

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1787

September Term, 2014

HENRY BURGOS

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Davis, Arrie, W.
(Retired, Specially Assigned),

JJ.

Opinion by, Davis, J.

Filed: November 16, 2015

*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.

Appellant, Henry Ismael Burgos, was tried and convicted by a jury in the Circuit Court for Prince George’s County of wearing, carrying or transporting a handgun. He was sentenced to three years imprisonment, all suspended, and placed on supervised probation for two years. Appellant appealed, raising the following question for our review, which we quote:

Did the trial court err when it denied Burgos’s Motion to Suppress?

For the reasons to be discussed, we find no error and affirm.

FACTS AND LEGAL PROCEEDINGS

Officer Seth Meachum (“Officer Meachum”) of the Prince George’s County Police was on routine patrol on December 16, 2013 at approximately 10:15 a.m. when he observed a dark Jeep on Annapolis Road. Unable to see a license tag on either the front or back of the Jeep, he followed the Jeep and, as it turned onto Seabrook Road, he activated the lights on his vehicle. As the Jeep pulled over, Officer Meachum “called out” a traffic stop “advising that [he] did not see any tags, no tags were displayed.”

As Officer Meachum approached the Jeep on foot, he noticed an out-of-state “dealer tag” affixed to the inside of the “dark and tinted” rear window. The officer then told the dispatcher that he saw a tag and he asked for “routine backup.” When Officer Meachum proceeded to the front of the Jeep to talk to the driver, he noticed “a green leafy substance on the window which he suspected to be marijuana.”

After backup officers arrived, Officer Meachem asked appellant to alight from the vehicle, at which time he conducted a pat down. As Officer Meachem patted down

appellant's "right-side chest area [he] felt a large bulge in the right pocket area in the shape of an L." Officer Meachem asked appellant what it was and appellant responded that it was his gun. Appellant was placed in handcuffs and another officer recovered a small caliber semi automatic handgun from appellant's pocket. Appellant was charged with wearing, carrying or transporting a handgun in a vehicle, possession of marijuana, and driving with a suspended license.

At a suppression hearing prior to trial, defense counsel moved to suppress the evidence on the ground that the traffic stop was illegal. Officer Meachem testified, in part, as follows:

[STATE]: And what, if anything, occurred when you tried to conduct your traffic stop?

OFFICER MEACHEM: I turned on my emergency equipment. The vehicle pulled into the doctor's office right there on Seabrook Road right next to Seabrook and Annapolis. I called out on my traffic stop advising that I did not see any tags, no tags were displayed. As I got out of the car and started to approach the vehicle –

[STATE]: When you're saying tags, what do you mean?

[OFFICER]: Registration plates. As I approached the vehicle, it wasn't until I got close to the vehicle that I noticed that there was a dealer tag inside the Jeep in the rear window.

[STATE]: Okay. What, if anything, prevented you from seeing that tag earlier?

[OFFICER]: The vehicle was tinted out, dark and tinted.

[STATE]: The back window?

[OFFICER]: Yes, sir.

[STATE]: So how close were you to the vehicle when you finally were able to see there was a dealer tag in the window?

[OFFICER]: I was between eight to ten feet from the rear bumper.

[STATE]: Okay. And that was the first time you noticed it?

[OFFICER]: Yes, sir.

[STATE]: Okay, And what did you do next?

[OFFICER]: I continued up – after I noticed the tag, I advised Dispatch, you know, I do have a tag. It's a – I believe an Alabama or it was a dealer tag and the registration plate number was this and I continued to the front and to talk to the driver.

[STATE]: Now, was this registration tag on the inside or the outside of the window?

[OFFICER]: It was on the inside of the window.

[STATE]: Okay, what happened next?

[OFFICER]: At that time, I asked for routine backup. Backup did show up. I noticed at the time I thought it was a green leafy substance on the window to be suspected marijuana. As I talked to the driver, as soon as my backup officers arrived, I asked the driver to step on out.

