

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 0246

September Term, 2015

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DAVID BOLDING

v.

JOSHUA A. KOZAY, ET AL.

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Woodward,  
Graeff,  
Arthur,

JJ.

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Opinion by Arthur, J.

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Filed: December 29, 2016

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

After a police officer signaled a motorist to stop, he continued driving for more than 60 seconds, passing numerous places where he could safely stop. The motorist's conduct led the officer to suspect that he might be attempting to conceal a weapon. When the motorist finally stopped, the officer requested his keys to ensure that he could not drive away. The motorist refused to comply with five, separate requests, prompting the officer to attempt to remove him from the vehicle. When the motorist resisted, the officer threatened to tase him if he did not comply. Only then did the motorist accede. A frisk of the motorist and a search of the vehicle turned up no weapons.

After receiving probation before judgment on the charge of willfully failing to obey a lawful order, the motorist filed suit against the officer and Prince George's County, alleging various common-law and constitutional torts. The Circuit Court for Prince George's County entered summary judgment against the motorist. We affirm.

#### **FACTUAL AND PROCEDURAL HISTORY**

Just after 1:30 p.m. on February 27, 2012, Mr. David Bolding was driving his Cadillac Escalade pickup truck northbound on Route 1, a four-lane divided highway, between Beltsville and Laurel. Mr. Bolding's front license plate was not affixed to the truck's front bumper. Rather, the license plate was resting on top of the dashboard, inside the cab.

Officer Joshua Kozay, a member of the Prince George's County Police Department since August 2006, was on patrol in his marked police cruiser on the same

stretch of Route 1, also traveling northbound. The cruiser was outfitted with a dashboard video camera, which was in operation.

After passing Mr. Bolding’s vehicle, Officer Kozay observed the absence of any license plate on the truck’s front bumper. Officer Kozay decelerated, allowing Mr. Bolding to pass his police cruiser, and maneuvered behind Mr. Bolding’s vehicle to initiate a traffic stop.<sup>1</sup>

Officer Kozay activated his emergency lights. Instead of pulling over, Mr. Bolding continued onward, maintaining his speed.

Approximately 12 seconds later, Officer Kozay sounded his emergency siren in a short burst. Almost immediately, Mr. Bolding put on his right-turn signal, moved from the left lane to the right lane, and turned off the signal. Mr. Bolding, however, maintained his speed and exhibited no indication that he planned to pull over to the shoulder.

Roughly 10 seconds after Mr. Bolding had moved to the right lane, Officer Kozay activated his cruiser’s siren and left it on. Yet Mr. Bolding continued on Route 1 for about 18 more seconds, maintaining his speed and passing at least three driveways that he could have used to exit the highway. At other times, Mr. Bolding drove past portions of

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<sup>1</sup> Mr. Bolding’s truck was required to have two registration plates. *See* Md. Code (1977, 2015 Repl. Vol., 2016 Supp.), § 13-410(a)(1)(ii) of the Transportation Article (“TR”). “On a vehicle for which two registration plates are required, one plate shall be attached on the front and the other on the rear of the vehicle.” TR § 13-411(a). Under TR § 13-411(c)(2), each registration plate shall, at all times, be “(2) [s]ecurely fastened to the vehicle for which it is issued . . . (i) [i]n a horizontal position; (ii) [i]n a manner that prevents the plate from swinging; and (iii) [i]n a place and position to be clearly visible.”

the paved shoulder that were more than wide enough to permit a traffic stop: at one point, Mr. Bolding passed an 18-wheel, double-decker car hauler that was parked on the shoulder of Route 1.<sup>2</sup>

Eventually, Mr. Bolding abruptly decelerated and turned right, into the parking lot of a car dealership, putting on his turn signal just before he turned. Officer Kozay deactivated his siren, but left his emergency lights on. Again, however, Mr. Bolding did not immediately stop, even though he had ample room to park his vehicle. Instead, Mr. Bolding continued driving through the parking lot, leading Officer Kozay to sound his cruiser's air horn. Mr. Bolding finally came to a stop directly in front of the dealership's showroom, roughly 18 seconds after he had entered the parking lot.

