

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000461-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM ROCKCASTLE CIRCUIT COURT
HONORABLE DANIEL J. VENTERS, JUDGE
ACTION NO. 01-CR-00058

JOHN L. LAMB

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JOHNSON, KNOPF AND McANULTY, JUDGES.

JOHNSON, JUDGE: The Commonwealth of Kentucky has appealed from an order entered by the Rockcastle Circuit Court on February 8, 2002, which granted John L. Lamb's motion to suppress from evidence the methamphetamine that was seized from his vehicle as the result of a warrantless search following a traffic stop and his arrest. Having concluded that the trial court's findings were not clearly erroneous and that it correctly applied the law by concluding that there was no probable cause that a traffic

offense had been committed which would have justified the initial traffic stop, we affirm.

Lamb was charged in an indictment returned by a Rockcastle County grand jury on August 10, 2001, with the offenses of possession of a controlled substance (methamphetamine) while in possession of a firearm,¹ operating a motor vehicle while license suspended,² operating a motor vehicle without tail lamps,³ and not having insurance on a motor vehicle.⁴ Lamb filed a motion to suppress any evidence obtained as a result of the warrantless search of his automobile and a suppression hearing was held on February 6, 2002.⁵

Kentucky State Police Trooper Lafe⁶ Owens was the only witness to testify at the suppression hearing. He testified that in Rockcastle County, Kentucky, on the evening of June 7, 2001, he observed a pickup truck traveling on U.S. Highway 25 and preparing to turn onto Calloway Road. Trooper Owens testified that it was getting dark and the truck's headlights were illuminated, but its taillights were not. Trooper Owens

¹ Kentucky Revised Statutes (KRS) 218A.1415 and KRS 218A.992.

² KRS 186.620.

³ KRS 189.050.

⁴ KRS 304-39.080.

⁵ A jury trial that had been scheduled for this date was continued since the wife of one of the Commonwealth's witnesses was giving birth.

⁶ The record shows Trooper Owens's first name as "Lafe" and "Lath".

activated his blue lights to signal the driver to stop as the truck was turning onto Calloway Road. The truck traveled approximately one-tenth of a mile on Calloway Road before turning left through a gate and into a private driveway, which was the driveway of Lamb's home. Trooper Owens alleged that after the truck entered the driveway it went across the yard and stopped next to a fenced field. Trooper Owens estimated that after he activated his blue lights the truck continued to travel for one minute before stopping.

Trooper Owens pulled into Lamb's driveway behind the pickup truck. As Trooper Owens stepped out of his police cruiser, Lamb exited the driver's side door of the truck. Lamb and Trooper Owens walked toward each other and met between the two vehicles. Trooper Owens recognized Lamb and realized that Lamb's driver's license had been suspended. Trooper Owens asked Lamb if his driver's license was suspended and Lamb admitted that fact. Trooper Owens arrested Lamb for driving a motor vehicle on a suspended license and put Lamb in the backseat of his police cruiser.⁷ The time was 7:14 p.m.

After placing Lamb in the cruiser, Trooper Owens searched Lamb's truck. Trooper Owens first looked inside the truck and saw a rifle lying on the front seat. He then searched the truck's interior and found a small plastic container,

⁷ Another peace officer, Deputy Jailer Shannon Taylor, was in the cruiser's front seat.

similar to a film canister, under the driver's seat. The canister contained a ripped portion of a plastic bag corner, tied off at the opening. The partial plastic bag contained a brown powder substance, which was later determined to be methamphetamine. The container also held some pill pieces.

The evidence further established that the Kentucky State Police does not have a formal policy as to when a driver charged with operating a motor vehicle on a suspended driver's license should be arrested and taken into custody, and that it was within Trooper Owens's discretion to arrest Lamb or to issue him a citation. Trooper Owens testified that he elected to arrest Lamb because Lamb did not immediately stop when he activated his blue lights.

At the suppression hearing, the Commonwealth took the position that Lamb had been lawfully stopped while driving his pickup truck because he had committed the traffic violation of operating a motor vehicle without tail lamps, that the police officer lawfully arrested Lamb for driving on a suspended license, and that pursuant to Commonwealth v. Wood,⁸ the officer conducted a lawful warrantless search of Lamb's truck incident to the arrest. Lamb's primary contention at the suppression hearing was that his arrest was for a minor traffic violation

⁸ Ky.App., 14 S.W.3d 557 (1999).

and that pursuant to Clark v. Commonwealth,⁹ the search incident to arrest was improper. The trial court also raised the issue of whether probable cause existed in the first place to support the police officer's actions in stopping Lamb for a violation of the tail lamp statute.

In an order entered on February 8, 2002, the trial court granted Lamb's motion to suppress on two grounds: (1) that the initial traffic stop was not based on probable cause that a traffic violation had been committed; and (2) that the arrest was for a minor traffic violation, whereby the search incident to arrest exception for a warrantless search did not apply.

Regarding Trooper Owens's citing Lamb for a violation of KRS 189.050¹⁰ for operating his truck without illuminated taillights, the trial court stated:

The only evidence is simply that the red taillights were not on. There is no evidence that they were incapable of illuminating and being seen for a distance of 500 feet when illuminated, or that a red reflector was not present as a substitute

⁹ Ky.App., 868 S.W.2d 101 (1993).

¹⁰ KRS 189.050(1) provides:

Except as provided in any regulations adopted pursuant to KRS 189.287, all vehicles shall display at the rear one (1) red light visible when lighted for at least five hundred (500) feet. A red reflector meeting the requirements may be used in lieu of a red light.

for the red light. KRS 189.030¹¹ requires that the light be illuminated during the period from one-half hour after sunset until one-half hour before sunrise, and at such other times atmospheric conditions render visibility lower than ordinary.

The trial court declared that it was taking judicial notice of tables maintained by the United States Naval Observatory which "indicate that sunset on June 7, 2001, occurred at 19:57 hours, or 8:57 p.m."¹² in Richmond, Kentucky. The trial court also stated that the time of 8:57 p.m. "is confirmed by the publication 'Old Farmer's Almanac.'"¹³ The trial court then stated:

Sunset on the date in question did not occur until almost an hour and forty-five minutes after the Defendant was arrested. At that time of day, there was no reason for the Defendant to have his taillights illuminated. There is no proof of any unusual atmospheric conditions which rendered the daylight such as to require the

¹¹ KRS 189.030(1) provides:

Lights, when required on a vehicle shall be illuminated during the period from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise, and at such other times as atmospheric conditions render visibility as low as or lower than is ordinarily the case during that period. Provisions as to distances that lights must be visible refer to visibility under ordinary atmospheric conditions.

¹² The table states: "Daylight time is not implemented in this program. When daylight time is in use, add one hour to the times listed in the table" [emphasis original]. Thus, the difference between military time and daylight time is 11 hours instead of 12 hours, which is the difference between military time and standard time.

¹³ The trial court attached to its order copies of both materials confirming the 19:57 and 8:57 p.m. times, respectively.

illumination of taillights. Nor was it reasonable for the officer to assume that simply because the taillights were not illuminated at the same time the headlights were on that they were inoperable or not suitably reflective enough to satisfy the requirement of the statute. The fact that the sun was more than an hour and a half away from setting negates the reasonableness of the officer's conclusion that the Defendant's taillights were defective and undermines the probable cause for the entire stop.

The trial court granted Lamb's motion and ordered that the methamphetamine seized from his truck as a result of the warrantless search be suppressed. This appeal followed.

"An appellate court's standard of review of the trial court's decision on a motion to suppress requires that we first determine whether the trial court's findings of fact are supported by substantial evidence. If they are, then they are conclusive."¹⁴ "Based on those findings of fact, we must then conduct a de novo review of the trial court's application of the law to those facts to determine whether its decision is correct as a matter of law."¹⁵

"[W]hile [a]s a general matter determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal[,] . . . we hasten to point out that a reviewing court should take care both to

¹⁴ Commonwealth v. Neal, Ky.App., 84 S.W.3d 920, 923 (2002)(citing Kentucky Rules of Criminal Procedure (RCr) 9.78).

