

Commonwealth Of Kentucky
Court of Appeals

NO. 2007-CA-000021-MR

ROBERT LEWIS

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE JOHN L. ATKINS, JUDGE
INDICTMENT NO. 05-CR-00592

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, LAMBERT, AND THOMPSON, JUDGES.

LAMBERT, JUDGE: Robert Lewis appeals from the denial of his motion to suppress evidence gathered during a canine unit search of his vehicle after a traffic stop. He alleges that the stop was unreasonably long, and therefore the search was a violation of his constitutional rights. After careful review, we affirm.

During the early morning hours of September 15, 2005, Officer Timothy Leyenaar of the Hopkinsville Police Department noticed a vehicle driving in a known high drug activity area.

The vehicle failed to properly signal when making a turn, and Officer Leyenaar initiated the stop at 4:18 a.m. Pursuant to the stop, the vehicle's plates, which indicated it was from Minnesota, were run through the Emergency Operation Center (hereinafter "EOC").

When Officer Leyenaar made contact with the driver, Lewis, and his two passengers, the officer realized that he was familiar with the two passengers due to their prior drug activities but was unfamiliar with Lewis. Lewis was irate about being pulled over, and Officer Leyenaar had to spend a substantial amount of time explaining the situation to him. During the explanation, EOC informed Officer Leyenaar that it was initially unsuccessful in obtaining registration information concerning the plates.

After checking for warrants and looking up violation numbers, at 4:26 a.m., EOC informed Officer Leyenaar that the tags on the vehicle had not been reported stolen, but the registration information was not yet available. During this time, Officer Leyenaar requested the canine unit to respond.

At 4:41 a.m., Officer Raymond Beard and his canine arrived. Officer Leyenaar had not yet completed the citation nor had dispatch informed him on the registration of the vehicle.

Officer Beard walked the canine around the vehicle, and it alerted at the passenger door. After the passengers were removed, the officers recovered a package of crack cocaine.

None of the occupants claimed ownership of the drugs, so all three were arrested.

Lewis was indicted for first-degree trafficking in a controlled substance and for possession of drug paraphernalia. He subsequently filed a motion to suppress "all evidence gained by the lengthy detention of the vehicle and persons therein." After the suppression hearing, the trial court determined that prior to the arrival of the canine unit, Officer Leyenaar's delay in completing the citation was not pre-text but in good faith fulfilling the obligation to ensure accurate charges.

At trial, Lewis was found guilty of first-degree possession of a controlled substance and possession of drug paraphernalia. He was subsequently sentenced to five years. This appeal followed.

Lewis argues that the trial court erred in failing to suppress the evidence gathered during the alleged illegal search of his vehicle. We disagree.

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. 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.

See Commonwealth v. Neal, 84 S.W.3d 920, 923 (Ky.App. 2006) (citing *Adcock v. Commonwealth*, 967 S.W.2d 6, 8 (Ky. 1998); *Commonwealth v. Opell*, 3 S.W.3d 747, 751 (Ky.App. 1999)).

Lewis' only argument is that the duration of the traffic stop was unreasonable and therefore the evidence should have been suppressed. Lewis raises the factual argument that Officer Leyenaar had completed the writing of the ticket before the K-9 unit arrived. In light of this allegation, he contends that the precedent of *United States v. Dortch*, 199 F.3d 193 (5th Cir. 1999), in which the Fifth Circuit held that detaining defendants for a K-9 search after the initial lawful purpose of the stop was complete was unlawful, dictates we find his detention unlawful.

Lewis ignores the fact that at a suppression hearing the judge is the sole trier of fact and the sole judge of credibility of the witnesses. See *Henson v. Commonwealth*, 20 S.W.3d 466, 469 (Ky. 1999). In this case, the trial court found that Leyenaar had not completed his legitimate purpose for the traffic stop when the K-9 unit arrived. It determined that the officer was "engaged in legitimate police investigation and paperwork." We review the court's findings of fact only for clear error and give due weight to the inferences drawn by the trial judge. See *Stewart v. Commonwealth*, 44 S.W.3d 376, 380 (Ky.App. 2000). After careful review, we find that the findings of fact were supported by substantial evidence. Therefore, there was no clear error.

Accordingly, we affirm the judgment of the Christian Circuit Court.

ALL CONCUR.

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