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Nora Borja

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellant,

v.

HANK PUA ARURANG,
Defendant-Appellee.

Supreme Court No. 2015-SCC-0014-TRF

Superior Court No. 14-02029

SLIP OPINION

Cite as: 2017 MP 1

Decided February 23, 2017

Emily Cohen, Assistant Attorney General, Office of the Attorney General, Saipan, MP, for Plaintiff-Appellant.[1]

Michael A. Sato, Assistant Public Defender, Office of the Public Defender, Saipan, MP, for Defendant-Appellee.

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[1] Emily Cohen is no longer an Assistant Attorney General.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; PERRY B. INOS, Associate Justice.

CASTRO, C.J.:

¶ 1 The Commonwealth of the Northern Mariana Islands ("Commonwealth") appeals the trial court's order granting Defendant-Appellee Hank Pua Arurang's ("Arurang") motion to suppress evidence obtained from a traffic stop. For the reasons discussed below, we REVERSE the decision of the trial court.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 Around 4:00 a.m. on June 28, 2014, Police Officer Dan Smith ("Officer Smith") stopped Arurang after observing Arurang's vehicle straddle the lane dividers on the road leading to the Marianas Business Plaza soon after making a right turn from Beach Road. When Officer Smith approached Arurang's vehicle, he detected the odor of alcohol and conducted a field sobriety test. He then took Arurang to the police station and administered a breathalyzer test. Arurang was charged with Failure to Drive on the Right Side of the Highway, Reckless Driving, and Driving Under the Influence.

¶ 3 Arurang moved to suppress the evidence obtained during the traffic stop on the grounds that Officer Smith lacked reasonable suspicion of a traffic violation. At the motion hearing, Arurang testified that when he turned onto the road leading to the Marianas Business Plaza, he momentarily left his lane in order to avoid hitting a dog drinking out of a wide puddle that extended out onto the road. Officer Smith testified that he did not see any dogs or puddles on the road. He stated that he initiated the stop because Arurang's vehicle failed to travel in a single lane or keep right in the proper lane, in violation of 9 CMC § 5301(c). The trial court took judicial notice that it had been raining for several days leading up to June 28, 2014. The trial court found that there was no reasonable suspicion for the traffic stop and granted Arurang's motion to suppress the evidence obtained from the traffic stop.

¶ 4 The Commonwealth appeals the trial court's order under 6 CMC § 8101(b).[2]

II. JURISDICTION

¶ 5 We have jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3.

¶ 6 Arurang raises a threshold issue, arguing we lack jurisdiction because the order being appealed by the Commonwealth, suppressing illegally obtained

[2] 6 CMC § 8101(b) states in pertinent part, '[a]n appeal by the Commonwealth government shall lie to the Supreme Court from a decision or order of the Superior Court suppressing or excluding evidence . . . if the Attorney General certifies to the Superior Court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of fact material in the proceeding."

evidence, is not a final order, but rather an interlocutory order. Jurisdictional issues are questions of law which we review de novo. *Commonwealth v. Borja*, 2015 MP 8 ¶ 12 (Slip Op., Nov. 18, 2015).

¶ 7 We have previously considered various challenges to our jurisdiction. In *Borja*, we addressed a paramount question regarding the source of our jurisdiction. There, we stated, "[The Supreme Court] is established by the Constitution and not the Legislature, [therefore,] the Legislature is without the constitutional authority to limit this Court's jurisdiction." *Id.* at ¶ 18. Though the Constitution was amended in 1997 "so that the Judicial Branch, consisting of a Supreme Court and a Superior Court, would have a firm and secure constitutional foundation, co-equal with the Executive and Legislative Branches," *In re Roberto*, 2010 MP 7 ¶ 10 (quoting House Legislative Initiative 10-3, HS1, HD1),[3] we held that the constitutional amendments did not alter this Court's authority; it merely converted this Court from a statutory court to a constitutional one. *Id.* (citing *Borja v. Tenorio*, 1998 MP 2 ¶ 12).

¶ 8 Prior to the 1997 constitutional amendments, we determined that although the Constitution did not have an explicit finality requirement, we could only hear appeals from final judgments and orders. *Id.* (citing *Commonwealth v. Hasinto*, 1 NMI 377, 385 (1990)). We construed 1 CMC § 3102(a)[4], the statute governing appeals, to mean that we only had jurisdiction over Superior Court judgments and orders that were final. The statute, however, does not expressly state that the judgments and orders being appealed must be final. *Hasinto*, 1 NMI at 385; *see Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 13 ("This Court's appellate jurisdiction over Superior Court proceedings, set forth in 1 CMC § 3102(a), permits us to hear appeal only from judgments and orders which are final, except as otherwise provided by law."); *see also Chan v. Chan*, 2003 MP 5 ¶ 18 ("This provision has been interpreted by the Supreme Court as granting jurisdiction only over Superior Court judgments and orders which are final."); *see also Friends of Marpi*, 2012 MP 9 ¶ 15 ("This Court only hears appeals from final judgments and order of the Commonwealth Superior Court unless a recognized exception applies.").

¶ 9 Notwithstanding the finality requirement, we have jurisdiction over interlocutory appeals permitted by constitutionally sound statutes. *In re Roberto*, 2010 MP 7 ¶ 10; *Malite v. Tudela*, 2007 MP 3 ¶ 21. In *Roberto*, we held that statutory exceptions to the finality requirement survived the 1997 constitutional amendments. *Id.* ("[E]xceptions to the finality requirement first recognized before the 1997 amendments still existed after its passage."). "[A]ll laws, regulations, and rules affecting the judiciary shall continue to exist as if

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[3] House Legislative Initiative 10-3, HS1, HD1 (1997) amended article IV of the NMI Constitution and established the Supreme Court's jurisdiction to "hear appeals from final judgments and orders of the Commonwealth superior court." *In re Roberto*, 2010 MP 7 ¶ 7 (quoting NMI CONST. art. IV, § 3).

[4] 1 CMC § 3102(a) states, "[t]he Supreme Court has appellate jurisdiction over judgments and orders of the Superior Court of the Commonwealth."

established pursuant to this [amendment], and shall unless clearly inconsistent, be read to be consistent with [this amendment]." *Id.* ¶ 7 (quoting House Legislative Initiative 10-3, HS1, HD1 at 4). We held in *Malite v. Tudela* that interlocutory appeals are permitted when a statute's prerequisites are met. 2007 MP 3 ¶ 21. In *Malite*, the petitioners sought a writ of mandamus review of a trial court's order denying a motion for a temporary restraining order. *Id.* Although the petitioners failed to meet the requirements for a writ of mandamus, we found the order was immediately appealable under 8 CMC § 2206.[5] *Id.* at ¶ 19. As such, we converted the petition for writ of mandamus into an interlocutory appeal under 8 CMC § 2206. *Id.* at ¶ 20. Here, the Commonwealth appealed the trial court's suppression order pursuant to 6 CMC § 8101(b). The Attorney General certified to the Superior Court on July 22, 2015 that the instant appeal is not being taken for the purposes of delay, and the suppressed evidence constituted substantial proof of facts material in the proceeding, thereby meeting the requirements of section 8101(b).

¶ 10 Arurang argues we lack jurisdiction because the suppression order is interlocutory in nature and thus section 8101(b) conflicts with article IV, section 3 of the NMI Constitution. We disagree.

¶ 11 Although suppression orders are generally interlocutory in nature, they may be immediately appealed as final orders if a later review would be impossible. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 481(1975) (holding that the Court has jurisdiction over interim review of certain issues where a later review is not possible). The United States Supreme Court has identified several instances where the Court will treat a decision of the highest state court as final within the meaning of 28 U.S.C. § 1257[6] even though further proceedings are anticipated in the lower state courts. The Court noted "where the federal claim has been finally decided, with further proceedings on the merits in the state courts to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the case." *Cox*, 420 U.S. at 481. The Supreme Court of Pennsylvania has taken a similar approach. It has held that certain pretrial orders are final for the purposes of appeal. *See Commonwealth v. Bosurgi*, 190 A.2d 304, 308 (Pa. 1963) (holding that the government has a right to appellate review of pretrial orders where the effect of such order is to terminate or conclude prosecution). "An appellate review of the validity of the order of suppression cannot harm the defendant whereas the denial of the right to such review does harm the Commonwealth." *Id.* In *Bosurgi*, the court gave two instances where a suppression order is final—when

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[5] 8 CMC § 2206 provides for an immediate appeal "from an order . . . directing or allowing the payment of a debt, claim, legacy, or attorney's fee . . . [or] refusing to make any [such] order . . . ." We found, in *Malite*, that the trial court's order amounted to an order allowing the payment of an estate claim. *Malite*, 2007 MP 3 ¶ 21.

[6] 28 U.S.C. § 1257(a) states, "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court. . . ."

it terminates the case, or when it handicaps the prosecution because it is not able to present all of its evidence. *Id.* Here, with the suppression order in place, the Commonwealth is not able to present all of its available evidence at trial. Without an immediate appeal, the Commonwealth will be "deprived of any opportunity to secure an appellate court evaluation of the validity of the order of suppression which forces the Commonwealth to trial without all of its evidence." *Id.* at 308. Because a later review of the suppression order would not be possible, we consider it a final order and also find that the statute is not inconsistent with our Constitution.

¶ 12 Accordingly, we conclude we have appellate jurisdiction over the suppression order.

II. STANDARDS OF REVIEW

¶ 13 The Commonwealth raises one overarching issue: whether the trial court erred in suppressing evidence discovered during the traffic stop. We address this issue by reviewing de novo the trial court's reasonable suspicion determination. *Commonwealth v. Crisostomo*, 2014 MP 18 ¶ 8.