In moving to suppress, defense counsel argued:

[Officer Meachum] gets 8 to 10 feet away from the automobile. He notices an out-state-dealer's tag. He has no knowledge about how it's supposed to be displayed, whether it can be displayed, and I think he has to give full faith and credit to the laws of the State of Alabama that if there is a tag there, that that is the appropriate way to display it.

The State has put on no evidence to the proof of foreign laws about what the State of Alabama requires for the display. Cars, automobiles move through interstate commerce, through Washington D.C., the Metropolitan area on a barely, hourly, minutely basis

Now I believe that he should have broken off the encounter once he saw that there was a plate. If he had no other knowledge and no other idea of the law, then he cannot depend upon a law that he doesn't know.

The suppression court and appellant's counsel later engaged in the following exchange:

THE COURT: [Appellant's counsel], you're saying when he was eight to ten feet away, he should have just made a U-turn and walked back to his car?

[APPELLANT'S COUNSEL]: Yes, there's no reason for him to go up to the car – up to the window at that point. There's a tag. He pulled it over for failure to display tags in a Maryland manner. Now, we have jurisdictions all over that we know have a single tag. We have jurisdictions all over that have different tint requirements in an automobile. We have jurisdictions all around here that have different licensing, and he has to respect that. And once he gets there, once he sees that it's from a different jurisdiction, I don't think that he has a right to proceed any further.

In denying appellant's motion to suppress, the court found:

All right. There was – the chief witness in this case testified he acknowledged that when he was eight to ten feet away from the vehicle, he realized there was a tag there, there was a dealer tag; however, there's been no testimony – no one asked him why did you continue to approach the vehicle yet he continued to approach the vehicle where he said he saw an alleged green leafy substance, which he believed to be marijuana. Based upon that, the court finds – the Court's going to deny the defense's motion to suppress.

At trial, the State presented much of the same evidence it had produced at the suppression hearing. The trial court granted appellant's motion for judgement of acquittal as to possession of marijuana and driving on a suspended license. As noted, *supra*, a jury found appellant guilty of wearing, carrying or transporting a handgun.

STANDARD OF REVIEW

Our review of a trial court’s denial of a motion to suppress is limited to the record of the suppression hearing and we do not consider the trial record. *Brown v. State*, 397 Md. 89, 98 (2007); *Collins v. State*, 192 Md. App. 192, 214 (2010).

The appellate court extends great deference to the lower court’s factual findings, accepting them unless they are clearly erroneous. *Holt v. State*, 435 Md. 443, 457 (2013). “Although we extend great deference to the hearing judge’s findings of fact, we review independently, the application of the law to those facts to determine if the evidence at issue was obtained in violation of the law, and accordingly, should be suppressed.” *Laney v. State*, 379 Md. 522, 534 (2004) (citations omitted). “In determining whether a constitutional right has been violated, we make an independent, *de novo*, constitutional appraisal by applying the law to the facts presented in a particular case.” *Williams v. State*, 372 Md. 386, 401 (2002) (emphasis added) (citation omitted). These facts must be viewed “in the light most favorable to the party who prevailed on the motion.” *State v. Donaldson*, 221 Md. App. 134, 138 (2015) (quoting *Holt*, 435 Md. at 457).

DISCUSSION

Appellant contends that while Officer Meachem initially had reasonable suspicion to conduct the traffic stop, the reasonable suspicion evaporated when the officer saw the temporary dealer registration, because Officer Meachem no longer reasonably believed that the vehicle was without plates. Acknowledging that the failure to display a registered license

plate on the front and back of a passenger vehicle is a violation of MD CODE ANN., TRANSP. §§ 13-410 and 13-411, appellant concedes that “the stop was a valid one at its outset.” Citing *Ferris v. State*, 355 Md. 356 (1999), however, appellant, argues that “[a] stop that is valid at its inception does not remain valid forever.” He argues that, once Officer Meachum approached the Jeep and realized that the vehicle was, in fact, displaying an out-of-state license plate, the continued detention of appellant was no longer supported by reasonable suspicion.

