion relative to the seriousness of any offense 'is of central relevance to determining reasonableness[.]'") (quoting Maryland v. King, 569 U.S. 435, 446 (2013)).

In Santos v. Frederick County Bd. of Comm'rs, 725 F.3d 451 (4th Cir. 2013), the Fourth Circuit summarized "three categories of police-citizen encounters," id. at 460–61:

> First, "consensual" encounters, the least intrusive type of police-citizen interaction, do not constitute seizures and, therefore, do not implicate Fourth Amendment protections. Florida v. Bostick, 501 U.S. 429, 434[] (1991). Second, brief investigative detentions—commonly referred to as "Terry stops"—require reasonable, articulable suspicion of criminal activity. Terry [v. Ohio, 392 U.S. 1 (1968)]. Finally, arrests, the most intrusive type of police-citizen encounter, must be supported by probable cause. Devenpeck v. Alford, 543 U.S. 146, 152[] (2006).
>
> A police-citizen encounter rises to the level of a Fourth Amendment seizure when "the officer, by

> means of physical force or show of authority, has in some way restrained the liberty of a citizen . . . ." United States v. Jones, 678 F.3d 293, 299 (4th Cir. 2012) (quoting Terry, 392 U.S. at 19 n.16 [ ]). This inquiry is objective, [United States v.] Weaver, 282 F.3d [302, 309 (4th Cir. 2002)], asking whether "'in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.'" Jones, 678 F.3d at 299 (quoting Mendenhall, 446 U.S. at 553 [ ]). An encounter generally remains consensual when, for example, police officers engage an individual in routine questioning in a public place. United States v. Gray, 883 F.2d 320, 323 (1989); see also Bostick, 501 U.S. at 434[ ] ("[M]ere police questioning does not constitute a seizure.").

Generally, warrantless seizures and searches are per se unreasonable, subject only to a few well-established exceptions. See Katz v. United States, 389 U.S. 347, 357 (1967); see also Riley, 573 U.S. at 382 (stating that, "[i]n the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement"); Kentucky v. King, 563 U.S. 452, 459–60 (2011). The government bears the burden of justifying a warrantless seizure. Feliciana, 974 F.3d at 523; United States v. Kehoe, 893 F.3d 232, 237 (4th Cir. 2018); United States v. McGee, 736 F.3d 263, 269 (4th Cir. 2013).

What has become known as the "Terry stop and frisk" is one of the exceptions to the warrant requirement. See Terry, 392 U.S. 1. The seminal case of Terry v. Ohio permits a police officer to stop and temporarily detain an individual for investigative purposes, without violating the Fourth Amendment's prohibition against unreasonable searches and seizures, so long as the officer has a reasonable, articulable suspicion, based on specific facts, that criminal activity is afoot. Id. at 30; see United States v. Peters, 60 F.4th 855, 862 (4th Cir. 2023); Feliciana, 974 F.3d at 522; see also United States v. Arvizu, 534 U.S. 266, 273 (2002); Reid v. Georgia, 448 U.S. 438, 440 (1980); United States v. Slocumb, 804 F.3d 677, 681 (4th Cir. 2015); United States v. Massenburg, 654 F.3d 480, 485 (4th Cir. 2011). The purpose of a Terry stop is investigative, that is, to verify or to dispel the officer's suspicion. Terry, 392 U.S. at 22, 30.[6]

---

[6] With respect to a frisk, the police officer must have a reasonable suspicion that the suspect is both armed and dangerous. Johnson, 555 U.S. at 327. But, certainty is not required. Terry, 392 U.S. at 27.

Bowman, 884 F.3d at 209; United States v. Palmer, 820 F.3d 640, 648 (4th Cir. 2016); Williams, 808 F.3d at 245; United States v. Guijon-Ortiz, 660 F.3d 757, 764 (4th Cir. 2011). Under the dual inquiry standard, the court examines "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." Sharpe, 470 U.S. at 682; see also Bernard, 927 F.3d at 805; United States v. Hill, 852 F.3d 377, 381 (4th Cir. 2017); Williams, 808 F.3d at 245; Guijon-Ortiz, 660 F.3d at 764.

