

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-001585-MR

JONATHAN PHILLIP ESTES

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 10-CR-00480

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING IN PART, VACATING IN PART,
AND REMANDING

** ** * * * * *

BEFORE: CLAYTON, JONES, AND VANMETER, JUDGES.

JONES, JUDGE: Following a conditional guilty plea, the Appellant, Jonathan Phillip Estes, brings this appeal in which he asserts that the trial court acted erroneously when it refused to suppress a statement he made to police prior to his arrest as well as drugs found on his person during a warrantless traffic stop. For

the reasons more fully explained below, we AFFIRM in part, VACATE in part and REMAND.

I. BACKGROUND

On May 19, 2009, the Kentucky State Police (KSP) received information from a confidential informant that Estes was selling Percocet out of Squire's Tavern in Lexington, Kentucky. Two KSP officers, Detective Morris and Trooper Harris (collectively referred to as "the officers"), arrived separately at Squire's Tavern then sat together in one vehicle to conduct surveillance in the parking lot. The officers observed a white male sitting in a black Lexus, previously identified by the confidential informant as Estes's vehicle. The officers checked the state's on-file record of Estes's driver's license photo and identified Estes as the man in the Lexus.

The officers then observed another male get into the passenger seat of the Lexus. After a period of two to three minutes, the other male exited the Lexus. Estes then exited the vehicle and proceeded to get into the passenger seat of a second vehicle with another male in the driver's seat. After several minutes in that vehicle, Estes walked back to the Lexus. While walking, he was approached by another male. The two men then spent several minutes in Estes's Lexus.

During each separate encounter, the officers noted that Estes and the person he was with at the time looked down, leaned toward the middle console, and made several small movements inside the car. Eventually, Estes left his vehicle and went inside Squire's Tavern.

The two undercover officers followed Estes into the Tavern. Once inside, they observed Estes playing poker. They described his general demeanor inside the tavern as lethargic and noted that he appeared to have "bloodshot" eyes and kept nodding off. Approximately one hour later, Estes exited the Tavern. At that time, Detective Morris approached Estes and attempted to initiate a drug buy. However, Estes denied having any pills for sale. Estes then returned to his Lexus and left the parking lot.

Trooper Harris also left Squires Tavern and followed Estes. He then contacted Lexington Metro Police and requested assistance with a traffic stop of Estes's vehicle.¹ Estes was then pulled over by the Lexington police, during which time he was administered sobriety tests. Trooper Harris and Detective Morris each arrived at the scene while Estes was administered the tests but neither officer approached Estes at that time.

After Estes passed the sobriety tests, Detective Morris and Trooper Harris approached Estes as he sat on the curb next to his car in a supermarket parking lot. They informed Estes of what they had witnessed at the bar. While speaking with Detective Morris, Estes acknowledged that he had completed two transactions in the parking lot. Estes also consented to a search of his vehicle, which revealed no evidence. However, the officers found a plastic baggie in Estes's pocket containing fifteen blue pills, later identified as oxycodone, and \$450

¹ He testified that he did so based on his observations that Estes appeared to be driving under the influence and based on the three drug transactions that he suspected had taken place in the parking lot. However, Trooper Harris was unable to recall what, if any, of this information was provided when he requested assistance.

in cash. Despite this evidence, Estes was not arrested that evening because he indicated that he was willing to work with the KSP as a confidential informant.

On October 22, 2010, after a series of additional run-ins with the law, KSP was unable to utilize Estes as a confidential informant and one of the officers swore out a criminal complaint against Estes for the events that occurred on May 19, 2009. Estes was then indicted on three counts of first degree trafficking in a controlled substance and being a persistent felony offender (PFO).

On November 9, 2012, Estes filed a Motion to Suppress the evidence seized as a result of the May 19, 2009 traffic stop. Estes argued that the police “lacked reasonable and articulable suspicion in order to perform a traffic stop on [his] vehicle” and that the detectives failed to Mirandize him before they questioned him about his conduct earlier that evening. Ultimately, the court overruled the motion on both grounds. Estes then entered a conditional guilty plea.² This appeal followed.

² Part of Appellant’s guilty plea concerned charges filed due to a separate incident in 2012.

