



In the Missouri Court of Appeals Eastern District

DIVISION FOUR

STATE OF MISSOURI,)	No. ED108605
)	
Appellant,)	Appeal from the Circuit Court
)	of Jefferson County
vs.)	
)	Honorable Edward L. Page
████████████████████)	
)	
Respondent.)	FILED: January 19, 2021

In this driving while intoxicated case, the State appeals the trial court’s order granting ██████ motion to suppress. In his motion, ██████ sought the suppression of evidence on the basis that the traffic stop was improper. Because uncontested evidence established reasonable suspicion to justify the traffic stop, we reverse and remand for further proceedings.

Factual and Procedural Background

After the State charged ██████ with the class B misdemeanor of driving while intoxicated, he filed a motion to suppress, contending the traffic stop was improper and seeking the exclusion of the results of his field sobriety test and evidence that he refused to take a breathalyzer test. At the suppression hearing, the trial court heard from one witness, Master Sergeant ██████ of the Missouri State Highway Patrol, who was the arresting officer. Sergeant ██████ testified that on October 11, 2018 he was patrolling southbound Highway 21, a divided four-lane highway in a rural area, when he observed ██████ vehicle “following [him] too closely” at an approximate

distance of two car lengths behind his vehicle. He stated that he then noticed the vehicle “backed off further and further and further to gain distance from [his] patrol car, about a quarter-mile back.” Sergeant ██████ explained that because he thought the driver’s actions were “very suspicious,” he pulled his vehicle over to the shoulder and allowed ██████ vehicle to pass. Sergeant ██████ stated he then followed ██████ vehicle four or five miles and watched as ██████ took an exit at a point where the highway ended, turned left onto Route B and then pulled into a gas station parking lot. Sergeant ██████ testified that while he was following ██████ he conducted a “computer check,” which indicated ██████ license plates were expired and that the “colored tab that was on the actual plate did not match the record.” Sergeant ██████ related that he stopped his vehicle and watched as ██████ vehicle “continued out of the parking lot” without anyone “stopping for gas or drinks or a restroom break” and then reentered Highway ██████ headed northbound, which was the opposite direction his vehicle had previously been traveling. Sergeant ██████ testified he followed ██████ and then initiated a traffic stop based on ██████ “following too close,” to investigate the “discrepancy with the registration on the license plate,” and because of ██████ attempt to “evade” him.

During cross-examination, Sergeant ██████ acknowledged that after he stopped ██████ his investigation ultimately revealed that ██████ license plates were not expired. He testified that he had noticed the license plates “contained a 2020 sticker” before he pulled over ██████ vehicle and stated that “[a]t face value, without a computer check, [he] would have suspected that it was a valid registration.” Sergeant ██████ explained, however, that “in [his] experience, many times people would switch or manufacture their own stickers.” He also agreed a reasonable explanation for the discrepancy was that “maybe the computer just wasn’t updated” since the stop occurred only 11 days after the expiration date indicated by the computer check.

After the hearing, the trial court allowed the parties the opportunity to submit memoranda in support of their positions. ██████ memorandum in support of his motion to suppress made various legal arguments as to why Sergeant ██████ observations did not amount to reasonable suspicion, but did not challenge the credibility of his testimony. The trial court granted the motion to suppress without making any findings of fact or conclusions of law. This appeal follows.

Standard of Review

“We review a trial court’s decision to grant or deny a motion to suppress to determine if there was substantial evidence to support the decision, and will only reverse if the trial court’s ruling was clearly erroneous.” *State v. Lewis*, 431 S.W.3d 7, 13 (Mo. App. E.D. 2014). “If the trial court’s ruling is plausible, in light of the record viewed in its entirety, we will not reverse.” *State v. Selvy*, 462 S.W.3d 756, 764 (Mo. App. E.D. 2015). “We view the evidence and all reasonable inferences from the evidence in the light most favorable to the trial court’s ruling, and we defer to the trial court’s credibility determinations and factual findings.” *State v. Galen*, 554 S.W.3d 550, 553 (Mo. App. E.D. 2018). But “we review the question of whether conduct violates the Fourth Amendment *de novo*.” *Id.*

Discussion

The State alleges the trial court erred in granting the motion to suppress because “[t]he traffic stop was lawful.” According to the State, “the totality of the circumstances is easily satisfied” because Sergeant ██████ “saw the traffic violation of following too closely, a discrepancy between the license plate and the tag on it, and unusual driving behavior.” ██████ on the other hand, argues we should affirm on the basis that the trial court did not find Sergeant ██████ testimony to be credible.