The total elapsed time from when Officer Kozay initiated the traffic stop by activating his emergency lights to when Mr. Bolding stopped his vehicle was approximately 63 seconds.

Before getting out of the cruiser, Officer Kozay called in the location of the traffic stop on his radio, provided a description of Mr. Bolding's vehicle, and requested backup. Officer Kozay briefly explained the reason for the request, remarking to the dispatcher that Mr. Bolding had been refusing to stop. Based on his training and experience, Officer Kozay knew that when drivers do not immediately acknowledge an officer's directive to stop, they may be using the time to conceal a weapon. He was concerned that Mr.

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<sup>2</sup> In his brief, Mr. Bolding asserts, as a "fact," "that the shoulder of the highway was not paved." While the shoulder was narrow in places, the assertion that it was unpaved has no support in the record.

Bolding might have been concealing a weapon. The tinted rear window of Mr. Bolding's truck prevented him from seeing what the driver was doing inside the cab.

Officer Kozay got out of his cruiser and walked towards the driver's door of Mr. Bolding's Escalade. Upon reaching the door, Officer Kozay instructed Mr. Bolding to "shut the truck off" and to give him the keys. At his deposition, Officer Kozay explained that when a driver has not promptly complied with an order to pull over, he requests the keys to ensure that the driver does not suddenly attempt to drive away. The officer testified that he was concerned for his own safety (he did not want to be dragged by Mr. Bolding's vehicle) and for the safety of any persons who might be in the dealership lot.

Mr. Bolding did not comply with the first order to give the officer his keys. Instead, he said something, which is inaudible on the recording. Officer Kozay replied, "Yes. You were refusing to stop. Give me the keys." Again, Mr. Bolding did not comply. Twice more, Officer Kozay ordered Mr. Bolding to give him the keys, and he instructed Mr. Bolding to provide his driver's license and registration. When Mr. Bolding persisted in his failure to comply, Officer Kozay instructed him for a fifth time to hand over his keys. The five orders extended over a period of approximately 20 seconds.

After the fifth order to Mr. Bolding to give up his keys, Mr. Bolding responded, inaudibly on the recording. His response led Officer Kozay to say, "Yes, you will.

You’ll get out of the car then.” Officer Kozay opened the driver’s door, reached into the truck to unbuckle Mr. Bolding’s seatbelt, and attempted to remove him from the vehicle.<sup>3</sup>

Mr. Bolding began to struggle with the officer, who was unable to extract him. During the struggle, Officer Kozay repeatedly said, “Get out of the car!” Mr. Bolding objected three times to being touched by Officer Kozay. Twice, Mr. Bolding asked, “Why are you doing this?,” and exclaimed (as he was refusing to exit the vehicle), “I’m not refusing to do anything!” Mr. Bolding also asked Officer Kozay what he was doing. At one point, Mr. Bolding extended one of his legs and tried to hook it around one of the officer’s legs.

Officer Kozay later recounted that, during the struggle, he had grasped and secured one of Mr. Bolding’s wrists, but could not gain control of the other wrist. Officer Kozay explained that it is very important for an officer to control a subject’s hands because they are the “dangerous parts” of the body – they can reach for a gun or other weapon. Once Mr. Bolding had braced a leg against the inside of the vehicle and had balled his free hand into a fist, Officer Kozay said, he chose to disengage physically from Mr. Bolding.

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<sup>3</sup> Under the Prince George’s County Police Department’s “use of force continuum,” an officer may use “escort techniques” if a person “[f]ails to respond to direction but exhibits no physical resistance.” The continuum does not define “escort techniques,” but they generally include gripping a wrist, elbow, or shoulder. *See, e.g.,* Consent Decree in *United States of America v. City of Newark*, No. 2:16-cv-01731-MCA-MAH in the U.S. District Court of New Jersey, at 4 (May 5, 2016), *available at* <https://www.justice.gov/crt/file/868131/download>.

Unsuccessful in his efforts to extract Mr. Bolding from his vehicle – in a struggle that lasted for approximately 15 seconds – Officer Kozay stepped back, drew a Taser from his belt, and told Mr. Bolding that if he did not exit his vehicle, he would be tased.<sup>4</sup> Mr. Bolding promptly alighted from the vehicle. Officer Kozay ordered Mr. Bolding to kneel on the ground next to his truck and to place his hands behind his head. After holstering his Taser, Officer Kozay made Mr. Bolding lace his fingers together. Officer Kozay conducted a weapons pat-down search on Mr. Bolding, removing his wallet and tossing it into the truck.

At this point, Officer Kozay’s backup arrived. Officer Kozay retrieved Mr. Bolding’s wallet from the truck, took out the driver’s license, and tossed the wallet back into the truck; removed the keys from the truck; and after conferring with Mr. Bolding, retrieved the vehicle registration. After a few minutes, the officers permitted Mr. Bolding to lean against his truck and, when he complained of back pain, to stand.<sup>5</sup>

Officer Kozay issued citations to Mr. Bolding for possession of more than one driver’s license at a time, for failure to attach a license plate to the front of his vehicle, and for willfully disobeying a lawful order. The encounter lasted about 35 minutes.

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<sup>4</sup> Under the Prince George’s County Police Department’s “use of force continuum,” an officer may use a Taser if a person engages in “active resistance,” which is defined as “[p]hysically evasive movements to defeat the officers [sic] attempt at control, or a verbally manifested attempt to resist.”

<sup>5</sup> The record extract contains a fragmentary transcript of the traffic court proceedings, in which a judge recounts Mr. Bolding’s testimony that “he was taking some rather powerful drugs” at the time of the incident.

The district court acquitted Mr. Bolding of possession of more than one driver’s license at a time and failing to attach a license plate to the front of his vehicle, but convicted him of willfully disobeying a lawful order.<sup>6</sup> Mr. Bolding took an appeal to the circuit court, which found that he had willfully disobeyed an officer’s order. The court, however, did not impose a sentence, but placed Mr. Bolding on probation before judgment, with a one-day probationary period.

Mr. Bolding filed suit against Officer Kozay and Prince George’s County. He alleged malicious prosecution, false arrest, assault, battery, a deprivation of liberty in violation of Article 24 of the Maryland Declaration of Rights, an unreasonable search and seizure in violation of Article 26 of the Maryland of Rights, and (against the County) an unlawful pattern and practice of violating the Declaration of Rights.

After discovery, Officer Kozay and the County moved for summary judgment. Mr. Bolding voluntarily dropped the malicious prosecution claims, but opposed summary judgment on the other counts. Concluding that Officer Kozay was well within his rights, the court granted summary judgment on all of the remaining counts.

Mr. Bolding filed this timely appeal.

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<sup>6</sup> It appears that Mr. Bolding displayed a decorative “Cadillac” plate on his front bumper and kept his front license plate on his dashboard. Even though TR § 13-411(c)(2) requires that a plate be “[s]ecurely fastened,” “[i]n a place and position to be clearly visible,” the district court acquitted him of violating that statute.



### **QUESTIONS PRESENTED**

Mr. Bolding presents five questions,<sup>7</sup> which we have rephrased and consolidated as follows: Did the circuit court err in granting summary judgment on common-law and constitutional tort claims?

For the reasons that follow, we answer that question in the negative.

### **DISCUSSION**

#### **I. Summary Judgment Standards**

When a party moves for summary judgment, the court “shall enter judgment in favor of or against the moving party if the motion and response show that there is no

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<sup>7</sup> Several of Mr. Bolding’s questions incorrectly assumed that he took 20 seconds or less to comply with Officer Kozay’s direction to pull over and stop his truck. He phrased his questions as follows:

1. Does a driver’s taking up to 20 seconds to pull over a vehicle after an officer activates his lights and sirens make it reasonable for the officer to, as a matter of law, assume that the driver is concealing a weapon?
2. Does a driver’s taking up to 20 seconds to pull over a vehicle after an officer activates his lights and sirens, and the driver’s subsequent questioning of the officer’s need to take the vehicle’s keys, make it reasonable, as a matter of law, for an officer to use force to remove the driver from the vehicle?
3. Did disputes of material facts preclude the granting of summary judgment?
4. In granting summary judgment to the Appellees, did the circuit court fail to assume all disputed facts and take all reasonable inferences in Appellant’s favor?
5. Given that Appellant was not convicted of a crime, did the circuit court improperly apply principles of estoppel to accept facts from those prior criminal proceedings?

genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.” Md. Rule 2-501(f).

