

**STATE OF WEST VIRGINIA  
SUPREME COURT OF APPEALS**

C. CASEY FORBES, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**State of West Virginia,  
Plaintiff Below, Respondent**

**v.) No. 23-422 Fayette (CC-10-2022-F-178)**

**Steven Verrell Roberts,  
Defendant Below, Petitioner**

**MEMORANDUM DECISION**

The petitioner, Steven Verrell Roberts, appeals his convictions, as set forth in the Circuit Court of Fayette County’s June 15, 2023, sentencing order, for two felony charges: possession of a controlled substance (methamphetamine) with intent to deliver; and transportation into the State of not less than five grams but fewer than fifty grams of methamphetamine.<sup>1</sup> The petitioner alleges that the circuit court erred in denying his motion to suppress because the police lacked a subjectively reasonable basis for stopping his vehicle. Upon our review, finding no substantial question of law and no prejudicial error, we determine that oral argument is unnecessary and that a memorandum decision affirming the circuit court’s order is appropriate. *See* W. Va. R. App. P. 21.

On November 15, 2021, Officer Jonathan Pauley, with the Oak Hill Police Department (OHPD), was engaged in drug interdiction on Route 19 in Fayette County, along with a trainee, Officer Scott Wilshire, and a K-9. The officers positioned their police cruiser within the median of Route 19, with its high beams on.<sup>2</sup> The petitioner drove past the officers’ surveillance location at around 9:15 p.m. in a vehicle with a Pennsylvania license plate. The officers noticed that the petitioner “began braking” before passing their cruiser and continued braking after passing them. The officers observed that the petitioner was “completely locked up on the steering wheel looking straight ahead.” Finding this behavior suspicious, Officer Pauley mobilized the police cruiser and “got out on” the petitioner’s vehicle and followed it. Thereafter, the officers saw the petitioner’s vehicle “veer across the dotted line on two different occasions[,]” and they initiated a traffic stop

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<sup>1</sup> The petitioner appears by counsel Matthew Brummond. The State of West Virginia appears by Attorney General John B. McCuskey and Deputy Attorney General Andrea Nease Proper. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel.

<sup>2</sup> Accounts vary as to whether the police cruiser was situated sideways in the median or parallel to traffic.

of his vehicle.<sup>3</sup>

During his initial interaction with the petitioner, Officer Pauley noticed that he nervously avoided eye contact. Officer Pauley returned to the police cruiser to run a check on the petitioner's driver's license, and, after completing that task, he asked Officer Wilshire to have the petitioner join him in the police cruiser. The petitioner was directed to sit in the front passenger seat of the cruiser, with Officer Pauley in the driver's seat and Officer Wilshire situated in the back seat with the K-9. Officer Pauley informed the petitioner that he was issuing him a warning for his traffic violation and engaged the petitioner in a conversation while completing the paperwork. The petitioner stated that he had made a quick turnaround trip from Erie, Pennsylvania, to Charlotte, North Carolina, to visit family, and he was on his way back home. Officer Pauley found it suspicious that the petitioner had made a round-trip drive between Erie and Charlotte within a day without any visible luggage in his vehicle, so he asked the petitioner for consent to search his vehicle, and the petitioner agreed. To verify the petitioner's consent, Officer Pauley repeated his request to search the petitioner's vehicle, and the petitioner again agreed. Pursuant to the search of the petitioner's vehicle, the officers found ten bags containing approximately 1,006 pills of methamphetamine and clear plastic baggies commonly used to package illegal narcotics. The petitioner was arrested and later indicted for possession of methamphetamine with intent to deliver and transportation of a controlled substance into the State.