Where, as here, the trial court did not make findings of fact and conclusions of law, we presume the trial court made findings “in accordance with the decree entered” and will affirm “under any reasonable theory supported by the evidence.” *State v. Kampschroeder*, 985 S.W.2d 396, 398 (Mo. App. E.D. 1999). Accordingly, “we must view the evidence submitted to determine whether it would support any set of factual findings under which the trial court could have found that the State failed to meet its burden of proving that the stop was proper.” *State v. Abeln*, 136 S.W.3d 803, 808 (Mo. App. W.D. 2004).

“In ruling on a motion to suppress, the trial court may believe or disbelieve all or any part of the testimony presented by the State, even if uncontradicted, and the court may find that the State failed to meet its burden of proof.” *Selvy*, 462 S.W.3d at 764. But it is important to recognize the distinction between uncontradicted evidence and uncontested evidence. “To contest evidence, a party need not present contradictory or contrary evidence. While a party can contest evidence by putting forth evidence to the contrary, a party also can contest evidence by cross-examination or by pointing out internal inconsistencies in the evidence.” *White v. Dir. of Revenue*, 321 S.W.3d 298, 308 (Mo. banc 2010) (internal citations omitted). “[W]here the facts are contested, deference is given to the trial court’s assessment of the evidence and credibility of the witnesses.” *Velluto v. Dir. of Revenue*, 383 S.W.3d 14, 17 (Mo. App. E.D. 2012). In other words, once evidence is contested, “‘a trial court is free to disbelieve any, all or none of the evidence,’ and the appellate court ‘is not to re-evaluate testimony through its own perspective.’” *State v. Avent*, 432 S.W.3d 249, 253 (Mo. App. W.D. 2014) (quoting *Pearson v. Koster*, 367 S.W.3d 36, 44 (Mo. banc 2012)).

But “[i]f the evidence is uncontested or admitted so that the real issue is a legal one, then there is no need to defer to the trial court’s [ruling].” *Velluto*, 383 S.W.3d at 17; *see also Avent*, 432 S.W.3d at 261 (Pfeiffer, J., dissenting). Evidence is “uncontested when a party has admitted

in its pleadings, by counsel, or through the party's individual testimony the basic facts of [the] other party's case. In such cases, the issue is legal, and there is no finding of fact to which to defer." *White*, 321 S.W.3d at 307 (internal citations and quotation marks omitted). "[A] legitimate factual dispute or credibility determination is presented by cross-examination of a witness that raises a legitimate credibility dilemma with respect to a material aspect of the case." *State v. Hamilton*, 227 S.W.3d 514, 516 (Mo. App. S.D. 2007) (citing *Howdeshell v. Dir. of Revenue*, 184 S.W.3d 193, 199 (Mo. App. S.D. 2006)).

Our review of the cases on this subject reveals that courts will affirm the granting of a motion to suppress based on deference to the trial court's credibility determinations when the facts are contested through cross-examination that challenges the credibility of the witness or otherwise seeks to undermine the witness's factual representations on a material issue.

For example, in *Avent*, the court affirmed the trial court's order granting the defendant's motion to suppress in a driving while intoxicated case, noting that the factual issues "were clearly contested" and that the question presented to the trial court was not "merely an issue of law." 432 S.W.3d at 253. The court emphasized that the defendant cross-examined the arresting officer, "challenging his testimony by inferring bias and partiality, pointing out [his] selective omission of observations favorable to [the defendant], and . . . questioning the evidentiary weight of his observations and the reasonableness of inferences drawn therefrom." *Id.* The court also stressed that the defendant's cross-examination elicited an admission from the officer that his observations were not indicative of how much alcohol the defendant had consumed and "an abundance of testimony from [the officer] indicative of [the defendant] not being intoxicated." *Id.*

Similarly, in *State v. Emmett*, 346 S.W.3d 418, 420 (Mo. App. S.D. 2011), the court rejected the State's assertion that the facts relating to the defendant's motion to suppress were not

in dispute, noting that the defendant cross-examined the State's witnesses, "challenging their testimony." The court emphasized that the cross-examination (1) drew repeated responses of "I don't remember," (2) elicited an admission that a witness "just assumed" the defendant was acting with another in committing a theft, and (3) "pointed out inconsistencies between a witness's testimony and his prior written report." *Id.*

Credibility was also an issue in *Abeln*, where the court rejected the State's argument that the defendant had stipulated to the facts relating to his motion to suppress, concluding "the parties merely stipulated that [the trooper] would offer certain testimony if he were called to testify at a hearing on the motion." 136 S.W.3d at 814. In reviewing that stipulation, the court concluded it was not "unreasonable for the trial court to be skeptical about the witness' credibility" in light of the assertions the trooper made about his observations of the defendant, noting that a factfinder could conclude some of those observations were "impossible." *Id.* at 808; *see also Hamilton*, 227 S.W.3d at 517 (affirming the trial court's suppression of evidence when the testifying officer's credibility was "undercut" through cross-examination).

