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Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-1340-MR

COMMONWEALTH OF KENTUCKY — APPELLANT

v.

APPEAL FROM HOPKINS CIRCUIT COURT
HONORABLE CHRISTOPHER B. OGLESBY, JUDGE
ACTION NO. 24-CR-00282

STEPHAN CRAWFORD — APPELLEE

OPINION
AFFIRMING IN PART,
VACATING IN PART,
AND REMANDING

** ** ** ** **

BEFORE: THOMPSON, CHIEF JUDGE; EASTON AND ECKERLE, JUDGES.

EASTON, JUDGE: The Commonwealth appeals from an Order of the Hopkins Circuit Court granting Appellee Stephan Crawford's (Crawford) Motion to Suppress evidence. During his interaction with the police, Crawford threw away a

black bag[1] containing drugs and a digital scale, and this is the focus of the suppression motion. The Commonwealth argues the circuit court erred in finding no probable cause for a "traffic stop" by accepting the testimony of the non-defendant driver that he used his turn signal and then further erred in finding that Crawford did not attempt to flee. We affirm the finding of no probable cause based on an observed traffic violation, but we vacate and remand for further proceedings to address the remainder of the interaction between Crawford and police.

FACTUAL AND PROCEDURAL BACKGROUND

Crawford was indicted for resisting arrest,[2] fleeing or evading police,[3] first-degree trafficking in methamphetamine (more than two grams),[4] and trafficking in marijuana (less than eight ounces)[5] as the result of what has been assumed to be a traffic stop and subsequent search. Crawford was also indicted as

[1] The black bag had also been described as a "backpack" in the record.

[2] Kentucky Revised Statutes (KRS) 520.090.

[3] KRS 520.095.

[4] KRS 218A.1412.

[5] KRS 218A.1421.

a persistent felony offender.[6] Crawford has a record of drug trafficking[7] and was on probation in two cases[8] for methamphetamine possession at the time of the police interaction in question.

Crawford filed a Motion to Suppress the drug evidence seized, arguing there was no probable cause to stop the vehicle because the driver did not fail to use his turn signal. He also disputed the claim that he tried to flee from detectives after the stop. He argued there was no probable cause to search either his person or his black bag.

We start our review of the evidence with a recognition that evaluation of whether officers have a reasonable, articulable suspicion of criminal activity to detain or probable cause to arrest develops in a matter of seconds, sometimes even a split second, along a continuum of interaction between police and potential defendants. For this reason, we take the time to relate the details of the evidence presented.

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[6] KRS 532.080.

[7] *Commonwealth v. Stephan Crawford*, No. 12-CR-00480, Christian Circuit Court (diversion granted for marijuana trafficking later voided and five-year sentence ordered to be served).

[8] *Commonwealth v. Stephan Crawford*, No. 23-CR-00110, Hopkins Circuit Court, and *Commonwealth v. Stephan Crawford*, No 22-CR-00293, Hopkins Circuit Court (charge of trafficking in methamphetamine amended down to possession). Revocation of the probation in both cases has been scheduled along with proceedings in this case on appeal.

Three witnesses testified at the suppression hearing: Detective Dozer (Dozer), Officer Childress (Childress), and the driver, Ryan Bowman (Bowman), of the vehicle in which Crawford was a passenger. The circuit court also viewed body camera video footage provided by Childress.

The Commonwealth called Dozer as its first witness. He testified that detectives in the Madisonville-Hopkins County Vice/Narcotics unit received a Crime Stoppers tip alleging that Crawford was selling drugs out of his home on Silkwood Avenue in Madisonville. Dozer did not state when the tip was received or articulate any further details about the tip or the tipster's basis of the knowledge claimed. Dozer stated these tips were common and that part of their job was to confirm the validity of tips.

As a result, Dozer and two other detectives went to Crawford's residence to conduct surveillance from the street in an unmarked car. Because they were working undercover, the detectives were not wearing body cameras and did not possess handcuffs.

The detectives surveilled the home for approximately one hour when they observed two males leave the house, enter a white vehicle, and drive away along Silkwood Avenue. Detectives later determined Crawford was seated in the front passenger seat, and his friend, Bowman, was the driver.