II. STANDARD OF REVIEW

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). However, as determined in *Commonwealth v. Lucas*, 195 S.W.3d 403, 405 (Ky. 2006):

This Court has used a *de novo* standard of review in deciding whether the Fifth Amendment protection against self-incrimination is applicable to a particular situation. See [*Welch v. Commonwealth*, 149 S.W.3d 407 \(Ky.2004\)](#). Both the U.S. Supreme Court and the Sixth Circuit Court of Appeals have held that the question of whether a defendant is in custody is a mixed question of law and fact to be reviewed *de novo*. See [*Thompson v. Keohane*, 516 U.S. 99, 116 S.Ct. 457, 133 L.Ed.2d 383 \(1995\)](#) and [*United States v. Salvo*, 133 F.3d 943 \(6th Cir.1998\)](#). We also recognize that the findings of the trial judge are conclusive if supported by substantial evidence and the decision must have been demonstrated to have been clearly erroneous. See [*Clark v. Commonwealth*, 868 S.W.2d 101 \(Ky.App.1993\) citing RCr 9.78 and *Harper v. Commonwealth*, 694 S.W.2d 665 \(Ky.1985\), cert. denied 476 U.S. 1178, 106 S.Ct. 2906, 90 L.Ed.2d 992 \(1986\)](#).

With these standards in mind, we now turn to the issues Estes raises on appeal.

III. ANALYSIS

A. Warrantless Stop

Estes maintains that the trial court erred when it denied his motion to suppress because his vehicle was stopped illegally by police. Specifically, Estes argues that Sgt. Brown, the Lexington Metro police officer who pulled him over, lacked the requisite “specific and articulate facts” required under *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), for a legal traffic stop.

Under the *Terry* doctrine, law enforcement officers may make a warrantless stop of a person or an automobile “where a law enforcement officer lacks probable cause, but possesses a reasonable and articulable suspicion that a person has been involved in criminal activity.” *United States v. Hurst*, 228 F.3d 751, 756–57 (6th Cir.2000); *United States v. Sandridge*, 385 F.3d 1032 (6th Cir.2004). Reasonable suspicion is determined by the totality of the circumstances. *United States v. Smith*, 263 F.3d 571, 588 (6th Cir. 2001). Further, the collective knowledge of all the law enforcement officers involved in the stop may be taken into consideration when determining whether reasonable suspicion exists. *United States v. Williams*, 650 F. Supp. 2d 633, 653 (W.D. Ky. 2009). *See United States v. Miramonted*, 365 F.3d 902, 905 (10th Cir. 2004) (“Probable cause and/or reasonable suspicion can rest on the collective knowledge of law enforcement, rather than solely on that of the arresting officer.”).

We find that Detective Morris and Trooper Harris possessed the requisite justification to stop Estes. Detective Morris and Trooper Harris observed Estes to be in an altered state in the tavern. They indicated that Estes's eyes looked

bloodshot, he appeared to be nodding off while playing poker, and his demeanor was generally lethargic. These observations are certainly indicative of someone under the influence of drugs and alcohol. They then observed Estes enter his car and drive away from the tavern.

Given the officers' observations of Estes during the evening and his general demeanor, we believe the officers had a reasonable suspicion that Estes was driving under the influence of drugs or alcohol, which they then articulated to Lexington authorities. Based on the collective knowledge of the officers (both the detectives and the Lexington police), there was sufficient cause to stop Estes. *See United States v. Hensley*, 469 U.S. 221, 233, 105 S.Ct. 675, 83 L.Ed.2d. 604 (1985); *United States v. Lyons*, 687 F.3d 754, 766 (6th Cir. 2012). Moreover, the responding officers were entitled to presume the accuracy of the information furnished to them by the detectives even though they had no direct first-hand knowledge of those events themselves. *See United States v. Lyons*, 687 F.3d 754, 766 (6th Cir. 2012) ("Because officers 'must often act swiftly [and] cannot be expected to cross-examine their fellow officers about the foundation of transmitted information,' we impute collective knowledge among multiple law enforcement agencies, even when the evidence demonstrates that the responding officer was wholly unaware of the specific facts that established reasonable suspicion for the stop."). We are satisfied that the collective knowledge doctrine applies in this instance providing cause for Estes's traffic stop by the Lexington police.

Accordingly, we find no error in the circuit court's application of the law in this matter and we affirm the ruling on the motion to suppress in this regard.

B. Miranda

Estes also argues that the trial court committed reversible error by failing to suppress the statements he made to Detective Morris after the traffic stop was complete. Estes maintains that these statements were made as part of a custodial interrogation and should have been preceded by a proper *Miranda* warning.

The procedural rules of a custodial interrogation as set forth in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966), are well-established:

We hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.