III. DISCUSSION

A. Reasonable Suspicion

¶ 14 The Commonwealth argues the trial court erred in suppressing evidence based on a finding there was no reasonable suspicion for the traffic stop. Challenging the trial court's reasonable suspicion determination, the Commonwealth argues we should determine the reasonableness of the stop from the perspective of a reasonable officer at the time the stop was made. *Terry v. Ohio*, 392 U.S. 1 (1968). Often times police officers are forced to make quick decisions in the field, and this should be taken into account when determining reasonableness. *Kentucky v. King*, 563 U.S. 452, 466 (2011).

¶ 15 Unreasonable searches and seizures are prohibited under article I, section 3 of the NMI Constitution and the Fourth Amendment to the United States Constitution. The protection from unreasonable searches and seizures "extend[s] to brief investigatory stops of persons or vehicles that fall short of traditional arrest." *Crisostomo*, 2014 MP 18 ¶ 18 (internal quotation marks and citations omitted). "To make an investigatory stop, the officer must have a reasonable suspicion that criminal activity be afoot." *Id*. (citing *Commonwealth v. Fu Zhu Lin*, 2016 MP 6 ¶ 13). Criminal activity includes traffic violations. *See* 9 CMC §§ 1302–04 (stating police officers may stop individuals for traffic violations).

¶ 16 In determining whether reasonable suspicion exists, "courts look at the totality of the circumstances to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing." *Crisostomo*, 2014 MP 18 ¶ 18 (internal quotation marks and citation omitted). "Bases for suspicion include inferences and deductions that officers draw from applying their experience and specialized training to the situation at hand." *Id.* ¶

19 (internal citation omitted).

¶ 17 We evaluate whether Officer Smith had reasonable suspicion for the traffic stop by considering whether, under the totality of the circumstances, a reasonable police officer would have suspected a traffic code violation. At the time of the traffic stop, Officer Smith had over fifteen years of experience in the traffic section at the Department of Public Safety. Officer Smith testified that during the early hours of June 28, 2014, the roads where dry and clear of any puddles when he observed Arurang momentarily leave his lane after making a right turn into the road leading to the Marianas Business Plaza. Our traffic code states that vehicles must be operated on the right half of all highways.[7] However, our traffic code also states, "[a] vehicle shall be operated as nearly as practical entirely within a single lane and may not be moved from the lane until the operator has first ascertained that the movement can be made safely." 9 CMC § 5304(a). Arurang asserts that while making a right turn from Beach Road, he observed a dog drinking from a three-feet wide puddle, and after noticing that there was no oncoming traffic, briefly left his lane to avoid hitting the dog. However, an investigatory traffic stop may be justified "on something less than probable cause[,]" such as when a police officer observes an unexplained lane deviation. *People v. Hackett*, 971 N.E.2d 1058, 1066 (Ill. 2012). The stop allows the officer to inquire into the reason for the lane deviation. *Id.* Here, prior to making a right turn onto the road leading to Marianas Business Plaza, Arurang was driving behind Officer Smith on Beach Road in the early morning of June 28. Arurang overtook Officer Smith's vehicle, signaled a right turn, and switched lanes to be in front of Officer Smith. Officer Smith then observed Arurang make a proper right turn, but make an unexplained deviation from the proper lane, instead straddling the lane divider. While Arurang testified that he swerved to avoid a large puddle and a dog, Officer Smith did not observe either of those conditions, and saw only Arurang's unexplained deviation.[8]

¶ 18 Officer Smith did not have knowledge of a dog or puddle on the road when he pulled over Arurang for lane deviation. We find Officer Smith's mistake of fact to be reasonable. A reasonable mistake of fact could not invalidate a traffic stop when the officer had a reasonably articulable suspicion of a traffic violation. Police officers are required to act reasonably, not perfectly, under the Fourth Amendment. *Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990). As such, under the totality of the circumstances standard and taking into account Officer Smith's training and experience, he had reasonable suspicion for the traffic stop. Accordingly, we reverse the trial court's decision

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[7] 9 CMC § 5301(a) states, in pertinent part, "[u]pon all highways of sufficient width a vehicle or bicycle shall be operated upon the right half of the roadway."

[8] A single occurrence of crossing a lane does not give rise to reasonable suspicion to justify a stop. *United States v. Gregory*, 79 F.3d 973, 978-99 (10th Cir. 1996). However, we consider the totality of the circumstances, including the time of day, road conditions, and other factors beyond the mere crossing of a lane divider to determine whether there was reasonable suspicion to justify a stop.

to suppress the evidence gathered by Officer Smith after the traffic stop.

IV. CONCLUSION

¶ 19 For the reasons stated above, we REVERSE the trial court's reasonable suspicion determination. This case is REMANDED for proceedings consistent with this opinion.

SO ORDERED this 23rd day of February, 2017.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
PERRY B. INOS
Associate Justice