While following the vehicle, Dozer, who was riding in the back passenger seat of the unmarked car, said he observed Bowman turn left from Silkwood Avenue onto Browning Street without first using his turn signal. The detectives contacted a local traffic patrol unit to initiate a traffic stop, but the officer on duty was too far away to promptly assist. So, detectives followed the vehicle along Browning Street and continued mobile surveillance after Bowman turned right onto West Noel Avenue.

After briefly traveling down West Noel Avenue, Bowman turned onto Brown Lane and immediately pulled into a driveway. Detectives *then* activated their lights and pulled behind the vehicle at an angle, which would prevent any easy way out. They did not activate their siren.

Dozer was the first officer out of the car and identified himself as law enforcement when he got out. Crawford had quickly gotten out of the vehicle holding a black bag. He turned toward Dozer and asked why they had been stopped. Dozer instructed Crawford to get back in the car, but instead Crawford first threw the black bag and then arguably attempted to flee. Dozer estimated Crawford was only able to get four or five feet away from the vehicle when he and another detective took Crawford to the ground. The detectives struggled to restrain Crawford as he resisted and failed to comply when instructed to put his hands behind his back.

Dozer testified he was able to apprehend Crawford quickly, but it appeared Crawford's intention was to get away from him and keep the black bag away from police by throwing it toward another vehicle. Ultimately, Crawford was restrained. Officer Childress arrived on scene wearing a body camera and provided handcuffs. Bowman was also placed temporarily in handcuffs and later released. Dozer did not recall any other witnesses present at the stop besides the parties involved.

Detectives then searched the black bag and discovered a black box containing 30.1 grams of suspected methamphetamine, an additional 1.3 grams of suspected methamphetamine in a rolled-up dollar bill, a digital scale, a jar containing 29.1 grams of suspected marijuana, and a cup containing suspected marijuana residue and a glass smoking device. Officers found $150 in U.S. currency on Crawford's person.

The Commonwealth then called Childress as its second and final witness. Childress testified she was unable to assist initially with the traffic stop but later arrived at the scene to provide back-up. She was wearing a body camera, and it was recording at that time.

Upon arrival, she observed a struggle between the detectives and Crawford. The detectives were trying to get Crawford's hands behind his back. She provided handcuffs to the detectives but admitted she was not present when

Crawford pulled into the driveway or when he was initially taken to the ground. He was already physically restrained when she arrived.

Childress confirmed the authenticity of the body camera video footage, and it was played for the circuit court without objection. The brief video showed two detectives on top of Crawford and the detectives and Crawford yelling at one another. Crawford is laying on his stomach on the driveway next to the front passenger side door. He certainly appears to be resisting his arrest. The video showed Crawford being handcuffed and Bowman standing quietly next to the driver's side door with his hands behind his back in handcuffs.

Crawford called Bowman as his sole witness. Bowman testified that he had been friends with Crawford since childhood and the two of them assisted one another with a car-detailing business. On the day of the traffic stop, Bowman was driving Crawford to the home on Brown Lane where they ultimately interacted with the police. They went to this home to pick up a car to detail.

Bowman disputed he failed to use his turn signal, stating he typically uses his turn signal, and he clearly remembered using it on the day in question. Bowman recalled an animal control truck in the road before the turn onto Browning Street. Bowman stated he saw animal control officers trying to restrain a pit bull and he had to swerve around the truck before he got to the stop sign. He distinctly recalls activating his turn signal at the stop.

Significantly, Bowman was not aware they were being followed until they had already arrived at their destination and pulled into the customer's driveway on Brown Lane. The car they were going to pick up to detail was parked on the street and the owner was standing next to it. A woman and child were seated on the front porch of the home as well. After they pulled into the driveway, Crawford got out of the vehicle and greeted the customer.

