

RENDERED: NOVEMBER 9, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001638-MR

LEWIS FRANCIS MOFFETT

APPELLANT

ON REMAND FROM KENTUCKY SUPREME COURT
ACTION NO. 2017-SC-000182-DG
APPEAL FROM DAVIESS CIRCUIT COURT
v. HONORABLE JOSEPH W CASTLEN III, JUDGE
ACTION NO. 14-CR-00080

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
REVERSING, IN PART AND
AFFIRMING, IN PART

** ** * * * * *

BEFORE: ACREE, JONES AND NICKELL, JUDGES.

ACREE, JUDGE: This case is again before the Court of Appeals following remand by the Supreme Court of Kentucky of our previous opinion affirming the trial court. We are under a mandate to consider recent controlling authority and, in that light, to further consider Lewis Moffett's argument on appeal that the Daviess

Circuit Court erred in denying his motion to suppress evidence yielded from a canine sniff of his vehicle. Upon that further consideration, we reverse Moffett's conviction for trafficking in marijuana. The conviction for failing to illuminate headlamps is affirmed.

I. Factual and Procedural Background

The facts surrounding Moffett's traffic stop are not in dispute as they were stipulated at trial:

On October 10, 2013, at 12:25 a.m. in Daviess County, Daviess County Deputy Sheriff Nathan Thomason initiated a traffic stop, having observed a vehicle with no headlamps illuminated. The Deputy requested identification from Mr. Moffett, who was driving the vehicle, and his two passengers, Treazure Sawyers and Donald Goodman. At 12:29 a.m., the Deputy radioed dispatch for any outstanding warrants. At 12:35 a.m. it was determined that Moffett and Sawyers had no warrants outstanding, but Goodman had two warrants for probation violations involving drug offenses. The Deputy was also familiar with Sawyers and her criminal drug history. Three minutes later, i.e., 12:38 a.m., a K-9 unit was requested by the Deputy, and the unit arrived ten minutes later, at 12:48 a.m. The canine, Raizi, walked around Mr. Moffett's vehicle and alerted to the trunk and also the rear passenger door where Goodman had been sitting prior to his removal from the vehicle. