

**NO. 2008-KA-01098-COA**

**IN THE  
COURT OF APPEALS  
OF THE STATE OF MISSISSIPPI**

**TYRONNE LEKEITH WADE  
Defendant – Appellant**

**v.**

**STATE OF MISSISSIPPI  
Plaintiff – Appellee**

**Appeal from the Circuit Court of Harrison County, Mississippi  
First Judicial District**

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**REPLY BRIEF OF THE APPELLANT**

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## **STATEMENT OF THE REPLY ISSUES**

In response to the brief filed by the State in this matter, the Appellant respectfully replies as follows, and asserts the following points of reply argument:

- I. MISSISSIPPI LAW ON DISPLAY OF LICENSE TAGS ON VEHICLES DOES NOT APPLY TO VEHICLES NOT REGISTERED IN MISSISSIPPI.**
- II. DEPUTY SENSENY ILLEGALLY DETAINED APPELLANT WHEN HE DID NOT IMMEDIATELY RELEASE APPELLANT AFTER THE WARNING CITATION WAS ISSUED AND BEFORE THE DRUG-SNIFFING CANINE ARRIVED ON THE SCENE.**

## **REPLY ARGUMENT**

### **I. MISSISSIPPI LAW ON DISPLAY OF LICENSE TAGS ON VEHICLES DOES NOT APPLY TO VEHICLES NOT REGISTERED IN MISSISSIPPI**

The State asserts that Miss. Code Ann. § 27-29-40 provides probable cause to stop any vehicle on a Mississippi highway for violating the law on improper display of a license tag. (Appellee's Brief at 4). That statute deals with the issuance of special in-transit tags or plates to dealers and automobile auctions, and provides when such tag is properly issued by the Tax Commission, the dealer is exempt from the annual highway privilege tax when such tag or plate is displayed in plain view as prescribed by the State Tax Commission. Miss. Code Ann. § 27-19-40. Miss. Code Ann. § 27-19-31 may be more applicable to the situation in the instant case. It deals with tags or license plates issued for vehicles registered in Mississippi. That statute provides that the State Tax Commission shall furnish one license tag and up to two license decals to vehicles registered in Mississippi and such license tag "shall be fastened immovably twelve (12) inches or more above the ground, at the rear of the vehicle under or over the rear light, with the number in upright position so that it will be plainly visible and legible at all times..." Miss. Code Ann. § 27-29-31. However, Appellant, Tyronne LeKeith Wade ("Wade") was operating a vehicle not registered in Mississippi and was not legally required to follow Mississippi law pertaining to the fastening and displaying of a tag on a vehicle registered in Mississippi.

Additionally, the State relies on the analysis of the applicable law on using failure to have a license tag conspicuously displayed as set forth in *Gonzales v. State*, 963 So.2d

1138 (Miss. 2007). (Appellee's Brief at 5). The Gonzales case, in all due respect to our Supreme Court, apparently relies on the wrong statute for authority of a Mississippi law enforcement officer to stop a vehicle not registered in Mississippi for failure to display a license tag. Gonzales, at 1143. A close review of Miss. Code Ann. § 27-29-323, reveals that that section pertains to vehicles bearing a dealer's distinguishing number tag. Section 27-19-301 through 335 is known as "The Motor Vehicle Dealer Tag Permit Law". Miss. Code Ann. § 27-19-301. The vehicle operated by Wade was not required to bear a dealer's distinguishing number tag issued through and by permission of the Mississippi State Tax Commission. The State correctly concedes Wade's vehicle was registered in Alabama. (Appellee's Brief at 5). However, Wade was not required to display a dealer's distinguishing number tag as stated in § 27-19-323.

While it is commonly held that a Mississippi law enforcement officer may enforce the traffic laws of this state against any person operating a vehicle on highways in Mississippi, it does not extend to enforcing laws of a foreign state pertaining to the display of a tag on a vehicle registered in a foreign state. Mississippi's traffic rules and regulations are contained in Title 63, Chapter 3 of the Mississippi Code. Mississippi Code Section 63-3-1 provides that "[T]his chapter may be cited as the Uniform Highway Traffic Regulation Law - Rules of the Road. Miss. Code Ann. 63-3-1. The laws pertaining to display of a license plate or tag on a vehicle are not contained under Mississippi's Uniform Highway Traffic Regulation Law – Rules of the Road, but are contained in Title 27, Chapter 19, Motor Vehicle Privilege and Excise Taxes. Miss. Code Ann. § 27-19-1, *et seq.* Thus, probable cause did not exist for Deputy Senseney to stop

Wade's vehicle because he did not see a tag on the part and at the location a tag would be required to be displayed on a vehicle registered in Mississippi. Deputy Senseney only had to look to the rear window of Wade's vehicle and he would have seen the tag issued by Alabama authorities and no stop would have been necessary. Indeed, Deputy Senseney testified he saw the temporary tag in the rear back glass when he approached the Wade's vehicle after the stop. (T.5). If Deputy Senseney saw the tag on approaching the vehicle, then he also saw the tag before the stop at least while he was pulling Wade's vehicle over.