Reasonable suspicion requires "'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" Glover, 589 U.S. at 380 (citation omitted); see Ornelas v. United States, 517 U.S. 690, 696 (1996) (stating that reasonable suspicion is "a particularized and objective basis for suspecting the person stopped of criminal activity. . . ."); see also Wingate v. Fulford, 987 F.3d 299, 305 (4th Cir. 2021); Feliciana, 974

F.3d at 523; Williams, 808 F.3d at 246; United States v. Black, 707 F.3d 531, 539 (4th Cir. 2013); Massenburg, 654 F.3d at 486; United States v. Griffin, 589 F.3d 148, 152 (4th Cir. 2009). But, it "is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence," although a "minimal level of objective justification [is required] for making the stop." Illinois v. Wardlow, 528 U.S. 119, 123 (2000); see Glover, 589 U.S. at 380; United States v. Critchfield, 81 F.4th 390 F.4th 393 (4th Cir. 2023); United States v. Lawing, 703 F. 3d 229, 236 (4th Cir. 2012); United States v. Christmas, 222 F.3d 141, 143 (4th Cir. 2000).

To be sure, the matter of reasonable, articulable suspicion is sometimes elusive. The Supreme Court has acknowledged the difficulty in defining the term "articulable suspicion." Ornelas, 517 U.S. at 699–700. Moreover, the Court has recognized that the standard is "'not readily, or even usefully, reduced to a neat set of legal rules.'" Id. at 695–96. However, "the detaining officer

[must] '. . . either articulate why a particular behavior is suspicious or logically demonstrate, given the surrounding circumstances, that the behavior is likely to be indicative of some more sinister activity than may appear at first glance.'" Williams, 808 F.3d at 246 (citation omitted).

Reasonable suspicion is an "objective standard." United States v. Johnson, 734 F.3d 270, 275 (4th Cir. 2014). Therefore, the officer's subjective state of mind is not considered. United States v. George, 732 F.3d 296, 299 (4th Cir. 2013), cert. denied, 572 U.S. 1009 (2014); United States v. Powell, 666 F.3d 180, 186 (4th Cir. 2011).

Notably, the standard "'depends on the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" Glover, 589 U.S. at 380 (citations omitted) (emphasis added in Glover). Moreover, officers must be permitted to make "'commonsense judgments and inferences about human behavior.'" Id. (citation omitted); see Navarette v. California, 572 U.S. 393, 404 (2014). Therefore, in

assessing reasonable suspicion, courts must "give due weight to common sense judgments reached by officers in light of their experience and training." United States v. Perkins, 363 F.3d 317, 321 (4th Cir. 2004); see also Glover, 589 U.S. at 383; Critchfield, 81 F.4th at 393; Feliciana, 974 F.3d at 525; United States v. McBride, 676 F.3d 385 (4th Cir. 2012); Sowards, 690 F.3d at 587–88; United States v. Johnson, 599 F.3d 339, 343 (4th Cir. 2010); United States v. Branch, 537 F.3d 328, 33–37 (4th Cir. 2008), cert. denied, 555 U.S. 1118 (2009).

As the Fourth Circuit has said, the court "must not discount the officers' experience and training 'to detect the nefarious in the mundane.'" Critchfield, 81 F.4th at 395 (quoting United States v. McCoy, 513 F.3d 405, 415 (4th Cir. 2008)). However, a mere "'hunch'" or "'inchoate and unparticularized suspicion'" is not enough. Wardlow, 528 U.S. at 124 (citation omitted); see Critchfield, 81 F.4th at 393; United States v. Gist-Davis, 41 F.4th 259, 264 (4th Cir. 2022). "The suspicion must be articulable . . . ."

Critchfield, 81 F.4th at 393. But, "'[t]o be reasonable is not to be perfect.'" Glover, 589 U.S. at 381 (citation omitted).

In making this assessment, a court considers the totality of circumstances. See Arvizu, 534 U.S. at 273; Peters, 60 F.4th at 864; Cloud, 994 F.3d at 242. "A host of factors can contribute to a basis for reasonable suspicion, including the context of the stop, the crime rate in the area, and the nervous or evasive behavior of the suspect." George, 732 F.3d at 299 (citing Wardlow, 528 U.S. at 124). And, "[f]acts innocent in themselves may together amount to reasonable suspicion." United States v. Mitchell, 963 F.3d 385, 390 (4th Cir. 2020); see Sokolow, 490 U.S. at 9–10.

The fact that a vehicle is being driven contrary to the laws governing the operation of motor vehicles generally gives rise to probable cause or reasonable, articulable suspicion of a crime. Prouse, 440 U.S. at 650; Whren, 517 U.S. at 817–18. In Bernard, 927 F.3d at 805, the Fourth

Circuit reiterated: "'When an officer observes a traffic offense—however minor—he has probable cause to stop the driver of the vehicle.'" (quoting United States v. Williams, 740 F.3d 308, 312 (4th Cir. 2014)). And, "'once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures.'" Ohio v. Robinette, 519 U.S. 33, 38–39 (1996) (quoting Mimms, 434 U.S. at 111 n.6).[7] The stop of the driver ordinarily does not violate the Constitution, so long as the stop is no longer than necessary to perform the traditional incidents of a routine traffic stop. Rodriguez, 575 U.S. at 350; Illinois v. Caballes, 543 U.S. 405, 407 (2005); Prouse, 440 U.S. at 650; Branch, 537 F.3d at 335.

