Circuit Court for Anne Arundel County
Case No. C-02-CR-21-000597

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 23

September Term, 2023

DUANE COREY JOHNSON

v.

STATE OF MARYLAND

Nazarian,
Reed,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 1, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by a jury in the Circuit Court for Anne Arundel County of wearing, carrying, or transporting a handgun in a vehicle and illegal possession of ammunition, Duane Corey Johnson, appellant, presents for our review a single issue: whether the court erred in denying his motion to suppress. For the reasons that follow, we shall affirm the judgments of the circuit court.

Prior to trial, Mr. Johnson filed a motion to suppress "all evidence . . . which was unlawfully seized by police officers or their agents in their search of . . . a motor vehicle." At a hearing on the motion, the State called Anne Arundel County Police Detective Glenn Wright, who testified that at approximately 9:46 p.m. on March 25, 2021, he "was in the Brooklyn Park area" when he "observed [a] Toyota Solara traveling at a speed greater than reasonable on Church Street as well as a lack of validation tabs affixed to the rear registration plate." The detective "conducted a traffic stop" of the vehicle and approached it, but "the window did not open." Detective Wright "asked the driver to open the door so that [the detective] could speak with him." The "driver of the vehicle," whom Detective Wright identified in court as Mr. Johnson, "complied and . . . told [the detective] that he wanted to record the interaction." Detective Wright replied, "[i]t's fine," and "asked for [Mr. Johnson's] license and registration." The detective "handed the information to" an Anne Arundel County Police Detective named Clark "so he could . . . check priors for Mr. Johnson."

After Anne Arundel County Police Detectives named Simone and Fraser "arrived on scene," Detective Wright "began just having a short conversation with Mr. Johnson." The detective "asked . . . for consent to search the vehicle," and Mr. Johnson "denied

consent." Detective Wright testified: "At that point, Mr. Johnson continued speaking, whether he was asked questions or not, appeared nervous, at which point, due to the high crime and drug area that Brooklyn Park is in Anne Arundel County, I asked Detective Simone to utilize his canine partner, Nova, to conduct a scan of the vehicle." Detective Simone subsequently "advised that . . . Nova[] had alerted to the presence of a controlled dangerous substance within the vehicle." Detective Wright searched the vehicle and discovered "in the center console" a "loaded high-point handgun."

Following the hearing, defense counsel argued, in pertinent part:

> . . . I think the [c]ourt can see what is going on here. They are simply using this as a subterfuge to try to search the vehicle. [Mr. Johnson] won't consent to it. So then [he] is ordered out of the vehicle and subsequently a search occurs. . . . .
>
> So I would submit to the [c]ourt that the State has the burden . . . to establish that there is a warrantless search that is permitted under the Constitution and they haven't established that under these circumstances. And I do believe that Mr. Johnson was improperly detained at the scene only because he has indicated that he wasn't going to consent to a search of the vehicle and they continued to detain him there [f]or purposes of searching the car.

Following argument, the court denied the motion. At trial, the State submitted into evidence the handgun and its magazine.

Mr. Johnson contends that, for the following reasons, the court erred in denying the motion to suppress:

> Th[is] case represents yet another example of the State exploiting "pretextual" traffic stops – ostensibly pursuant to *Whren v. United States*, 517 U[.]S. 806 (1996) – in order to pursue criminal investigations. This Court has observed that police abuse of this tactic is a threat to the proverbial "goose that lays the golden egg." *Charity v. State*, 132 Md. App. 598, 602 (2000). At some point, this Court must declare that the goose has been duly

> dispatched by police overuse and abuse. Whether by way of the Fourth Amendment, or by Article 26 of the Maryland Declaration of Rights, this Court should find this traffic stop unconstitutional; and, in any event, pretextual traffic stops should no longer be a lawful basis to allow the police to engage in separate criminal investigations in Maryland.

We disagree. In *Whren*, the U.S. Supreme Court stated that "the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred," 517 U.S. at 810 (citations omitted), and held "that the constitutional reasonableness of traffic stops [does not] depend[] on the actual motivations of the individual officers involved." *Id.* at 813. At no time since has the Court reversed *Whren*, and the Supreme Court of Maryland recently recognized its continued applicability. *See Washington v. State*, 482 Md. 395, 424 (2022) ("when assessing the constitutionality of a police officer's stop of an individual or vehicle, the actual motivations of the officers involved are irrelevant" (citing *Whren*)). The Supreme Court of Maryland further stated in *Washington*:

> [W]e interpret Article 26 *in pari materia* with the Fourth Amendment, meaning that the protections under Article 26 are coextensive with those under the Fourth Amendment. *See*, *e.g.*, *Whittington v. State*, 474 Md. 1, 23 n.17, 252 A.3d 529, 542 n.17 (2021); *King v. State*, 434 Md. 472, 482, 76 A.3d 1035, 1041 (2013); *Fitzgerald v. State*, 384 Md. 484, 506, 864 A.2d 1006, 1019 (2004). As we stated nearly a decade ago, "[a]lthough we have asserted that Article 26 may have a meaning independent of the Fourth Amendment, we have not held, to date, that it provides greater protection against state searches than its federal kin. Rather, we rejected uniformly such assertions." *King*, 434 Md. at 483, 76 A.3d at 1041 (citations omitted). Additionally, "never have we concluded explicitly and with clarity that an exclusionary rule, permitting the suppression of [ ] evidence as a remedy for an alleged Article 26 violation, exists under our state constitutional law." *Id*. at 483, 76 A.3d at 1042 (citations omitted). In *King*, *id*. at 484, 76 A.3d at 1042, we pointed out that granting the defendant "the relief he [sought] under Article 26 would require both a departure from our traditional interpretation of the bounds of Article 26, as

> well as the adoption of a state law-based exclusionary rule." We declined to do so and reiterated that, "in construing Article 26, decisions of the Supreme Court are entitled to great respect." *Id*. at 484, 76 A.3d at 1042 (cleaned up).

Washington, 482 Md. at 454-55 (footnote omitted).

Here, Detective Wright testified that Mr. Johnson operated his vehicle "at a speed greater than reasonable," and that "validation tabs [were not] affixed to the rear registration plate" of the vehicle. Detective Wright thus had probable cause to believe that a traffic violation had occurred, and the constitutional reasonableness of the stop does not depend on the detective's actual motivation. Also, the Supreme Court of Maryland explicitly rejected in *King*, and again rejected in *Washington*, the argument that Article 26 "'provides greater protection against state searches than its federal kin.'" *Id.* at 455 (quoting *King*, 434 Md. at 483). Hence, the court did not err in denying the motion to suppress.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.