The State disagrees, stating:

Officer Meachem’s traffic stop complied with the Fourth Amendment because the Officer had reasonable suspicion to believe a traffic infraction was occurring when he pulled over [appellant’s] vehicle. This reasonable suspicion did not evaporate during the stop because Officer Meachem had good reason to believe that the manner in which [appellant’s] tags were displayed violated Maryland law. If Officer Meachem was wrong in his belief, it was a reasonable mistake of law to suspect that [appellant] was violating the Maryland Transportation Article. Finally, even if Officer Meachem was operating under a mistake of law, and even if that mistake of law was not reasonable, the evidence recovered from [appellant’s] should not be excluded because doing so would not serve the purpose of the Exclusionary Rule.

Officer Meachem had reasonable suspicion to conduct a traffic stop when he observed no registration plates on appellant’s vehicle—this fact is not in dispute. A traffic stop is lawful if it is supported by “reasonable suspicion that the car is being driven contrary to the laws governing the operation of motor vehicles[.]” *Lewis v. State*, 398 Md. 349, 362 (2007)

(quoting *Delaware v. Prouse*, 440 U.S. 648, 650 (1979)). Because the tags were not properly displayed on appellant’s vehicle, the stop was lawful.¹

The precise issue before us is whether a second detention requiring additional articulable suspicion occurred when Officer Meachem walked up to appellant’s window and engaged appellant *after* he discovered the out-of-state dealer tag in the window. The Court of Appeals, in *Ferris*, *supra*, provided a cogent explanation of the parameters of a lawful traffic stop. In its explication that a stop is valid at its inception does not remain valid forever, the Court opined:

[T]he officer’s purpose in an ordinary traffic stop is to enforce the laws of the roadway, and ordinarily to investigate the manner of driving with the intent to issue a citation or warning. Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention. Thus, once the underlying basis for the initial traffic stop has concluded, a police-driver encounter which implicates the Fourth Amendment is constitutionally permissible only if either

¹ MD CODE ANN., TRANSP. § 13-402.1 provides in pertinent part:

- (a) *In general*. A nonresident may drive or permit the driving of a foreign vehicle in this State, without registering the vehicle in this State, if:
 - (1) At all times while driving in this State, the vehicle:
 - (i) Is registered in and displays current registration plates issued for it in the owner’s place of residence; and
 - (ii) Carries as provided in § 13-409(a) of this subtitle, a current registration card issued for it in the owners place of residence

MD CODE ANN., TRANSP. § 13-409 provides in pertinent part:

- (a) *In general*. An individual who is driving or in control of a vehicle shall carry a registration card in the vehicle to which the registration card refers.
- (b) *Display of registration card upon demand of officer*. On demand of a police officer who identified himself as a police officer, an individual who is driving or in control of a vehicle shall display a registration card that refers to the vehicle.

(1) the driver consents to the continuing intrusion or (2) the officer has, at a minimum, a reasonable, articulable suspicion that criminal activity is afoot.

355 Md. at 372 (internal citations omitted).

The purpose of the traffic stop here could have only been accomplished once Officer Meachum determined that the vehicle was displaying a valid registration and made contact with appellant to explain that the reason for the stop was that he was unable to see the vehicle's tag until he approached the vehicle on foot and was eight to ten feet away. To suggest that Officer Meachum should have walked away without engaging appellant is unreasonable. The suppression court found that Officer Meachum's sighting of what he believed to be marijuana occurred as Officer Meachum approached the vehicle and apparently before he engaged appellant in conversation. This minimal investigatory detention was reasonable and minimally intrusive. Accordingly we hold that the suppression court did not err in denying the motion to suppress.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**