
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 23-120

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STATE OF WEST VIRGINIA,

Respondent,

v.

SEAN ALLEN TAYLOR,

Petitioner.

RESPONDENT'S BRIEF

Appeal from the
Magistrate Court of Roane County
Case No. 21-F-60

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INTRODUCTION

The State of West Virginia, by counsel, responds to Petitioner Sean Allen Taylor’s brief. Petitioner challenges a traffic stop where he was charged with third offense driving on a revoked license for DUI, no insurance, and an expired motor vehicle inspection [MVI] sticker. Petitioner argues that he should not have been stopped for an expired inspection sticker because the Governor’s COVID Executive Order in effect at the time suspended deadlines for inspections. But the officer who stopped Petitioner had a reasonable articulable suspicion that a crime was occurring, because he recognized the driver as either Petitioner or Petitioner’s brother, and he knew that neither one of them had a valid license. Further, it was objectively reasonable for the officer to believe that an expired inspection sticker is a crime that justifies the traffic stop because the Governor’s COVID order is ambiguous. This Court should affirm.

ASSIGNMENT OF ERROR

A police officer pulled over Petitioner for an expired motor vehicle inspection sticker. Due to the stop, he charged Petitioner with driving while revoked for DUI and other offenses. However, sixteen months prior, the governor had rescinded the motor vehicle inspection requirement due to COVID. Was the officer’s mistake-occurring sixteen months after the law changed-objectively reasonable, or was the stop unlawful under the Fourth Amendment to the United States Constitution?

Pet’r’s Br. 1.

STATEMENT OF THE CASE

On July 9, 2021, West Virginia State Police Trooper Josh Mack was “conducting patrol on Harmony Road” in Roane County when he encountered Petitioner traveling in his direction. App. 3. During his testimony before the grand jury, Trooper Mack described his encounter with Petitioner as follows –

I observed a vehicle traveling in my direction. It was a Chevy pickup truck and it had an extremely expired MVI [motor vehicle inspection] sticker. I then observed

one of the Taylor brothers driving it, which I did know both had no legal license at that time, so I turned on that vehicle and conducted a traffic stop on it for that MVI.

App. 3-4. During the stop, Mack confirmed his initial suspicion that Petitioner's license was revoked for DUI, and further determined that Petitioner had no insurance on his vehicle and his inspection sticker expired in 2018. App. 4-5, 17. Mack further testified that Petitioner had two prior convictions in Roane County for driving revoked for DUI; the dates of these previous convictions are August 11, 2014 and March 26, 2018. App. 5.

At the preliminary hearing, Mack testified that Petitioner had "multiple convictions for driving while revoked, DUI. App. 17. More specifically, he had multiple convictions on a revoked third offense." App. 17-18. When asked what county those convictions were from, Mack testified "I'd have to refer to my Complaint for it, but I know for sure there was convictions in Roane County." App. 18. Two certified disposition orders were admitted at the preliminary hearing showing Petitioner had been twice convicted in Roane County for driving revoked for DUI. App. 19-20.

Petitioner unsuccessfully argued at the preliminary hearing that Mack's traffic stop was invalid because the Governor's Executive Order 7-20 (hereinafter referred to as the Governor's COVID order) suspended deadlines for motor vehicle inspections. App. 21-23, 88-90. During questioning on this issue, Mack indicated he was not aware of any changes in the law related to motor vehicle inspections. App. 21-22. When questioned about his knowledge of the Governor's COVID order, Mack expressed uncertainty whether West Virginia was still in a state of emergency in July 2021. App. 22. Mack further testified that he "got an inspection sticker in the middle of COVID," and that as far as he knew, Petitioner was required to have a valid MVI sticker when he stopped him. App. 22-23. At the conclusion of the preliminary hearing, Petitioner's counsel argued that Mack "is clearly unaware of" the effect of the Governor's COVID order. App. 24. On July 20,

2021, Executive Order 23-21 rescinded the portion of the Governor's COVID order pertaining to motor vehicle inspections, effective October 1, 2021. 2021 WV Reg. Text 589266. The magistrate court found probable cause, and Petitioner subsequently was indicted for Third Offense Driving While License Revoked for DUI, Driving without Insurance, and Failure to Display MVI. App. 8-9, 25.