However, "the Government cannot rely upon post hoc rationalizations to validate those seizures that happen to

[7] A passenger may also be required to exit a vehicle during a routine traffic stop. Wilson, 519 U.S. at 414–15.

turn up contraband." United States v. Foster, 824 F.3d 84, 89 (4th Cir. 2016) (citation and internal quotation marks omitted); see Peters, 60 F.4th at 864. As the Fourth Circuit has said, "[i]t is the police officer who 'must be able to point to specific and articulable facts' — not a party's brief." Peters, 60 F.4th at 864 (citing Terry, 392 U.S. at 21) (emphasis in Peters).

According to defendant, his stop of plaintiff was justified by reasonable, articulable suspicion that she was using her phone in a manner prohibited by Transp. §§ 21-1124.1, 2. ECF 96-2 at 8–9. As noted, Transp. § 21-1124.1(b) states, in part, that "an individual may not use a text messaging device to write, send, or read a text message or an electronic message while operating a motor vehicle in the travel portion of the roadway." And, Transp. § 21-1124.2(d)(2) provides: "A driver of a motor vehicle that is in motion may not use the driver's hands to use a handheld telephone other than to initiate or terminate a wireless

telephone call or to turn on or turn off the handheld telephone."

I have determined that there is no genuine dispute that defendant observed plaintiff "holding a cell phone in her right hand" while she was driving on Interstate 95, in the vicinity of the police officer, who was in an unmarked police car. ECF 96-3 (Warrenfeltz Declaration), ¶ 3; see also ECF 96-4 at 4. In my view, defendant's observation to this effect was sufficient to create a reasonable, articulable suspicion that plaintiff was "us[ing] a text messaging device to write, send, or read a text message or an electronic message while operating a motor vehicle in the travel portion of the roadway," in violation of Transp. § 21-1124.1(b). In addition, defendant's observation was sufficient to create a reasonable, articulable suspicion that plaintiff was "us[ing] [her] hands to use a handheld telephone other than to initiate or terminate a wireless telephone call or to turn on or turn off the handheld telephone," in violation of Transp. § 21-1124.2(d)(2).

In sum, I readily conclude that defendant's stop of plaintiff was lawful, because the officer had reasonable, articulable suspicion that plaintiff was operating her vehicle in violation of Maryland law. It follows that the stop did not violate the Fourth Amendment. Because defendant's stop of Ogunsula did not violate the Fourth Amendment, defendant is entitled to summary judgment. And, having concluded that the stop was lawful, I need not address defendant's invocation of qualified immunity. E.W. ex rel. T.W. v. Dolgos, 884 F.3d 172, 178 (4th Cir. 2018) (citation and internal quotation marks omitted).

As noted, plaintiff's Motion to Seal (ECF 117), Motion for Reconsideration (ECF 114), and Motion Regarding Subpoenas (ECF 128) are pending.

The Motion to Seal (ECF 117) appears to ask the Court to permanently seal the subpoenas plaintiff requested in her filing of March 12, 2024. See ECF 118; ECF 118-1. However, the Motion to Seal provides no argument that sealing of the requested subpoenas would be appropriate.

See ECF 117. Defendant did not respond to the Motion to Seal. See Docket.

It is well established that the common law provides "a right of access [to] all judicial records and documents." In re Application of the United States for an Order Pursuant to 18 U.S.C. Section 2703(D), 707 F.3d 283, 290 (4th Cir. 2013) (quoting In re Knight Publ'g Co., 743 F.2d 231, 235 (4th Cir. 1984)) (additional citation omitted). This right can be defeated only if "'the public's right of access is outweighed by competing interests.'" In re Application, 707 F.3d at 290 (quoting In re Knight, 743 F.2d at 235) (additional citation omitted); see also Rushford v. New Yorker Magazine, Inc., 846 F.2d 249, 253 (4th Cir. 1988) (holding that common law right of access may be abrogated in "unusual circumstances," when "countervailing interests heavily outweigh the public interests in access").

Applying this standard, I see no basis on which to conclude that sealing of the requested subpoenas would be

warranted. Therefore, I shall deny the Motion to Seal. ECF 117.

