

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TYRONNE LEKEITH WADE

APPELLANT

VS.

NO. 2008-KA-1098-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

This is an appeal against a judgment of the Circuit Court of the First Judicial District of Harrison County, Mississippi, in which Tyronne Lekeith Wade was convicted in a bench trial of Possession of Marijuana with Intent to Transfer, a violation of Miss.Code Ann. § 41-29-139(a). Wade was sentenced to twenty years in the custody of the Mississippi Department of Corrections, with ten years suspended, followed by five years post-release supervision. CP 49-53.

ISSUES

- I. Whether the initial traffic stop was legal?
- II. Whether Deputy Sensengey illegally detained Wade after issuing the warning ticket?

STATEMENT OF THE FACTS

On June 11, 2007, Deputy William Senseney ("Senseney") with the Harrison County Sheriff's Department was on patrol on Interstate 10. In the course of his duties he stopped a Dodge Magnum for no license plate. Senseney testified that upon approaching the vehicle on foot, he realized it did have an Alabama temporary tag on the inside rear window but the tag was obscured by the dark tint and dirt covering the window. While checking the driver's license and proof of insurance, he noticed the driver, Tyronne Lekeith Wade ("Wade"), appeared nervous. Senseney also noticed an overwhelming odor of air freshener coming from the car and air fresheners put on the interior vents, rosary beads hanging from the mirror and a set of dog tags and Bible on the console. Wade gave the deputy his North Carolina drivers license and a copy of the rental car agreement that reflected automobile insurance coverage. Wade told the story of visiting his dying uncle in Beaumont, Texas; however, Senseney noted Wade rented the car in Harlingen, Texas. Id. Senseney asked Wade to step back to his patrol car. While running the car license plate and Wade's license, a criminal history, and completing a warning citation for the improper display of the tag, Senseney asked Wade about "the nature of his travels." When Wade gave inconsistent answers, Senseney asked Wade for consent to search the car, which Wade denied. Senseney radioed a request for a canine unit to assist. T. 2-33; 86-136; Exhibit S-1 through S-9.

Deputy Tim Huguet and his certified drug dog arrived within a few minutes and commenced a canine sniff of the exterior of the car. After the dog alerted on two

separate areas of the vehicle, the deputies conducted a search of the interior. The deputies found two suitcases containing four large wrapped packages of what was later identified to be approximately sixty-six pounds of marijuana. Wade was arrested and charged with possession of a controlled substance with the intent to distribute. T.34-47; 138-151.

The defense filed a motion to suppress the marijuana found during the search, claiming Deputy Senseney unlawfully detained Wade while waiting for the canine unit to arrive. CP 30-32. At the suppression hearing, the trial judge heard testimony from Deputy Senseney and Deputy Huguet. T. 5-50. After receiving briefs from both parties, the trial judge denied Wade's motion to suppress the marijuana. CP 48. Wade waived his right to a trial by jury and was convicted in a bench trial. CP 49-53. After denial of post trial motions, Wade appealed.

SUMMARY OF THE ARGUMENT

The trial court's denial of Wade's motion to suppress evidence should be affirmed. Deputy Senseney had probable cause to believe that a traffic violation occurred when he stopped Wade's vehicle because he could not see a license plate on the vehicle.

Wade was not illegally detained or unreasonably delayed during the short time it took for the canine unit to arrive at the scene. Based upon the facts as testified to by Deputy Senseney and his training and experience, he had reasonable suspicion to believe Wade was involved in criminal activity and further investigation was warranted. Once the drug dog "alerted," probable cause to search the vehicle was established.

ARGUMENT

I. Senseney's initial traffic stop was legal.

In his first assignment of error, Wade argues that the trial court erred by failing to suppress the marijuana found during a search of his vehicle because the initial traffic stop was illegal. Simply put, Wade argues that even though Deputy Senseney may not have seen a valid tag on Wade's car, Senseney did not have probable cause to stop him and therefore the evidenced seized should have been suppressed. According to Wade, probable cause to stop his car did not exist because Mississippi car tag laws did not apply to his rental car registered in Alabama. Wade went on to claim Deputy Senseney, being a Harrison County law enforcement officer, could not legally stop the car for failure to have a tag.