After his indictment, Petitioner filed a motion to suppress evidence from the traffic stop, alleging that the sole basis for the stop was an expired MVI sticker. App. 10. Despite having an inspection sticker that expired in 2018, Petitioner argued an expired MVI sticker was not a valid reason for a traffic stop because the Governor's COVID order suspended deadlines for motor vehicle inspections during the COVID state of emergency. App. 10-12, 17, 29-40, 88-90. The State filed a response to Petitioner's motion, arguing that Trooper Mack made an objectively reasonable mistake of law when he stopped Petitioner. App. 13. Petitioner's motion to suppress does not address Mack's testimony before the grand jury that he recognized the driver as "one of the Taylor brothers," neither of whom had a valid driver's license. App. 3-4, 10-12, 29-40. After reviewing the parties' briefs, the circuit court found Mack made an objectively reasonable mistake of law and dismissed the MVI charge. App. 41-45.

When the court ruled Mack made an objectively reasonable mistake of law regarding the status of the MVI statute, it found the Governor's COVID order did not clearly and unambiguously inform Trooper Mack that he could not enforce West Virginia Code § 17C-16-9. App. 43-44. The language of the Executive Order states "the following statutory regulations are to be suspended ... 14. [d]eadlines for annual vehicle inspections (W. Va. Code § 17C-16-1, et seq.)." App. 90. But the court found the COVID order's citation of West Virginia Code § 17C-16-1 et seq. "encompasses a much broader scope of laws than just those pertaining to deadlines for

inspections.” App. 44. The court agreed that the Executive Order suspended West Virginia Code § 17C-16-9, but found it “difficult to fathom” that the order intended to suspend all of Article 16, including “the prohibition against issuing counterfeit certificates [of inspection] or suspend the State Police’s authority to revoke or suspend a stations permit to issue certificates of inspection.” App. 43-44 (citing W. Va. Code §§ 17C-16-6, 17C-16-8). The court concluded that “the ambiguous language and lack of clarity in the Executive Order’s statutory citation leave numerous interpretations regarding which subsections were suspended. Therefore, it was reasonable for Trooper Mack to believe that [Petitioner’s] expired inspection sticker violated the law....” App. 44.

After the court denied Petitioner’s motion to suppress, Petitioner entered a conditional guilty plea to Count One – Third Offense Driving Revoked for DUI. App. 46-54. As a result of his guilty plea, and his “lengthy consistent history of serious driving offenses,” including a prior conviction for Third Offense Driving Revoked for DUI, Petitioner was sentenced to 1-3 years in prison. App. 82, 85-87.

SUMMARY OF ARGUMENT

The traffic stop in question is valid because Trooper Mack had a reasonable suspicion that the driver did not have a valid driver’s license. This suspicion was independent of Mack’s belief that Petitioner was driving with an expired inspection sticker. Further, Mack was not aware that the Governor’s COVID Executive Order prevented enforcement of motor vehicle inspection laws, and this was an objectively reasonable mistake of law.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to West Virginia Rule of Appellate Procedure 18(a)(3) and (4), oral argument is unnecessary because the facts and legal arguments are adequately presented in the briefs and the record. Accordingly, this case is appropriate for resolution by memorandum decision.

ARGUMENT

A. Standards of review.

“On appeal, legal conclusions made with regard to suppression determinations are reviewed *de novo*. Factual determinations upon which these legal conclusions are based are reviewed under the clearly erroneous standard. In addition, factual findings based, at least in part, on determinations of witness credibility are accorded great deference. Syl. Pt. 3, *State v. Stuart*, 192 W. Va. 428, 452 S.E.2d 886 (1994).

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.

State v. Lilly, 194 W. Va. 595, 600, 461 S.E.2d 101, 106 (1995) (footnote omitted). Further, when this Court the denial of a motion to suppress, it considers the evidence in the light most favorable to the prosecution. *Id.*

B. Trooper Mack had reasonable suspicion that the driver did not have a valid driver’s license.

Trooper Mack properly conducted the traffic stop because he had a reasonable suspicion that the driver did not have a valid license. “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.” Syl. Pt. 1, in part, *Stuart*, 192 W. Va. 428, 452 S.E.2d 886. “When evaluating whether or not particular facts establish

reasonable suspicion, one must examine the totality of the circumstances, which includes both the quantity and quality of the information known by the police.” Syl. Pt. 2, *Stuart*. Mack’s experience as a police officer is “significant in determining reasonable suspicion.” *Stuart*, 192 W. Va. at 433, 452 S.E.2d at 891, n.10. Reasonable suspicion is a

less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.

Id. at 432, 452 S.E.2d at 890 (quoting *Alabama v. White*, 496 U.S. 325, 330 (1990)).

