

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

THEODORE MAXWELL

Appellant

No. 1189 EDA 2013

Appeal from the Judgment of Sentence entered April 18, 2013
In the Court of Common Pleas of Philadelphia County
Criminal Division at No: CP-51-CR-0013828-2012

BEFORE: ALLEN, STABILE, and STRASSBURGER,* JJ.

MEMORANDUM BY STABILE, J.:

FILED APRIL 14, 2014

Theodore Maxwell appeals from the judgment of sentence entered following his convictions for violating the Uniform Firearms Act¹ (VUFA). Maxwell fled from a traffic stop of a car in which he was a passenger. Police officers arrested him after a foot chase because he was openly carrying a firearm. He contends that traffic stop was illegal, and the Court of Common Pleas of Philadelphia County (trial court) erred in denying his motion to suppress evidence. Because the trial court correctly concluded that the officer who arrested Maxwell had reasonable suspicion to stop the vehicle, we affirm.

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S.A. §§ 6101-27.

On the afternoon of November 3, 2012, Philadelphia Police Officers Tyrone Broaddus² and Latanya Cousins were on routine patrol at the 6300 block of Chew Avenue in Northwest Philadelphia. Trial Court Opinion, 8/1/13, at 2-3. Officer Broaddus noticed a green Crown Victoria with a Pennsylvania inspection sticker and a Delaware license plate traveling in the opposite direction. **Id.** Officer Broaddus also noticed that all of the car's windows except the front windshield were tinted so that he could not see the inside of the vehicle. **Id.** He turned his patrol car around to follow the Crown Victoria, activated the car's emergency lights, and began a traffic stop at the corner of Boyer and Pleasant Streets. **Id.** As he pulled his patrol car behind the Crown Victoria, a passenger—Maxwell—exited with a black handgun in his hand. **Id.** Maxwell ran away before Officer Broaddus was able to say anything to him. Officer Broaddus and his partner pursued on foot. **Id.** At the 400 block of Pleasant Street, Officer Broaddus saw Maxwell throw the gun onto a roof. **Id.** Officer Broaddus arrested Maxwell, and Officer Cousins retrieved the firearm. **Id.**

Maxwell was charged with three firearms offenses. He moved to suppress, contending that Officer Broaddus lacked legal grounds to stop the vehicle in which he was a passenger. The trial court denied the motion. At

² In its Rule 1925(a) opinion, the trial court spelled the Officer's name "Broadus," but while testifying at the suppression hearing, he spelled his own name "Broaddus." **See** N.T. Suppression, 4/18/13, at 6.

a bench trial held immediately afterward, the court found Maxwell guilty of two VUFA,³ and sentenced him to two and a half to five years in prison followed by five years of probation. Maxwell appealed to this Court.

On appeal, Maxwell raises one issue:

Did not the lower court err in denying [his] motion to suppress evidence as there was no reasonable suspicion or probable cause to stop the car in which [he] was a passenger and, therefore, all evidence subsequently obtained, including both physical evidence and [his] statement to the police, was tainted by the initial illegality and should have been suppressed and, additionally, the seizure of the gun occurred as a result of forced abandonment?

Appellant's Brief at 3.

When a defendant appeals the denial of a suppression motion,

we are limited to determining whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Since the Commonwealth prevailed in the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as it remains uncontradicted when read in the context of the record as a whole.^[4] Where the record supports the factual findings of the trial court, we are bound by those

³ 18 Pa.C.S.A. §§ 6106 (carrying a firearm without a license) and 6108 (carrying a firearm on a public street in Philadelphia).

⁴ The Supreme Court recently held that the scope of review of a suppression court's decision is limited to the evidence produced at the suppression hearing, and not the whole record. ***In the Interest of L.J.***, 79 A.3d 1073, 1076 (Pa. 2013). That case does not apply here, because the ruling is prospective, and the case was decided after the suppression hearing in this case. ***Id.*** at 1078-79.

facts and may reverse only if the legal conclusions drawn therefrom are in error.

