

Circuit Court for Baltimore City
Case No.: 420038001

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1055

September Term, 2020

SHAMMAH KISHAWN WAKE

v.

STATE OF MARYLAND

Fader, C.J.,
Ripken,
Kenney, James A., III
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: September 16, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On November 19, 2020, Shammah Kishawn Wake, appellant, entered a conditional guilty plea in the Circuit Court for Baltimore City to knowing possession of a regulated firearm after having been convicted of a disqualifying crime, and wearing, carrying, and knowingly transporting a handgun in a vehicle.¹ In accordance with the guilty plea agreement, the court sentenced him to five years' imprisonment for illegally possessing a firearm, and to three concurrent years' imprisonment for transporting a handgun in a vehicle. For both offenses, the court suspended all but time served in favor of three years' supervised probation.

BACKGROUND

The Stop

On January 11, 2020, a check by a Baltimore City Police officer on the license plates of the car that appellant was then operating revealed that the registration for the license plate had been cancelled almost two years earlier. As a result, the police officer stopped appellant's car and asked him for his driver's license and registration card. In response, appellant produced his driver's license but admitted that, while he did have the title to the car, the car was not registered and, therefore, he did not have the registration card. The police officer decided to have the car towed because it was unregistered. Because the vehicle was about to be towed, the car was searched, by other police officers who had

¹ Maryland Rule 4-242(d) permits a defendant to enter a conditional guilty plea where the defendant can reserve the right to appeal certain issues determined adversely to the defendant which, if determined in favor of the defendant, would have been dispositive of the case. As will be seen, the appellate issue in this case deals with the circuit court's denial of appellant's motion to suppress evidence.

arrived on the scene, to inventory its contents. That search yielded a loaded handgun, suspected marijuana, a scale, and a license plate on the front of the vehicle with a different number than the one on the back, the registration for which also had been cancelled. After the police had read appellant his Miranda rights, he admitted to possessing the firearm for protection.

The Motion to Suppress

In the circuit court, appellant sought to suppress the evidence found in his car on the basis that the police had no authority to impound or tow it, and, therefore, they had no authority to inventory its contents. He claimed that the vehicle was legally parked and that no law specifically authorized the police to impound the car simply because it was not registered. Citing Article 31 § 31-8(c) of the Baltimore City Code, which permits the police to impound abandoned vehicles, appellant maintained that, because the car was not an “abandoned vehicle” within the meaning of the Code, the police lacked the authority to impound it.² Thus, according to appellant, the police violated his Fourth Amendment right

² The Baltimore City Code adopted the definition of “abandoned vehicle” found Section 25-201 of the Transportation Article of the Maryland Code, which provides, in pertinent part:

- (b) “Abandoned vehicle” means any motor vehicle, trailer, or semitrailer:
- (1) That is inoperable and left unattended on public property for more than 48 hours;
 - (2) That has remained illegally on public property for more than 48 hours;
 - (3) That has remained on private property for more than 48 hours without the consent of the owner or person in control of the property;

(continued)

to be free from unreasonable searches and seizures, and as a result, he was entitled to have the evidence found during the inventory search of his car suppressed at trial.

Finding that the police had sufficient justification to impound appellant’s car, the circuit court denied his motion to suppress evidence.

DISCUSSION

In *Pacheco v. State*, 465 Md. 311 (2019), the Court of Appeals summarized the standard of review of a circuit court’s denial of a motion to suppress:

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- (4) That has remained in a garage for more than 10 days after the garage keeper has given the owner of the vehicle notice by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to remove the vehicle;
 - (5) That has remained in a garage for more than 10 days after the period when, by contract, the vehicle was to remain in the garage;
 - (6) That was left for more than 10 days in a garage by:
 - (i) Someone other than its registered owner; or
 - (ii) A person authorized to have possession of the vehicle under a contract of use, service, storage, or repair;
 - (7) *That has remained on public property for more than 48 hours and:*
 - (i) *Is not displaying currently valid registration plates; or*
 - (ii) *Is displaying registration plates of another vehicle;*
 - (8) That has been left unattended on any portion of a “controlled access highway” as defined in § 8-101(f) of this article for more than 24 hours;
 - (9) That has been left unattended on any portion of a primary or secondary highway or controlled access highway, as defined in § 8-101 of this article, and is in violation of any of the provisions of § 22-408 of this article; or
 - (10) That is not reclaimed as provided under § 16-303.1 of this article.

(Emphasis added)

Our review of a circuit court’s denial of a motion to suppress evidence is limited to the record developed at the suppression hearing. We assess the record in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress. We accept the trial court’s factual findings unless they are clearly erroneous, but we review *de novo* the court’s application of the law to its findings of fact. When a party raises a constitutional challenge to a search or seizure, this Court renders an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.

Id. at 319-20 (cleaned up).

Generally speaking, the Fourth Amendment prohibits warrantless searches and seizures absent some recognized exception to that rule. One such exception is for an “inventory search,” which “authorizes the search of a vehicle in lawful police custody for the purpose of cataloging property located therein.” *Briscoe v State*, 422 Md. 384, 396 (2011) (citation omitted).

At issue in this case is whether appellant’s car was in lawful police custody at the time of the inventory search. As noted above, appellant claims that there is no law authorizing the police to impound a vehicle simply because it is not registered. Moreover, he asserts that, because the Baltimore City Code did not authorize the police to impound his car as it did not meet the definition of an abandoned vehicle, the police were not in lawful custody of his car when they searched it.

Whether there is a specific law authorizing the police to impound an unregistered vehicle, or whether appellant’s car met the definition of an abandoned vehicle, is beside the point, from a Fourth Amendment standpoint, so long as the police conduct was reasonable.

In *State v. Paynter*, 234 Md. App. 252 (2017), upon lawfully stopping Paynter’s car for speeding, the police determined that Paynter’s license was suspended and his car had a suspended registration. While Paynter did not argue that the police were not in lawful custody of his car, and the lower court made no finding that the car was not in lawful police custody, we held that, under the circumstances, the requirement that the police be in lawful custody of a vehicle before inventorying its contents was “incontestably satisfied.” *Id.* at 276.

Similarly, in *Thompson v. State*, 192 Md. App. 653, 657 (2010), the police stopped the vehicle Thompson was driving because it was not registered. They then arrested Thompson and towed his car. *Id.* at 658-59. Prior to towing the car, police conducted an inventory search and recovered a gun. *Id.* at 659. On appeal, Thompson argued that the evidence found in his car should have been suppressed because his arrest was unlawful. *Id.* at 666. This Court held that it did not have to determine whether Thompson’s arrest was lawful because, even if it was unlawful, “the removal of the unregistered vehicle from the custody of an unlicensed driver was not illegal, and the handgun would have inevitably been discovered during the subsequent lawful inventory search of the vehicle.” *Id.* at 669.

We said that the police officer’s “decision to have the vehicle towed is consistent with a long line of Maryland cases that give police departments authority to take automobiles in custody, in furtherance of their community caretaking functions.” *Id.* at 671. (citation and quotation omitted).

Section 13-401 of the Transportation Article prohibits anyone from driving an unregistered vehicle on a public road. Moreover, Section 13-402 of the Transportation

Article prohibits parking an unregistered vehicle on a public road. Thus, appellant’s car was not lawfully parked, and could not lawfully be driven away. In light of *Paynter* and *Thompson, supra*, we do not find the police conduct in this case to be unreasonable, and therefore, we hold that the inventory search of appellant’s car did not violate his rights under the Fourth Amendment.

Consequently, we shall affirm the judgment of the circuit court.

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