

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-002368-MR

JESUS HERNANDEZ

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 08-CR-00655

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, LAMBERT, AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Jesus Hernandez appeals from a judgment of the Fayette Circuit Court following his conditional guilty plea to second-degree criminal possession of a forged instrument and operating a motor vehicle without an operator's license. Concluding that Hernandez's constitutional rights were not violated, we affirm.

On April 20, 2008, Lexington Police Detective Keith Ford was driving home from a grocery store when he observed an erratic driver. Although off-duty at the time, Detective Ford positioned his unmarked pickup truck behind the suspect vehicle and began calling for assistance from on-duty officers. Unsuccessful in obtaining assistance, Detective Ford continued following the suspect.

The suspect then made a “quick turn” into the parking lot of the Campbell House Hotel. The suspect exited and walked away from his vehicle. Detective Ford positioned his vehicle from a vantage point where he could observe the suspect. He observed the suspect milling about the lot, looking over his shoulder, and looking around the corners of the building. Based on the suspect’s conduct, Detective Ford believed that the man realized that he was being followed.

Detective Ford then requested that a canine unit be dispatched to the scene. The suspect then noticed Detective Ford observing him and quickly began walking away. Detective Ford honked his horn at the suspect and yelled, “Police!” After reaching the suspect and displaying his badge, Detective Ford requested the suspect’s driver’s license. The suspect shrugged his shoulders and it became clear that he could not understand English. Detective Ford then repeated his request in Spanish. The suspect answered, “No.” The suspect was then arrested for not being in possession of an operator’s license.

During the search following the arrest, Detective Ford discovered fraudulent immigration papers and a social security card in the suspect’s wallet.

Detective Ford also discovered that the suspect's vehicle's registration decal had been altered by changing the expiration date from 2007 to 2008 with a marker.

On June 11, 2008, Hernandez was indicted by a Fayette County grand jury on (1) two counts of second-degree criminal possession of a forged instrument; (2) operating a motor vehicle without an operator's license; and (3) operating a motor vehicle without both headlights. Hernandez then filed a motion to suppress arguing that police did not have reasonable suspicion to stop him. Thus, he argued that the evidence against him must be suppressed due to an invalid search. Following a suppression hearing, the trial court denied the motion and ruled that the stop was valid because of the vehicle's lack of two headlights.

On October 24, 2008, Hernandez entered into a conditional guilty plea to one count of second-degree criminal possession of a forged instrument and to operating a motor vehicle without an operator's license but reserved his right to appeal. The remaining charges against him were dismissed. Later, the trial court sentenced Hernandez to one-year's imprisonment for second-degree criminal possession of a forged instrument and ninety-days' confinement for operating with no operator's license. His sentence was conditionally discharged for three years. This appeal follows.

Hernandez contends that the trial court erred by denying his motion to suppress the evidence obtained against him in violation of his constitutional rights. While conceding that police had reasonable suspicion to stop him when it observed only one working headlight on his vehicle, Hernandez contends that the reasonable

suspicion became stale when he was not immediately stopped for the violation. He also contends that Detective Ford, an undercover narcotics officer, had an ulterior motive in stopping him constituting a “mere hunch” that he would find illegal drugs. Thus, Hernandez contends that the search was constitutionally defective.

Our review of a trial court’s suppression ruling is a two-step determination whereby we review its factual findings under a clearly erroneous standard and its application of law under *de novo* review. *Henry v. Commonwealth*, 275 S.W.3d 194, 197 (Ky. 2008). Findings of fact are not clearly erroneous if they are supported by substantial evidence. *Hallum v. Commonwealth*, 219 S.W.3d 216, 220 (Ky.App. 2007). Substantial evidence constitutes facts that a reasonable mind would accept as sufficient to support a conclusion. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). On *de novo* review, we afford no deference to the trial court's application of the law to the facts. *Morton v. Commonwealth*, 232 S.W.3d 566, 569 (Ky.App. 2007).

The Fourth Amendment of the United States Constitution and Section Ten of the Kentucky Constitution prohibit unwarranted and unreasonable searches and seizures by law enforcement against citizens. *Commonwealth v. Hatcher*, 199 S.W.3d 124, 126 (Ky. 2006). Police may stop an automobile and conduct a brief, investigatory stop of its driver when they have a reasonable, articulable suspicion that crime activity may be occurring. *Strange v. Commonwealth*, 269 S.W.3d 847, 850 (Ky. 2008). “In determining whether the requisite reasonable and articulable suspicion exists, the reviewing court 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).

Here, Detective Ford observed Hernandez operating a motor vehicle without two headlights in contravention of KRS¹ 189.040(1). As a result, police had reasonable suspicion to stop Hernandez for committing the violation. *Strange*, 269 S.W.3d at 850. Although Hernandez contends that this reasonable suspicion expired when Detective Ford decided to not immediately stop him, we believe that police always maintain the right to stop any person who is in breach of the law.

Furthermore, Hernandez’s contention that Detective Ford had an ulterior motive to discover illegal drugs in Hernandez’s vehicle is misplaced. Even if Detective Ford’s motive for stopping Hernandez was for a drug investigation, his motivation does not invalidate the stop because it was made pursuant to Hernandez’s violation of KRS 189.040(1). *Wilson v. Commonwealth*, 37 S.W.3d 745, 749 (Ky. 2001). Notwithstanding the irrelevance of an officer’s motive, we note that investigatory stops “are limited in time and scope to what appears reasonable under the circumstances in any individual case and the investigation conducted by the officer during such a stop cannot exceed limits otherwise prescribed by law.” *Deberry v. Commonwealth*, 500 S.W.2d 64, 66 (Ky. 1973).

Based on the facts of this case, we conclude the police did not exceed the scope of the reasonable suspicion provided by Hernandez’s conduct. When stopped, Hernandez did not have an operator’s license in violation of KRS

¹ Kentucky Revised Statutes (KRS).

186.410(1). This is a Class B misdemeanor as provided in KRS 186.990(3).

Hernandez was arrested and the search incident to his arrest yielded the forged documentation. *McCloud v. Commonwealth*, 286 S.W.3d 780, 785 (Ky. 2009) (the search incident to arrest exception permits searching an arrestee and the area within his immediate control). Accordingly, we conclude that the trial court's suppression order was proper.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

Emily Holt Rhorer
Assistant Public Advocate
Dept. of Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Michael L. Harned
Assistant Attorney General
Frankfort, Kentucky