

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-002111-MR

MICHAEL DEWAYNE BECKHAM

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE JOHN R. ADAMS, JUDGE  
ACTION NO. 03-CR-00655

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

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BEFORE: GUIDUGLI AND KNOFF, JUDGES; AND EMBERTON, SENIOR JUDGE.<sup>1</sup>  
GUIDUGLI, JUDGE. Michael Dewayne Beckham ("Beckham") appeals from a judgment of the Fayette Circuit Court on a conditional plea of guilty to one count each of operating a motor vehicle under the influence, fourth offense, and operating on a suspended license. He argues that the trial court erred in

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<sup>1</sup> Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 100(5)(b) of the Kentucky Constitution and KRS 21.580.

failing to grant a motion to suppress. For the reasons stated herein, we affirm the judgment.

On April 17, 2003, at approximately 2:00 a.m., Transylvania University Department of Public Safety officers Scott Anderson ("Anderson") and Brian Miller ("Miller") were traveling in a university vehicle off campus on 6th Street in Lexington, Kentucky. They observed a vehicle being operated by Beckham run a red light. In an apparent attempt to scare Beckham or otherwise dissuade him from running other red lights, Anderson flashed the emergency lights on the university patrol car. Anderson would later state that it was not his intention to stop Beckham's vehicle. Beckham's vehicle continued on and passed the university patrol car. Beckham then pulled the vehicle to the side of the road, stopping the car and exiting it. Anderson observed Beckham staggering, and stopped the university patrol car. Anderson spoke with Beckham and noted that Beckham appeared to be intoxicated. Lexington Metro police were summoned. Lexington Metro officer Kyle Sorenson ("Sorenson") determined that Beckham was intoxicated, and placed him under arrest.

On June 2, 2003, Beckham was indicted by the Fayette Grand Jury on charges of operating a motor vehicle under the

influence, fourth offense, and operating on a suspended license.<sup>2</sup> On June 11, 2003, Beckham filed a motion to suppress, arguing that the university police had no lawful authority to stop his vehicle and that any evidence of his alleged intoxication should be suppressed.

A hearing on the motion was conducted, where Anderson testified that he did not stop Beckham's vehicle. Beckham did not testify. Upon considering the testimony, the trial judge denied the motion. It was her opinion that though Anderson should not have flicked the lights on the university patrol car, he did not effectuate a traffic stop.

On August 8, 2003, Beckham entered a plea of guilty to both counts of the indictment, conditioned on the reservation of his right to appeal the denial of his motion to suppress. The plea was accepted by the trial court, and Beckham was sentenced to a combined sentence of one year in prison. The sentence was suspended, and Beckham was placed on probation for a period of three years. This appeal followed.

The sole issue now before us is whether the trial court committed reversible error in denying Beckham's motion to suppress the evidence obtained by the Metro Lexington police

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<sup>2</sup> The indictment was combined with a separate indictment of one count of flagrant non-support, and the matters were prosecuted. Beckham's sentence included a period of incarceration for flagrant non-support.

after Beckham stopped his car. Beckham argues that Anderson had no lawful authority to stop his vehicle, and that Anderson's act of flashing the university patrol car's lights and stopping the car behind Beckham's car constitutes an unlawful stop. Relying in part on the "fruit of the poison tree" doctrine, Beckham contends that any evidence collected as a result of the unlawful stop should have been suppressed. As such, he argues that the trial court erred in denying his motion, and he seeks an order reversing his conviction.

We have closely studied the record and the law, and find no error in the trial court's denial of Beckham's motion to suppress. The trial court's ruling on a motion to suppress shall be sustained if supported by substantial evidence. RCr 9.78; Harper v. Commonwealth, Ky., 694 S.W.2d 665 (1985). In the matter at bar, substantial evidence exists in the record sufficient to support the trial court's ruling. Anderson testified that it was not his intention to pull over Beckham's car; that he flashed the vehicle's lights only "briefly"; that Beckham drove past him after the lights were flashed; that had Beckham not stopped, Anderson would not have pursued him; and, that Anderson never used the university patrol car's siren. Since Beckham did not testify at the suppression hearing, Anderson's statements are uncontroverted. These statements were not rebutted by Beckham and constitute substantial evidence

sufficient to support the trial judge's conclusion that Anderson had not effectuated a police stop outside the bounds of his university jurisdiction.

The record may be sufficient to support an opposite conclusion, to wit, that the flashing of lights and request to Beckham to produce a driver's license constitutes an exercise of police action beyond that which the law allows. The relevant inquiry, however, is not whether the evidence might support such a conclusion, but whether substantial evidence exists in support of the conclusion reached by the trial judge. Such evidence does exist, and as such the order denying the motion to suppress was proper.

For the foregoing reasons, we affirm the judgment of the Fayette Circuit Court entered following its denial of Beckham's motion to suppress.

ALL CONCUR.

BRIEF FOR APPELLANT:

Herbert T. West  
Lexington, KY

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General

Louis F. Mathias, Jr.  
Assistant Attorney General  
Frankfort, KY