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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001792-DG

JACOB N. REDFERN

APPELLANT

ON DISCRETIONARY REVIEW
FROM LYON CIRCUIT COURT
v. HONORABLE CLARENCE A. WOODALL, III, JUDGE
ACTION NO. 14-XX-00001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON, STUMBO AND THOMPSON, JUDGES.

STUMBO, JUDGE: Jacob Redfern appeals from an order of the Lyon Circuit Court which affirmed a decision of the Lyon District Court. The district court denied a motion by Redfern seeking to suppress any evidence gathered as a result of a traffic safety/DUI checkpoint. Finding no error, we affirm.

On March 20, 2014, Redfern was stopped at a DUI checkpoint conducted by the Kentucky State Police (hereinafter “KSP”), with assistance from the Lyon County Sherriff’s Office and Eddyville Police Department. As a result of this checkpoint, Redfern was arrested for DUI, first offense with aggravator. In district court, Redfern moved to suppress the evidence of his intoxication, alleging that the checkpoint was constitutionally impermissible. The district court denied the motion. The court found that KSP Trooper Derek Scott sought permission from his supervisor to set up the checkpoint at one of KSP’s preapproved sites. The court also found that each vehicle that came to the checkpoint was stopped and treated in the same manner. The court further found that the checkpoint was visible to approaching motorists because four officers in uniforms and safety vests were visible. Also visible were four police vehicles with their lights flashing. In addition, five days prior to the checkpoint, the KSP released a press release informing the public of the upcoming checkpoint. Finally, the court found that there was minimal intrusiveness to the stops. Redfern then appealed the issue to the circuit court, which affirmed. This appeal followed.

Our standard of review of a circuit court’s decision on a suppression motion following a hearing is twofold. First, the factual findings of the court are conclusive if they are supported by substantial evidence. The second prong involves a *de novo* review to determine whether the court’s decision is correct as a matter of law.

Stewart v. Commonwealth, 44 S.W.3d 376, 380 (Ky. App. 2000) (footnotes and citations omitted).

In *Commonwealth v. Buchanon*, 122 S.W.3d 565 (Ky. 2004), the Kentucky Supreme Court set forth some “non-exclusive factors courts may consider in determining the reasonableness of a particular roadblock.” *Id.* at 570.

First, it is important that decisions regarding the location, time, and procedures governing a particular roadblock should be determined by those law enforcement officials in a supervisory position, rather than by the officers who are out in the field. Any lower ranking officer who wishes to establish a roadblock should seek permission from supervisory officials. Locations should be chosen so as not to affect the public's safety and should bear some reasonable relation to the conduct law enforcement is trying to curtail.

Second, the law enforcement officials who work the roadblock should comply with the procedures established by their superior officers so that each motorist is dealt with in exactly the same manner. Officers in the field should not have unfettered discretion in deciding which vehicles to stop or how each stop is handled.

Third, the nature of the roadblock should be readily apparent to approaching motorists. At least some of the law enforcement officers present at the scene should be in uniform and patrol cars should be marked in some manner. Signs warning of a checkpoint ahead are also advisable.

Fourth, the length of a stop is an important factor in determining the intrusiveness of the roadblock. Motorists should not be detained any longer than necessary in order to perform a cursory examination of the vehicle to look for signs of intoxication or check for

license and registration. If during the initial stop, an officer has a reasonable suspicion that the motorist has violated the law, the motorist should be asked to pull to the side so that other motorists can proceed.

We reiterate that the above list of factors is not exhaustive. Also, a mere violation of one factor does not automatically result in a violation of constitutional proportions. The guidelines are to be applied on a case-by-case basis in order to determine the reasonableness of each roadblock.

Id. at 571.

These factors were utilized in the case of *Commonwealth v. Cox*, 491 S.W.3d 167, 170 (Ky. 2015), relied heavily upon by Redfern. The facts in *Cox* are similar to the facts in the case *sub judice*. In *Cox*, Billy Cox was arrested at a DUI checkpoint for driving under the influence of alcohol. A Marion District Court jury convicted Cox and his conviction and sentence were affirmed by the circuit court. The Court of Appeals reversed Cox's conviction, finding that the evidence leading to his conviction was unconstitutionally obtained because the Court did not approve of the procedures used at the DUI checkpoint. The Kentucky Supreme Court affirmed the Court of Appeals. In discussing the *Buchanon* factors, the Court found that because the KSP did not erect signs on the roadway warning motorists of the upcoming checkpoint and did not release any information about the checkpoint to the media, *Buchanon* factor three was not satisfied.

On appeal, Redfern's only argument is in regard to *Buchanon* factor three. Redfern argues that the holding in *Cox* mandates that checkpoints be preceded by signs informing motorists of the checkpoint. We disagree. The *Cox* Court indicated that the KSP did not have signs on the roadway and did not release information to the media. The Court in *Cox* did not mandate the use of signs, only that the public be put on notice.

Here, the KSP informed the public of the upcoming checkpoint via press release. While we reiterate the *Buchanon* and *Cox* Courts in saying that signs warning of a checkpoint are advisable, the press release, the four police cars with flashing lights, and the uniformed officers wearing visible safety vests were sufficient to put approaching motorists on notice that a traffic safety/DUI checkpoint was underway.

We also affirm the judgment of the district court because, as stated by the *Buchanon* Court, the "list of factors is not exhaustive. Also, a mere violation of one factor does not automatically result in a violation of constitutional proportions. The guidelines are to be applied on a case-by-case basis in order to determine the reasonableness of each roadblock." *Buchanon* at 571. Here, Redfern's only argument on appeal concerned one factor.

Having reviewed the evidence, arguments, and case law, we believe the circuit court did not err in affirming the district court's judgment. The district court properly applied the *Buchanon* factors to this case; therefore, we affirm.

ALL CONCUR.

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