In the Motion for Reconsideration (ECF 114), plaintiff asks the Court to issue a protective order specifying that she need not produce medical records that predate the events of August 30, 2017, by more than one year. Because my disposition of the Motion will result in the dismissal of the suit, any question regarding the scope of plaintiff's discovery obligations is now moot.

Therefore, I shall deny, as moot, the Motion for Reconsideration (ECF 114).

In the Motion Regarding Subpoenas (ECF 128), plaintiff asks the Court to issue subpoenas to "The Washington Metropolitan Area Transit Authority," "AT&T," and the "Hyatt Regency." Id. at 1. Plaintiff indicates that the requested subpoenas would produce information concerning "the disappearance of the phone" on which she claims she stored case-related information. Id. at 2. In particular, according to plaintiff, the requested subpoenas would

facilitate her recovery of a lost phone containing photographs and videos of "a vehicle of the same make, model and year that the Plaintiff was driving" when she was pulled over by defendant. Id.

Fed. R. Civ. P. 45(a)(3) provides: "The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service."

But, Local Rule 102.3 provides:

> The Clerk shall not issue any subpoena under Fed. R. Civ. P. 45(a)(3) to any self-represented litigant without f irst obtaining an order from the Court authorizing the issuance of the subpoena. Before entering any such order the Court may require the litigant to state the reasons why the subpoena should be issued, and the Court may refuse to authorize issuance of the subpoena if it concludes that the subpoena imposes undue burden or expense on the person subject to the subpoena or upon the U.S. Marshal or other court officer who would be required to serve it under 28 U.S.C. § 1915, or is otherwise inconsistent with the requirements of Fed. R. Civ. P. 26 and 45(d)

I readily conclude that granting the subpoenas discussed in the Motion Regarding Subpoenas would be

"inconsistent with the requirements of Fed. R. Civ. P. 26[b][1]." That Rule provides, in part:

> Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Especially in light of my disposition of the Motion, which will result in dismissal of plaintiff's suit, issuance of subpoenas to aid plaintiff in the recovery of her lost cell phone would not be "proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). Therefore, I shall deny the Motion Regarding Subpoenas. ECF 128.

VI. Conclusion

I am mindful that plaintiff earnestly believes that she was subjected to an unlawful traffic stop. I also recognize that the traffic stop cascaded into a series of events that led to plaintiff's unfortunate detention. The

Court certainly regrets any indignities that plaintiff may have experienced. But, what happened to plaintiff as a result of the legal traffic stop was not the "fault" of the officer, who lawfully executed the traffic stop, learned of the outstanding warrant, and acted appropriately in detaining plaintiff because of it.

For the foregoing reasons, I shall grant the Motion (ECF 96); deny the Motion for Reconsideration (ECF 114), as moot; deny the Motion to Seal (ECF 117); and deny the Motion Regarding Subpoenas. ECF 128.

An Order follows, consistent with this Memorandum Opinion.

STATUTES

Fourth Amendment

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.

Fourteenth Amendment

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the

basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. § 1979; Pub. L. 96–170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104–317, title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

2017 Maryland Code Transportation
Title 21 - Vehicle Laws -- Rules of the Road
Subtitle 11 - Miscellaneous Rules

§ 21-1124.1. Text messaging prohibited

Universal Citation:

MD Transp Code § 21-1124.1 (2017)

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "9-1-1 system" has the meaning stated in § 1-301 of the Public Safety Article.

(3) "Text messaging device" means a handheld device used to send a text message or an electronic message via a short message service, wireless telephone service, or electronic communication network.

(b) In general. -- Subject to subsection (c) of this section, an individual may not use a text messaging device to write, send, or read a text message or an electronic message while operating a motor vehicle in the travel portion of the roadway.

(c) Exceptions. -- This section does not apply to the use of:

(1) A global positioning system; or

(2) A text messaging device to contact a 9-1-1 system.

§ 21-1124.2. Communications Traffic Safety Act

Universal Citation:

MD Transp Code § 21-1124.2 (2017)

(a) Definitions. --

(1) In this section the following words have the meanings indicated

(2) "Handheld telephone" means a handheld device used to access wireless telephone service.

(3) "9-1-1 system" has the meaning stated in § 1-301 of the Public Safety Article.

