Circuit Court for Harford County
Case No: C-12-CR-18-000116

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 424

September Term, 2019

MELISSA RAE PRITT

v.

STATE OF MARYLAND

Fader, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 5, 2020

A jury sitting in the Circuit Court for Harford County found Melissa Rae Pritt, appellant, guilty of driving while impaired by a controlled dangerous substance. The court sentenced her to two years' incarceration, with all but 60 days suspended, to be followed by a three-year period of supervised probation. On appeal, Ms. Pritt contends that the court (1) erred in denying her motion to suppress and (2) erred in sentencing her as a subsequent offender. For the reasons to be discussed, we conclude that the suppression court did not err, but agree with Ms. Pritt that the sentencing court did err. Accordingly, we shall affirm the conviction, but remand for re-sentencing.

Suppression

At a suppression hearing, Officer Pettit[1] of the Aberdeen Police Department testified that, on February 25, 2018, at approximately 2:49PM dispatch relayed that a 911 caller reported a gold SUV was observed "crossing the center line and swerving." The caller provided the vehicle's tag number and further reported that the caller had followed the vehicle into the ShopRite Plaza shopping center. Officer Pettit could not "recall the actual radio traffic," but he did remember that the dispatcher related that "the individual was driving erratically, dangerously and at one point was throwing trash out the window." He further understood that the driver was perhaps "intoxicated or possibly a medical problem" and that is the way he "approached it" because it "could have been either/or."

Officer Pettit was in the vicinity and responded to the shopping center. He testified that upon arriving, he observed a gold or tan vehicle, bearing the tag number given by the

[1] The officer did not provide his first name.

911 caller, "stop in the middle of the lane where there [were] no stop signs" and not "even a shoulder." Specifically, the vehicle stopped in a travel lane connecting two parking lots, an area clearly not for parking. The driver, later identified as Ms. Pritt, "sat there maybe ten to twelve seconds before she started [driving] again," heading "out of the parking lot towards traffic[.]" As the vehicle drove by him, Officer Pettit observed that the front windshield had a purple tint, which he also viewed as "another probable cause to pull the vehicle over." Officer Pettit then initiated a traffic stop.

When he approached the vehicle and began conversing with Ms. Pritt, Officer Pettit "noticed that her pupils were pinpoint and there was resting nystagmus, nystagmus being the involuntary movement of the eyes when you are under the influence." Her speech "was slurred, it was slow." He did not detect any odor of alcohol, but he asked her whether she had consumed "any alcohol or any medications, to which she answered yes." When asked what she had ingested, Ms. Pritt replied that she had taken "Methadone and oxy" about three hours earlier. Officer Pettit directed Ms. Pritt to exit the vehicle. He then conducted various field sobriety tests and thereafter arrested her for driving while impaired. He did not issue any traffic citations.

The defense argued that the 911 call was "not sufficiently reliable to justify or give reasonable articulable suspicion to investigate what was happening" and moved to suppress the evidence gained from the traffic stop. The suppression court denied the motion, explaining its ruling as follow:

> As to reasonable articulable suspicion, we have the caller calling in that the driver is erratically driving on Route 22, throwing trash out the window of a gold or tan car and gives

> the exact tag number. That's enough for me for the officer to at least investigate it. He should. It is his duty I believe.
>
> He comes across this car with this particular tag number. He sees a car parked in the middle of the lane for ten seconds before starting up again and noticed that there is a problem with the windshield tint. The driver is headed towards traffic and beyond that the car stopped.
>
> I think there was more than reasonable articulable suspicion for the officer to have an investigatory stop and later whether or not there was probable cause on the part of the officer after he made observations, which were that the pupils were pinpoint indicating possible under the influence of something. When asked, she indicated that she had taken Methadone and Oxycontin pills three hours before, her speech was slurred and show [sic], and that the field sobriety tests were indicated that she didn't pass them with flying colors, which could indicate drugs and/or alcohol.
>
> So, I think there is more than probable cause to make an arrest and I don't believe there was any abandonment of the original basis for the stop. Therefore, the court will deny the motion.

When reviewing a court's denial of a motion to suppress, "we limit ourselves to considering the record of the suppression hearing." *Small v. State*, 464 Md. 68, 88 (2019). "We accept the suppression hearing court's factual findings and determinations regarding the credibility of testimony unless they are clearly erroneous." *Id.* Moreover, "[w]e review the facts found by the trial court in the light most favorable to the prevailing party." *Wilkes v. State*, 364 Md. 554, 569 (2001). "Legal conclusions are reviewed *de novo.* We independently apply the law to the facts to determine whether a defendant's constitutional rights have been violated." *Small*, *supra*, 464 Md. at 88 (internal citations omitted).

Ms. Pritt contends that the suppression court erred in denying her motion because the 911 call "lacked sufficient indicia of reliability to establish reasonable suspicion for the

investigatory stop." Because the State failed to produce a recording of the call, or explain its failure to do so, she maintains the dispatch information received by Officer Pettit was essentially "double-level hearsay" and perhaps "an incomplete summary" of what the caller related in the call. She further asserts that Officer Pettit "did not corroborate the information in the tip that the SUV was driving in a dangerous fashion[,]" claiming that "stopping in a traffic lane that connects two shopping centers is vastly different behavior than swerving and crossing the center lane." But even if the call was sufficiently reliable, Ms. Pritt argues that "it did not provide reasonable suspicion of an ongoing crime, such as driving while impaired by alcohol or drugs." She notes that it is "unclear whether the caller saw the SUV repeatedly cross the center line and swerve or whether the caller saw the SUV cross the center line and swerve a single time." She maintains that the "former may have provided reasonable suspicion that [she] was driving while impaired, but the latter did not." The latter, she claims, could have "suggested distraction by another task, such as texting, or placing a call, or looking for an object in the vehicle."

The State responds that the "information known to the officer" via dispatch "supported his reasonable suspicion that Pritt may be intoxicated" and that the "officer's observations" of her stopping in a travel lane "corroborated the caller's tip regarding Pritt's erratic driving[.]" The State also maintains that the caller's tip was sufficiently reliable, given that the caller reported following the SUV into the shopping center where a very short time later Officer Pettit observed it. But in any event, the State contends that Officer Pettit's observations alone justified the stop, noting that he also observed that the SUV's

windshield was improperly tinted – another reason the officer testified prompted him to initiate the stop.

Based on the totality of the circumstances – including the caller's concern about the SUV's erratic and dangerous driving, the caller following the SUV to the shopping center, and Officer's Pettit's observation very soon thereafter of the SUV stopping, without any apparent reason, in a travel lane – we hold that the suppression court properly concluded that Officer Pettit had a reasonable articulable suspicion that Ms. Pritt may have been driving while impaired. *Bost v. State,* 406 Md. 341, 356 (2008) (When evaluating reasonable suspicion, we look at "'the totality of the circumstances,' viewed through the eyes of a reasonable, prudent, police officer."). Given the facts elicited at the suppression hearing, we agree with the State that the caller's tip in this instance was sufficiently reliable. *Navarette v. Californiia*, 572 U.S. 393, 397 (2014) ("[U]nder appropriate circumstances, an anonymous tip can demonstrate 'sufficient indicia of reliability to provide reasonable suspicion to make [an] investigatory stop.") (quotation omitted)). But in any event, Officer Pettit's observation of the tinted windshield alone gave him probable cause to initiate the traffic stop. *See* MD. CODE, Transportation, § 22-406(i)(2) (authorizing a police officer who has observed a vehicle being operated with non-compliant window tinting to "stop the driver of the vehicle" and issue a citation and an equipment repair order). The suppression court, therefore, did not err in denying the motion to suppress based on the traffic stop.

Sentence

Ms. Pritt was convicted of driving while impaired by a controlled dangerous substance, a violation of Transp. § 21-902(d)(1). At the time of Ms. Pritt's offense, the

penalty for a first violation was imprisonment not exceeding one year or a fine not exceeding $2,000, or both. Transp. § 21-902(d)(1)(ii). For a second offense, the penalty could not exceed two years' imprisonment. *Id.* To qualify as a second offender for sentencing purposes, the prior conviction must have occurred "within 5 years before" the new offense. Transp. § 21-902(d)(1)(iii).

Here, the State had filed a subsequent offender notice stating that Ms. Pritt had been convicted in 2002 of driving or attempting to drive while under the influence of alcohol per se and at sentencing in this case the State urged the court to sentence Ms. Pritt as a second time offender. The court did so, imposing a sentence of two years' imprisonment with all but 60 days suspended. Ms. Pritt maintains that the court erred because her prior conviction was not "within 5 years" of the present offense. The State agrees that the court erred and that her sentence is illegal because it exceeded the maximum permitted sentence for a first conviction under § 21-902(d)(1)(ii). We agree.

The statute is clear that, "[f]or the purpose of determining subsequent offender penalties" in this instance "a prior conviction under [the relevant provisions] within 5 years before the conviction for a violation of this paragraph, shall be considered a prior conviction." § 21-902(d)(1)(iii). Because the 2002 conviction was not "within 5 years" of

the present conviction, that offense did not qualify as a "prior conviction" for subsequent offender sentencing purposes.

SENTENCE VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR HARFORD COUNTY FOR RESENTENCING. JUDGMENT OF CONVICTION AFFIRMED. COSTS TO BE EVENLY SPLIT BETWEEN APPELLANT AND HARFORD COUNTY.