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Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001800-MR

BRUCE MARIO BENTON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE ERNESTO M. SCORSONE, JUDGE
ACTION NO. 17-CR-00515

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: ACREE, COMBS, AND MAZE, JUDGES.

MAZE, JUDGE: Appellant, Bruce Mario Benton, entered a conditional *Alford*¹ plea to the amended charges of trafficking in a controlled substance in the first degree, being a convicted felon in possession of a firearm, and being a persistent felony offender in the second degree, while reserving the right to appeal the denial

¹ *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

of his motion to suppress evidence. Benton now appeals, and for the following reasons, we affirm.

BACKGROUND

On February 20, 2017, Benton was driving in Lexington, Kentucky around 11 p.m. That night, Officer Daniel True was on special assignment. He was looking for people who may have been breaking into residences or automobiles. Officer True checked Kenawood Park for criminal activity. As he approached a roundabout, he saw a vehicle, whose lights were initially off, turn on its lights and exit the park. He believed the park closed at dark and testified there was an ordinance to that effect.

Officer True began following the vehicle that exited the park. As he followed, he ran the vehicle's registration plate through his computer with the National Crime Information Center ("NCIC") and discovered the owner had an active warrant. He could not see inside the vehicle because the windows were tinted. Officer True pulled the vehicle over.

As Officer True walked toward the vehicle, he smelled marijuana. Also, he was still in contact with dispatch over his radio at this point and learned that the vehicle was connected to a theft at Hibbett Sports. Benton rolled his window partially down and Officer True asked for Benton's driver's license. Benton did not have a driver's license, so Officer True requested Benton's Social

Security number instead. The Social Security number Benton gave did not work. Officer True advised Benton that giving false information was a crime. Benton then gave Officer True a paper scan of his Ohio driver's license. This time a record was returned. Although no warrants were active, Benton's record revealed an investigative alert from the gang resource unit. Officer True testified this alert meant if the police made contact with Benton, that unit would want to talk with him.

At this point, Officer True already determined that Benton was not the subject of the active warrant based on Benton's age. Benton told Officer True that the vehicle belonged to his father, who was not present. So, Officer True believed that Benton's father was probably the subject of the warrant.

Officer True's backup, Officer Jacob Webster, arrived at the stop. The officers asked Benton and his passenger to exit the vehicle. Benton was agitated and yelled at Officer True as he searched the vehicle. Inside the vehicle, the officers found a digital scale and a loaded handgun. Benton was placed under arrest and, upon searching Benton, the officers found approximately forty-seven grams of heroin in his underwear. Marijuana was also found.

On May 15, 2017, Benton was indicted on one count of trafficking in a controlled substance of two or more grams of heroin with a firearm enhancement, which is a class B felony. He was also indicted for being a felon in possession of a

handgun, trafficking in marijuana, carrying a concealed deadly weapon, promoting contraband, resisting arrest, possession of drug paraphernalia, having no operator's license, menacing, and being a first-degree felony offender.

On January 31, 2018, Benton filed a motion to suppress all evidence resulting from the stop. Benton argued Officer True had no probable cause to believe a traffic violation had occurred and no reasonable articulable suspicion that any criminal activity was afoot.

On February 23, 2018, the trial court heard Benton's motion to suppress. At that hearing, Officer True and Officer Webster testified. Although the warrant against the owner of the vehicle was not introduced into evidence, Officer True testified that the NCIC search revealed an active warrant. After hearing the evidence, the trial court denied the motion to suppress finding the police had a reasonable suspicion to follow Benton, run the license plate, and, after learning of the warrant, to stop Benton.

On March 2, 2018, Benton entered an *Alford* plea to the amended charges of trafficking in a controlled substance in the first degree, being a convicted felon in possession of a firearm, and being a persistent felony offender in the second degree. The other charges were dismissed as part of the plea. The trial court entered a final judgment to that effect and sentenced Benton to ten years in prison. Benton now appeals as a matter of right.

ANALYSIS

Benton argues that he was illegally stopped and all evidence discovered as a result of that stop should have been suppressed. Specifically, he argues that *testimony about a warrant* is not substantial evidence. Rather, the *actual warrant* should have been produced. Without the warrant, Benton argues the Commonwealth did not carry its burden of proof. In response, the Commonwealth argues the stop was justified by a reasonable belief that the vehicle's owner had an active warrant and a physical warrant was not required to be produced in this case.

“In reviewing a trial court’s ruling on a motion to suppress, we employ a two-step process.” *Commonwealth v. Bucalo*, 422 S.W.3d 253, 257 (Ky. 2013). “First, we examine whether the trial court’s findings of fact are supported by substantial evidence.” *Id.* “If the trial court’s factual findings are not clearly erroneous, then we conduct a *de novo* review of its applicability of the law to the facts.” *Id.*

Our analysis of whether Officer True legally stopped Benton when the warrant was never produced begins with the Fourth Amendment. The Fourth Amendment ensures that individuals have the right to be free from “unreasonable searches and seizures.” U.S. CONST. amend. IV. Ordinarily, a search or seizure must be based on a warrant supported by probable cause. *Navarette v. California*,

572 U.S. 393, 396-97, 134 S.Ct. 1683, 1687, 188 L.Ed.2d 680 (2014). However, the Fourth Amendment permits brief investigative stops when an officer has a particularized and objective basis for suspecting that “either the vehicle or an occupant is otherwise subject to seizure for violation of law[.]” *Delaware v. Prouse*, 440 U.S. 648, 663, 99 S.Ct. 1391, 1401, 59 L.Ed.2d 660 (1979). To conduct an investigative stop, the officer must articulate a “reasonable suspicion” of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 19-31, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Whether the officer has reasonable suspicion to conduct a stop is determined by the totality of the circumstances. *Alabama v. White*, 496 U.S. 325, 328, 110 S.Ct. 2412, 2415, 110 L.Ed.2d 301 (1990).

