

RENDERED: JUNE 19, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001008-MR

WADE ALVIN STEVENSON, JR.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NOS. 13-CR-01169 & 13-CR-01169-005

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; NICKELL AND TAYLOR, JUDGES.

NICKELL, JUDGE: Wade Alvin Stevenson, Jr., appeals from a judgment convicting him of one count of criminal possession of a forged instrument in the second degree¹ and being a persistent felony offender in the second degree.² He

¹ Kentucky Revised Statutes (KRS) 516.060.

² KRS 532.080(5).

entered a conditional plea of guilty³ to these charges reserving his right to appeal the circuit court's denial of his motion to suppress evidence recovered during a traffic stop.

Gene Haynes, a detective with the financial crimes unit of the Lexington Police, received a fraud report from David Boggs at a Speedway service station. The report stated that a man had come into the Speedway and presented two checks later determined to be forgeries. Boggs provided Detective Haynes with a video as well as the license plate, make and model of the car. The car, which had Georgia license plates, was a rental vehicle and long overdue.

Sergeant Scott Perrine testified that during his patrol briefing, Detective Haynes told the officers to be on the lookout for a particular vehicle with Georgia license plates because the car was connected with a crime ring that was involved in forgery and theft. Detective Haynes also told Sergeant Perrine and the other officers that he had received additional information that the people in the car were in the area of Elkhorn and Winchester Road, possibly staying in one of the nearby hotels.

That evening, Sergeant Perrine and his partner spotted the suspect vehicle parked in a handicapped parking space at the Microtel hotel. Sergeant Perrine observed the car lacked the required handicapped parking permit. After identifying the car, he notified Detective Haynes, and continued to observe the vehicle for about ten minutes. At about 7:47 or 7:48 p.m., Stevenson and another

³ Kentucky Rules of Criminal Procedure (RCr) 8.09.

individual left the hotel and drove away in the vehicle. The officers followed for a brief time and then activated their emergency equipment. Stevenson did not stop immediately but was eventually pulled over at 7:51 p.m. According to Sergeant Perrine, he initiated the traffic stop because of the handicapped parking permit violation, and to investigate the possible criminal activity on which he had been briefed by Detective Haynes.

Sergeant Perrine testified he felt a little nervous because the car had continued to drive even after he activated his lights, so he and his fellow officer removed Stevenson and the passenger from the car and separated them. Sergeant Perrine explained he normally would not ask everyone to get out of a vehicle during a traffic stop, but did so in this case because the officers had a reasonable suspicion the vehicle was involved in criminal activity. The officers patted down Stevenson and his passenger for weapons, and Stevenson was then placed in the police car. Although he was not handcuffed, he could not leave the car. The officers checked the occupants' identities and discovered both had drug activities in their criminal histories. Because of Sergeant Perrine's experience that there is a frequent connection between drug crimes and financial crimes, a K-9 officer was called to the scene and arrived at 8:11 p.m.

Meanwhile, Detective Haynes had arrived. He advised Stevenson of his *Miranda*⁴ rights, and then told him about the report of fraudulent checks at Speedway. Stevenson made incriminating statements, including an admission he

⁴ *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966).

had forged the checks. This confession occurred while the canine search of the outside of the car was in progress. The canine alerted to the presence of drugs, and a search of the interior of the vehicle was conducted at around 8:15 or 8:20 p.m. The officer found credit cards, debit cards, and a check register containing checks belonging to Margaret Hamilton, who had previously filed a police report claiming her checks had been stolen and forged. Stevenson voluntarily consented to go to police headquarters to be interviewed. He made further incriminating statements during that interview. He subsequently filed a motion to suppress the evidence recovered from the car, and his incriminating statements, arguing the latter were the fruit of the poisonous tree. Following a hearing, the circuit court entered an order denying the motion. Stevenson entered his conditional guilty plea and this appeal followed.

Our review of a trial court's ruling on a motion to suppress is two-fold. First, the factual findings are deemed conclusive if they are supported by substantial evidence. RCr 9.78. If unsupported by substantial evidence, the trial court's factual findings are deemed clearly erroneous. *Commonwealth v. Banks*, 68 S.W.3d 347, 349 (Ky. 2001). Second, we conduct a *de novo* review to determine whether the trial court's decision was correct as a matter of law. *Roberson v. Commonwealth*, 185 S.W.3d 634, 637 (Ky. 2006).

In this case, the salient facts are not in dispute. The circuit court made verbal conclusions of law that the police officer had a reasonable articulable suspicion to justify making the stop, based upon the briefing from Detective

Haynes, and the handicapped parking violation. The circuit court further held Stevenson was not detained for an unlawful amount of time.

“The Fourth Amendment to the U.S. Constitution, made applicable to the states through the Fourteenth Amendment and Section 10 of the Kentucky Constitution, protects citizens from unreasonable searches and seizures.”

Commonwealth v. Bucalo, 422 S.W.3d 253, 257-58 (Ky. 2013). A traffic stop is considered a seizure of the driver “even though the purpose of the stop is limited and the resulting detention quite brief.” *Id.* at 258 (internal citation omitted).

“[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Generally, if an officer unreasonably prolongs the investigatory stop in order to facilitate a dog sniff, any resulting seizure will be deemed unconstitutional.” *Id.* (internal quotation marks and citation omitted).

Stevenson argues the police officers unreasonably extended the duration of the traffic stop, because he was detained beyond the time necessary for the purpose of the stop to be accomplished, namely issuing the citation for the handicapped parking violation. He acknowledges probable cause in the form of the parking violation existed for Sergeant Perrine to make the traffic stop, but contends he was detained for too long thereafter. Stevenson was pulled over at about 7:47 p.m. He claims the ticket for the handicapped parking violation should have taken no more than ten minutes to write, yet the K-9 unit did not arrive until 8:10 p.m. or 8:11 p.m.

In this case, however, the police had reasonable suspicion to justify contacting the K-9 unit. The officers had been briefed by Detective Haynes that the vehicle was associated with individuals who were suspected of committing crimes of forgery and theft. Although Stevenson claims there was no reason to believe a canine trained to detect the odor of drugs would find evidence of financial crimes, Officer Perrine explained that people involved in financial crimes most of the time are “feeding a drug habit.” As Stevenson himself acknowledges, the officers checked the occupants’ identities when they pulled them over and discovered both had drug activities in their criminal histories. “Officers may draw on their own experience and specialized training to make inferences from, and deductions about, the cumulative information available to them that might well elude an untrained person.” *Bauder v. Commonwealth*, 299 S.W.3d 588, 592 (Ky. 2009) (citing *United States v. Arvizu*, 534 U.S. 266, 273–74, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002)). In any event, the officers were fully justified in detaining Stevenson until Detective Haynes arrived, since they had a reasonable suspicion, based on the description of the car provided by Speedway, that its occupants were implicated in passing the forged checks. Under these circumstances, where a reasonable suspicion existed to believe there were drugs and also evidence of the forgery in the car, a detention of approximately twenty minutes was not unconstitutionally prolonged.

Because the circuit court did not err in denying the motion to suppress, its judgment is affirmed.

ALL CONCUR.

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