The issue of whether a trial court properly granted summary judgment is a question of law. *Butler v. S & S P’ship*, 435 Md. 635, 665 (2013) (citation omitted). In an appeal from the grant of summary judgment, this Court conducts a *de novo* review to determine whether the circuit court’s conclusions were legally correct. *See D’Aoust v. Diamond*, 424 Md. 549, 574 (2012). The relevant inquiry is well known:

When reviewing a grant of summary judgment, we determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. This Court considers the record in the light most favorable to the nonmoving party and construe[s] any reasonable inferences that may be drawn from the facts against the moving party. A plaintiff’s claim must be supported by more than a scintilla of evidence[,] as there must be evidence upon which [a] jury could reasonably find for the plaintiff.

*Blackburn Ltd. P’ship v. Paul*, 438 Md. 100, 107-08 (2014) (citations and quotation marks omitted).

“‘[I]f the trial court does not state its reasons for granting the motion, we will affirm the judgment so long as the record ‘discloses it was correct in so doing.’”

*Smigelski v. Potomac Ins. Co. of Illinois*, 403 Md. 55, 61 (2008) (quoting *Phillips v. Allstate Indem. Co.*, 156 Md. App. 729, 740 (2004)).

## **II. The Court Did Not Err in Granting Summary Judgment**

Mr. Bolding’s arguments have their own internal logic, which does not correlate with the specific elements of his various legal theories or the counts in his complaint. Our discussion follows the specific arguments that he has made in his brief.

### **A. The Court Did Not Resolve Disputes of Fact**

Mr. Bolding expressly assumes that the court granted summary judgment on his claims for assault, battery, and excessive use of force because it concluded that Officer Kozay’s conduct comported with that “of a reasonable police officer similarly situated.” *State v. Albrecht*, 336 Md. 475, 513 (1994).<sup>8</sup> He also assumes that, in the court’s view, the search of his person was based on a reasonable suspicion that he was carrying a weapon.

Mr. Bolding complains that the court based its conclusions on Officer Kozay’s stated belief that Mr. Bolding might be attempting to conceal a weapon because of how long he took to stop. He specifically complains that the court abandoned “the fact-based reasonableness standard” for evaluating an officer’s conduct and replaced it with “an officer-deferential test,” under which an officer, as a matter of law, is entitled to assume

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<sup>8</sup> Mr. Bolding describes that conclusion as a “finding,” employing that rhetorical device to insinuate that the court exceeded the limits of its authority on summary judgment by engaging in impermissible fact-finding.

that drivers are armed if they do not pull over and stop “immediately upon [the] activation of lights and sirens.”<sup>9</sup>

Mr. Bolding’s contention has no merit. Officer Kozay testified, without contradiction, that, based on his training and experience, when a driver does not promptly comply with a directive to pull over and stop, he or she may be taking the time to conceal a weapon. *See Chase v. State*, 224 Md. App. 631, 645 (2015) (citing *U.S. v. Arvizu*, 534 U.S. 266, 273 (2002)), *aff’d*, 449 Md. 283 (2016) (“[a] police officer’s experience and training are highly relevant in assessing . . . reasonable suspicion”).<sup>10</sup>

Here, the indisputable video-record shows that Mr. Bolding did not come to a stop until more than 60 seconds after Officer Kozay first activated his emergency lights, and more than 50 seconds after he first sounded his siren. During the first 40 seconds, when Mr. Bolding was traveling on Route 1, he neither decelerated nor pulled over even though he passed numerous places where he could safely stop. Even when Mr. Bolding turned into the dealership’s parking lot, he continued driving for about another 20 seconds

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<sup>9</sup> Here, as on several other occasions in his brief, Mr. Bolding states, incorrectly, that he took only 20 seconds to stop.