In criminal appeals, a presumption of correctness attaches to any ruling by the trial court. *Carr v. State*, 592 So.2d 114, 127 (Miss.1991). When reviewing a trial court's ruling on a suppression hearing, an appellate court must assess whether substantial credible evidence supports the trial court's finding, considering the totality of the circumstances. *Jaramillo v. State*, 950 So.2d 1104 (Miss.Ct.App.2007). The admissibility of evidence lies with the trial court's discretion and will only be reversed if this discretion is abused. *Crawford v. State*, 754 So.2d 1211, 1215 (Miss.2000).

The trial court's denial of Wade's motion to suppress evidence should be affirmed. Deputy Senseney had probable cause to believe that a traffic violation occurred when he stopped Wade's vehicle for failure to have a tag in violation of Miss. Code Ann. § 27-19-323 and Miss. Code Ann. § 27-29-40. The action of an

officer stopping a vehicle is reasonable when there is “probable cause to believe that a traffic violation has occurred.” *Whren v. United States*, 517 U.S. 806, 810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

Senseney testified he did not see a license plate on the vehicle when it passed him and he stopped it for that reason. T. 5-13. Mississippi Code Annotated section 27-19-323 (Rev.2006) provides that vehicles operated on Mississippi’s highways must have tags “conspicuously displayed on the vehicle being operated in such a manner that it may be easily read.” Even if Wade’s car had a valid tag, it was not “conspicuously displayed.” It was within Deputy Senseney’s authority to pull Wade over to check for a tag, and to check the expiration of the tag (if found) or to see if the tag was valid or the car stolen. *Gonzales v. State*, 963 So.2d 1138, (Miss. 2007). It is true that there was a temporary tag affixed to the inside of the rear window, but Senseney did not know this until after the stop. The rear window was dirty and heavily tinted, as seen in Exhibit S-1 and S-9. In addition to being in possession of a valid tag, Wade was required under Mississippi law to conspicuously display it so that it could be easily read, even though the car was registered in Alabama. The tag was not conspicuously displayed, having been put behind a tinted window and it could not be easily read. T. 5.

The issue of stopping a car for failure to have a tag was recently addressed in *Gonzales*, a case directly on point and almost identical in facts to Wade’s traffic stop. In *Gonzales*, a trooper stopped a vehicle for no tag. After obtaining consent to search the vehicle, the officer found sixty pounds of marijuana inside. In a motion to suppress, *Gonzales* contended the officer lacked reasonable suspicion to stop the

vehicle because there was a valid, temporary tag taped in the back window, therefore the evidence obtained in the subsequent search was inadmissible. Even though there was a tag in the rear window, the Mississippi Supreme Court held the officer had reasonable suspicion to stop the vehicle because the vehicle did not appear to have a tag in plain view. The Court held the statute governing exhibition of dealer tags and the statute regulating "special in-transit tags" required not only the existence of a valid tag, but also that the tag be displayed in plain view. Gonzales, like the defendant *sub judice*, was driving a rental car with dark tinted, dirty windows, making it difficult to see or read the tag placed inside the rear window. See Exhibits S-1, S-9.

Wade's reliance on *U.S. v. Lopez-Valdez* 178 F.3d 282, 287-89 (5th Cir.1999) is unavailing, insofar as it is factually distinguishable. In *Lopez* the officer stopped a vehicle on the mistaken belief that the broken taillight violated state law. In the case *sub judice*, Senseney did not mistake state law in stopping Wade.

Even if this Court were to decide that Mississippi law did not apply to the Alabama rental car, or that the exhibition of the tag under the circumstances here met the requirements of Mississippi law, Deputy Senseney's act in stopping the vehicle was reasonable. Senseney did not see a tag when he stopped the vehicle. His actions were objectively reasonable under these circumstances. *Harrison v. State*, 800 So.2d 1134 (Miss. 2001). A law enforcement officer may stop a vehicle where he has probable cause to believe that a violation of law has or is occurring. *Walker v. State*, 962 So.2d 39 (Miss.App.,2006). The question of whether probable cause existed is analyzed by considering what the officer saw or knew at the time he made a stop. The fact that he might later find that he was in error as to facts he thought existed does not

of itself mean he was not in possession of probable cause.