In this case, Trooper Mack testified before the grand jury that he recognized the driver of a truck to be either Petitioner or Petitioner’s brother; Mack knew that neither one of them had a valid driver’s license. App. 3-4. Mack’s prior knowledge of Petitioner and his driving record provided him with reasonable suspicion for the traffic stop. App. 3-4. Mack’s memory of Petitioner’s driving record is corroborated by the court’s finding that Petitioner had a “lengthy consistent history of serious driving offenses” and at least one prior conviction for Third Offense Driving Revoked for DUI. App. 67-68, 81-82. Petitioner had two prior convictions in Roane County for Driving Revoked for DUI, and a prior conviction for Third Offense Driving Revoked for DUI, before he was stopped in this case. App. 18-19, 81-82. In a small community like Roane County, it is not surprising Mack knew Petitioner did not have a valid driver’s license when he stopped him. Thus, this Court may conclude that Mack’s prior knowledge of Petitioner’s driving record provided him with reasonable suspicion to stop Petitioner. *See State v. Sallis*, 981 N.W.2d 336, 344-45 (Iowa 2022) (holding that an officer’s knowledge that a driver’s license is suspended provides reasonable suspicion for a traffic stop); *Deboy v. Commonwealth*, 214 S.W.3d 926, 928-29 (Ky. Ct. App. 2007) (same); *State v. Nunez*, 455 S.W.3d 529, 531 (Mo. Ct. App. 2015) (same);

United States v. Pierre, 484 F.3d 75, 83-84 (1st Cir. 2007) (same); *State v. Decoteau*, 681 N.W.2d 803 (N. D. 2004) (same); *State v. Harris*, 513 S.E.2d 1, 3 (Ga. Ct. App. 1999) (same); *Commonwealth v. Deramo*, 762 N.E.2d 815, 817-19 (Mass. 2002) (same); *State v. Yeargan*, 958 S.W.2d 626, 633 (Tenn. 1997) (same); *State v. Gibson*, 665 P.2d 1302, 1304 (Utah 1983) (same). Mack recognized that Petitioner or his brother was driving and he had reason to know that neither one of them had a valid license. Thus, Mack had reasonable suspicion to stop Petitioner that was independent of his expired inspection sticker. Syl. Pt. 1, in part, *Stuart*, 192 W. Va. 428, 452 S.E.2d 886.

In his appeal, Petitioner attempts to minimize Mack's testimony before the grand jury as "historically-revised" and claims, without citation to the record, that Mack "departed from earlier testimony that he learned about Petitioner's driving history only after initiating the stop." Pet'r's Br. 2-3. Petitioner instead relies upon Mack's testimony at Petitioner's preliminary hearing, in which Petitioner's counsel focused her questions on the expired inspection sticker and the Governor's COVID order. App. 16-23.

Trooper Mack spent very little time testifying at the preliminary hearing, and the fact that he did not mention his prior knowledge of Petitioner's driving record at the preliminary hearing does not mean he fabricated his testimony before the grand jury as Petitioner implies. Pet'r's Br. 2-3. "A preliminary hearing is ordinarily a much less searching exploration into the merits of a case than a trial, simply because its function is the more limited one of determining whether probable cause exists to hold the accused for trial." *Desper v. State*, 173 W. Va. 494, 498, 318 S.E.2d 437, 441 (1984) (quoting *Barber v. Page*, 390 U.S. 719, 725 (1968)). In other words, the State was not obligated to present all of its evidence at the preliminary hearing regarding the basis for the traffic stop.

Despite Petitioner's insinuation that Mack had a sinister motive when testifying before the grand jury, no one at the preliminary hearing specifically asked Mack about his prior knowledge of Petitioner's driving record before the traffic stop. Pet'r's Br. 2-3. Importantly, the Appendix Record does not support Petitioner's claim that, in his testimony before the grand jury, Mack "departed from earlier testimony that he learned about Petitioner's driving history only after initiating the stop." Pet'r's Br. 2. The mere fact that Mack's prior knowledge of Petitioner's driving record did not come up at the preliminary hearing does not discredit his testimony before the grand jury. In sum, Mack had reasonable suspicion that a crime was occurring when he stopped Petitioner and the court did not err when it denied Petitioner's motion to suppress.

Even though the court did not adopt this rationale in its denial of Petitioner's motion to suppress, this Court has consistently held that, on appeal, it may "[a]ffirm the judgment of the lower court when it appears that such judgment is correct on any legal ground disclosed by the record, regardless of the ground, reason or theory assigned by the lower court as the basis for its judgment." Syl. Pt. 3, *Barnett v. Wolfolk*, 149 W. Va. 246, 140 S.E.2d 466 (1965); *see also Cumberland Chevrolet Oldsmobile Cadillac, Inc. v. Gen. Motors Corp.*, 187 W. Va. 535, 538, 420 S.E.2d 295, 298 n. 4 (1992) (stating that "even if the reasoning of a trial court is in error ... we are not bound by a trial court's erroneous reasoning"); *State ex rel. Dandy v. Thompson*, 148 W. Va. 263, 274, 134 S.E.2d 730, 737 (1964) (stating in criminal context that "correctness ... of [trial court's] final action is the only material consideration, not the stated reasons for [the trial court's] taking such action."). Thus, this Court should affirm the lower court's denial of the motion to suppress because the court correctly found the traffic stop to be valid.

