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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001023-MR

CARROLL K. RUNYON

APPELLANT

v. APPEAL FROM MARTIN CIRCUIT COURT
HONORABLE JOHN DAVID PRESTON, JUDGE
ACTION NO. 16-CR-00012

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: DIXON, JOHNSON, AND MAZE, JUDGES.

MAZE, JUDGE: This appeal arises from a Martin Circuit Court order denying Appellant, Carroll Runyon's, motion to suppress evidence of a traffic stop, which partly arose from a sobriety checkpoint, that he argues was unconstitutional. After a review of the record, we affirm.

Background

On September 27, 2015, a sobriety checkpoint was set up on Highway 292 in Martin County. Prior to setting up the checkpoint, the deputies conducting the checkpoint received prior approval. On the night in question, the deputies had just backed into the normal checkpoint location and turned on the vehicle's flashing lights, when Runyon approached. At least one of the deputies was wearing a reflective vest. There were, however, no signs warning of the upcoming checkpoint and the checkpoint was not broadcast through local media. The deputy began flagging Runyon to stop at the checkpoint by waving his flashlight at him. Runyon slowed to stop for a few seconds before then passing by the deputies at what seemed like a high rate of speed. The deputy recalled hearing Runyon's engine rev as he narrowly passed by the deputy.

The deputies then pursued Runyon. Runyon was stopped and arrested. He was charged with fleeing or evading police in the first degree, operating a motor vehicle under the influence of alcohol/drugs, and carrying a concealed deadly weapon. A motion to suppress was made by the defense arguing that the sobriety checkpoint was unconstitutional under *Commonwealth v. Cox*, 491 S.W.3d 167 (Ky. 2015). The defense's argument was that *Cox* requires warning and notice of a check-point (i.e. signage or notice through local media).

The trial court considered this argument and was unsure if *Cox* would apply retroactively to the September 2015 stop, and if so, whether *Cox* extended

Commonwealth v. Buchanon, 122 S.W.3d 565 (Ky. 2003), to now mandate signage or media notice. The trial court denied the suppression motion finding that regardless of *Cox*, Runyon fled the scene and did not stop at the checkpoint. Therefore, neither *Buchanon* nor *Cox* applied to the case. Runyon entered a conditional guilty plea to the charges but reserved his right to appeal the constitutionality of the sobriety checkpoint. This appeal followed.

Standard of Review

Here, the facts are not in dispute. The issue presented is whether *Cox* applies retroactively to the current case, and if so, does it render the sobriety checkpoint unconstitutional for lack of notice (i.e. signage or media notice). The issue is therefore a question of law and will be reviewed *de novo*. *Western Kentucky Coca-Cola Bottling Co., Inc. v. Revenue Cabinet*, 80 S.W.3d 787, 790 (Ky. App. 2002).

Analysis

The Kentucky Supreme Court articulated four general guidelines that must be met for a roadblock to be constitutional. *Buchanon*, 122 S.W.3d at 571.

The third factor, which is at issue here, states that,

the nature of the roadblock should be readily apparent to approaching motorists. At least some of the law enforcement officers present at the scene should be in uniform and patrol cars should be marked in some manner. Signs warning of a checkpoint ahead are also advisable.

More recently, in *Cox*, the Court indicates that the third factor articulated in *Buchanon* is extended to now mandate either signs or media notice. *Cox*, 491 S.W.3d at 172. The Court there explained that,

[t]he presiding troopers did not erect warning signs down the road to inform vehicles approaching the site, nor did they post any announcements of a proposed checkpoint to the media. The KSP did turn on their emergency lights at the roadblock and officers were in uniform, but that is not enough to provide adequate notice to approaching motorists.

Id.

While we understand the trial court's confusion in regards to *Cox*, we will not address the issue of whether *Cox* applies to the current case, and if so, whether it makes the checkpoint at issue unconstitutional. Instead, we agree that neither *Cox* nor *Buchanon* apply because Runyon was not stopped at the checkpoint.

It is constitutional for a police officer to stop an individual "when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Bauder v. Commonwealth*, 299 S.W.3d 588, 591 (Ky. 2009), citing *Terry v. Ohio*, 392 U.S. 1, 30; 88 S.Ct. 1868; 20 L.Ed.2d 889 (1968). The reasonable suspicion standard is less than probable cause but "requires at least a minimal level of objective justification for making the stop." *Id.*, citing *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989).

Here, Runyon's action in revving his car engine and driving quickly through the checkpoint without stopping to talk with the deputies was sufficient to raise a reasonable suspicion in the deputies' minds that he was partaking in an

illegal activity. Had Runyon stopped at the checkpoint as requested by the officers and then been arrested, he possibly could have successfully raised the constitutionality of the stop as an issue. However, that is not what happened in this case. Instead, Runyon ignored the deputy's request to stop and quickly sped through the checkpoint. This was sufficient to meet the reasonable suspicion standard and therefore the pursuit, stop, and subsequent arrest were constitutional.

Conclusion

Accordingly, the Martin Circuit Court denying Runyon's motion to suppress is affirmed.

ALL CONCUR.

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