Then the detectives immediately pulled in behind Bowman's vehicle at an angle on the street. Bowman did not confirm the verbal interaction between Dozer and Crawford. Bowman refuted Dozer's testimony that Crawford tried to flee. Bowman testified that Crawford did not try to run away. After Crawford got out of the car to greet the customers, and before he could do anything else, he turned around toward detectives and took a step while his hand was still on the door. Officers immediately took him to the ground. Bowman did not address the throwing of the black bag.

While Crawford was being taken down, Bowman heard officers yell at him to put his hands up, so he placed them on the steering wheel until he was instructed to get out of the car. Bowman was then handcuffed and told to stand in front of a vehicle. The detectives searched Bowman's vehicle. They found nothing of note. It was not until they were finished that Bowman was uncuffed

and told he was "pulled over" for failure to use a turn signal. He was never cited for any traffic offense. The Commonwealth did not cross-examine Bowman.

After hearing the testimony and viewing the body camera video, the circuit court concluded the Commonwealth had failed to establish a valid traffic stop or a valid search incident to arrest for fleeing or evading police.[9] The circuit court relied on Bowman's testimony that he "certainly" used his turn signal and that Bowman was never cited for an improper turn signal. The circuit court accepted Bowman's testimony that Crawford was still holding onto the passenger door of the vehicle speaking with customers on the porch when officers took him to the ground. The circuit court also noted that the body camera video clearly showed Crawford on the ground right beside the vehicle, "having yet to flee."

The circuit court granted Crawford's Motion to Suppress all evidence obtained, including the contents of the black bag. The Commonwealth then filed this timely appeal.

STANDARD OF REVIEW

The standard of review on a suppression motion is twofold. First the factual findings are conclusive if supported by substantial evidence and should only be reviewed for clear error. RCr[10] 9.78; *Commonwealth v. Neal*, 84 S.W.3d

[9] Trial Record (TR) at 79.

[10] Kentucky Rules of Criminal Procedure.

920, 923 (Ky. App. 2002). Second, when the findings of fact are supported by substantial evidence, the question is "whether the rule of law as applied to the established facts is or is not violated[,]" *i.e.*, determination of reasonable suspicion and probable cause are subject to *de novo* review because they are mixed questions of law and fact. *Adcock v. Commonwealth*, 967 S.W.2d 6, 8 (Ky. 1998) (quoting *Ornelas v. United States*, 517 U.S. 690, 697, 116 S. Ct. 1657, 1662, 134 L. Ed. 2d 911 (1996)).

ANALYSIS

The Commonwealth raises numerous challenges to the circuit court's finding that there was no probable cause for the traffic stop. The Commonwealth also makes numerous arguments in support of the validity of the search of the black bag regardless of the validity of the initial stop. While we find no clear error in the circuit court's specific fact-finding about the turn signal, we must remand because of errors in the application of the law pertaining to reasonable, articulable suspicion and probable cause as applied to the continuing circumstances presented.

THE "TRAFFIC STOP"

As the Kentucky Supreme Court explained in *Commonwealth v. Bucalo*, 422 S.W.3d 253, 257–58 (Ky. 2013):

> The Fourth Amendment to the U.S. Constitution, made applicable to the states through the Fourteenth Amendment and Section 10 of the Kentucky Constitution, protects citizens from unreasonable

> searches and seizures. A traffic stop is considered a seizure of the driver "even though the purpose of the stop is limited and the resulting detention quite brief." *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979). Therefore, a traffic stop is "subject to the constitutional imperative that it not be 'unreasonable' under the circumstances." *Whren v. U.S.*, 517 U.S. 806, 810, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996). It has long been considered reasonable for an officer to conduct a traffic stop if he or she has probable cause to believe that a traffic violation has occurred. *Wilson v. Commonwealth*, 37 S.W.3d 745 (Ky. 2001).

Here, the circuit court determined the stop at issue was invalid because the evidence was insufficient to show Bowman failed to use his turn signal. The circuit court essentially found no probable cause to believe that a traffic violation had occurred. The Commonwealth raises numerous challenges to this determination, most of which go to the circuit court's discretion in weighing the evidence and the credibility of witnesses.

