

RENDERED: JANUARY 5, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000564-MR

CURTIS CHAMBERS

APPELLANT

v.

APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE FRED A. STINE, V, JUDGE
ACTION NO. 15-CR-00863

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: COMBS, D. LAMBERT, AND NICKELL, JUDGES.

NICKELL, JUDGE: Curtis Chambers entered a conditional guilty plea to one count of first-degree possession of a controlled substance¹ and one count of possession of drug paraphernalia.² Chambers alleges the trial court erred in

¹ Kentucky Revised Statutes (KRS) 218A.1415, a Class D felony.

² KRS 218A.500(2), a Class A misdemeanor.

denying his motion to suppress evidence discovered during questioning by a police officer during a traffic stop. Chambers alleges the officer's questioning took place after the purpose of the initial stop had been completed and, therefore, violated the Fourth Amendment to the United States Constitution as an unreasonable search and seizure, making the evidence inadmissible. Upon careful review, we discern no error and affirm.

Cold Spring Police Officer Galvin Adkisson was travelling south on US 27 in Campbell County, Kentucky, when he noticed a vehicle swerving over the yellow center line of the highway two or three times. Officer Adkisson "ran the plates" of the vehicle and thereafter received a transmission requesting verification of the vehicle's insurance. Consequently, Officer Adkisson initiated a traffic stop to determine the sobriety of the driver and whether the vehicle was insured.

During the traffic stop, Officer Adkisson discovered the driver of the vehicle was Richard Johnson and his passenger was Chambers. Officer Adkisson asked Johnson to produce his driver's license and proof of insurance. Johnson stated he did not have his driver's license³ but gave the officer his name and social security number to verify he was a licensed driver. There is conflicting testimony

³ This constitutes a violation of KRS 186.510, for which the officer could have issued a citation to Johnson.

on whether proof of insurance was produced. Officer Adkisson testified he did not recall whether proof of insurance was produced, but Chambers testified it was.

Officer Adkisson asked Johnson where the trip originated. Johnson informed the officer he and Chambers had been looking at tires for his truck. Officer Adkisson approached Chambers and asked him the same question. Chambers told the officer that they were looking for tires for the detained truck—his father’s truck. Chambers testified it was at this time Officer Adkisson asked Chambers, “Haven’t I pulled you over on a drug stop before?” Chambers denied any previous encounter.

Officer Adkisson asked Johnson to step out of the vehicle. Officer Adkisson observed track marks⁴ on Johnson’s arm and asked Johnson if there were any drugs or paraphernalia in the vehicle. The officer informed Johnson if there was anything in the vehicle, Johnson would only receive a citation and be released. Johnson admitted having a syringe in the vehicle.

Officer Adkisson approached the passenger side of the vehicle and told Chambers Johnson had admitted having a syringe in the car. The officer asked Chambers if he had any contraband of his own, explaining an affirmative answer would only lead to a citation. In response, Chambers admitted having a syringe

⁴ The date of the traffic stop was August 4, 2015, around 8:00 p.m. Officer Adkisson testified it was still light outside when he observed the track marks on Johnson’s arm.

and heroin inside his drink cup. This exchange occurred less than ten minutes into the stop and prior to Officer Adkisson issuing any citations.

After a second police unit arrived, less than five minutes later, Officer Adkisson searched the vehicle, finding the heroin and syringes Chambers and Johnson admitted possessing. Officer Adkisson testified it was after arrival of the second police unit that he verified Johnson was a licensed driver. Officer Adkisson wrote citations and released both Chambers and Johnson as he had promised. It took Officer Adkisson between twenty to twenty-five minutes to issue the citations to Johnson and Chambers. The total time of the stop was around fifty minutes.

Prior to trial, Chambers moved to suppress the evidence seized during the search of the vehicle, arguing his roadside detention was prolonged beyond the time authorized by law. After a hearing, at which Chambers and Officer Adkisson testified, the trial court denied Chambers' motion.

Following the denial, Chambers entered a conditional guilty plea to both charges, reserving the right to appeal the trial court's suppression ruling. Chambers was sentenced to consecutive terms of two years in prison on count one, probated for five years, and twelve months in prison on count two, probated for two years. This appeal followed.

On review of the trial court's denial of Chambers' motion to suppress, we first review the trial court's findings of fact under the clearly erroneous standard. *Davis v. Commonwealth*, 484 S.W.3d 288, 290 (Ky. 2016) (citing *Simpson v. Commonwealth*, 474 S.W.3d 544, 547 (Ky. 2015)). Under this standard, the trial court's findings of fact will be conclusive if they are supported by substantial evidence. *Id.* We find the trial court's findings of fact to be supported by substantial evidence. Therefore, they are binding on our review.

Chambers asserts the trial court erred in applying the law to the facts. Chambers contends Officer Adkisson's questions about possession of drugs and/or drug paraphernalia and his subsequent search and seizure were illegal because they occurred after Officer Adkisson had accomplished the initial purposes of the traffic stop—determining sobriety of the driver and insurance coverage of the vehicle. We undertake *de novo* review of the trial court's application of the law to the facts to determine whether its decision to deny the motion to suppress was correct as a matter of law. *Id.*

Chambers contends the stop was unlawfully extended when Officer Adkisson questioned Johnson, and then asked Chambers, about drug and/or drug paraphernalia possession. Specifically, Chambers argues the officer's observation of the track marks on Johnson's arm did not support a reasonable suspicion drugs or paraphernalia were present in the vehicle or possessed by its occupants.

The Fourth Amendment to the United States Constitution guarantees “[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]” Warrantless searches and seizures are “*per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967). One such exception is an investigative stop made pursuant to *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). During a *Terry* stop, a police officer may temporarily seize a person if the officer has reasonable suspicion to believe the person has committed or is about to commit a crime. *Florida v. Royer*, 460 U.S. 491, 498, 103 S.Ct. 1319, 1324, 75 L.Ed.2d 229 (1983).

Traffic stops are seizures within the meaning of the Constitution. *Rodriguez v. United States*, 135 S.Ct. 1609, 1614, 191 L.Ed.2d 492 (2015). “Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s ‘mission’—to address the traffic violation that warranted the stop, and attend to related safety concerns[.]” *Id.* (internal citations omitted). “Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.*

In *Rodriguez*, the Supreme Court addressed the constitutionality of a prolonged stop due to a dog sniff, holding any nonconsensual extension of a

detention beyond the time necessary to complete the purpose of the stop, unless accompanied by additional grounds to believe other criminal activity was afoot, was unconstitutional. *Id.*, 135 S.Ct. at 1616. However, if reasonable suspicion of criminal activity arises during a lawful seizure, an officer may prolong the seizure if necessary to effectuate the purpose of the new reason for the seizure. *Id.* at 1616-17.

The case before us is factually distinguishable from *Rodriguez*, requiring a different legal outcome. In *Rodriguez*, the officer had issued a written citation prior to conducting the dog sniff. In the instant case, the initial reasons for the stop were to evaluate the sobriety of the driver as well as to verify insurance on the vehicle. Mere minutes into the stop, another violation—failure to have physical possession of a driver’s license and produce it upon request—was discovered. Also, within minutes of initiating the stop, the officer testified he observed track marks on the driver’s arms. The officer also recognized Chambers from a previous traffic stop in which all the other occupants possessed drugs, paraphernalia or had arrest warrants. These facts, taken in concert, created reasonable suspicion of criminal activity of drug and/or paraphernalia possession. As such, the officer was justified in his questions. Further, both Johnson and Chambers admitted possessing drugs and/or paraphernalia within the first ten minutes of the stop. Officer Adkisson testified it took him ten to fifteen minutes to

write each citation. Therefore, we find reason to believe the traffic stop was not prolonged beyond the time reasonably required to complete the mission of issuing tickets. Any extensions beyond the initial reasons for the stop were justified and lawful.

To determine whether requisite reasonable and articulable suspicion exists, we must examine the totality of the circumstances to see whether the officer “had a particularized and objective basis for the suspicion.” *Commonwealth v. Marr*, 250 S.W.3d 624, 627 (Ky. 2008). A court cannot evaluate the factors relied on by the officer in isolation; rather, the court is obligated to consider the entirety of the officer’s “observations and give due regard to inferences and deductions drawn by [him] from [his] experience and training.” *Baltimore v. Commonwealth*, 119 S.W.3d 532, 539 (Ky. App. 2003).

In this case, the purpose of the stop was to determine if the vehicle was insured and to assess the driver’s sobriety. Chambers claims without reasonable suspicion, Officer Adkisson abandoned investigating the original purpose for the stop to see whether the car contained drugs or paraphernalia, unjustifiably prolonging the stop once he saw track marks on Johnson’s arms. However, the track marks were not the sole reason for the officer’s suspicion.

Officer Adkisson testified he stopped the vehicle because it crossed the center line several times. Such manner of driving reasonably led him to

suspect an impaired driver. Officer Adkisson also testified regarding a prior traffic stop when Chambers was driving, and all other occupants of the vehicle possessed drugs or paraphernalia or had arrest warrants. These facts, considered with the track marks on Johnson's arm, provided sufficient basis for Officer Adkisson's suspicion the vehicle might contain drugs or paraphernalia and justified his questions to confirm or dispel his reasonable suspicion. After Johnson readily admitted the car contained a syringe—less than ten minutes into the stop—the officer had probable cause to further investigate drug and paraphernalia possession by similarly questioning Chambers.

The findings of fact in the instant case demonstrate Officer Adkisson had not finished the initial reason for the stop when he noticed the track marks on Johnson's arm. This, in conjunction with the totality of the circumstances, caused reasonable suspicion of the criminal activity of drug and/or drug paraphernalia possession. Under *Rodriguez*, an officer may discover other facts allowing him to investigate other matters while handling the initial reason for stopping a vehicle. An officer may prolong the seizure if necessary to effectuate a new purpose. *Rodriguez*, 135 S.Ct. at 1616-1617. Therefore, Officer Adkisson's investigation into drug and/or paraphernalia possession was lawful and the evidence derived therefrom admissible.

For the foregoing reasons, the judgment of the Campbell Circuit Court is affirmed.

ALL CONCUR.

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