STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

State of West Virginia,
Plaintiff Below, Respondent

vs) No. 11-1276 (Harrison County 09-F-116)

Eric Troy Schlichting,
Defendant Below, Petitioner

FILED
September 7, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Eric Troy Schlichting, by counsel, Jerry Blair, appeals the Circuit Court of Harrison County's order entered on July 27, 2011, sentencing him to two to three years in the penitentiary. Petitioner was convicted of third or subsequent offense driving on revoked license for driving under the influence. The State has filed its response, by counsel Michele Duncan Bishop.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Petitioner was indicted on a charge of third or subsequent offense driving on revoked license for driving under the influence after he was pulled over by a police officer for driving a vehicle with a license plate that did not match said vehicle. After the indictment, petitioner moved for the suppression of evidence, arguing that the police officer ran petitioner's license plate, asking if it belonged to a Dodge Intrepid, and was told it did not. However, petitioner was actually driving a Chrysler Concorde and therefore argues that the officer did not satisfy the reliability standards necessary to stop the vehicle. The police officer testified at the hearing on the motion to suppress that he had run the plates before, because the vehicle was sitting at a home that was thought to be empty. The officer indicated that he knew that the plates did not belong to the vehicle but that previously, no one was in the vehicle and it was parked at the time. On the night in question, the officer testified that he again checked the license plate, and finding that the plate belonged to a Chevrolet Cavalier, he initiated a traffic stop. At that time, he determined that petitioner's driver's license had been revoked. The motion to suppress was denied. Petitioner stipulated to the three prior convictions for driving on a license suspended for driving under the influence, and was sentenced as a recidivist to two to three years in the penitentiary. Petitioner them moved for reconsideration of the sentence, but this motion was denied. Petitioner now appeals from the order resentencing him for purposes of this appeal.

Petitioner argues that the circuit court erred in failing to suppress all of the evidence subsequent to the stop in this matter as "fruit of the poisonous tree." Petitioner also argues that without the evidence from the stop, his conviction should be overturned. Petitioner argues that the police did not have reasonable suspicion to stop him, and that prior to the night in question, police had run license plate checks at least twice before and knew that the plate did not belong to the vehicle in question, but took no prior action. Petitioner notes that the officer did not charge him with any violation regarding the license plate when he was stopped.

The State responds, arguing that the officer did have reasonable suspicion for stopping petitioner on the night in question, as there is no question that the license plate on the vehicle that night did not belong to said vehicle. The State argues that there is no requirement that any action be taken against petitioner for the illegal license plate prior to the night in question. The State argues that the circuit court's order should be affirmed.

In *State v. Lilly*, 194 W.Va. 595, 600, 461 S.E.2d 101, 106 (1995) (internal citations and footnote omitted), we set forth the standard of review for motions to suppress:

> [W]e first review a circuit court's findings of fact when ruling on a motion to suppress evidence under the clearly erroneous standard. Second, we review *de novo* questions of law and the circuit court's ultimate conclusion as to the constitutionality of the law enforcement action. Under the clearly erroneous standard, a circuit court's decision ordinarily will be affirmed unless it is unsupported by substantial evidence; based on an erroneous interpretation of applicable law; or, in light of the entire record, this Court is left with a firm and definite conviction that a mistake has been made. When we review the denial of a motion to suppress, we consider the evidence in the light most favorable to the prosecution.

Petitioner herein argues that the officer did not have "reasonable suspicion" to stop the vehicle, as the officer erroneously believed the vehicle was a Dodge Intrepid as opposed to a Chrysler Concorde. However, when the officer checked the status of the vehicle's license plate, he determined that the plate actually belonged to a Chevrolet Cavalier. This Court has recently stated as follows:

> "Police officers may stop a vehicle to investigate if they have an articulable reasonable suspicion that the vehicle is subject to seizure or a person in the vehicle has committed, is committing, or is about to commit a crime . . . ." Syllabus Point 1, *State v. Stuart,* 192 W.Va. 428, 452 S.E.2d 886 (1994).

Syl. Pt. 4, *Ullom v. Miller,* 227 W.Va. 1, 705 S.E.2d 111 (2010). Moreover, "'[w]hen evaluating whether or not particular facts establish reasonable suspicion, one must examine the totality of the circumstances, which includes both quantity and quality of the information known to the police.' Syllabus Point 2, *State v. Stuart,* 192 W.Va. 428, 452 S.E.2d 886 (1994)." Syl. Pt. 5, *Ullom v. Miller,* 227 W.Va. 1, 705 S.E.2d 111 (2010). In the present case, the arresting officer had reasonable

suspicion based on the fact that the plates in question belonged on a Chevrolet Cavalier. Although the officer mistakenly believed that the car in question was a Dodge Intrepid instead of a Chrysler Concorde, there is no question that the vehicle was not a Chevrolet Cavalier. Therefore, this Court finds no error in the circuit court's denial of petitioner's motion to suppress.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: September 7, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh