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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

KENNETH LORAY ELLIS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 2D03-4540

Opinion filed June 28, 2006.

Appeal from the Circuit Court
for Hillsborough County;
J. Rogers Padgett, Judge.

James Marion Moorman, Public
Defender, and Joseph Shields, Jr.,
Assistant Public Defender, and
Joseph N. D'Achille, Jr., Special
Assistant Public Defender, Bartow,
for Appellant.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Richard M. Fishkin,
Assistant Attorney General, Tampa,
for Appellee.

KELLY, Judge.

Kenneth Loray Ellis appeals his judgment and sentence for trafficking in cocaine and driving with a suspended license. We find no merit in the issues he has

raised in this appeal and write to address only his argument that the trial court erred in denying his motion to suppress.

Officer Amanda Wilson was on routine patrol in Tampa when she noticed a car driven by Ellis moving along Comanche Avenue in a normal manner. As Officer Wilson does "all day long, every day of the week," she "ran the tag" by entering the tag number into her patrol car's computer system to request a report on the status of the tag. The response from this database query was "no record found." Officer Wilson activated her lights and siren and followed Ellis to a residence about a block and a half away, where Ellis pulled into the driveway. Ellis could not produce a valid driver's license or the registration information and was arrested for driving without a license. An ensuing search of the car incident to arrest yielded a black bag containing cocaine.

Ellis filed a motion to suppress, seeking to have the stop declared invalid and the fruits thereof suppressed. During the suppression hearing, Officer Wilson testified that the "no record found" response indicated to her that the car was not currently registered in the State of Florida and therefore was being operated in violation of section 320.02(1), Florida Statutes (1997).[1] On cross-examination, she acknowledged that "it could mean other things, but it could mean other things that there's something wrong with the tag in that particular vehicle." In response to a question from the trial court asking whether the "other things" were "all illegal things" or

[1] Violation of section 320.02(1), which requires owners or persons in charge of a motor vehicle operated or driven on the roads of this state to register the vehicle in the state, is a second-degree misdemeanor pursuant to section 320.57(1), Florida Statutes (1997). When an owner registers a car, the Department of Motor Vehicles assigns a registration license number to the car and issues a registration certificate and a registration license plate to the owner that display the assigned number. § 320.06(1)(a), Fla. Stat. (1997).

"are there any legal things that it could be," she stated that she "could not think of a legal thing." She also acknowledged that there had been occasions when she had stopped cars on the basis of a "no record found" response and found that the car was properly registered. She testified that "that's why you conduct the stop to see the paper registration, to verify the paper." The trial court denied Ellis's motion to suppress, finding that the officer had a reasonable belief that Ellis's car was not properly registered and therefore, she was entitled to conduct a stop to investigate the status of the registration.

Stopping an automobile and detaining its occupants constitute a "seizure" within the meaning of the Fourth Amendment. Delaware v. Prouse, 440 U.S. 648, 653 (1979). The essential purpose of the proscription in the Fourth Amendment is to impose a standard of "reasonableness" upon the exercise of discretion by a government official in order to safeguard the privacy and security of individuals against arbitrary invasions. Id. at 653-54. "[T]he permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." Id. at 654. The reasonableness standard usually requires that the facts upon which an intrusion is based be capable of measurement against an objective standard such as probable cause or a less stringent test such as reasonable suspicion. Id. Accordingly, the Supreme Court has held that it is a violation of the Fourth Amendment to stop an automobile and detain a driver to check his license and registration unless "there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that

either the vehicle or an occupant is otherwise subject to seizure for violation of the law." Id. at 663.

Thus, the issue we must decide is whether the officer who stopped Ellis had at least a reasonable, articulable suspicion that the car Ellis was driving was not properly registered. To justify an investigatory stop, an officer must be able to "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the stop. Terry v. Ohio, 392 U.S. 1, 21 (1968). In assessing the reasonableness of the stop, we must look at the facts available to the officer at the moment of the stop and determine whether they " 'warrant a man of reasonable caution in the belief' that the action taken was appropriate." Id. at 21-22 (quoting Carroll v. United States, 267 U.S. 132, 162 (1925)). Further, in determining whether an officer acted reasonably, "due weight must be given . . . to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience." Id. at 27.

Here, Officer Wilson had information that the Department of Motor Vehicles had no registration record for the tag affixed to Ellis's car. She testified that to her that indicated that the car was not currently registered or that there was "something wrong" with the tag. We conclude that given her experience and the facts known to her at the time, it was reasonable for Officer Wilson to infer that the car was not properly registered. Accordingly, she was justified in stopping the car to investigate further.

In an analogous factual situation we have recognized that it is proper for an officer to stop a car to determine whether it has a current registration. In Palmer v. State, 753 So. 2d 679 (Fla. 2d DCA 2000), Palmer had a temporary tag properly displayed in the rear license plate bracket of his car; however, because lighting in the

area was poor, a deputy who saw Palmer sitting in his car could not read the expiration date on the tag. When Palmer drove away, the deputy followed him onto a lighted street hoping to read the expiration date. Id. at 679. When he still could not read the date, he stopped Palmer due to the "possibly expired" tag. We concluded that the stop was justified, but only up to the point that the deputy could read the expiration date on the tag. Id. at 680; see also Borys v. State, 824 So. 2d 204 (Fla. 2d DCA 2002) (upholding a stop that was conducted because the officer was not able to read the expiration date on a temporary tag).[2]

In Palmer and Borys, we found the stops justified even though the officers had no reason to suspect that the cars' registrations were not current. In contrast, Officer Wilson actually had information indicating that the Department of Motor Vehicles had no record of the tag, which in light of her experience gave her a reason to suspect that the car was not properly registered or that there was "something wrong" with the tag. If the officers in Palmer and Borys were justified in stopping cars to investigate the status of their registrations simply because they could not determine that status from looking at the tag, then Officer Wilson was justified in stopping Ellis to investigate after having received information that indicated that the Department of Motor Vehicles had no record of the tag affixed to Ellis's car.

[2] In Diaz v. State, 800 So. 2d 326 (Fla. 2d DCA 2001), this court also found that a stop was justified based on the officer's inability to read the expiration date on a temporary tag. In State v. Diaz, 850 So. 2d 435, 437 (Fla. 2003), the supreme court affirmed our decision but did not expressly decide whether a stop based on an officer's inability to read the expiration date of a temporary tag was justified, stating, "we assume for the purposes of this case that the initial stop by the deputy sheriff was legitimate, albeit based upon a barely justifiable purpose."

Ellis argues that Officer Wilson did not have a reasonable suspicion because she admitted that there had been occasions when she had received the "no record found" response and then on further investigation determined the car was properly registered. "[E]ven in Terry the conduct justifying the stop was ambiguous and susceptible of an innocent explanation." Ilinois v. Wardlow, 528 U.S. 119, 125 (2000). Terry does not require absolute certainty nor does it require an officer to ignore facts that indicate an individual may be committing a crime simply because those facts do not rise to the level of probable cause to make an arrest. Terry, 392 U.S. at 21-22, 26. Where the facts known to an officer suggest, but do not "necessarily" indicate ongoing criminal activity, an officer is entitled to detain an individual to resolve the ambiguity. Wardlow, 528 U.S. at 125.

Accordingly, we conclude that the trial court correctly denied Ellis's motion to suppress, and finding no merit in the other issues he has raised, we affirm his judgment and sentence.

Affirmed.

VILLANTI, J., Concurs.
NORTHCUTT, J., Concurs specially with opinion.

NORTHCUTT, Judge, concurring.

I concur in the decision reflected in Judge Kelly's nicely crafted opinion, but I would feel differently if I weren't bound by this court's decision in Palmer v. State, 753 So. 2d 679 (Fla. 2d DCA 2000), and its progeny. In Palmer an officer stopped a vehicle because poor nighttime lighting conditions made it difficult for him to read the expiration date on the vehicle's temporary license tag. This court observed that the stop was justified "because of the possibly expired" tag. Id. at 680. But the court concluded that it was unlawful for the officer to detain the motorist after he found that the tag had not expired.

I would have held that the Palmer stop was unlawful from its inception. The reason is that, as Judge Kelly has aptly detailed in the case now before us, an investigatory stop is lawful only if it is initiated under circumstances that reasonably, i.e., objectively, lead the officer to suspect that a crime or violation is afoot. Palmer turned this test on its head: rather than examining the circumstances to determine whether they would cause a reasonable person to suspect that a violation was being committed, in that case the court condoned the stop because the circumstances did not permit the officer to dispel his simple curiosity about whether the motorist might possibly be committing a violation. Hypothetically, then, if in this case the computer system had been temporarily inoperative Palmer seemingly would have permitted the officer to stop every car she encountered simply because the circumstances prevented her from checking their registrations beforehand.

To be sure, this case presents a closer question than did Palmer because the officer's computer inquiry—a reasonable attempt to satisfy her curiosity without intruding

on the motorist's Fourth Amendment rights—resulted in the "no record found" message. Setting Palmer aside for the moment, the question is whether that response produced in the officer a reasonable suspicion that the car was unregistered, or whether it merely failed to dispel the officer's idle curiosity about its registration status.

Read literally, the "no record found" message imparted nothing one way or the other about the car's registration. Only by putting this message in the context of the other possible responses programmed into the computer inquiry system could we discern whether it was intended to indicate that the car was unregistered. After all, there was a tag attached to the car, and no other circumstance suggested that anything was amiss. If the tag was unassigned or expired, might the response to the computer inquiry have said so? Based on the record created in the circuit court, we simply do not know; the record contains no evidence about how the tag inquiry computer program was supposed to work.

Instead, I suspect that my colleagues' view of the case is at least somewhat informed by their own computing experiences. To a point, there is nothing wrong with this. Common experiences create common knowledge. Thus, for example, I would not bat an eye before voting to uphold a conviction for motor vehicle theft based on the victim's testimony that he saw the defendant steal his "Chevy." And it is certainly true that, a quarter century after the introduction of the personal computer, many of us have had the sometimes jarring experience of receiving a "no record found" message, or some such.

But there are a couple of reasons why I don't think it is appropriate for this case to turn on a common understanding of the phrase "no record found." The first stems

from the fact that, while it is reasonable to suspect that a "Chevy" is a motor vehicle, it is not reasonable to suspect that a "motor vehicle" is a Chevy. The same principle applies here: in our common experience we know that "no record found" could mean that the record does not exist and we know that this explanation for the message is but one among a range of possibilities, wide or narrow, depending on all the circumstances. In other words, "no record found" is the equivalent of "motor vehicle," not of "Chevy." The second reason I would not apply a common understanding of the phrase "no record found" to this case is that the principle I just mentioned was borne out by the officer's own testimony.

At the hearing on the motion to suppress, the officer conceded that her interpretation of the "no record found" response was her own subjective one. She testified that, to her, the message meant that the car was not currently registered. My colleagues in the majority conclude that, "given her experience and the facts known to her at the time," it was reasonable for the officer to infer that the car was not properly registered.

But, in fact, the officer did not recount any previous experience that would support that conclusion. In fact, the evidence was to the contrary. In the officer's only testimony about her prior experience she acknowledged that she had previously performed traffic stops after her computer returned "no record found" responses to her tag inquiries, only to discover that the vehicles were properly registered. She had received no explanation for this, but speculated that the Department of Motor Vehicles had made mistakes. No one asked, and the record does not disclose, whether this was a common occurrence or a rare one. With that information, we might be able to assess

the reasonableness of the inference the officer drew from the computer message. Without it, we cannot. But the record suggests that, based on her experience, the officer herself might not have attached much significance to the "no record found" message beyond its failure to disprove the possibility that the car was unregistered. "There have been periods where the D.M.V. has entered things incorrectly," she said. "That's why you conduct the stop to see the paper registration, to verify the paper—."

The State has pointed out to us that the evidence did not demonstrate that the message received by the officer was the result of an error. True enough. But the significance of the officer's testimony was that she had received "no record found" messages in regard to cars that were properly registered. Whether mistaken or not, the relative frequency of those occurrences bears on whether the officer's experience reasonably led her to suspect that Ellis's car was unregistered based solely on that response to her inquiry.

I do not mean to suggest that a computer's "no record found" response to an officer's tag inquiry cannot reasonably cause the officer to suspect that the tag is not registered. But our duty in each case is to assess the reasonableness of the officer's suspicion under all the circumstances. In this case, the record contains no evidence of the intended meaning of the phrase "no record found" as used in the tag inquiry computer program employed by the officer who stopped Ellis; we cannot conclude from our common knowledge of the phrase that it meant the car was unregistered; and the only evidence of the officer's experience was to the contrary. Were it not for Palmer, I would vote to reverse because the State did not meet its burden to prove that the

circumstances reasonably caused the officer to suspect that Ellis was driving an unregistered car. But, bound by that decision, I must concur in the affirmance.