<sup>10</sup> At two, disparate points in his brief, Mr. Bolding cites Officer Kozay’s testimony that he called for backup because he had a “gut feeling” based on how long it took Mr. Bolding to stop. Although Mr. Bolding does not develop the argument, he may be equating the “gut feeling” with the kind of “inchoate and unparticularized suspicion or ‘hunch’” that differs from “the specific reasonable inferences which [an officer] is entitled to draw from the facts in light of his [or her] experience.” *Derricott v. State*, 327 Md. 582, 588 (1992). The short answer to Mr. Bolding’s undeveloped argument is that, regardless of what might have motivated Officer Kozay to call for backup, he testified, without contradiction, that it was his training and experience that led him to suspect that Mr. Bolding might be attempting to conceal a weapon.

before finally coming to a stop. During this entire time, Officer Kozay was unable to see what Mr. Bolding was doing in the cab of his truck, because the tinted rear window obscured his view.

On the basis of these undisputed facts, the court did not err in concluding that Mr. Bolding's conduct gave Officer Kozay a reasonable basis to suspect that he might be attempting to conceal a weapon and, at the very least, to order him to turn over his keys. When Mr. Bolding refused to comply with five, lawful orders to turn over his keys, it was reasonable for the officer to attempt to escort him from the vehicle. When Mr. Bolding physically resisted the attempt to escort him from the vehicle, it was reasonable for the officer to draw his taser in an effort to compel Mr. Bolding to comply. Finally, because Mr. Bolding had refused to comply with five, lawful orders, had physically resisted the officer's efforts to require him to comply, and had given the officer a reasonable basis to suspect that he might have been attempting to conceal a weapon when he did not immediately pull over and stop, the officer unquestionably had reasonable suspicion to believe that Mr. Bolding had committed, was committing, or was about to commit a crime and had a reasonable belief that he might be armed and presently dangerous. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). At a minimum, therefore, when the officer frisked Mr. Bolding, he had reasonable suspicion to do so. *Id.*<sup>11</sup>

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<sup>11</sup> Mr. Bolding faults the circuit court for not explaining why his delay in pulling over justified an assumption (more precisely, a suspicion) that he might be armed. “[W]e have,” however, “previously recognized that there may be instances when a trial court, in granting a motion for summary judgment, will not necessarily have placed on the record its reasons for doing so.” *Fischbach v. Fischbach*, 187 Md. App. 61, 77 (2009). (cont.)

**B. No Reasonable Jury Could Find that the Officer Failed to Give Mr. Bolding a Chance to Comply**

Mr. Bolding argues that before using force Officer Kozay did not give him “a chance to comply.” The undisputed facts in the record refute that contention.

Mr. Bolding asserts that Officer Kozay gave his first verbal command, to get out of the vehicle, while the officer was opening the door and reaching inside. Mr. Bolding ignores Officer Kozay’s five, previous commands to turn over the keys, none of which Mr. Bolding complied with. After Mr. Bolding had refused to comply with five, separate orders to turn over his keys, there was no reason to believe that he would have voluntarily complied with a more intrusive order to get out of his truck. In these circumstances, no reasonable jury could conclude that the officer failed to give Mr. Bolding a chance to comply.

Mr. Bolding also asserts that, after Officer Kozay began to attempt to extract him from the truck, he protested that he “was not refusing to do anything” and told the officer, “You don’t have to touch me.” But saying that something is so doesn’t make it so. Even as Mr. Bolding claimed that he “was not refusing to do anything,” he was refusing to get out of his truck and to give Officer Kozay the keys. Even as he was telling the officer, “You don’t have to touch me,” Mr. Bolding was resisting several lawful orders by

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“[I]f the trial court did not specify the grounds upon which it granted summary judgment, appellate courts assume that the trial court “carefully considered all of the asserted grounds and determined that all or at least enough of them . . . were meritorious.”” *Id.* (quoting *Kimmel v. SAFECO Ins. Co.*, 116 Md. App. 346, 354-55 (1997), which quoted *Bond v. Nibco, Inc.*, 96 Md. App. 127, 133 (1993)).

bracing one leg against the inside of the truck, attempting to hook his other leg around the officer's leg, and balling his free hand into a fist. Contrary to Mr. Bolding's contention, Officer Kozay had no reason to believe that he would begin to comply with lawful directives merely because he claimed (counterfactually) not to be resisting while he was actively resisting the officer.