The petitioner filed a motion to suppress, arguing that the police had no justifiable reason to stop and search his vehicle, and that he was pressured to consent to the search. On February 2, 2023, the circuit court conducted a suppression hearing, and the State proffered the OHPD lead officer's testimony to the court by agreement. The petitioner offered no testimony at the suppression hearing but relied on the body camera footage as evidence in support of his argument that the OHPD officers had no reason to stop him. The circuit court denied the motion to suppress, finding that the OHPD officers stopped the petitioner only after observing him weaving on the road, and the petitioner subsequently "freely and voluntarily" consented to the search of his vehicle on two separate occasions as evidenced by the officers' body camera footage. On February 9, 2023, the circuit court entered an order reflecting its ruling.

The petitioner's jury trial took place on March 29, 2023, and Officer Pauley testified that the petitioner's braking behavior, fixed stare, and rigid body were "pretextual indicators" they had been trained to identify while doing interdiction work; the petitioner consented twice to having his vehicle searched; and both instances of his consent to search were recorded on body camera. The petitioner also testified at trial, stating that the OHPD police cruiser on Route 19 was positioned in such a way that its high beams were shining onto the highway with its lights flashing when he passed it. Although he did not realize that a K-9 was in the back seat while he was inside the police cruiser,<sup>4</sup> the petitioner said he felt compelled to consent to the search of his car because he was by

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<sup>3</sup> The officers' body cameras were not activated until after the police stopped the petitioner's vehicle and did not record the petitioner's traffic infraction. The body camera footage is also muted for approximately fifty-five seconds at the beginning of the officers' roadside interactions with the petitioner.

<sup>4</sup> On appeal, the petitioner states that he was asked for permission to search his vehicle while on a dark road, alone with police officers, in the presence of a K-9, "trained attack dog,"

himself with the police on a dark road in West Virginia. The petitioner said he felt additional pressure to consent to the search because of the things Officer Pauley said to him: he smelled marijuana in the petitioner's car; he knew the petitioner had something in the car; and they were going to search his car regardless of what the petitioner said. The petitioner stated that he was surprised that police found pills, but he also recalled that his cousin and two other people had been in his car while he had been in Charlotte.

The jury convicted the petitioner on both charges. On June 15, 2023, the circuit court sentenced the petitioner to one to fifteen years of imprisonment for possession of a controlled substance (methamphetamine) with intent to deliver, and eight years of imprisonment for transportation into the State of not less than five grams but fewer than fifty grams of methamphetamine. The court ordered the sentences to run consecutively. The petitioner now appeals the circuit court's order, alleging that the court erred in denying his motion to suppress.

We have held that

[w]hen reviewing a ruling on a motion to suppress, an appellate court should construe all facts in the light most favorable to the State, as it was the prevailing party below. Because of the highly fact-specific nature of a motion to suppress, particular deference is given to the findings of the circuit court because it had the opportunity to observe the witnesses and to hear testimony on the issues. Therefore, the circuit court's factual findings are reviewed for clear error.

Syl. Pt. 1, *State v. Lacy*, 196 W. Va. 104, 468 S.E.2d 719 (1996).

The petitioner alleges that the circuit court erred in denying his motion to suppress because the police lacked reasonable suspicion to stop his vehicle for drug possession. To avoid violating his rights under the West Virginia Constitution,<sup>5</sup> the petitioner argues that the police were required to have a subjectively reasonable basis for stopping his vehicle, arising from their true motivations instead of pretextual, objective indicators. But in *State v. McMutary*, 250 W. Va. 78, 902 S.E.2d 410 (2024), this Court reiterated that it adheres to the rationale expressed by the United States Supreme Court in *Whren v. United States*, 517 U.S. 806 (1996), that “[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.” See *McMutary*, 250 W. Va. at 84, 902 S.E.2d at 416 (citing *Whren*, 517 U.S. at 813). In the present case, the circuit court found

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which appears to imply that his consent to search was coerced and involuntary; however, the petitioner's trial testimony contradicts any allegation of a coercive K-9 presence. Further, the petitioner did not allege involuntary consent before the circuit court, and such a claim will not be considered for the first time on appeal. See Syl. Pt. 17, in part, *State v. Thomas*, 157 W. Va. 640, 203 S.E.2d 445 (1974) (“[E]rrors assigned for the first time in an appellate court will not be regarded in any matter of which the trial court had jurisdiction or which might have been remedied in the trial court if objected to there.”).