Here, although ██████ counsel questioned Sergeant ██████ that cross-examination did not raise "a legitimate credibility dilemma" or "a legitimate factual dispute" as to whether the computer check indicated that ██████ license plates were expired. *Hamilton*, 227 S.W.3d at 516. Indeed, the cross-examination assumed the truth of Sergeant ██████ testimony as to what the computer check indicated:

[█████ counsel]: So wouldn't it be reasonable that maybe the person got the sticker, that's why there's a 2020 sticker on the things, and perhaps maybe the computer just wasn't updated?

[Sergeant ██████ That's one possible explanation, yes.

In other words, in questioning Sergeant ██████ on this issue, ██████ counsel focused on challenging the reasonableness of his decision to stop the vehicle in light of the fact that he had observed the current 2020 stickers on the license plates before he stopped the vehicle. But the question of “[w]hether the facts amount to reasonable suspicion is a question of law that we review *de novo*.” *State v. Bergmann*, 113 S.W.3d 284, 286 (Mo. App. E.D. 2003).

The uncontested nature of this evidence is confirmed by ██████ memorandum in support of his motion to suppress, which ██████ filed after the hearing. In that memorandum, ██████ did not challenge Sergeant ██████ credibility and instead framed the issue as purely a legal one: “The question presented to the Court in this case is whether the State has met its burden that [Sergeant] ██████ reasons for stopping ██████ equate to reasonable suspicion.” Now, for the first time, ██████ claims the credibility of Sergeant ██████ was at issue and argues we must affirm the trial court’s ruling because “the trial court gave no credibility to any of [Sergeant] ██████ testimony.” But it is clear Sergeant’s ██████ testimony as to what the computer check indicated was not contested; only the legal effect of that evidence was in dispute, which, again, is “a question of law that we review *de novo*.” *Id.*

Applying that standard, we now turn to the issue of whether uncontested facts established reasonable suspicion to justify the traffic stop. “The Fourth and Fourteenth Amendments to the United States Constitution and article I, section 15 of the Missouri Constitution, protect individuals from warrantless searches or seizures, except where a law enforcement officer has ‘reasonable suspicion’ of criminal activity ‘based on specific and articulable facts.’” *Galen*, 554 S.W.3d at 553 (quoting *State v. Schroeder*, 330 S.W.3d 468, 472 (Mo. banc 2011)). “Reasonable suspicion may be established with information that is different in amount or content, or that is less reliable, than the evidence required to establish probable cause.” *State v. Pike*, 162 S.W.3d 464, 473 (Mo.

banc 2005). “The quantity and quality of the information must be considered in the ‘totality of the circumstances’ to determine whether reasonable suspicion exists.” *Id.* “Reasonable suspicion requires less certainty than that required for probable cause, and officers are ‘permitted to make use of all of the information available to them, and they may make inferences from that information that would not be made by members of the public, who lack access to the officer’s knowledge, information, and training.’” *State v. Loyd*, 338 S.W.3d 863, 867 (Mo. App. W.D. 2011) (quoting *State v. Johnson*, 316 S.W.3d 390, 396 (Mo. App. W.D. 2010)).

The reasonable suspicion standard applies to traffic stops. *Pike*, 162 S.W.3d at 473. “Reasonable suspicion—and therefore a traffic stop—may be based on the officer’s observation of a traffic violation.” *Id.* And even a minor traffic violation gives an officer probable cause to stop a vehicle. *State v. Alford*, 603 S.W.3d 725, 730 (Mo. App. W.D. 2020). An officer who observes a vehicle with an expired license plate sticker has authority to stop the vehicle for the purpose of issuing a traffic summons. *State v. Preston*, 861 S.W.2d 627, 630 (Mo. App. E.D. 1993).

Here, Sergeant ██████ testified the computer check indicated that ██████ license plates were expired. Although he saw that ██████ license plates “contained a 2020 sticker,” he explained that “in [his] experience, many times people would switch or manufacture their own stickers.” The uncontested evidence on the license plate issue justified the traffic stop because the information from the computer check gave rise to reasonable suspicion that ██████ had committed a traffic violation by having expired license plates. *See id.* Although it turned out that ██████ license plates were not actually expired, the information from the computer check still created reasonable suspicion to justify the stop of ██████ vehicle. *See State v. Long*, 303 S.W.3d 198, 202 (Mo. App. W.D. 2010) (“The law justifies stopping possibly an innocent person, because the stop is a minimal

intrusion, which allows the officers to briefly investigate further.”). Because uncontested evidence established reasonable suspicion as a matter of law, the trial court should have denied the motion to suppress.

Conclusion

For the foregoing reasons, we reverse and remand for further proceedings consistent with this opinion.



MICHAEL E. GARDNER, Judge

Gary M. Gaertner, Jr., P.J., concurs.

Philip M. Hess, J., concurs.