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19-P-933

Appeals Court

COMMONWEALTH vs. MARIO PUAC-CUC.

No. 19-P-933.

Middlesex. February 4, 2020. - June 8, 2020.

Present: Maldonado, Singh, & Englander, JJ.

Registrar of Motor Vehicles. Motor Vehicle, License to operate, Operating under the influence. Alcoholic Liquors, Motor vehicle. Constitutional Law, Investigatory stop, Reasonable suspicion. Search and Seizure, Reasonable suspicion, Threshold police inquiry. Threshold Police Inquiry. Practice, Criminal, Motion to suppress, Motion for reconsideration.

Complaint received and sworn to in the Framingham Division of the District Court Department on April 30, 2018.

A pretrial motion to suppress evidence was heard by Martine Carroll, J., and a motion for reconsideration was also considered by her.

An application for leave to prosecute an interlocutory appeal was allowed by Barbara A. Lenk, J., in the Supreme Judicial Court for the county of Suffolk, and the appeal was reported by her to the Appeals Court.

Lindsay Russell, Assistant District Attorney, for the Commonwealth.

Richard S. Jacobs for the defendant.

ENGLANDER, J. A Framingham police officer stopped the vehicle the defendant was driving, after the officer's routine check of the registry of motor vehicles's (RMV's) database revealed that the vehicle's registered owner did not have a valid license. The defendant (who was not the registered owner) was subsequently arrested for driving while under the influence. A District Court judge granted the defendant's motion to suppress on the ground, among others, that the officer did not have reasonable suspicion to justify the stop. Because both Federal and Massachusetts law hold that the stop was reasonable under the circumstances, we reverse.

Background.<sup>1</sup> In the early morning hours of April 29, 2018, the defendant was driving a Chevrolet sport utility vehicle on the streets of Framingham. Sergeant Philip Hurton was driving behind the defendant and ran a routine check of the defendant's license plate through the RMV database. Hurton learned that the owner of the vehicle, one Norberto Puac-Cuc, did not have a valid driver's license. As a result, Hurton pulled the vehicle over.

Hurton did not see the driver prior to stopping the vehicle. His sole basis for the stop was that the registered

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<sup>1</sup> The facts are taken from the transcript of the suppression hearing. The judge did not make subsidiary findings of fact.

owner did not have a license. When Hurton approached the vehicle, he saw a male operator (the defendant) and two passengers. The defendant did not have identification but did provide his name and date of birth. He was not the registered owner. Hurton noticed indicia that the defendant might have been drinking, and after further questioning, the defendant made incriminating statements and ultimately was arrested for operating a motor vehicle while under the influence of intoxicating liquor, G. L. c. 90, § 24 (1) (a) (1), and operating a motor vehicle without a license, G. L. c. 90, § 10.

The defendant moved to suppress, and the motion judge held a hearing at which Hurton testified. The prosecutor argued that the stop was lawful under Commonwealth v. Garden, 451 Mass. 43 (2008), once Hurton determined that the registered owner did not have a valid license. The judge granted the motion to suppress, stating in a handwritten endorsement: "No objective reasonable suspicion of criminal activity to justify stop."<sup>2</sup>

The Commonwealth moved for reconsideration, reemphasizing that the stop was justified under Garden and Commonwealth v. Deramo, 436 Mass. 40 (2002). The judge denied that motion. The Commonwealth then filed a "Motion for Written Findings of Fact,"

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<sup>2</sup> It is unclear what evidence the defendant was seeking to suppress, although the motion at least encompassed the defendant's statements to the officer. Deciding the case as we do, we need not determine precisely what evidence is at issue.

on which the judge endorsed: "Based upon the credible testimony, I find the stop was a pretextual stop."

A justice of the Supreme Judicial Court granted the Commonwealth leave for an interlocutory appeal.

Discussion. 1. The reasonable suspicion issue. The question is whether at the time of the stop, the officer had an objectively reasonable suspicion that a crime or a traffic violation had been, was being, or was about to be committed, such that he could stop the vehicle to conduct a "threshold inquiry." Garden, 451 Mass. at 45, quoting Commonwealth v. Wren, 391 Mass. 705, 707 (1984). "Operation of a motor vehicle in Massachusetts without a proper license is a violation of law and an arrestable offense." Commonwealth v. Chown, 459 Mass. 756, 763 (2011), citing G. L. c. 90, § 21. Since the registered owner was not licensed, the stop was valid if Sergeant Hurton could reasonably infer that the owner of the vehicle was driving it at the time of the stop. See Garden, 451 Mass. at 45-46. In analyzing the validity of the stop, "we independently determine the correctness of the judge's application of constitutional principles to the facts . . ." (citation omitted). Commonwealth v. Buckley, 478 Mass. 861, 864 (2018).