CR[11] 52.01 provides that the factual findings of the trial court "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." "When confronted with inconsistent testimony or other conflicting evidence at a suppression hearing, the trial court, as factfinder, is entitled to weigh the evidence and judge the credibility of the witnesses." *Osborne v. Commonwealth*, 718

[11] Kentucky Rules of Civil Procedure.

S.W.3d 622, 627 (Ky. 2025). "This rule applies whether the inconsistencies arise from the testimony of a single witness or within the context of the overall proof. Moreover, 'the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a] . . . finding from being supported by substantial evidence.'" *Id*. (citations omitted).

The Commonwealth first argues the circuit court improperly credited Bowman's testimony over Dozer's testimony. The Commonwealth interprets certain dialogue between counsel and the trial judge as indicating that, because Crawford offered one witness, and the Commonwealth did the same, the trial judge felt he could not find for the Commonwealth by a preponderance of the evidence. But the circuit court's decision is not actually based on the number of witnesses who testified, but rather, it is based on the weight and credibility of the testimony.

Prior to announcing his decision from the bench, the trial court judge discussed his concerns with the case with counsel. The trial judge appeared frustrated that there were three officers in the unmarked vehicle following the Bowman vehicle yet only one officer testified, and this officer was in the back seat. There was no testimony about whether officers confirmed the turn signal light was functioning properly at the time of the alleged traffic violation, no one was charged with a traffic violation, and the driver of the vehicle testified he *absolutely* activated his turn signal. Childress was not present to observe a traffic violation,

so her testimony did not support the position of the Commonwealth. The trial judge described the traffic stop as "sloppy" and stated he didn't care what was in the black bag "if the stop is not a good stop, if there was no evidence before the court to find a constitutional stop, the court won't allow evidence to come in."[12]

The trial judge went on to state that there was only probable cause to stop the vehicle if the turn signal was not activated, and the Commonwealth had failed to prove this fact by a preponderance of the evidence. We note here that the Commonwealth argued that doubt is resolved in favor of the Commonwealth. That is the standard for a directed verdict[13] but does not apply to a suppression decision. In any event, this misstatement did not alter the result of the motion. Even had the circuit court applied that presumption, and we do not believe it did, the Commonwealth did not satisfy its burden of proof about the turn signal.

The Commonwealth still argues Dozer's testimony had the most convincing force. But a police officer does not inherently have more credibility by virtue of his or her occupation. This principle, that a factfinder should evaluate the credibility of each witness with no pre-determined presumptions due to occupation,

[12] Video Record, 10-1-25, beginning at 10:01:43.

[13] *See Mills v. Commonwealth*, 680 S.W.3d 497, 499 (Ky. App. 2023).

is so strong in Kentucky law that such a belief is grounds to strike a potential juror for cause. *See Fugett v. Commonwealth*, 250 S.W.3d 604, 613–15 (Ky. 2008).

The Commonwealth insists the circuit court improperly relied on the fact that detectives intended to have a traffic patrol officer make the stop. The Commonwealth is correct that detectives in this case were free to request such assistance, particularly when conducting surveillance in an unmarked car without body cameras or handcuffs.[14] The circuit court simply mentioned the request for traffic patrol assistance in conjunction with other events that transpired prior to the stop. But there is no indication the evidence was suppressed in this case because of a request for traffic patrol assistance. This testimony was not listed in the written order articulating grounds to support the finding of an invalid stop, and "[w]hen there is a conflict between a court's oral statements and the written judgment, the written judgment controls." *Machniak v. Commonwealth*, 351 S.W.3d 648, 652 (Ky. 2011).

At this point, we comment on the observation that the circuit court considered the fact that Bowman was not cited for a traffic violation. We cannot tell what extent this factor figured into the factual determination by the circuit

[14] "[A]n arresting officer is entitled to act on the strength of the knowledge communicated from a fellow officer and he may assume its reliability provided he is not otherwise aware of circumstances sufficient to materially impeach the information received." *Commonwealth v. Smith*, 542 S.W.3d 276, 281 (Ky. 2018) (internal quotation marks and citation omitted).

court that Bowman used his turn signal. We find no law which requires a citation to be issued. When subsequent events reveal much more serious matters, we should not question the discretion of officers not to cite for relatively minor violations, especially when the driver has been cooperative.