Commonwealth v. Brown, 64 A.3d 1101, 1104-05 (Pa. Super. 2013) (quoting **Commonwealth v. Cauley**, 10 A.3d 321, 325 (Pa. Super. 2010)) (internal alterations omitted).

A police officer may stop a vehicle upon reasonable suspicion of a violation of the Motor Vehicle Code or of criminal activity. 75 Pa.C.S.A. § 6308(b); **Commonwealth v. Feczko**, 10 A.3d 1285, 1290-91 (Pa. Super. 2010) (*en banc*). A stop based on reasonable suspicion must have a stated investigatory purpose. Absent an investigatory purpose, the officer must have probable cause of a Vehicle Code violation. **Id.** Finally, a traffic stop of a car is an investigative detention of anyone inside the vehicle. **Brendlin v. California**, 551 U.S. 249, 251 (2007); **see Commonwealth v. Knotts**, 663 A.2d 216, 218 (Pa. Super. 1995) (“When police stop a vehicle in this Commonwealth for investigatory purposes, the vehicle, and its occupants, are considered ‘seized’ and this seizure is subject to constitutional constraints.”).

Reasonable suspicion to stop is viewed from the standpoint of an objectively reasonable police officer. **Commonwealth v. Walls**, 53 A.3d 889, 893 (Pa. Super. 2012). “A finding of reasonable suspicion does not demand a meticulously accurate appraisal of the facts.” **Commonwealth v. Chase**, 960 A.2d 108, 120 (Pa. 2008) (internal quotation omitted). A suppression court must consider the totality of the circumstances to

determine whether the police officer's suspicion of criminal activity was reasonable. **Walls**, 53 A.3d at 893.

At the suppression hearing, Officer Broaddus testified that he stopped the car in which Maxwell was traveling because it had a Delaware license plate but Pennsylvania inspection stickers on the windshield. N.T. Suppression, 4/18/13, at 10-11, 14-15. On cross-examination, Officer Broaddus initially agreed with defense counsel that he had stopped the Crown Victoria "solely" because of the Delaware license plate and Pennsylvania inspection stickers. **Id.** at 16-17. When prompted further by the court, however, he modified his answer:

THE COURT: I think you omitted in your question also something he observed about the car that he testified to when he first took the witness stand, tinted windows.

[DEFENSE COUNSEL]: That's right, but I just asked if that was the sole reason for him to pull it over. He is free to say no if that's not correct.

THE COURT: Well, is that true, were there tinted windows also [sic] drew your attention to this car?

[OFFICER BROADDUS]: That was part of it, yes.

Id. at 17. In its Rule 1925(a) opinion, the trial court explained that Officer Broaddus had reasonable suspicion to stop the vehicle based on both the tinted-windows violation and the car's Delaware license plate and Pennsylvania inspection sticker. Trial Court Opinion, 8/1/13, at 7-8.

Maxwell initially contends that the record does not support the trial court's conclusion that Officer Broaddus had reasonable suspicion that the

Crown Victoria had illegally tinted windows. No evidence shows, he argues, that the window's tint factored into reasonable suspicion to stop. We disagree.

Officer Broaddus relied, in part, on suspicion of illegal window tint to pull over the vehicle in which Maxwell was a passenger. As noted above, we may reverse the trial court on a factual finding only if the finding lacks support in the record. Here, the record supports the trial court's factual finding. Maxwell complains that Officer Broaddus never mentioned window-tint as a reason to stop the Crown Victoria until prompted by the court. But that contention challenges Officer Broaddus' credibility, and determining a witness's credibility is the trial court's province. We are not in a position—and we lack authority—to reevaluate witness credibility on appeal. For this reason, we are bound by the trial court's factual findings regarding the reasons Officer Broaddus stopped the vehicle.

Next, Maxwell argues that the trial court incorrectly concluded that Officer Broaddus had reasonable suspicion to stop the Crown Victoria. The reasons for stopping the vehicle are not Vehicle Code violations, he argues. As to the disparity between the inspection sticker and license plate, Maxwell claims that having a Delaware license plate and a Pennsylvania inspection sticker is not illegal in either jurisdiction. Maxwell argues that the prohibition against excessive window tint applies only to vehicles registered

in Pennsylvania. In his brief, Maxwell includes a lengthy discussion of, 75 Pa.C.S.A. § 4524(e), pertaining to windshield obstructions and wipers.⁵ **See** Appellant's Brief at 15-19. Because the Department of Transportation may issue certificates of exemption only to vehicles registered in Pennsylvania, Maxwell argues the Crown Victoria was not in violation of Section 4524(e), and thus Officer Broaddus lacked reasonable suspicion to stop the vehicle.

Excessive window tint is illegal in both Pennsylvania and Delaware. In Delaware, tinting is illegal if it violates Federal Motor Vehicle Safety Standard (FMVSS) No. 205, 49 C.F.R. § 571.205, which governs glazing materials for vehicles. 21 Del. C. § 4143. Pennsylvania also has adopted FMVSS No. 205 by regulation. 67 Pa. Code § 175.67(d)(4). This Court, however, has ruled that window tint violates Section 4524(e) only if does not permit a person to

⁵ In relevant part, the Vehicle Code, 75 Pa.C.S.A. § 4524(e) provides that:

No person shall drive any motor vehicle with any sun screening device or other material which does not permit a person to see or view the inside of the vehicle through the windshield, side wing or side window of the vehicle.

Id. § 4524(e)(1). Certain types of vehicles are exempt. **Id.** § 4524(e)(2). Exempt vehicles include hearses, ambulances, government vehicles, and vehicles for which the Department of Transportation has issued a certificate of exemption. **Id.** The Department grants certificates of exemption to two types of vehicles: (i) a vehicle with manufacture-installed tint; and (ii) a vehicle that complies with Federal regulations and whose owner, registrant, or member of the owner or registrant's household certifies that the window-tint is medically necessary. **Id.** A driver must carry the certificate of exemption and submit it to a police officer on demand. **Id.** § 4524(e)(4). Finally, the sale or transfer of the vehicle to voids the exemption if the buyer does not qualify for the medical-necessity exemption. **Id.** § 4524(e)(5).

see inside of the vehicle. **Commonwealth v. Brubaker**, 5 A.3d 261, 265-66 (Pa. Super. 2010).

Maxwell's statutory-construction argument misses the mark. Police officers do not need proof that a vehicle's window tint is illegal before conducting a traffic stop because reasonable suspicion does not require proof beyond a reasonable doubt. **See Commonwealth v. Fell**, 901 A.2d 542, 545 (Pa. Super. 2006) (noting that reasonable suspicion is less demanding than probable cause); **Commonwealth v. Brown**, 627 A.2d 1217, 1218 (Pa. Super. 1993) (noting that probable cause is less demanding than proof beyond a reasonable doubt); **see also Commonwealth v. Allen**, 725 A.2d 737, 743 (Pa. 1999) (Castille, J., dissenting) ("[R]easonable suspicion' required for an investigative stop is far less exacting than the standard of 'probable cause' for an arrest, which is itself far less exacting than the necessary 'proof beyond a reasonable doubt' required to convict."). Nor does reasonable suspicion "require that the activity in question [be] unquestionably criminal before an officer may investigate further." **Commonwealth v. Ulman**, 902 A.2d 514, 518 (Pa. Super. 2006). Rather, reasonable suspicion requires only "specific and articulable facts" which leads a police officer to suspect a violation of the Vehicle Code. **Commonwealth v. Holmes**, 14 A.3d 89, 95 (Pa. 2011). Furthermore, because a vehicle may be exempt from the window-tint requirements, a police officer who observes a vehicle with, as in this case, clearly illegal window tint, needs to investigate further to determine whether a violation

has occurred. **See Feczko**, 10 A.3d at 1290-91 (noting police need only reasonable suspicion of a Vehicle Code violation to perform a traffic stop with a stated investigatory purpose); **accord State v. Trower**, 931 A.2d 456, 457-58 (Del. Super. 2007) (ruling that window tint too opaque to see vehicle's occupants provides reasonable suspicion to perform a traffic stop).

