RENDERED: November 1, 2002; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000061-MR

TONI MARIE MADDOX

v.

APPEAL FROM JEFFERSONS CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
ACTION NO. 99-CR-002573

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: EMBERTON, CHIEF JUDGE; SCHRODER, AND TACKETT, JUDGES.

SCHRODER, JUDGE: Toni Marie Maddox appeals from her conviction of first-degree illegal possession of a controlled substance and illegal possession of drug paraphernalia pursuant to a conditional guilty plea reserving the right to appeal the denial of her suppression motions. Having reviewed the record and the applicable law, we affirm.

On July 19, 1999, a roadblock was being conducted by the Louisville Police Department. Detective Gayle Clemmons, an officer working the road block, observed a car pull out of a side street, Fisk Court, and turn in the direction of the road block. The car traveled about 3 car lengths and then, before reaching

the roadblock, stopped so abruptly that the front end of the car went down and the rear end went up. The car then began backing back down the street quickly, weaving into both lanes as it did so, and finally the rear end of the car cut around back into Fisk Court. At this point Clemmons pulled up in front of the car, turned on his blue lights and got out of his car. Appellant was the driver of the stopped car, and Bonita Harris was in the passenger seat. Clemmons approached the car, and saw Harris stuffing something down between her left leg and the console. Suspecting it might be a weapon, Clemmons asked Harris to step out of the car, after which he saw two crack pipes lying on the seat. While another officer watched appellant, Clemmons spoke to Harris, who told him that the car was hers, but that she wasn't driving because she and appellant had been smoking crack cocaine all day and that she was so high she couldn't drive, and therefore she let appellant drive. The car and appellant were subsequently searched.

As a result of the stop and search, appellant was charged with first-degree illegal possession of a controlled substance, illegal use or possession of drug paraphernalia, reckless driving (KRS 189.290), operating a motor vehicle without a license, and being a first-degree persistent felony offender. On June 22, 2000, appellant filed a motion to suppress, with a hearing held thereon on January 5, 2001. At the suppression hearing, Detective Clemmons testified to the facts as stated above. On January 9, 2001, the court entered an order denying the motion, finding that the testimony of Detective Clemmons as

to appellant's driving pattern was undisputed, and that the manner in which appellant was driving was sufficient to create a reasonable suspicion to justify a stop. Also on January 9, 2001, appellant filed a second motion to suppress, in which she argued that, based on the testimony of Detective Clemmons at the January 5, 2001 hearing, that Clemmons did not have probable cause to stop appellant for reckless driving pursuant to KRS 189.290. A hearing was held on the motion on February 19, 2001. The motion was denied in an order entered April 23, 2001, with the court again finding that under the totality of the circumstances, appellant's driving action created a reasonable suspicion to stop the car.

On August 16, 2001, appellant entered a conditional guilty plea to first-degree possession of a controlled substance, and illegal possession of drug paraphernalia, reserving the right to appeal the trial court's denial of her suppression motions. The remaining charges were dismissed. This appeal followed.

Appellant's sole argument on appeal is that the trial court erred in finding the stop was valid, as no evidence was presented that she was operating the car recklessly within the meaning of KRS 189.290. The standard of review of a trial court's decision on a suppression motion has two prongs. Stewart v. Commonwealth, Ky. App., 44 S.W.3d 376, 380 (2000). First, a trial court's findings of fact pursuant to a motion to suppress are conclusive if they are supported by substantial evidence. RCr 9.78. The second prong is a *de novo* review to determine

whether the trial court's ruling is correct as a matter of law. Stewart, 44 S.W.3d at 380.

"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." Taylor v. Commonwealth, Ky., 987 S.W.2d 302, 305 (1998); United States v. Cortez, 449 U.S. 411, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981). See also Creech v. Commonwealth, Ky. App., 812 S.W.2d 162 (1991). "In order to determine whether there was a reasonable articulable suspicion, the reviewing appellate court must weigh the totality of the circumstances." Taylor, 987 S.W.2d at 305.

Although Detective Clemmons did testify that he pursued the vehicle because it was driving recklessly, his testimony also included his observations that upon approaching the roadblock, appellant stopped very abruptly and began backing up quickly, weaving into both lanes as she did so, and subsequently cut back into the street she came out of. The trial court found that "any individual driving in the manner described by Detective Clemmons was sufficient to create a reasonable suspicion to justify a stop." We conclude that the testimony of Detective Clemmons constitutes substantial evidence to support the trial court's findings as to appellant's actions. Further, considering the totality of the circumstances, we agree with the trial court that appellant's actions were sufficient to create reasonable suspicion to stop the car. Taylor, 987 S.W.2d at 305. See also, Steinbeck v. Commonwealth, Ky. App., 862 S.W.2d 912, 914 (1993).

(Driver's turn away from sobriety checkpoint, combined with police officer's experience in similar instances, was sufficient for officer to form reasonable suspicion that driver may have been engaging in criminal activity.) Having concluded that reasonable suspicion existed to justify the stop, we need not address appellant's argument as to whether her actions constituted reckless driving pursuant to KRS 189.290.

For the aforementioned reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. David Niehaus
Louisville, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler, III
Attorney General

Kent T. Young
Assistant Attorney General
Frankfort, Kentucky