

COURT OF APPEALS OF VIRGINIA

Present: Chief Judge Moon, Judge Willis and Senior Judge Hodges  
Argued at Alexandria, Virginia

DWIGHT ANTOINE BUSHNELL

v. Record No. 1314-94-4

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION\* BY  
JUDGE WILLIAM H. HODGES  
OCTOBER 24, 1995

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY  
Richard J. Jamborsky, Judge

Jonathan Shapiro (Michael W. Lieberman; Jonathan  
Shapiro & Associates, P.C. on brief), for appellant.

Marla Lynn Graff, Assistant Attorney General (James S.  
Gilmore, III, Attorney General, on brief), for  
appellee.

Dwight Antoine Bushnell (appellant) was convicted of driving after having been adjudicated an habitual offender. On appeal, appellant contends that the police officer who stopped his car lacked probable cause or reasonable suspicion to do so, and that the trial court erred in refusing to suppress evidence obtained from the stop. We disagree and affirm the judgment of the trial court.

I.

On March 17, 1993, after midnight, Fairfax County Police Officer Michael Reser was traveling on Richmond Highway in Fairfax County. He saw appellant's Honda automobile. Appellant was driving and there was one passenger in the car. Reser checked the license tag number through the computer in his police car. He received the social security number of the car's registered owner. When Reser checked the social security number

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\*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

in the computer, he learned that the car's registered owner had been adjudicated an habitual offender.

Reser also obtained a description of the registered owner, consisting of height, weight, age, and gender. With the assistance of his headlights, Reser could see into appellant's car. The driver appeared to match the description of the registered owner. Reser stopped the car, and upon confirming that appellant was the registered owner, arrested him for driving after having been adjudicated an habitual offender.

Appellant filed a motion to suppress alleging that the stop of his vehicle was constitutionally invalid because the officer lacked probable cause or reasonable suspicion. The trial court denied the motion, finding that the officer had reasonable suspicion, "based on the vehicle's registration to an habitual offender, and a similarity in height, weight, and age of the driver to the habitual offender."

## II.

On appeal, the burden is on the defendant to show that the trial court's denial of a suppression motion, "when the evidence is considered most favorably to the Commonwealth, constituted reversible error." Fore v. Commonwealth, 220 Va. 1007, 1010, 265 S.E.2d 729, 731, cert. denied, 449 U.S. 1017 (1980). "The trial court's ruling will be affirmed on appeal unless that decision is clearly erroneous." Hoye v. Commonwealth, 18 Va. App. 132, 134, 442 S.E.2d 404, 406 (1994).

"For evidence obtained as a result of a warrantless stop to be admissible, the officer who made the stop must articulate a

reasonable suspicion, based on objective facts, that the motorist is subject to lawful seizure." Lee v. Commonwealth, 18 Va. App. 235, 238, 443 S.E.2d 180, 181 (1994). In stating his reasons for the stop, "the officer must prove only that a reasonable suspicion exists that criminal activity may be afoot." Id. at 238, 443 S.E.2d at 182. The standard for reasonable suspicion "is less stringent than probable cause." Leeth v. Commonwealth, 223 Va. 335, 340, 288 S.E.2d 475, 478 (1982). See Logan v. Commonwealth, 19 Va. App. 437, 441, 452 S.E.2d 364, 367 (1994) (en banc).

In Hoye, upon facts nearly identical to this case, this Court upheld the trial court's finding that the officer had articulated a reasonable suspicion for an investigatory stop. In Hoye, the officer believed that Hoye's license plate had expired, although actually it had not. The officer, upon checking the license plate number through the Department of Motor Vehicles data base in the computer in her police car, learned the social security number of the registered owner. Upon checking that number, the officer learned that the owner was an habitual offender. The officer also obtained a description of the owner which included age, gender, weight, height, hair color, and eye color. The officer testified that the driver appeared to be the same gender and approximate age, and to have the same weight and hair color as the owner. Upon those facts, she stopped Hoye's car. Hoye, 18 Va. App. at 133-34, 442 S.E.2d at 405-06.

Hoye controls our decision in this case. We hold that upon the facts in this case, the trial court did not err in finding

that Officer Reser had a reasonable suspicion, based on specific and articulated facts, that the driver of the vehicle was an habitual offender. Accordingly, we affirm appellant's conviction.

Affirmed.