In addition, the Commonwealth argues that "[t]he constitutional validity of a stop is not undermined simply because the officers who made the stop were mistaken about relevant facts." *Benton v. Commonwealth*, 598 S.W.3d 102, 106 (Ky. App. 2020) (quoting *United States v. Jenkins*, 452 F.3d 207, 212 (2d Cir. 2006)). And even if the officers had never intended to issue a citation and used it as a mere pretext for the stop, there would be no problem because "the officer's subjective intentions were irrelevant." *Greer v. Commonwealth*, 514 S.W.3d 566, 569 (Ky. App. 2017). All that was required was "probable cause to believe a civil traffic violation has occurred . . . regardless of [the officer's] subjective motivation in doing so." *Id*. (quoting *Wilson v. Commonwealth*, 37 S.W.3d 745, 749 (Ky. 2001)).

Under the Commonwealth's reasoning, arguably any traffic stop for any reason is lawful. Under this theory, citizens of the Commonwealth would effectively have no constitutional protection against unlawful traffic stops. But the law in Kentucky clearly provides that a traffic stop is "subject to the constitutional imperative that it not be 'unreasonable' under the circumstances." *Whren*, *supra*.

So how do we distinguish what is "unreasonable" from what is a mere "mistake" in the context of a traffic stop?

The Commonwealth relies on *Benton*, but its reliance is misplaced. In *Benton*, the officer who conducted the traffic stop believed the driver had an outstanding warrant based on information received from an NCIC[15] search of the vehicle's license plate. *Benton*, 598 S.W.3d at 105. Officers made an honest mistake by relying on incorrect information from a trusted source. The *Benton* court upheld the stop, relying on the reasoning in *U.S. v. Jenkins*, *supra*, a 2nd Circuit case in which officers acknowledged a mistake about whether there was a temporary tag on a vehicle. The 2nd Circuit held that, upon seeing there actually was a temporary tag, the approaching officers did not need to immediately turn around and get back in their car and drive away. Instead, it was acceptable for the officers to approach the car to explain why it was pulled over, and if they happened to immediately smell or see something giving rise to the need to investigate criminal activity, then that was permissible. *Jenkins*, 452 F.3d at 213–14.

In *Greer*, 514 S.W.3d at 569, we determined the grade of window tinting on a vehicle, later found to be within legal limits, did not invalidate a traffic stop to investigate that issue. It was reasonable to stop the vehicle when the degree

[15] National Crime Information Center (NCIC) is a nationwide electronic database that stores active arrest warrants from federal, state, and local agencies.

of the tint could not be ascertained until further measurement. But traffic stops based on honest mistakes discussed are not analogous to what happened in this case.

Here, detectives did not make an honest *mistake*. Rather, they testified about a *disputed observation* about a turn signal. The trial court believed the driver over the officer effectively disbelieving the officer's testimony. The circuit court, as factfinder confronted with inconsistent testimony, judged the credibility of the witnesses, and determined the Commonwealth had failed to meet its preponderance of the evidence burden sufficient to overcome the Motion to Suppress on this specific point. We find no clear error in this determination.

Had there been an observed traffic violation, Crawford might have raised the Crime Stopper tip investigation as a pretext for the stop. The circuit court briefly addressed this issue from the bench. The trial judge stated that the tip alone, without articulation of other facts, would not give sufficient cause for a stop. We agree. "Before an investigating officer can rely on an anonymous tip as part of his basis for reasonable suspicion, that tip must have sufficient indicia of reliability." *Henson v. Commonwealth*, 245 S.W.3d 745, 748 (Ky. 2008) (citations omitted).

Here, Dozer did not supply details indicating "sufficient indicia of reliability." There was no evidence that detectives observed suspicious behavior

indicative of drug trafficking. Dozer admitted detectives did not recognize Crawford or Bowman when they left Crawford's home in the vehicle. Some indication of reliability of the anonymous tip was needed if the tip was to support a stop independent of an observed traffic violation. Pretext is not the relevant inquiry if there is in fact no observed traffic infraction.

