

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000857-MR

CAITLIN P. COWAN

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT
HONORABLE WILLIAM G. CLOUSE, JR., JUDGE
ACTION NO. 14-CR-00560

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, STUMBO, AND VANMETER, JUDGES.

CLAYTON, JUDGE: Caitlin P. Cowan appeals from a Madison Circuit Court judgment after entering a plea of guilty conditioned on her right to appeal the trial court's denial of her motion to suppress evidence.

The following facts were elicited at the suppression hearing: One evening, at approximately 9:30 p.m. in Berea, Kentucky, Officer Bradley and Officer Johnson observed a car with one headlight out. The appearance of the car

matched a description the police had received two nights before of a car involved in a disturbance, possibly drug-related. The officers pulled the car over. When Officer Bradley approached the vehicle, he noticed that the mirror was missing from the driver's side. There were two passengers in the car, Cowan, who was sitting in the front passenger seat and Ms. Baker, who was sitting in the back seat behind her. The driver, Mr. Palmer, told the officer that they were headed for Lexington because Ms. Baker was late for work. Officer Bradley drew the driver's attention to the missing mirror and burned-out headlight, questioned the occupants of the vehicle and asked for their identification in order to check for outstanding warrants. Mr. Palmer refused to allow the officer to search the car, stating that he had borrowed it and did not feel comfortable consenting to a search.

Officer Bradley then called for a canine unit. He was told that the Berea Canine Unit was unavailable. Unbeknownst to Officer Bradley, however, dispatch contacted a canine officer from the Madison County Sheriff's Department who was able to respond.

Meanwhile, Officer Bradley was in his car, checking the identification documents and writing a traffic citation. While he was thus engaged, the canine officer, Deputy Bol, arrived, about eleven minutes after Officer Bradley made the call to dispatch. The two officers briefly conversed, and Officer Bradley told Deputy Bol that the driver would not consent to a search. The dog walked around the vehicle and alerted at two different locations. A search of the car revealed a baggie of marijuana, a black make-up bag holding a flashlight containing heroin

and some items of drug paraphernalia. Cowan identified the make-up bag as hers. She was arrested and taken to the police station, where she received a Miranda warning. She was indicted for one charge of first-degree possession of a controlled substance and possession of drug paraphernalia.

The trial court found that Officer Bradley initiated the stop, based on the burned-out headlight, at 9:29 p.m.; and he conversed with the driver for thirteen minutes. The canine arrived eleven minutes after Officer Bradley concluded the conversation. Officer Bradley was writing the citation for the headlight when the canine arrived. The trial court calculated that thirty-two minutes elapsed from the stop to the alert, and noted that Officer Bradley testified that it normally takes ten to twenty minutes to write a citation. The trial court found that the vehicle was detained a reasonable time prior to the alert, and that once the dog alerted, there was probable cause for a search of the vehicle.

The trial court denied Cowan's motion to suppress the evidence, except as to any statements made by Cowan prior to receiving the Miranda warning. Cowan entered a conditional guilty plea to the original charges. She was sentenced, in accordance with her plea agreement, to one year on the possession charge and ninety days on the paraphernalia charge, diverted for two years. This appeal followed.

An appellate court's standard of review of the trial court's decision on a motion to suppress requires that the appellate court first determine whether the trial court's findings of fact are supported by substantial evidence. If they are, then they are conclusive. Based on those

findings of fact, we must then conduct a *de novo* review of the trial court's application of the law to those facts to determine whether its decision is correct as a matter of law.

Commonwealth v. Neal, 84 S.W.3d 920, 923 (Ky. App. 2002) (footnotes omitted).

Cowan does not contest the legality of the initial stop of the vehicle based on the unilluminated headlight. She also acknowledges that a dog sniff is an acceptable investigative device which may be utilized during a lawful investigative stop. Her argument focuses solely on the duration of the traffic stop, which she contends was impermissibly prolonged in order to allow the dog sniff.

Under the Fourth Amendment, the duration and scope of a traffic stop are subject to limitations. "Although an officer may detain a vehicle and its occupants in order to conduct an ordinary traffic stop, 'any subsequent detention ... must not be excessively intrusive in that the officer's actions must be reasonably related in scope to circumstances justifying the initial interference.'" *United States v. Davis*, 430 F.3d 345, 353 (6th Cir. 2005) (citation omitted)." *Turley v. Commonwealth*, 399 S.W.3d 412, 421 (Ky. 2013). "[A]n officer cannot detain a vehicle's occupants beyond completion of the purpose of the initial traffic stop 'unless something happened during the stop to cause the officer to have a 'reasonable and articulable suspicion that criminal activity [is] afoot.'" *Id.* at 422. "A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required

to complete that mission.” *Illinois v. Caballes*, 543 U.S. 405, 407, 125 S. Ct. 834, 837, 160 L. Ed. 2d 842 (2005).

Cowan argues that Officer Bradley should reasonably have finished writing up his citation for one burned-out headlight in the time it took for the canine unit to appear. Instead, she contends, the stop was unreasonably prolonged while Officer Bradley spent extra time talking with Deputy Bol, and then while the dog sniff was being conducted. She contends that, without a doubt, Officer Bradley could have finished writing the citation in the eight additional minutes it took for the dog to search and “hit.”

The trial court stated that the key time to consider was the thirty-two minutes which elapsed between the initial stop and the positive alert for drugs. The trial court found that Officer Bradley was still within the time frame he had testified to as being normal for writing citations when the alert took place. The trial court recognized that the testimony from both officers was that Officer Bradley was still working on the citation when Deputy Bol arrived and when the alerts occurred. The trial court concluded that it would have to ignore this testimony in order to find the stop was unreasonably long, and it found that the occupants of the vehicle were not detained any longer than was necessary to allow Officer Bradley to complete his job.

The trial court’s findings are supported by substantial evidence in the record in the form of the officers’ testimony and references to the time stamps on the video of the incident. Cowan nonetheless argues that the period of over an

hour which elapsed between the initial stop and the release of the vehicle was excessively long. But the key period is the half-hour which elapsed between the traffic stop and the canine alert, because once the canine had alerted, the officers had probable cause to search the vehicle. There is no evidence that Officer Bradley unreasonably delayed the stop in order to allow time for the drug sniffing dog to arrive. Indeed, after he was informed by dispatch that the Berea Canine Unit was unavailable, Officer Bradley did not even know that another unit was on its way and hence he had no reason to prolong the stop.

Once Deputy Bol arrived, the stop continued for about eight minutes while the police officers conversed, Officer Bradley completed the traffic citation, and the dog performed the sniff of the car. This period was within the ten to twenty minutes that Officer Bradley testified was the amount of time it would take an officer to prepare a citation. “A seizure justified only by a police-observed traffic violation, therefore, ‘become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission’ of issuing a ticket for the violation.” *Rodriguez v. United States*, 135 S. Ct. 1609, 1612, 191 L. Ed. 2d 492 (2015) (citing *Caballes*, 543 U.S. 405, 407, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005)). There appears to be no evidence that the stop was prolonged beyond the time reasonably required to complete its initial purpose – the issuance of the traffic citation.

For the foregoing reasons, the trial court did not err in denying the motion to suppress the evidence, and its final judgment is affirmed.

ALL CONCUR.

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