In short, the undisputed facts show that before resorting to force Officer Kozay exhibited considerable patience with a recalcitrant motorist who had not only delayed in complying with a lawful directive to pull over and stop, but had failed to comply with no fewer than five, lawful commands to hand over his keys. No reasonable jury could find that the officer failed to give Mr. Bolding a reasonable chance to comply.

**C. The Decision Does Not “Justify Police Misconduct”**

Despite his failure to comply promptly with the officer's signal to pull over and stop, Mr. Bolding argues that a reasonable officer would not have seen him as a threat, because he kept driving at the same speed and did not try to escape. His argument ignores the undisputed testimony, based on Officer Kozay's training and experience, that persons who do not promptly comply with direction to pull over and stop may be concealing weapons. On the undisputed facts in this case, a reasonable officer could have suspected that Mr. Bolding posed a threat even if it was not the threat of an attempt to escape capture by taking off at a high rate of speed.<sup>12</sup>

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<sup>12</sup> In advancing his fallacious argument, Mr. Bolding reiterates his incorrect assertion that he took “less than 20 seconds” to pull over. In addition, (cont.)

Mr. Bolding goes on to invoke a purported dispute regarding whether he “expressly refused” to give his keys to the officer. It is, however, immaterial whether Mr. Bolding *expressly* refused to comply with the officer’s commands: the only material issue is whether he *refused*. See *Prince George’s Cnty. v. Washington Post Co.*, 149 Md. App. 289, 304 (2003) (quoting *King v. Bankerd*, 303 Md. 98, 111 (1985)) (“[a] material fact is one that would ‘affect the outcome of the case’”). The video irrefutably shows that Mr. Bolding failed to comply with five separate requests, over the course of about 20 seconds, to turn over his keys. It is beyond dispute that in those circumstances a reasonable officer could conclude that he was refusing to comply.

Elsewhere, Mr. Bolding argues that even if he did refuse to relinquish his keys (which is unquestionably the case), Officer Kozay and the County have not explained why the officer might reasonably suspect that he might be armed and might pose a threat. His argument again ignores the officer’s undisputed testimony that when persons fail to comply promptly with a command to pull over and stop, they may be concealing weapons and may attempt to escape. The argument also ignores the great likelihood that the officer’s concern would be heightened because of Mr. Bolding’s subsequent refusal, after five, separate requests, to turn over the keys to his truck.

Mr. Bolding also complains that Officer Kozay did not wait for backup before approaching his truck. Although his precise point is not entirely clear, Mr. Bolding

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Mr. Bolding asserts, incorrectly, that the shoulder of the U.S. highway on which he was traveling “was not paved.” The video conclusively refutes both assertions.



seems to suggest a jury could disbelieve Officer Kozay’s putative testimony that he believed Mr. Bolding to be armed and dangerous. The officer had not, however, concluded that Bolding “was” armed or dangerous. He simply knew, from his experience and training, that when drivers fail to comply promptly with an order to pull over and stop, they may be concealing weapons and may attempt to escape once they have stopped. To address his concern that Mr. Bolding might attempt to escape (and injure either the officer himself or members of the public in the process), the officer requested Mr. Bolding’s keys. There is no basis to conclude that the officer’s decision not to await backup betrays some uncertainty about whether he really suspected that Mr. Bolding might be concealing a weapon.

Finally, Mr. Bolding expresses concern that if an officer is alleged to have used unreasonable force, “he need only claim that the driver did not stop immediately [and] was accordingly assumed to be armed and dangerous.” Suffice it to say that Mr. Bolding’s stated concern is not present in this case: here, we have undisputed video evidence that Mr. Bolding took more than 60 seconds to stop, drove past numerous places where he could have stopped, did not slow down until he reached the dealership’s parking lot, and even then did not come to a stop for 20 seconds after he had pulled into the lot. The summary judgment in this case does not “justify police misconduct.”<sup>13</sup>

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<sup>13</sup> Even if a motorist does not immediately stop, there could still be a genuine dispute about the reasonableness of the officer’s belief on facts less extreme than those in this case – e.g., if the motorist testifies that she did not immediately perceive the officer’s signal or realize that it was meant for her, and that she stopped as soon as it was reasonably safe to do so. If an officer falsely claims that a driver did not (cont.)

