

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001118-MR

ROBERT W. NOFFSINGER

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 01-CR-00026

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BARBER, COMBS, and JOHNSON, Judges.

COMBS, JUDGE: Following his entry of a conditional plea of guilty, Robert W. Noffsinger appeals from an order of the Muhlenberg Circuit Court which denied his motion to suppress a statement given to police following a vehicular stop and ensuing arrest. By means of an Anders Brief, Noffsinger contends that the circuit court erred in overruling his motion to suppress. He argues that there was no probable cause to stop his vehicle; that his arrest was, therefore, illegal; and that his subsequent statement to the police was illegally obtained.

On February 23, 2001, Noffsinger was indicted for the offense of manufacturing methamphetamine (KRS¹ 218A.1432). The charge resulted from evidence that on January 25, 2001, Noffsinger and a co-defendant, Michael D. Robinson, manufactured methamphetamine or possessed the chemicals and/or the equipment for the manufacture of methamphetamine with the intent to manufacture methamphetamine. On March 12, 2001, Noffsinger filed a motion to suppress some of the evidence obtained during the police investigation – including a statement which he gave to police following his arrest in which he confessed to manufacturing methamphetamine.

On March 28, 2001, an evidentiary hearing was held on the motion. On March 30, 2001, the circuit court entered an order denying the motion to suppress. Noffsinger subsequently entered a conditional plea of guilty, in which he pled guilty to the amended charge of criminal facilitation to manufacture methamphetamine in exchange for a recommended sentence of five-years' imprisonment. Under the terms of his plea agreement and pursuant to RCr² 8.09, Noffsinger reserved his right to appeal the denial of his motion to suppress. On April 24, 2001, the circuit court entered final judgment and sentencing pursuant to the plea agreement. This appeal followed.

Noffsinger contends that there was no probable cause to stop his vehicle. As a consequence, the ensuing arrest was illegal, tainting his subsequent confession as "fruit of the

¹Kentucky Revised Statutes.

²Kentucky Rules of Criminal Procedure.

poisonous tree." Appellate counsel filed Noffsinger's brief pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).³

In its order denying the motion to suppress, the circuit court recited the following findings of fact:

On January 25, 2001, Muhlenberg County Sheriff's Deputy Eddie Brown received a call from dispatch about a complaint alleging that methamphetamine was being cooked or processed at Kathy Noffsinger's residence. Based upon the complaint, Deputy Brown went to the Noffsinger residence in the Bremen area of Muhlenberg County, Kentucky. Upon his arrival, he immediately detected a strong odor of ammonia. From his training and experience, Deputy Brown was aware that the odor of ammonia was associated with the manufacture of methamphetamine.

Deputy Brown spoke with the owner of the residence, Kathy Noffsinger, and requested that she step out onto the front porch where she could also smell the odor. Upon Deputy Brown's request, Ms. Noffsinger gave the officer permission to search the property. Ms. Noffsinger further advised that her son, Defendant Noffsinger, had been there earlier in the day.

Because the adjoining property was owned by Paul Noffsinger, Deputy Brown also obtained permission from Mr. Noffsinger to search the premises, including an outbuilding. Mr. Noffsinger advised that both Defendants had been in and around this outbuilding earlier in the day.

A search of the outbuilding resulted in the seizure of several items used to make methamphetamine. In fact, there was an active lab in and around the outbuilding at the time of the search.

Deputy Brown was familiar with both of the Defendants and knew that both had a history

³Appellate counsel concedes that "there appears to be no meritorious basis for the appeal[.]"

of involvement with methamphetamine, including the manufacture of same. Because of this knowledge, the items seized at the property and the statements obtained from Paul and Kathy Noffsinger, Deputy Brown contacted dispatch and requested all officers be on the look out for a vehicle which had been described by Kathy Noffsinger as being her son's vehicle. Deputy Brown also requested that any officer locating the Defendants to detain them until he (Brown) could effect a formal arrest.