384 U.S. at 478-479, 86 S.Ct. at 1630. *See also Wells v. Commonwealth*, 892 S.W.2d 299 (Ky. 1995).

In this case, it is undisputed that no one gave Estes any *Miranda* warnings at any point on May 19, 2009. Therefore, the question before us is whether Estes was subject to a custodial interrogation during the time he spoke with the officers following the cessation of the sobriety tests.

In *Miranda*, a custodial interrogation was defined as “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” *Miranda*, 384 U.S. at 444, 86 S.Ct. at 612. The determination of whether the defendant is in custody at the time of questioning is based on objective circumstances, not the subjective belief of the defendant or the officers. *Stansbury v. California*, 511 U.S. 318, 323, 114 S.Ct. 1526, 1529 (1994). The relevant inquiry is based upon totality of the circumstances would a reasonable person in the suspect's position have believed he was in police custody and not free to leave. *Id.* at 324, 114 S.Ct. at 1529; [Wilson v. Commonwealth](#), 199 S.W.3d 175, 180 (Ky. 2006).

The proper inquiry is explained in [Smith v. Commonwealth](#), 312 S.W.3d 353 (Ky. 2010):

Custody does not occur until police, by some form of physical force or show of authority, have restrained the liberty of an individual...The United States Supreme Court has identified factors that suggest a seizure has occurred and that a suspect is in custody: the threatening presence of several officers; the display of a weapon by

an officer; the physical touching of the suspect; and the use of tone of voice or language that would indicate that compliance with the officer's request would be compelled. Other factors which have been used to determine custody for *Miranda* purposes include: (1) the purpose of the questioning; (2) whether the place of the questioning was hostile or coercive; (3) the length of the questioning; and (4) other indicia of custody such as whether the suspect was informed at the time that the questioning was voluntary or that the suspect was free to leave or to request the officers to do so, whether the suspect possessed unrestrained freedom of movement during questioning, and whether the suspect initiated contact with the police or voluntarily admitted the officers into the residence and acquiesced to their requests to answer some questions.

Id. at 358–59 (internal citations and footnotes omitted).

Interrogation has been defined to include “any words or actions on the part of police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect ... focus[ing] primarily upon the perceptions of the suspect, rather than the intent of the police.” *Wells v. Commonwealth*, 892 S.W.2d 299, 302 (Ky.1995), quoting *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S.Ct. 1682, 1689, 64 L.Ed.2d 297 (1980).

Turning back to the matter before us, we must first note that ordinary traffic stops do not, in general, invoke the requirements of *Miranda*. *Greene v. Commonwealth*, 244 S.W.3d 128, 135 (Ky. App. 2008). As explained in *Berkemer v. McCarty*, 468 U.S. 420, 437-438, 104 S.Ct. 3138, 3149, 82 L.Ed.2d 317 (1984):

[t]wo features of an ordinary traffic stop mitigate the danger that a person questioned will be induced ‘to speak

where he would not otherwise do so freely.’ First, detention of a motorist pursuant to a traffic stop is presumptively temporary and brief. The vast majority of roadside detentions last only a few minutes ... Second, circumstances associated with the typical traffic stop are not such that the motorist feels completely at the mercy of the police ... Perhaps most importantly, the typical traffic stop is public, at least to some degree.

Police officers are also permitted to order passengers to exit a vehicle while a minor traffic stop is completed. [Owens v. Commonwealth, 291 S.W.3d 704, 708 \(Ky.2009\)](#). However, an ordinary traffic stop can turn into a custodial interrogation if it exceeds the scope of the initial stop and/or if the defendant is taken into "custody" in the nature of a formal arrest. *Butler v. Commonwealth*, 367 S.W.3d 609, 613-14 (Ky. App. 2012).

On November 16, 2012, when the trial court initially overruled Estes's motion to suppress on the basis that he was stopped illegally, it explicitly stated that it was "reserv[ing] ruling on the *Miranda* issue." Then, on March 19, 2013, the trial court overruled the motion to suppress in its entirety "for the reasons stated on the video record." The problem in this case is that the video record does not contain any findings on the *Miranda* issue, specifically whether Estes was "in custody" at the time of the interrogation. Without this central finding of fact by the trial court, we are unable to review the *Miranda* issue. Accordingly, we must vacate the trial court's order to the extent it overruled Estes's motion to suppress on the *Miranda* issue and remand this issue to the trial court for additional findings of fact.

IV. CONCLUSION

For the reasons discussed above, we AFFIRM in part; VACATE in part; and REMAND this matter to the Fayette Circuit Court for additional findings of fact and conclusions of law with respect to Appellant's claim that his confession was obtained in violation of *Miranda*.

ALL CONCUR.

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