Here, Officer True believed that the driver was subject to seizure for violation of the law because the NCIC search of the license plate showed an active warrant against the owner of the vehicle. Benton also admits the existence of an active warrant for the vehicle’s owner creates the necessary reasonable suspicion required to conduct an investigative stop. *Traft v. Commonwealth*, 539 S.W.3d 647, 651 (Ky. 2018). However, his complaint is that the warrant was not produced, so the trial court’s denial of his motion to suppress was not supported by substantial evidence.

According to Benton, under *U.S. v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), the trial court had no way to evaluate the validity of

the warrant without seeing the actual warrant. However, this is not a probable cause case, like *Leon*. This is a reasonable suspicion case. For an investigative stop, the police need only have a reasonable suspicion.

The Kentucky Supreme Court evaluated an investigative stop involving a warrant in *Traft*, 539 S.W.3d 647. In that case, the police used a license plate reader to determine that Traft had an active warrant for failing to appear in court. The police pulled Traft over based on the warrant alone, as he committed no traffic violations. At the stop, the police noticed signs that Traft was intoxicated. After failing the breathalyzer test, Traft was arrested. Traft moved to suppress arguing his right to privacy was violated when the police reviewed his license plate without reason. The Court held that Traft did not have a reasonable expectation of privacy in his license plate or the information gleaned from the search of that plate, and the police had reasonable suspicion to stop Traft's vehicle based on the active warrant. *Traft*, 539 S.W.3d at 649-51.

Although Benton was not the subject of the warrant, like in *Traft*, the reasonable suspicion analysis remains the same.² Officer True ran the license plate

² Benton does not argue this point, but courts have held that the police can reasonably suspect that the registered owner of a vehicle is the driver when the police lack information to the contrary. *See U.S. v. Montalvo-Rangel*, No. SA-10-CR-64-XR, 2010 WL 1417745, at *3 (W.D. Tex. Apr. 5, 2010); *see also State v. Howard*, 766 N.E.2d 179, 183 (Ohio Ct. App. 2001). Here, Officer True testified that the vehicle's windows were tinted, so he could not dispel the assumption that the vehicle's owner was the driver before conducting the investigative stop.

and determined an active warrant existed for the vehicle's owner. Officer True had reasonable suspicion to stop Benton based on that warrant.

Notably, Benton is not claiming the warrant that Officer True relied upon to make the stop does not exist or that the police fabricated the warrant as a reason to stop him. Instead, he argues the warrant should be produced if the Commonwealth relied upon it as a basis for the stop. If the Commonwealth is not required to produce the physical warrant, then Benton claims the police may nakedly assert there was a warrant without producing it.

In response, the Commonwealth argues the existence of the warrant is irrelevant, and Officer True's testimony that he believed there was a warrant was substantial evidence to support the trial court's denial of Benton's motion to suppress. Furthermore, the Commonwealth argues that, even if Officer True was mistaken in his belief that a warrant existed, the stop would still be constitutional. Courts have held that a "reasonable belief, even if it is mistaken, can justify an investigative stop." *U.S. v. Trogdon*, 789 F.3d 907, 913 (8th Cir. 2015); *see also U.S. v. Jenkins*, 452 F.3d 207, 212 (2nd Cir. 2006). "The constitutional validity of a stop is not undermined simply because the officers who made the stop were mistaken about relevant facts." *Jenkins*, 452 F.3d at 212.

We agree with the Commonwealth. The standard for an investigative stop is reasonable suspicion, not proof beyond a reasonable doubt or proof by a

preponderance of the evidence or even probable cause. A police officer may stop a vehicle based on information from known or even anonymous third parties, as long as the information is supported by an indicia of reliability. *White*, 496 U.S. at 329, 110 S.Ct. at 2415-16. Here, Officer True testified that he ran an NCIC search on his computer, which returned an active warrant for the vehicle's owner. The NCIC search generated information that Officer True relied upon in making the stop. Officer True did not need to physically possess the warrant to conduct the investigative stop. And, the trial court did not need to evaluate the physical warrant to find Officer True's testimony credible and reliable. "[A]n officer's testimony provides sufficient evidence to meet the substantial evidence standard." *Cobb v. Commonwealth*, 509 S.W.3d 705, 708 (Ky. 2017).

In his testimony, Officer True articulated a reasonable suspicion of criminal activity to justify the stop. He noted the vehicle in which Benton was driving turned on its lights and exited the park as he entered. Officer True testified the park closed at dark and it was around 11 p.m. when he saw Benton's vehicle. Even though Officer True testified that he treats a violation of a city ordinance the same as a crime, he did not immediately pull over Benton for being in the park after dark. He followed the vehicle for about one mile while running a search of the license plate. At that point, the NCIC search returned an active warrant for the vehicle's owner. This information gave Officer True a particularized and objective

basis for suspecting the vehicle's owner was subject to seizure for violation of the law, which met the reasonable suspicion standard to justify the stop. The testimony of Officer True and Officer Webster to the above facts provided substantial evidence upon which the trial court properly relied when denying Benton's motion to suppress. The actual warrant was not required for the trial court to make this decision.

CONCLUSION

For the foregoing reasons, we affirm.

ALL CONCUR.

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