

COURT OF APPEALS OF MARYLAND

Southern v. State, 371 Md. 93

807 A.2d 13 (2002) · No. No. 109, September Term, 2001 · Decided September 17, 2002

SUMMARY

The Maryland Court of Appeals held that the Court of Special Appeals improperly remanded the case to reopen a completed suppression hearing and give the State a second opportunity to present evidence supporting the constitutionality of the defendant's initial stop. Because the State failed to meet its burden at the original suppression hearing, the appellate court should have reversed the convictions and remanded for a new trial. The court discussed the proper use and limits of limited remands under Maryland Rule 8-604(d).

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Cathell, J.; Bell, C.J.; Eldridge, J.; Raker, J.; Wilner, J.; Harrell, J.; Battaglia, J.
JURISDICTION	Maryland
DECIDED	September 17, 2002
DOCKET	No. 109, September Term, 2001
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	After the Court of Special Appeals ordered a limited remand to reopen a suppression hearing and allow the State to present additional evidence concerning the constitutionality of the defendant's initial detention, the Court of Appeals granted certiorari to determine whether that remand was proper.
STANDARD OF REVIEW	The Court of Appeals reviewed the propriety of the Court of Special Appeals' limited-remand order under Maryland Rule 8-604(d), including whether the State could reopen a completed suppression proceeding to introduce evidence it had failed to present at the original hearing.
PRECEDENTIAL VALUE	published
PARTIES	George Wendell Southern v. State of Maryland

TOPICS

suppression of evidence

fourth amendment

search and seizure

appellate procedure

criminal procedure

PRACTICE AREAS

criminal procedure

appellate procedure

constitutional law

QUESTIONS PRESENTED

1. Whether the Court of Special Appeals properly remanded the case to reopen the suppression proceeding so the State could introduce new evidence supporting the constitutionality of Southern's initial stop.
2. Whether Maryland Rule 8-604(d) permits a limited remand to give a party a second opportunity to satisfy an evidentiary burden it failed to meet during a completed suppression hearing.

HOLDINGS

1. Maryland Rule 8-604(d) does not permit an appellate court to remand a completed suppression proceeding so the State can introduce new evidence to cure its failure to meet its burden of proving the constitutionality of an initial warrantless detention.
2. The appropriate disposition was reversal of the convictions and remand for a new trial, rather than remand for a reopened suppression hearing.

KEY QUOTATIONS

“Rule 8-604(d) does not permit such a remand for the purpose of introducing new evidence in cases where a party, like the State here, failed to sustain its burden of proof on an issue both raised in a motion to suppress and argued at the hearing on that motion.” (371 Md. at 107)

“The appropriate appellate response is a reversal with a new trial, not a remand for the taking of additional evidence in a reopened suppression proceeding in the same case.” (371 Md. at 112)

FACTUAL BACKGROUND

Southern was apprehended by police after a K-9 tracking operation near the scene of a robbery and was placed in custody. At the suppression hearing, the State presented evidence concerning a show-up identification, statements, and a vehicle search, but conceded that it presented no evidence describing the circumstances or justification for Southern's initial detention. Southern's counsel challenged the stop and evidence flowing from it, including the identification, but the circuit court denied suppression without resolving the constitutionality of the initial detention.

PROCEDURAL HISTORY

Southern was indicted in the Circuit Court for Prince George's County on robbery and related charges. The circuit court denied his motion to suppress, and a jury convicted him of two robberies and second-degree assault. The Court of Special Appeals held that Southern had adequately challenged the initial stop, that the State had failed to present sufficient evidence establishing its constitutionality, and that the circuit court had not ruled on that issue; it nevertheless remanded for a reopened suppression hearing at which the State could offer new

evidence. The Court of Appeals reversed that judgment and directed the intermediate appellate court to reverse the circuit court and remand for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Court of Special Appeals was instructed to reverse the judgment of the Circuit Court for Prince George's County and remand the case to that court for a new trial consistent with the opinion.

CASES CITED

- Southern v. State, 140 Md. App. 495, 780 A.2d 1228 (2001)
- Southern v. State, 367 Md. 88, 785 A.2d 1292 (2001)
- Carter v. State, 367 Md. 447, 788 A.2d 646 (2002)
- Davis Sand & Gravel Corp. v. Buckler, 231 Md. 370, 190 A.2d 531 (1963)
- Eastgate Associates v. Apper, 276 Md. 698, 350 A.2d 661 (1976)
- Reid v. State, 305 Md. 9, 501 A.2d 436 (1985)
- Comptroller of Treasury v. Panitz, 267 Md. 296, 297 A.2d 289 (1972)
- Earl v. Anchor Pontiac Buick, Inc., 246 Md. 653, 229 A.2d 412 (1967)
- Butler v. State, 55 Md. App. 409, 462 A.2d 1230 (1983)
- McMillian v. State, 325 Md. 272, 600 A.2d 430 (1992)
- Bailey v. State, 303 Md. 650, 496 A.2d 665 (1985)
- Warrick v. State, 302 Md. 162, 486 A.2d 189 (1985)
- Mahammitt v. State, 299 Md. 82, 472 A.2d 477 (1984)
- Wiener v. State, 290 Md. 425, 430 A.2d 588 (1981)
- Lipinski v. State, 333 Md. 582, 636 A.2d 994 (1994)
- Gill v. State, 265 Md. 350, 289 A.2d 575 (1972)
- Tu v. State, 336 Md. 406, 648 A.2d 993 (1994)
- DiPasquale v. State, 43 Md. App. 574, 406 A.2d 665 (1979)
- Stokes v. State, 362 Md. 407, 765 A.2d 612 (2001)
- Cartnail v. State, 359 Md. 272, 753 A.2d 519 (2000)
- Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)
- Terrell v. State, 3 Md. App. 340, 239 A.2d 128 (1968)