The Supreme Judicial Court has twice held that an officer may stop a vehicle, consistently with the Fourth Amendment to the United States Constitution and art. 14 of the Massachusetts

Declaration of Rights, based solely on the knowledge that the owner of a vehicle traveling on a public way was not licensed. The first such decision was Deramo, in which the officer stopped a vehicle that he recognized, under circumstances where the officer could not see the driver but knew that the owner's license had been revoked. Deramo, 436 Mass. at 41-43. The Deramo court held that the reasonable suspicion standard was satisfied: "the police may, in the absence of any contrary evidence, reasonably conclude that a vehicle is likely being driven by its registered owner." Id. at 43. The Supreme Judicial Court reiterated this holding in Garden, where police officers stopped a vehicle based solely on an RMV check, which revealed that the owner of the vehicle, a female, had a suspended license. Garden, 451 Mass. at 44-45. In Garden, the officers could not see the driver before they stopped the vehicle. The court accordingly held that, under Deramo, the stop was valid, even though after the stop one of the officers was able to observe that the driver of the vehicle was a man.<sup>3</sup> Garden, supra at 46.

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<sup>3</sup> We note that even under those circumstances, the Garden court concluded that the officer was justified in engaging in a brief conversation with the driver:

"The defendant argues that any justification for the stop evaporated the moment Officer Cooley, in approaching the Honda, observed that the driver of the Honda was a man . . . . We agree that at that moment Officer Cooley no

Deramo and Garden established, for the Massachusetts courts, that Hurton had reasonable suspicion for the stop here. The only question remaining is whether the United States Supreme Court has subsequently reached a different conclusion than Deramo and Garden, when applying the Fourth Amendment. It has not done so. Indeed, this term, the Court addressed substantially the same issue in Kansas v. Glover, 140 S. Ct. 1183 (2020), and ruled that there was no Fourth Amendment violation. In Glover, a police officer had stopped a vehicle after running a records check, through which the officer determined that the license of the vehicle's registered owner had been revoked. Id. at 1187. The officer did not see the driver before he conducted the stop. Id. The Court held that based upon those facts, the officer could properly rely on the "commonsense" "inference that the driver of a car is its registered owner." Id. at 1188-1189. The Court accordingly

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longer had reasonable suspicion that a crime was being committed. . . . Nevertheless, because the Honda was already legitimately stopped, it was no violation of the defendant's rights under art. 14 of the Massachusetts Declaration of [R]ights or the Fourth Amendment to the United States Constitution for Officer Cooley to continue walking the remaining distance from the police cruiser to the Honda . . . . At the very least, the officer properly could have taken the opportunity to explain the reason for the stop before allowing the defendant to continue on his way."

Garden, 451 Mass. at 46.

held that the officer had reasonable suspicion justifying the stop. Id. at 1188. The Court did go on to note, though, that "the presence of additional facts might dispel reasonable suspicion. . . . For example, if an officer knows that the registered owner of the vehicle is in his mid-sixties but observes that the driver is in her mid-twenties."<sup>4</sup> Id. at 1191.

Here, as in Garden, the officer did not see the defendant until the officer had stopped the vehicle and approached it on foot, and even then, the officer observed that the defendant was the same sex as the owner. There were thus no facts known to the officer that would have undermined the inference that the driver was the vehicle's owner.<sup>5</sup> Under Garden, Deramo, and Glover, there was reasonable suspicion for the stop, and no basis for suppression.

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<sup>4</sup> The Court's opinion in Glover also cited the fact that in that case, the owner's license had been revoked under Kansas law. The Court indicated that the revocation lent "further credence" to the inference that the owner was driving the vehicle, because in Kansas a revocation meant that the driver had "already demonstrated a disregard for the law . . . ." Glover, 140 S. Ct. at 1188-1189. The Court did not rest its conclusion on the fact that the owner's license was revoked, however, noting that "common sense suffices to justify this inference." Id. at 1188.

<sup>5</sup> The defendant cites the officer's testimony, on cross-examination, that he had "no reason to believe or not believe" that the owner was driving. We think the defendant places undue weight on this phrase, but in any event the reasonable suspicion analysis is based upon objective, not subjective, facts. The evidence is that the officer ran a check of the RMV records before stopping the vehicle.

2. The pretext issue. After the Commonwealth moved for reconsideration, the motion judge entered a second order that stated that the stop was "pretextual." It is not clear what the judge meant by pretextual, and the judge made no additional findings. A stop is not unlawful, however, solely because the police had a subjective purpose that is different than the proffered basis for the stop -- as long as there was a lawful basis for the stop. See Buckley, 478 Mass. at 866-873. "Pretext," standing alone, is accordingly not a basis for a suppression order. And while it is of course unlawful to stop a vehicle based upon the race of the driver, see Commonwealth v. Lora, 451 Mass. 425, 437-439 (2008), here there was no evidence from which the judge could have found that the stop was based upon race; the officer testified that he did not see the vehicle's occupants until after he effected the stop, and no evidence was presented that would support a contrary conclusion. Indeed, the defendant did not argue that the stop was based upon race.

The suppression order of  
February 28, 2019, is  
reversed.