We therefore hold that the traffic stop of the car in which Maxwell was a passenger was supported by reasonable suspicion because of the vehicle's excessive window tint. In this case, Officer Broaddus testified that the all of the Crown Victoria's windows except the front windshield were tinted so as to prevent him from seeing the interior of the vehicle. As we have demonstrated above, the suspected illegality of the window tint was sufficient—without determining whether it was actually illegal—to perform a traffic stop. And an investigatory stop based on reasonable suspicion was necessary to determine if a violation of the Vehicle Code existed. We agree therefore with the trial court that Officer Broaddus had reasonable suspicion to stop the vehicle.⁶ Therefore, the evidence obtained through the stop is

⁶ Given our disposition of this case, we need not address Maxwell's argument that having a Delaware license plate and a Pennsylvania inspection sticker is not illegal and therefore cannot support reasonable suspicion. Similarly, we need not address the Commonwealth's reply that the Delaware license plate and the Pennsylvania inspection sticker provided reasonable suspicion independent of any window-tint violation. **See** Appellee's Brief at 13-14.

Assuming that having a foreign license plate and a Pennsylvania inspection sticker is not illegal, and that Officer Broaddus' belief to the contrary was mistaken, there is a split of authority regarding whether mistakes of law can
(Footnote Continued Next Page)

not subject to suppression.⁷

Based on the foregoing, we hold that Officer Broadus had reasonable suspicion to stop the car in which Maxwell was a passenger. Therefore, the traffic stop of the car was legal, and the trial court correctly denied the motion to suppress. Accordingly, we affirm the judgment of sentence.

Judgment of sentence affirmed.

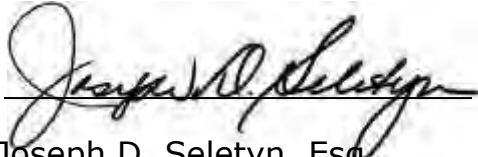
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support reasonable suspicion. Some federal and state courts have held that a mistake of law, if reasonable, can support reasonable suspicion to perform a traffic stop. *See, e.g., United States v. Delfin-Collina*, 464 F.3d 392, 397-99 (3d Cir. 2006); *State v. Heien*, 737 S.E.2d 351, 355-57 (N.C. 2012). On the other hand, other courts—including our Commonwealth Court—have held that a mistaken belief that a motorist has violated the law is *per se* unreasonable, and therefore can never be a valid basis for a traffic stop. *See, e.g., Commonwealth v. Rachau*, 670 A.2d 731, 735-36 (Pa. Cmwlth. 1996); *United States v. McDonald*, 453 F.3d 958, 961-62 (7th Cir. 2006); *Gilmore v. State*, 42 A.3d 123, 135 (Md. Spec. App. 2012). This Court has never addressed this issue. Neither has our Supreme Court, except to note in passing that “stops based on *factual* mistakes generally are constitutional if the mistake is objectively reasonable.” *Chase*, 960 A.2d at 120 (emphasis added).

⁷ Maxell challenges the legality of the seizure of the gun and incriminating statements he made to a police detective only as fruits of an illegal stop. Appellant’s Brief at 22; *see, e.g., Commonwealth v. Taggart*, 997 A.2d 1189, 1196 (Pa. Super. 2010) (“Pennsylvania courts have commonly held that contraband discarded during an unlawful pursuit must be suppressed.”). Because the initial stop was valid, the fruits of the poisonous tree doctrine does not apply here.

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Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/14/2014