For the first time on appeal, the Commonwealth raised the issue of whether a "traffic stop" even occurred. Commonwealth's Appellant Brief at footnote 6, pages 18 and 19, states as follows:

> Bowman's testimony that Crawford was "speaking with customers on a porch" casts doubt on whether a traffic stop even occurred. TR 79. Bowman never testified as to his knowledge that he was being pulled over. In fact, Bowman stated "I seen the black vehicle, but I didn't know who it was. And then as I pulled into the driveway, that's when they pulled up." VR 10/01/2025 at 9:49:50-9:49:50. Bowman then testified that he did not remember if the detectives turned on their blue lights. 9:40:50-9:40:59. If Bowman's testimony is to be believed, then it casts doubt on whether a traffic stop ever actually occurred. In that case, Crawford was never detained as part of a traffic stop, and the issue of the stop's validity becomes irrelevant.

This argument should have been raised in the first instance with the circuit court. Everyone argued about a traffic stop in the circuit court. And we have found that the finding of the use of a traffic signal is supported by the evidence of record. We also see the reality that the presence of the detectives who blocked retreat for Crawford serve as a form of detention, even if only for a

moment before other events occurred. But for other reasons which we will now explain, this case must be remanded for further analysis. We will not limit the circuit court in how it re-evaluates the evidence in addressing the issues.

The circuit court here decided that Crawford did not flee. That ultimate determination was not before the court. The question was only whether the officers then had a reasonable, articulable suspicion of fleeing. KRS 520.100 speaks in terms of suspicion when evaluating whether fleeing is occurring. At the moment of the alleged attempted flight, the officers knew Crawford's recent criminal history, they had a tip, *and*, when they interacted with Crawford, he inexplicably threw a bag away while they watched him do so. This would certainly raise suspicion that the black bag contained drug contraband as would later be proven by examination.

Then, whether Crawford was still touching the vehicle or a few feet from it, the officers observed what they perceived to be flight. The question is not whether he in fact fled at this point but whether the officers had a reasonable, articulable suspicion that Crawford was at least attempting to flee or tamper with evidence. They may also have developed probable cause for arrest by witnessing the misdemeanor offenses of attempted flight or tampering with evidence.

Now we finally have the separate question of resisting arrest. As the official commentary to KRS 520.090 states: "the unlawfulness of an arrest may not

be raised as a defense to a prosecution under this section." Once the officers decided to arrest Crawford, Crawford simply was not authorized to resist. Thus, the circuit court must consider the impact of the eventual arrest for resisting arrest. This gives us a segue to the remaining complaints of the Commonwealth about the black bag.

THE SEARCH OF THE BLACK BAG

> It is well-established under both Kentucky and U.S. Supreme Court jurisprudence that all searches without a valid search warrant are unreasonable unless shown to be within one of the exceptions to the rule that a search must rest upon a valid warrant. Accordingly, in order for us to hold that Bembury's Fourth Amendment rights were violated by the search of his backpack, we must find that the officers' actions constituted a search, that they acted without a warrant or consent, and that no established exception to the warrant requirement applies. It is not disputed that the officer's actions constituted a search and that the search was conducted without a warrant or Bembury's consent. The dispositive question is therefore whether an exception to the warrant requirement applies. More specifically, whether the search was justifiable as being incident to Bembury's lawful arrest.

Commonwealth v. Bembury, 677 S.W.3d 385, 392 (Ky. 2023) (internal quotation marks and citations omitted).

The search in *Bembury* concerned a container that was in Bembury's actual and exclusive possession immediately preceding his arrest and would have accompanied him to jail. *Id.* at 407. The Kentucky Supreme Court upheld the

search of the container because it was considered part of *Bembury*'s "person" for purposes of a search incident to his arrest. Our high Court held that "to be considered part of an arrestee's person, a container must be in the arrestee's *actual and exclusive possession*, as opposed to constructive possession, at or immediately preceding the time of arrest such that the item must necessarily accompany the arrestee into custody." *Id*. at 406 (emphasis added).