Once Senseney stopped the car, he had a duty to check the driver's license, validity of the tag, verify that the vehicle was insured and the insurance card in the vehicle. Pursuant to Mississippi Code Annotated section 16-53-4 every vehicle operated on Mississippi roads shall have liability insurance and have an insurance card in the vehicle; and "upon stopping a motor vehicle.... for any other statutory violation, a law enforcement officer, who is authorized to issue traffic citations, *shall* verify that the insurance card required by this section is in the motor vehicle."

As more fully discussed in the State's argument to Issue II, which is adopted herein, after the stop, Senseney developed reasonable suspicion of criminal activity that warranted further investigation.

The record contains ample credible evidence to support the trial court's denial of Wade's motion to suppress the evidence. It cannot be said that the trial court abused its discretion.

II. Wade was not illegally detained.

In his next assignment of error, Wade maintains a violation of his Fourth Amendment rights. He claims there was an illegal detention and seizure of his person which started the moment Senseney completed writing the warning ticket, the reason for the initial stop.

The Mississippi Court of Appeals spoke to this issue in *Tate v. State*, 946 So.2d 376 (Miss.App.,2006).

The Fourth Amendment protects individuals from unreasonable searches and seizures. *U.S. v. Grant*, 349 F.3d 192, 196 (5th Cir.2003). Traffic stops are considered to be seizures within the

meaning of the Fourth Amendment. *Id.* Because a traffic stop more closely resembles an investigative detention than a formal arrest, this Court analyzes a traffic stop for Fourth Amendment purposes under the standard articulated in *Terry*. *Couldery v. State*, 890 So.2d 959, 962(¶ 8) (Miss.Ct.App.2004). Under *Terry*, a detention is lawful if the officer “can ‘point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the search and seizure].’ ” *U.S. v. Santiago*, 310 F.3d 336, 340 (5th Cir.2002). *Terry* requires “a two-tiered reasonable suspicion inquiry: 1) whether the officer's action was justified at its inception, and 2) whether the search or seizure was reasonably related in scope to the circumstances that justified the stop in the first place.” *Grant*, 349 F.3d at 196. In determining the existence of “‘reasonable suspicion, grounded in specific and articulable facts,’ the court must consider whether, taking into account the totality of the circumstances, the detaining officers had a ‘particularized and objective basis for suspecting the particular person stopped of criminal activity.’ ” *Adams v. City of Booneville*, 910 So.2d 720, 722(¶ 8) (Miss.Ct.App.2005).

An officer proceeding upon reasonable suspicion may detain a suspect until such time at which reasonable suspicion has been verified or dispelled, at which point the detention must end. *Grant*, 349 F.3d at 196. If, during a proper investigative stop, the officer develops reasonable, articulable suspicion of some criminal activity in addition to that initially suspected, the permissible scope of the stop expands to include the officer's investigation of the newly suspected criminal activity. *U.S. v. Kye Soo Lee*, 898 F.2d 1034, 1040 (5th Cir.1990). Thus, in *Kye Soo Lee*, an officer who legally stopped individuals for traffic violations was justified in further detaining the individuals when, within the legal scope of the traffic stop, the officer observed circumstances that created a reasonable suspicion of additional criminal activity. *Id.*

The trial court correctly determined that Wade was not unlawfully detained during the few minutes of time it took for the canine to arrive and “alert” to drugs in the vehicle.

Once Senseney determined the tag was valid he had a reasonable period of time in which to check Wade's driver's license, car insurance, rental agreement and run a criminal history. See *Dortch*, 199 F.3d 199F at 198 (5th Cir.1999). Senseney

testified that while in his patrol car he began to question Wade regarding his travel. Wade gave inconsistent answers about where he had been and the condition of his “dying uncle.” Specifically, when asked about where he was coming from, Wade stated, “Where did I tell you I was coming from?” When asked again about his uncle, Wade stated he was fine. At the point in time Senseney received Wade’s criminal history, Senseney developed reasonable suspicion, grounded in specific and articulable facts, that Wade was involved in additional criminal activity. T. 5-14; 90-7.