(b) Exceptions to applicability of section. -- This section does not apply to:

(1) Emergency use of a handheld telephone, including calls to:

(i) A 9-1-1 system;

(ii) A hospital;

(iii) An ambulance service provider;

(iv) A fire department;

(v) A law enforcement agency; or

(vi) A first aid squad;

(2) Use of a handheld telephone by the following individuals when acting within the scope of official duty:

(i) Law enforcement personnel; and (ii) Emergency personnel;

(3) Use of a handheld telephone as a text messaging device as defined in § 21-1124.1 of this subtitle; and

(4) Use of a handheld telephone as a communication device utilizing push-to-talk technology by an individual operating a commercial motor vehicle, as defined in 49 C.F.R. Part 390.5 of the Federal Motor Carrier Safety Regulations.

(c) Persons prohibited from use of handheld telephone while driving. -- The following individuals may not use a handheld telephone while operating a motor vehicle:

(1) A driver of a Class H (school) vehicle that is carrying passengers and in motion; and

(2) A holder of a learner's instructional permit or a provisional driver's license who is 18 years of age or older.

(d) Prohibited use of handheld telephone while vehicle is in motion. --

(1) This subsection does not apply to an individual specified in subsection (c) of this section.

(2) A driver of a motor vehicle that is in motion may not use the driver's hands to use a handheld telephone other than to initiate or terminate a wireless telephone call or to turn on or turn off the handheld telephone

Rule 56. Summary Judgment

(a) MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) TIME TO FILE A MOTION. Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) PROCEDURES.

(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored in formation, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) Objection That a Fact Is Not Supported by Admissible Evidence. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence. (3) Materials Not

Cited. The court need consider only the cited materials, but it may consider other materials in the record. (4) Affidavits or Declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) WHEN FACTS ARE UNAVAILABLE TO THE NONMOVANT. If a nonmovant shows by affidavit or declaration that, for specified rea sons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) FAILING TO PROPERLY SUPPORT OR ADDRESS A FACT. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) JUDGMENT INDEPENDENT OF THE MOTION. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) FAILING TO GRANT ALL THE REQUESTED RELIEF. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) AFFIDAVIT OR DECLARATION SUBMITTED IN BAD FAITH. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions. (As amended

Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2010, eff. Dec. 1, 2010.)

Rule 59. New Trial; Altering or Amending a Judgment

(a) IN GENERAL.

(1) Grounds for New Trial. The court may, on motion, grant a new trial on all or some of the issues—and to any party—as follows:

(A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court; or

(B) after a nonjury trial, for any reason for which are hearing has heretofore been granted in a suit in equity in federal court.

(2) Further Action After a Nonjury Trial. After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(b) TIME TO FILE A MOTION FOR A NEW TRIAL. A motion for a new trial must be filed no later than 28 days after the entry of judgment.

(c) TIME TO SERVE AFFIDAVITS. When a motion for a new trial is based on affidavits, they must be filed with the motion. The op posing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

(d) NEW TRIAL ON THE COURT'S INITIATIVE OR FOR REASONS NOT IN THE MOTION. No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) MOTION TO ALTER OR AMEND A JUDGMENT. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

Notes

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Feb. 28, 1966, eff. July 1, 1966; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

GRAPHIC DIAGRAM OF TRAFFIC STOP
of Veronica Ogunsula

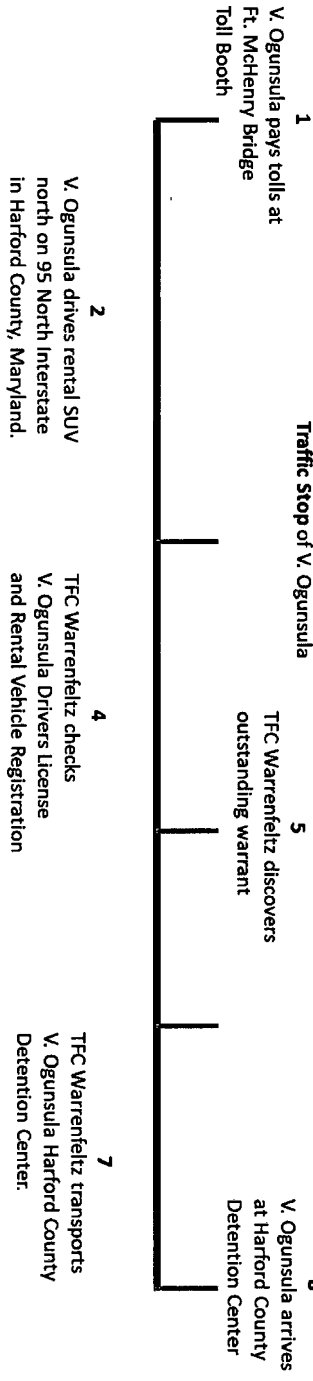

Figure 1--Diagram of Traffic Stop of Veronica Ogunsula, Wednesday, 8/30/2017