<sup>5</sup> Article III, section 6 of the West Virginia Constitution provides, in relevant part, that “[t]he rights of the citizens to be secure in their houses, persons, papers, and effects, against unreasonable searches and seizures, shall not be violated.”

that law enforcement officers stopped the petitioner's vehicle after observing him weave on the roadway, and we have indicated that this Court gives "particular deference to th[e] finding establishing the basis for [a] traffic stop." *See McMutary*, 250 W. Va. at 83, 902 S.E.2d at 415 (citing Syl. Pt. 1, in part, *Farley*, 230 W. Va. 193, 737 S.E.2d 90 (2012)). Here, as in *McMutary*, the petitioner does not dispute that he committed a traffic offense, in violation of West Virginia Code § 17C-7-1,<sup>6</sup> by swerving across the dotted line on the roadway. Consequently, law enforcement's stop of the petitioner's vehicle was reasonable under the circumstances.<sup>7</sup> *See McMutary*, 250 W. Va. at 80, 902 S.E.2d at 412, Syl. Pt. 4. ("Under West Virginia Constitution article III, section 6, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred."). The record on appeal shows that the OHPD officers readily acknowledged that the petitioner's response to their presence gave rise to their suspicions that he was engaged in illegal activity. However, the officers' stop of the petitioner's vehicle was reasonable regardless of their subjective suspicions because they stopped the petitioner's vehicle only after seeing him commit a traffic violation. *See McMutary*, 250 W. Va. at 84, 902 S.E.2d at 416 ("[T]he Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances, *whatever* the subjective intent." (quoting *Whren*, 517 U.S. at 807) (emphasis in original; citation omitted)). Once his vehicle was stopped, it is undisputed that the petitioner twice gave the officers consent to search his vehicle, in a manner consistent with the requirements of West Virginia Code § 62-1A-10,<sup>8</sup> and we have indicated that

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<sup>6</sup> West Virginia Code § 17C-7-1 provides, in relevant part:

(a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway[.]

....

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100[.]

<sup>7</sup> While the petitioner does not dispute that he veered across the dotted line on the roadway, he does claim that his traffic infraction was induced by law enforcement's creation of hazardous conditions. However, the record on appeal does not indicate that the petitioner raised this issue in the circuit court, and we will not consider it for the first time on appeal. *See Thomas*, 157 W. Va. at 642, 203 S.E.2d at 449, Syl. Pt. 17, in part.

<sup>8</sup> West Virginia Code § 62-1A-10 provides, in relevant part:

(a) A law-enforcement officer who stops a motor vehicle for an alleged violation of a traffic misdemeanor law or ordinance may not search the vehicle unless he or she:

....

the voluntary consent of a vehicle's owner or operator is sufficient to authorize a warrantless search. *See* Syl. Pt. 3, *State v. Justice*, 191 W. Va. 261, 445 S.E.2d 202 (1994) (quoting Syl. Pt. 8, *State v. Plantz*, 155 W. Va. 24, 180 S.E.2d 614 (1971), *overruled on other grounds by State ex rel. White v. Mohn*, 168 W. Va. 211, 283 S.E.2d 914 (1981)). Therefore, the circuit court did not err in denying the petitioner's motion to suppress.

For the foregoing reasons, we affirm.

Affirmed.

**ISSUED:** September 16, 2025

**CONCURRED IN BY:**

Chief Justice William R. Wooton  
Justice C. Haley Bunn  
Justice Charles S. Trump IV  
Justice Thomas H. Ewing  
Senior Status Justice John A. Hutchison

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(3) Obtains the oral consent of the operator of the vehicle and ensures that the oral consent is evidenced by an audio recording that complies with section eleven of this article.