Like the facts in *Bembury*, there is no dispute in this case that Crawford did not give consent to search his black bag. And like the Commonwealth's position in *Bembury*, it argues Crawford's black bag was searched as part of his "person" incident to his lawful arrest.

On remand, the circuit court must determine from all the evidence presented whether the black bag was within Crawford's possession such as to be permissible to search as part of a lawful arrest, if for nothing else than the arrest for resisting arrest. If it was not in Crawford's possession, the next question is the effect of Crawford throwing the black bag away. The question of abandonment was arguably not specifically raised by the Commonwealth, yet the apparently uncontradicted circumstances of the throwing of the black bag were presented and considered by the circuit court. The status of the black bag must be addressed on remand because of our determination of the error in stopping the analysis initially with the validity of the traffic stop and the finding of no fleeing when the question

to be answered was only if the officers had the required suspicion or probable cause by witnessing fleeing or tampering with evidence. As to the fleeing allegation, the officers could have been mistaken, and this could excuse any infirmity in the decision to react to what was perceived as fleeing. That is different from the claimed "mistake" in the actual observation of a traffic signal, which was in fact an observation disbelieved by the trial court.

No matter what, we have the unaddressed question of whether Crawford abandoned the black bag. If it was not in his possession when he was arrested for resisting arrest, it may have been abandoned. "[A]n individual does not hold any reasonable expectation of privacy to abandoned property." *Watkins v. Commonwealth*, 307 S.W.3d 628, 630 (Ky. 2010) (citing *California v. Greenwood*, 486 U.S. 35, 108 S. Ct. 1625, 100 L. Ed. 2d 30 (1988)). "Leaving property behind, when in flight from apprehension by law enforcement, must be considered in and of itself an abandonment of that property." *Id*. "[W]hen a person discards an item as part of an attempt to resist arrest, courts have repeatedly found that the person abandoned the item." *United States v. Dillard*, 78 F. App'x 505, 511 (6th Cir. 2003).

The Commonwealth argues there is no reasonable expectation of privacy in the black bag Crawford abandoned and it was reversible error to suppress this evidence. As proof of abandonment, the Commonwealth points to

the testimony of Dozer that, when detectives approached Crawford, he threw the black bag toward the side of the vehicle parked on the side of the road (presumably the customer's vehicle parked on the street). Dozer testified it appeared Crawford was trying to keep the bag away from officers. And because Crawford abandoned the black bag, he had no reasonable expectation of privacy in it and thus cannot benefit from the exclusionary rule (which excludes the admission of evidence obtained as the result of an invalid, warrantless search).

Because there is no reasonable expectation of privacy in abandoned property, the search of Crawford's black bag could be considered proper as an exception to the warrant requirement. And the warrantless search of abandoned property is a separate issue from the validity of the traffic stop.

"Under both Section 10 of the Kentucky Constitution and the Fourth Amendment to the U.S. Constitution, abandoned property is outside of constitutional protection. What constitutes abandoned property has to be determined on a case-by-case basis. Therefore, the act of abandonment itself turns to a large degree upon the possessor's state of mind. To that extent, trial courts must weigh the evidence and consider the circumstances in reaching a conclusion as to whether the property has, in fact, been abandoned." *Watkins*, 307 S.W.3d at 630 (citations omitted). Because the analysis essentially stopped with the finding

of no fleeing, when that was not the standard to be applied, the circuit court must now address the circumstances leading to the actual arrest.

CONCLUSION

There is substantial evidence to support the circuit court's initial finding that Bowman used his turn signal. As a result, there was no probable cause for the traffic stop (assuming it was in fact a traffic stop). In the analysis after the validity of the initial stop itself, the circuit court erred in its legal analysis in determining that fleeing did not occur. This leaves for determination on remand whether the black bag with its incriminating contents was properly searched incident to a lawful arrest for fleeing or resisting arrest or whether Crawford abandoned the black bag and cannot now complain of the discovery of its contents. We VACATE and REMAND for further proceedings.

ALL CONCUR.

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