

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000369-MR

THOMAS E. SIMPSON

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 06-CR-00194

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: STUMBO AND WINE, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

WINE, JUDGE: Thomas E. Simpson (“Simpson”) appeals from his conviction for trafficking in a controlled substance in the first degree; possession of drug paraphernalia, second or subsequent offense; and possession of marijuana pursuant to a conditional guilty plea reserving the right to appeal the denial of his suppression motion. Simpson received sixteen years’ imprisonment. Having reviewed the record and the applicable law, we affirm.

¹ Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On September 24, 2006, Trooper Jeff McWhorter (“Trooper McWhorter”) and fellow officers were conducting a safety road check in the South Carrollton area of Muhlenberg County, Kentucky. While operating the road check, Trooper McWhorter observed a vehicle approach a stop sign a short distance from the roadblock. The vehicle remained stopped for an unusually long period of time (approximately two minutes). The vehicle eventually turned right, traveling away from the roadblock toward Owensboro. Thinking that the driver’s actions were unusual, Trooper McWhorter decided to follow the car in his police cruiser.

Trooper McWhorter followed the vehicle for over a half mile. As he followed, he observed the vehicle weaving in the lane, back and forth from the center line to the fog line. Trooper McWhorter also noted that the vehicle’s rear license plate light was not working. At this point, Trooper McWhorter suspected the driver was intoxicated, and so he turned on his blue lights and directed the vehicle to pull over. Simpson was the driver of the stopped vehicle. Upon approaching the vehicle, Trooper McWhorter noticed Simpson was sweating and grinding his teeth. Due to his training and experience, Trooper McWhorter knew these to be signs typical of a person under the influence of methamphetamine. Believing Simpson to be under the influence of drugs, Trooper McWhorter began administering several field sobriety tests, all of which Simpson failed. Simpson admitted to Trooper McWhorter that he was a habitual user of methamphetamine, marijuana, and Xanax. Trooper McWhorter then arrested Simpson for driving under the influence.

As a search incident to arrest, Trooper McWhorter searched Simpson's vehicle and found a locked box. Simpson gave Trooper McWhorter the key to the box wherein he found twenty-three grams of suspected methamphetamine, assorted drug paraphernalia, a cutting agent, and marijuana.

On November 29, 2006, Simpson filed a motion to suppress, with a hearing held thereafter on December 4, 2006. In said motion, Simpson asserted that the evidence obtained from his vehicle was the fruit of an unlawful stop. At the suppression hearing, Trooper McWhorter testified to the facts as stated above. On the date of the hearing, the trial court entered an order denying the motion. The court found that the testimony of Trooper McWhorter as to Simpson's driving pattern was undisputed, and that the manner in which Simpson was driving was sufficient to create a reasonable suspicion to justify a stop. Following the denial of the suppression motion, Simpson entered a conditional guilty plea to trafficking in a controlled substance in the first degree; possession of drug paraphernalia, second or subsequent offense; and possession of marijuana. This appeal followed.

Simpson's sole argument on appeal is that the trial court erred in finding the stop was valid, asserting that there was no evidence that he was operating the car in violation of the law. Thus, Simpson argues, all evidence seized from his vehicle should have been suppressed. The standard of review of a trial court's decision on a suppression motion has two prongs. *Stewart v. Commonwealth*, 44 S.W.3d 376, 380 (Ky.App. 2000). First, a trial court's findings of fact pursuant to a motion to suppress are conclusive if

they are supported by substantial evidence. RCr 9.78. Here the trial court made detailed and thorough findings of fact which have not been refuted. The second prong is a *de novo* review to determine whether the trial court's ruling is correct as a matter of law. *Stewart*, 44 S.W.3d at 380.

“In order to justify an investigatory stop of an automobile, the police must have a reasonable articulable suspicion that the persons in the vehicle are, or are about to become involved in criminal activity.” *Taylor v. Commonwealth*, 987 S.W.2d 302, 305 (Ky. 1998); *United States v. Cortez*, 449 U.S. 411, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981). *See also Creech v. Commonwealth*, 812 S.W.2d 162 (Ky.App. 1991). “In order to determine whether there was a reasonable articulable suspicion, the reviewing appellate court must weigh the totality of the circumstances.” *Taylor*, 987 S.W.2d at 305.

Although Trooper McWhorter did testify that he pursued the vehicle because of the extra long stop at the stop sign, his testimony also included his observations that Simpson was weaving back and forth between the yellow line and the fog line in his lane. Simpson testified that he only began weaving when the trooper turned on his emergency lights and it startled him and caused him to weave. However, Trooper McWhorter also stated that he believed that the rear license plate light was not working. Simpson put on witnesses who testified that his rear license plate light was working. Without considering the operating status of the license plate light, we conclude that Simpson's behavior while driving created enough reasonable suspicion to justify a stop. The testimony of Trooper McWhorter constitutes substantial evidence to support

the trial court's findings as to Simpson's actions. Further, considering the totality of the circumstances, we agree with the trial court that Simpson's actions were sufficient to create reasonable suspicion to stop the car. *Taylor*, 987 S.W.2d at 305. *See also Steinbeck v. Commonwealth*, 862 S.W.2d 912, 914 (Ky.App. 1993). (Driver turning away from sobriety checkpoint, in conjunction with officer's experience in similar circumstances, was sufficient for officer to form reasonable suspicion that driver may have been engaged in criminal activity.) Consequently, the trial court properly denied Simpson's suppression motion.

Accordingly, the judgment of the Muhlenberg Circuit Court is affirmed.

ALL CONCUR.

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