Sometime later, Deputy Brown received information that the Defendants had been located in Greenville and had been taken to the Muhlenberg County Jail. At the Muhlenberg County Jail, Deputy Brown read both Defendants their constitutional rights and each Defendant signed a waiver of same. Each Defendant gave a statement and, in fact, Defendant Robinson gave two separate statements.

In reviewing the decision of a circuit court on a suppression motion following a hearing, our standard of review is twofold in nature. First, we review the trial court's factual findings for clear error. When a trial court holds a pre-trial suppression hearing to determine the admissibility of evidence obtained during a search, its findings of fact are conclusive if they are supported by substantial evidence. RCr 9.78; Adcock v. Commonwealth, Ky., 967 S.W.2d 6, 8 (1998). In this case, the court's factual findings consist of a succinct but thorough summary of the uncontradicted testimony presented at the suppression hearing. Consequently, its findings are supported by substantial evidence.

The second aspect of our review involves a *de novo* examination to determine whether the court's decision is correct as a matter of law. Stewart v. Commonwealth, Ky., 44 S.W.3d 376,

380 (2000). The findings of fact reveal underlying probable cause to justify the stop of Noffsinger's vehicle by the Greenville police. Therefore, his arrest was lawful, and his confession as to his involvement with the manufacture of methamphetamine was not the product or fruit of an illegal vehicular stop and/or arrest.

In order to justify an investigatory stop of an automobile, the police must have a reasonable, articulable suspicion that the persons in the vehicle are – or are about to become – involved in criminal activity. United States v. Cortez, 449 U.S. 411, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981); Taylor v. Commonwealth, Ky., 987 S.W.2d 302, 305 (1998). “[I]f police have a reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection with a completed felony, then a Terry⁴ stop may be made to investigate that suspicion.” United States v. Hensley, 469 U.S. 221, 229, 105 S. Ct. 675, 680, 83 L. Ed. 2d 604 (1985). An officer may stop and question a person if there are reasonable grounds to believe that person is wanted for past criminal conduct. Cortez, supra at 417, n2. In order to determine whether there was a reasonable, articulable suspicion, the reviewing appellate court must weigh the totality of the circumstances. Alabama v. White, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990); Taylor, supra at 305. A police officer may stop a vehicle based upon information from other police

⁴ See Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

officers. Hensley, supra; Commonwealth v. Hagan, Ky., 464 S.W.2d 261 (1971).

The uncontradicted testimony at the suppression hearing was that Muhlenberg County Sheriff Department officers discovered an active, presently producing, methamphetamine lab at the residence of Noffsinger's mother. The officers additionally obtained information that Noffsinger was responsible for the presence and operation of the lab. The officers were also aware that Noffsinger had a history of involvement with the production of methamphetamine. The Muhlenberg County officers dispatched this information from the crime scene to the Greenville officers. After receiving information concerning the commission of a felony from officers at an active crime scene, the Greenville Officers had a reasonable and justifiable basis for stopping Noffsinger's vehicle. Noffsinger had been identified as a suspect in the commission of a felony⁵ -- the operation of a methamphetamine lab -- leading the Greenville police to the reasonable suspicion that the vehicle might have been occupied by a felony suspect and/or might contain the fruits of methamphetamine production. Additionally, as an extra and independent basis for his arrest, Noffsinger was intoxicated when he was apprehended. If a police officer has reasonable grounds to believe that a suspect has committed a felony, he may make an arrest without a warrant. Crawford v. Commonwealth, Ky., 824 S.W.2d 847, 849 (1992); Commonwealth v. Hagan, supra., at 264.

⁵Manufacture of methamphetamine is a Class B felony for the first offense and a Class A felony for a second or subsequent offense. KRS 218A.1432(2).

Noffsinger does not contend that his subsequent confession given at the police station was not freely and voluntarily given. Because the confession was not the product of an illegal stop or arrest and was freely and voluntarily given, the trial court properly denied the motion to suppress.

The judgment of the Muhlenberg Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kimberly A. Brooks
Covington, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky

Michael L. Harned
Assistant Attorney General
Frankfort, Kentucky