IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

	*	
UNITED STATES OF AMERICA	*	
v.	*	**Case No. 99-1471PWG**
JOHN K. MITCHELL	*	

* * * * *

MOTION TO DISMISS COMPLAINT

Because John Mitchell had a valid Maryland license when he was charged with driving on a suspended out-of-state license, under Maryland law he was not guilty of driving on a suspended license and therefore the complaint should be dismissed.

STATEMENT OF FACTS

John K. Mitchell has held a Michigan driver's license since at least 1996. On February 28, 1997, Mr. Mitchell applied for a Maryland driver's license. In response to the question on the application asking "Do you presently hold a Drivers License," Mr. Mitchell wrote down his Michigan license number, the fact that Michigan was the state of issue for that license, that it was an operator type license, and that it expired on September 1, 2000. He also checked the "No" box. Mr. Mitchell was issued a Maryland driver's license which remained valid during all times relevant to the instant complaint.

On October 19, 1999, Mr. Mitchell was stopped at the gate of Aberdeen Proving Ground (APG), Maryland. Officer Toscano identified Mr. Mitchell by his Michigan driver's license. Officer Toscano ran a check on that license and determined that it was suspended.

On December 31, 1999, Mr. Mitchell was stopped again at the APG gate. Officer White

identified Mr. Mitchell by his Michigan driver's license. The officer ran a check on that license and determined that it was suspended.

On February 22, 2000, Mr. Mitchell was stopped again at the APG gate. Mr. Mitchell informed Officer Krause that he did not have his license on him. Mr. Mitchell was cited for failing to display a license. A subsequent check of Mr. Mitchell's Michigan license indicated that it was suspended.

Mr. Mitchell was subsequently charged with three counts of driving on a suspended out-of-state license in violation of Md. Code Ann., Transp. § 16-303(f).

ARGUMENT

I. UNDER MARYLAND LAW, A PERSON HOLDING A VALID MARYLAND LICENSE CANNOT BE CHARGED WITH DRIVING ON A SUSPENDED OUT-OF-STATE LICENSE.

Md. Code Ann., Transp. § 16-303(f) provides:

> (f) *Licenses suspended by other states*. – A person may not drive a motor vehicle on any highway or on any [private] property specified in § 21-101.1 of this article while the person's license issued by any other state is suspended.

The Maryland Court of Appeals has construed § 16-303(f) to apply only where the driver has no valid Maryland license and "the driver's privilege to operate a motor vehicle is dependent only on a license issued in another state." *Benbow v. Maryland*, 322 Md. 394, 402, 587 A.2d 1110, 1114 (1991). The interpretation of a state statute by the state's highest court is authoritative. *See Kolender v. Lawson*, 461 U.S. 352, 356 & n.4 (1983).

In *Benbow*, the defendant had obtained both a Virginia license and a Maryland license, although neither were in his possession at the time he was stopped. His driving privileges were

suspended in Virginia and valid in Maryland, and he was charged with driving on a suspended license based on the suspended status of his Virginia license. The Maryland Court of Appeals held that because Mr. Benbow held a valid Maryland license, the status of his Virginia license was irrelevant. Noting that Mr. Benbow's license was properly issued pursuant to Md. Code Ann., Transp. § 16-111(d)(2), which provides without caveat that "[w]hen issued and signed, a driver's license authorizes the licensee to drive any vehicle of the type or class specified on it, subject to any restrictions endorsed on the license,"[1] the Court concluded that § 16-303(f) does not "prohibit[] a person from driving on Maryland's roads under color of a valid Maryland license because a license in another state has been refused, canceled, suspended, or revoked." *Benbow*, 322 Md. at 402, 587 A.2d at 1114.

Benbow is on all fours with the instant case. On each of the dates on which he was charged with driving on a suspended Michigan license, Mr. Mitchell had a valid Maryland license, although like Mr. Benbow he did not have it on him at the time he was stopped. Accordingly under *Benbow* he did not violate § 16-303(f) and all three counts of the complaint should be dismissed.

II. THE 1989 AMENDMENT TO SECTION 16-111 REQUIRING LICENSE APPLICANTS TO SURRENDER OUT-OF-STATE LICENSES DOES NOT ALTER *BENBOW*'S APPLICABILITY OR THE OUTCOME OF THIS CASE.

At the time *Benbow* was decided, then-section 16-111(e)(2) provided that "before issuing a license, the Administration may require the applicant to surrender any other license issued to him by any jurisdiction." Md. Code Ann., Transp. §16-111(e)(2) (1989) (amended and

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[1] Section 16-111(d)(2) has since been recodified without substantive change at § 16-111.1(e)(2).

recodified at § 16-111.1(f)(2)). In 1989, the Maryland legislature substituted the word "shall" for the word "may," effective as of 1990. *Benbow*, 322 Md. at 403 n.7, 587 A.2d at 1115 n.7. The current version of the statute thus requires applicants to surrender out-of-state licenses in order to obtain a Maryland license. *See* § 16-111.1(f)(2).

This amendment does not alter the central holding of *Benbow* that a driver holding a valid Maryland license cannot be charged with driving on a suspended out-of-state license. As the *Benbow* court explained, "when a driver holds a license in good standing, § 16-111(d)(2) prevails, regardless of the status of a license issued to him in another state." *Benbow*, 322 Md. at 403, 587 A.2d at 1115. Nothing in the statute's language or in *Benbow*'s analysis suggests that by changing a single word in the out-of-state license surrender provision, the Maryland legislature intended to elevate § 16-303(f) over § 16-111. Accordingly, *Benbow* still stands for the proposition that a holder of a valid Maryland license is entitled to drive on Maryland highways regardless of the status of his or her out-of-state license.

This interpretation of *Benbow* best preserves the authority of the Maryland Motor Vehicle Administration ("MVA") to control drivers in Maryland directly through the regulation of their Maryland driver's licenses. Where a driver has suspended privileges in another state, the Maryland MVA can withhold or suspend the driver's Maryland license. Where the MVA chooses not to do so, the status of the out-of-state license is rightly ignored. A contrary rule would permit motor vehicle administrations in any other state effectively to control the validity of Maryland licenses, an outcome precluded by *Benbow'*s reasoning.

In this case, Mr. Mitchell reported his Michigan license information to the MVA when he applied for his Maryland license. The MVA decided to issue him a Maryland license, a decision

within its special area of expertise and authority. *See* Md. Code Ann., Transp. § 12-106 (governing MVA review of applications). Mr. Mitchell respectfully submits that the MVA's decision should not be disturbed. *See Vann v. Angelone*, 73 F.3d 519, 522 (4th Cir. 1996) ("[F]ederal courts must defer to state agencies applying state laws.").

CONCLUSION

For the reasons stated, Mr. Mitchell respectfully requests that the complaint in this case be dismissed.

Respectfully submitted,

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SASHA NATAPOFF
Assistant Federal Public Defender
100 South Charles Street
Suite 1100, Tower II
Baltimore, Maryland 21201
(410) 962-3962

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____th day of August, 2000, a copy of the foregoing Motion to Dismiss Complaint was delivered to Paul Marone, Special Assistant Federal Public Defender, U.S. Army Garrison, Building 310, Wing 10, Aberdeen Proving Ground, Maryland, 21001.

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SASHA NATAPOFF
Assistant Federal Public Defender