C. Trooper Mack made an objectively reasonable mistake of law when he conducted the traffic stop.

Despite Mack's knowledge that Petitioner did not have a valid driver's license, Petitioner submits that Mack should not have stopped Petitioner for driving with an expired inspection sticker because the Governor's COVID order suspended the statute requiring motor vehicle inspections [MVI]. Pet'r's Br. 1-7, App. 88-90. Mack observed Petitioner driving with an inspection sticker that expired in 2018, well before the declaration of the COVID-19 State of Emergency. App. 3-4, 43.

Operating a vehicle without a current inspection sticker is a misdemeanor. W. Va. Code § 17C-16-9. "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." Syl. Pt. 1, in part, *Stuart*. Even if the COVID order suspended the inspection statute in question, Mack's reasonable suspicion can be based upon an objectively reasonable mistake of law. *Heien v. North Carolina*, 574 U.S. 54 (2014) (holding that reasonable suspicion, as required for a traffic stop, can rest on an objectively reasonable mistake of law). Whether a mistake of law was objectively reasonable "is not to be made with the vision of hindsight, but instead by looking to what the officer reasonably knew at the time." *United States v. Smart*, 393 F.3d 767, 770 (8th Cir. 2005).

Mack testified he was not aware of any changes in law affecting deadlines for motor vehicle inspections. App. 21-22. When questioned about his knowledge of the Governor's COVID order, Mack expressed uncertainty whether, sixteen months after the order was signed, West Virginia was still in a state of emergency. App. 22. Mack further stated that "I know I got an inspection sticker in the middle of COVID." App. 22. At the conclusion of the preliminary hearing,

Petitioner's counsel admitted that Mack "is clearly unaware of" the effect of the Governor's COVID order. App. 24.

Although the Governor's COVID order states "the following statutory regulations are to be suspended for the duration of the State of Emergency: ... 14. [d]eadlines for annual vehicle inspections (W. Va. Code § 17C-16-1, *et seq.*)," it does not specifically cite West Virginia Code § 17C-16-9. App. 44, 88, 90. Rather, the order cites West Virginia Code § 17C-16-1 *et seq.*, which includes "numerous subsections unrelated to the requirement that individuals have their vehicles inspected annually." App. 43-44. For example, West Virginia Code § 17C-16-5 "provides that the Superintendent of the State Police is responsible for prescribing requirements for inspection stations and issuing permits." App. 43. West Virginia Code § 17C-16-6 prohibits assigning or transferring an inspection station permit to a different location, sets the fee for an inspection, and requires records for every inspection. And West Virginia Code § 17C-16-8 prohibits anyone from making, issuing, or displaying a counterfeit inspection sticker. The court found it "difficult to fathom that the Order intended to suspend the aforesaid provisions," and "[t]he ambiguous language ... in the [COVID] Order's statutory citation leave numerous interpretations regarding which subsections were suspended." App. 44.

There was a 16-month lapse between the issuance of the COVID order and Petitioner's arrest, which justifies Mack's uncertainty whether West Virginia was still in a state of emergency on July 9, 2021, when Petitioner was stopped. Moreover, a search of the Governor's website reflects there were fifteen amendments to the original COVID order in 2020 and 2021. Office of the Governor, <http://governor.wv.gov/Pages/Search.aspx?q=7-20> (last visited July 12, 2023). Considering this and the ambiguity of the statutory citation in the COVID Order, it was objectively reasonable for Trooper Mack to believe that [Petitioner's] expired inspection sticker violated the

law giving him reasonable suspicion to initiate a traffic stop. *See Heien*, 574 U.S. 54. Thus, it was objectively reasonable for Trooper Mack to believe that Defendant's expired inspection sticker violated the law giving him reasonable suspicion to initiate the traffic stop.

CONCLUSION

For the reasons stated, this Court should affirm the denial of Petitioner's motion to suppress and deny relief.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Jason David Parmer, do hereby certify that on the 20th day of July, 2023, I served a true and accurate copy of the foregoing **Respondent's Brief** upon the below-listed individuals via the West Virginia Supreme Court of Appeals E-filing System pursuant to Rule 38A of the West Virginia Rules of Appellate Procedure.

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