¹⁵ Id. at 923 (citing Adcock v. Commonwealth, Ky., 967 S.W.2d 6, 8 (1998); and Commonwealth v. Opell, Ky.App., 3 S.W.3d 747, 751 (1999)).

review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers."¹⁶

The Commonwealth argues on appeal that the trial court erred in both of its determinations. As to the initial stop, the Commonwealth contends that "probable cause to make the stop is the wrong standard [because] [a] stop requires articulable suspicion that criminal activity is afoot."¹⁷ Lamb's brief appears to argue that the Commonwealth has conceded this issue by not raising it in its brief, but we are perplexed by this argument since the Commonwealth clearly raised the argument in its brief. Nonetheless, there is a major problem with the Commonwealth's argument, since it is not the same argument that it made to the trial court.

The Commonwealth argues in its brief for the first time that "when the police officer saw that the truck's headlights were on and yet there were no tail lamps visible, he had an articulable suspicion that appellee was violating the law, and that articulable suspicion gave him the authority to stop appellee for the purpose of investigating whether a

¹⁶ Stewart v. Commonwealth, Ky.App., 44 S.W.3d 376, 380 (2000)(citing Ornelas v. United States, 517 U.S. 690, 698-700, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996)).

¹⁷ The Commonwealth cites Commonwealth v. Banks, Ky., 68 S.W.3d 347, 349-50 (2001), which discussed Terry stops, but did not involve an automobile stop.

criminal violation was occurring." Unfortunately for the Commonwealth, there is no evidence of record to support its new argument that the stop was an investigatory stop. Trooper Owens clearly testified at the suppression hearing that he stopped Lamb because he was violating the tail lamp statute, not that he was investigating such a violation. Thus, the only evidence of record, the Commonwealth's own evidence, supports the trial court's finding that it was a stop for a traffic violation, not an investigatory stop. Since the Commonwealth did not attempt to prove to the trial court that the stop was an investigatory stop, it cannot argue that position on appeal. A party "will not be permitted to feed one can of worms to the trial judge and another to the appellate court."¹⁸

In Whren v. United States,¹⁹ the United States Supreme Court explained that the Fourth Amendment requires probable cause to stop a vehicle for a traffic violation:

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for limited purposes, constitutes a "seizure" of "persons" within the meaning of this

¹⁸ Kennedy v. Commonwealth, Ky., 554 S.W.2d 219, 222 (1976)(citing Jenkins v. Commonwealth, Ky., 413 S.W.2d 624 (1966); and Harris v. Commonwealth, 301 Ky. 818, 193 S.W.2d 466 (1946)).

¹⁹ 517 U.S. 806, 809-10, 116 S.Ct. 1769, 1772, 135 L.Ed.2d 89, 95-96 (1996).

provision. See Delaware v. Prouse, 440 US 648, 653, 59 L Ed 2d 660, 99 S Ct 1391 (1979); United States v. Martinez-Fuerte, 428 US 543, 556, 49 L Ed 2d 1116, 96 S Ct 3074 (1976); United States v. Brignoni-Ponce, 422 US 873, 878, 45 L Ed 2d 607, 95 S Ct 2574 (1975). An automobile stop is thus subject to the constitutional imperative that it not be "unreasonable" under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred. See Prouse, supra, at 659, 59 L Ed 2d 660, 99 S Ct 1391; Pennsylvania v. Mimms, 434 US 106, 109, 54 L Ed 2d 331, 98 S Ct 330 (1977)(per curiam).

Thus, the trial court applied the correct standard when it concluded that there was no probable cause for Trooper Owens's traffic stop of Lamb.

Furthermore, since the findings of historical fact made by the trial court, including its finding related to time of sunset on June 7, 2001, and the lighting conditions at 7:14 p.m. on that day, were not clearly erroneous, we are bound by those findings. We must also give due weight to the inferences drawn by the trial court from those facts, including that "there was no reason for the Defendant to have his taillights illuminated[,] " that it was not "reasonable for the officer to assume that simply because the taillights were not illuminated at the same time the headlights were on that they were inoperable or not suitably reflective enough to satisfy the requirement of the statute[,] " and that "[t]he fact that the sun

was more than an hour and a half away from setting negates the reasonableness of the officer's conclusion that the Defendant's taillights were defective and undermines the probable cause for the entire stop." Since the trial court correctly applied the law to its well-supported factual findings, we must affirm its ruling that there was no probable cause for the initial traffic stop. Accordingly, while the issue concerning the search incident to arrest is an interesting and important issue, it is now moot.

For the foregoing reasons, the order of the Rockcastle Circuit Court granting the motion to suppress is affirmed.

ALL CONCUR.

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