No traffic violation occurred in Deputy Senseney's presence and he never should have stopped Wade. His actions were unreasonable and no probable cause existed to stop Wade.

**II. DEPUTY SENSENEY ILLEGALLY DETAINED APPELLANT WHEN HE DID NOT IMMEDIATELY RELEASE APPELLANT AFTER THE WARNING CITATION WAS ISSUED AND BEFORE THE DRUG-SNIFFING CANINE ARRIVED ON THE SCENE**

The State relies heavily upon what it believes is Deputy Senseney's authority to detain Wade for further investigative actions after determining the tag was valid. (Appellee's Brief at 8). Wade takes the position that there was insufficient basis to further detain him after he exercised his constitutional right to not grant permission for a search of his vehicle. Additionally, Wade disagrees with the State's argument that under a totality of the circumstances analysis, Wade was not illegally detained.

Our federal courts have held that, for purposes of Fourth Amendment analyses, traffic stops are considered to be seizures. *U.S. v. Grant*, 349 F.3d 192, 196 (5th Cir.2003). Thus, stopping a motorist without probable cause or without there being a violation of the traffic laws is an unlawful seizure which amounts to more than a mere detention, regardless of the length of the detention.

Deputy Senseney's inferences from what he saw and/or heard during the stop of Wade were not reasonable. First, Deputy Senseney was merely going on bald suspicion not grounded on reasonable bases. There was no other person available for Deputy Senseney to question or test whether Wade was truthful when discussing where he was coming from and the medical condition of any relative Wade had gone to see. Wade was in the car alone. Secondly, it's not reasonable to infer Wade was then and there in the possession of controlled substances simply because he was driving a rental car, had a Bible, rosary beads, and air freshener in his car. These would be things Deputy Senseney observed immediately upon making contact with Wade and the interior of the passenger compartment. Wade's criminal history should have had no bearing on the development of the "reasonable suspicion". Deputy Senseney did not describe the particular element of the criminal history that convinced him that reasonable suspicion existed to believe Wade was in possession of contraband drugs. Merely being arrested in another state for an alleged crime is not sufficient to support the inference that Wade was, at the time of the stop in the instant case, concealing drugs in his vehicle.

A common-sense approach to analyzing whether a detention is unreasonable should be applied. What's reasonable should be based on the facts of each particular



case. Accordingly, a short detention can be illegal or unlawful depending on other facts. In this case, Wade had already denied permission to search the vehicle and the drug-sniffing canine was not on the scene and Deputy Senseney had already given Wade the warning ticket. Wade should have been free to go about his travel. *Illinois v. Caballes*, 543 U.S. 405 (2005). The focus in the analysis of whether the detention was unreasonable should be on the fact that if the initial detention was lawful and reasonable but became unreasonable once the mission of issuing the warning citation was completed. Wade's continued detention for the purpose of allowing the drug-sniffing dog to arrive on the scene and search the vehicle was unreasonable.

### **CONCLUSION**

The Appellant, TYRONNE LEKEITH WADE, submits that the circuit court judge erred by denying his motion to suppress the marijuana seized from Wade's vehicle.

The initial stop was illegal because Senseney had no authority to enforce Alabama license tag laws and regulations in Mississippi. This was not a traffic stop because it did not involve enforcing Mississippi traffic laws and regulations, but was an attempt to cause a nonresident, driving a vehicle registered in Alabama to comply with Mississippi's laws pertaining to motor vehicle privilege and excise taxes. Even if the initial stop is considered by the Court to be reasonable and valid, it became an unlawful detention and seizure of Wade when Deputy Senseney exceeded the parameters of the initial stop by starting an investigation into whether Wade was trafficking drugs. Deputy Senseney did

not have reasonable suspicion that Wade was in the possession of illegal drugs. The conviction should be reversed and the trial judge's denial of Wade's motion to suppress the marijuana should be overturned.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Alvin Chase, Attorney for Appellant, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing APPELLANT'S RELY BRIEF to the following:

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This the 28th day of May, 2009.



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