**D. The Court Correctly Concluded that the Officer Had Probable Cause**

Mr. Bolding argues, at some length, that the court had no basis to enter summary judgment against him on his claims of false arrest and deprivation of liberty. He argues that those claims depended on whether Officer Kozay had probable cause to believe that a traffic violation had occurred (*see Byndloss v. State*, 391 Md. 462, 480 (2006)), but that he was acquitted of the alleged violation that precipitated the traffic stop – failing to attach a license plate to the front of his vehicle. Although the traffic court found that he failed to obey a lawful order, he argues that that finding could not establish probable cause for the stop, because the failure to obey occurred after the officer initiated the stop and, in any event, because he received probation before judgment.

For its part, the County seems to believe that the finding of guilt on the charge of failure to obey a lawful order is collateral estoppel on the issue of probable cause for the stop. That belief is completely unfounded. Collateral estoppel requires a valid and final judgment (*see, e.g., Colandrea v. Wilde Lake Cmty. Ass’n, Inc.*, 361 Md. 371, 387 (2000)), but when a court imposes probation before judgment, as the circuit court did in the traffic case against Mr. Bolding, “there is no judgment.” *Powell v. Maryland Aviation Admin.*, 336 Md. 210, 218-19 (1994). Accordingly, Mr. Bolding is correct that he is not precluded from relitigating the issue of whether Officer Kozay had probable cause to stop him. Mr. Bolding is also correct that because he failed to obey the officer’s

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immediately stop and a video-recording does not reveal precisely what occurred, the driver presumably could dispute the officer’s claim, which would yield a genuine issue of material fact, which would preclude summary judgment.

orders only after the officer had initiated the traffic stop, his failure to obey could not possibly create probable cause for the stop itself.<sup>14</sup>

The failure to obey, however, was not the sole basis for concluding that Officer Kozay had probable cause to initiate the traffic stop: Mr. Bolding’s failure to display a front license plate certainly gave the officer probable cause to believe that a traffic violation had occurred. *See Byndloss*, 391 Md. at 480; *see Trott v. State*, 138 Md. App. 89, 121-22 (2001) (quoting *Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979) (“[p]robable cause is defined as the “facts and circumstances within the officer’s knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense”). It makes no difference that the district court, for reasons that are completely unclear from the record, somehow found Mr. Bolding not guilty of failing to display his front license plate.<sup>15</sup> A conclusion that the State has not proved a violation

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<sup>14</sup> Mr. Bolding asserts that, in granting the motion for summary judgment against him, the circuit court treated the traffic case as collateral estoppel on the issue of probable cause. The transcript does not support that conclusion. In questioning Mr. Bolding’s counsel, the circuit court referred to the traffic court’s findings. Counsel responded by citing authority for the proposition that probation before judgment is not a conviction and thus has no preclusive effect. The court asked defense counsel to respond, and she did with an unpersuasive attempt to distinguish the controlling authority. When the court announced its decision, it made no reference to the traffic court’s findings.

<sup>15</sup> The record contains fragments of a transcript of what appears to be the district court proceedings against Mr. Bolding. In that transcript, the court “finds that a tag laying [sic] on the dashboard of a vehicle is not in compliance with the law.” Nonetheless, the court acquitted Mr. Bolding of failing to display his front license plate. For what it is worth, the court also stated that “it is certainly reasonable and the job (cont)

beyond a reasonable doubt does not mean that an officer failed to satisfy the lower standard of having probable cause to conclude that a violation had occurred. *See, e.g., State v. Cabral*, 159 Md. App. 354, 380 (2004).

In summary, Officer Kozay indisputably had probable cause to stop Mr. Bolding for violating TR § 13-411, the provision that requires motorists to securely fasten license plates in a visible location on the front of their vehicles. The circuit court, therefore, did not err in entering summary judgment against Mr. Bolding on his claims of false arrest and deprivation of liberty.

**JUDGMENT OF THE CIRCUIT COURT  
FOR PRINCE GEORGE’S COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**

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of the police to detect these sort of traffic violations when they see them and to pull folks over and investigate the situation.”