Senseney testified that he had over fourteen years experience in law enforcement. Based upon that training and experience, the heavy odor of air fresheners, the placement of the air fresheners on the vents, the religious items, the military dog tags, Wade’s inconsistent statements, the rental agreement, and Wade’s criminal past, Senseney developed reasonable suspicion that Wade was involved criminal activity associated with illegal drugs and that suspicion warranted further investigation. Id. After Wade denied Senseney’s request to search the car, the deputy requested the canine unit. T. 14; 97. When the canine unit alerted to drugs in the car, Senseney’s reasonable suspicion developed into probable cause to search the vehicle without a warrant and to legally detain Wade during that search. See *Terry v. Ohio*, *Illinois v. Caballes*, 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005); *McNeal v. State*, 617 So.2d 999, 1006 (Miss. 1993).

In *Williamson v. State*, 876 So.2d 353 (Miss.,2004) the Mississippi Supreme Court rejected a motion to suppress evidence obtained by a police officer who detained and questioned the defendant without probable cause for an arrest. Quoting *Shannon v. State*, 739 So.2d 468 (Miss.Ct.App.1999), the Court held

Police activity in preventing crime, detecting violations, making identifications, and in apprehending criminals may be divided into three types of action: (1) Voluntary conversation: An officer may approach a person for the purpose of engaging in a voluntary conversation no matter what facts are known to the officer since it involves no force and no detention of the person interviewed; (2) Investigative stop and **temporary detention: To stop and temporarily detain is not an arrest, and the cases hold that given reasonable circumstances an officer may stop and detain a person to resolve an ambiguous situation without having sufficient knowledge to justify an arrest;** (3) Arrest: An arrest may be made only when the officer has probable cause.

Singletary v. State, 318 So.2d 873, 876 (Miss.1975).

Police officers have the authority to detain a person without actually arresting him for investigatory purposes. *Haddox v. State*, 636 So.2d 1229, 1234 (Miss.1994). “[G]iven reasonable circumstances an officer may stop and detain a person to resolve an ambiguous situation without having sufficient knowledge to justify an arrest.” *Estes v. State*, 533 So.2d 437, 441 (Miss.1988) (quoting *Griffin v. State*, 339 So.2d 550, 553 (Miss.1976)). A reasonable suspicion is all that is required to effectuate a ‘stop and frisk’. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).
Shannon, 739 So.2d at 471.

Wade’s reliance on *Couldery v. State* 890 So.2d 959 (Miss.Ct.App.2004) and *Dortch v. United States*, 199F.3d 193 (5th Cir.1999) is misplaced. *Couldery* is distinguishable from the case sub judice. In *Couldery*, the officer initiated a traffic stop for driving in the left-hand lane on the interstate and listed that as the basis for the citation. The Court concluded that the action of the driver did not constitute a criminal offense- that driving in the left-hand lane of the interstate was not illegal. Therefore, the officer’s misapprehension of the law precluded the stop from being valid. However, unlike what occurred in *Couldery*, the stop here was clearly proper and not based upon a mistake of law.

Wade relies on *Dortch*, 199 F.3d 193 (5th Cir.1999) for the proposition that the

defendant's Fourth Amendment rights were violated when the detention extended beyond the completion of the computer check. In *Dortch*, the court held the basis for the initial traffic stop had concluded and the officers lacked reasonable suspicion to detain the defendant beyond the scope of issuing the citation. In the case *sub judice*, reasonable suspicion of additional criminal activity existed at the time Senseney issued Wade the warning ticket. Dortch had no criminal history, Wade did. According to Senseney it was lengthy and included a recent arrest in Louisiana on drug charges.

T. 10.



Prior to trial a suppression hearing was held, testimony and argument were heard. The State adopts as part of its argument the prosecutor's letter brief submitted in opposition to Wade's motion to suppress. CP 32-5. Senseney conducted a valid traffic stop; he did not illegally detain Wade; Senseney had reasonable suspicion of additional criminal activity that warranted further investigation through the use of a drug dog; probable cause to search the car was established when the canine alerted; and the car was legally searched pursuant to established law.

CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal, the State would ask this reviewing court to affirm the verdict and sentence of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lisa L. Blount, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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