

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001570-DG

GREGORY TRRAFT

APPELLANT

ON DISCRETIONARY REVIEW FROM BOONE CIRCUIT COURT
v. HONORABLE ANTHONY W. FROHLICH, JUDGE
ACTION NO. 13-XX-00001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, JONES, AND VANMETER, JUDGES.

CLAYTON, JUDGE: This is an appeal from the Boone Circuit Court regarding the appeal of the denial of a suppression motion by the Boone District Court in a Driving Under the Influence (DUI) case. Based upon the following, we affirm the decision of the Boone Circuit Court.

BACKGROUND INFORMATION

On September 11, 2012, Appellant Gregory Traft was stopped by Deputy Adam Schepis of the Boone County Sheriff's Department while he was driving on a public road in Boone County. Traft's vehicle was stopped after Deputy Schepis used a license plate reading camera attached to a law enforcement data base to research the license plate of the vehicle Traft was driving.

Deputy Schepis discovered that there was a failure to appear warrant on the registered owner of the vehicle, Traft. Deputy Schepis then pulled the vehicle over and determined that Traft had been drinking. He arrested Traft for DUI after Traft failed a field sobriety test. Traft filed a motion to suppress with the Boone District Court arguing that Deputy Schepis violated his right to privacy when he conducted the review of the vehicle's license plate for no stated purpose and that he lacked probable cause and a reasonable articulable suspicion to make the stop based on the minimal information at the time. Specifically, Traft argues that Deputy Schepis was unaware whether the owner of the vehicle was driving the vehicle at the time and he (Traft) was not committing any traffic offenses.

The Boone District Court denied Traft's motion to suppress after which he entered a conditional guilty plea on the DUI charge. He then appealed the issue to the Boone Circuit Court, which affirmed the decision of the district court. Traft then appealed to our Court for discretionary review, which we granted.

DISCUSSION

Traft first argues that the Boone Circuit Court applied an incorrect standard of review to his appeal. Specifically, he asserts that the circuit court erred when it found as follows:

The Court reviews matters involving a trial court's ruling on evidentiary issues and discovery disputes under an abuse of discretion standard... This standard is whether the trial court's decision was arbitrary, unreasonable, unfair, or unsupported by legal principles....

Boone Circuit Court Opinion at p. 1. Traft contends that the correct standard when reviewing an evidentiary issue is whether the trial court's factual findings were clearly erroneous, *i.e.*, not supported by substantial evidence and *de novo* for legal issues. *Frazier v. Commonwealth*, 406 S.W.3d 448 (Ky. 2013).

Traft is correct that, when reviewing the denial of a motion to suppress, an appellate court must uphold the trial court's findings if they are supported by substantial evidence. *See Talbott v. Commonwealth*, 968 S.W.2d 76 (Ky. 1998); *Canler v. Commonwealth*, 870 S.W.2d 219 (Ky. 1994), citing *Harper v. Commonwealth*, 694 S.W.2d 665 (Ky. 1985). Substantial evidence is "evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men." *Kentucky State Racing Comm'n v. Fuller*, 481 S.W.2d 298, 308 (Ky. 1972). A trial court's findings of fact must be upheld unless they are clearly erroneous. *See Neil v. Biggers*, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972); *Roark v. Commonwealth*, 90 S.W.3d 24, 28 (Ky. 2002).

In the present action, however, there is no issue regarding the facts. The only issue is whether the use of the camera at the time was in violation of Traft's

right to privacy and resulted in a traffic stop without articulable suspicion of wrongdoing. Thus, the issue is a legal one and the circuit court should have reviewed it *de novo*. As a result of the applicable standard, we too must review the issue *de novo*.

Traft asserts that the deputy lacked probable cause to initiate the traffic stop at issue. He also argues that an individual has a right to privacy from additional searches of his vehicle and person when a check of his license plate shows his vehicle was not stolen.

Both the United States and the Kentucky Constitutions protect citizens of our Commonwealth from unreasonable searches and seizures. U.S.C.A. Const. Amend. IV; Ky. Const. §10. These protections only extend, however, “to areas searched wherein the defendant possesses a ‘reasonable expectation of privacy.’” *Blades v. Commonwealth*, 339 S.W.3d 450, 453 (Ky. 2011) (quoting *Rawlings v. Kentucky*, 448 U.S. 98, 104, 100 S.Ct. 2556, 2561, 65 L.Ed.2d 633 (1980)). This “is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as ‘reasonable.’” *Katz v. United States*, 389 U.S. 347, 361, 88 S.Ct. 507, 516, 19 L.Ed. 2d 576 (1967) (Harlan, J., concurring); *Colbert v. Commonwealth*, 43 S.W.3d 777, 783 (Ky. 2001).

Both state and federal courts have also determined that there are areas which fall outside the protection of the Fourth Amendment as a person does not have a reasonable expectation of privacy in those areas. *See, e.g., California v.*

Greenwood, 486 U.S. 35, 39-42, 108 S.Ct.1625, 1628-30, 100 L.Ed.2d 30

(1988)(A person does not have a reasonable expectation of privacy in trash that is set out for collection on the curb.); *Williams v. Commonwealth*, 213 S.W.3d 671, 683 (Ky. 2006)("[C]itizens have no expectation of privacy in information that is contained on the outside of one's mail.") "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." *Katz, supra*, 389 U.S. at 351, 88 S.Ct. at 511.

There are no published cases on this issue within our Commonwealth. Specifically, no published Kentucky cases deal with whether an individual has a reasonable expectation of privacy regarding the license plate on his vehicle which he drives in public. In *United States v. Ellison*, 462 F.3d 557 (6th Cir. 2006), the Sixth Circuit Court of Appeals addressed "whether the Fourth Amendment is implicated when a police officer investigates an automobile license plate number using a law enforcement computer database." *Id.* at 559. The court based its decision on its reasoning that "[n]o argument can be made that a motorist seeks to keep the information on his license plate private" because "the very purpose of a license plate number... is to provide identifying information to law enforcement officials and others." *Id.* at 561. The court concluded that "because of the important role played by the [license plate] in the pervasive governmental regulation of the automobile and the efforts by the Federal Government to ensure that the [license plate] is placed in plain view, a motorist can have no reasonable

expectation of privacy in the information contained on it.” *Id.* (Citations and internal quotes omitted.)

The facts in *Ellison* were different from the facts in this instance, (while observing an illegally parked van, a police officer ran its plates) but the issue regarding one’s right to privacy is the same. Traft did not have a reasonable expectation of privacy in his license plate. Consequently, the officer was not required to have reasonable articulable suspicion that unlawful activity was taking place or about to take place when using his camera to read and search the network database for offenses tied to the vehicle and its owner.

Traft also argues, however, that the deputy did not have probable cause to stop the vehicle as anyone could be driving it, not just the owner. The deputy did, however, have the right to stop the vehicle and ask for identification. Once this was done, the deputy realized the owner was the driver and he had probable cause to continue his investigation.

Based upon the above, we affirm the decision of the trial court.

ALL CONCUR.

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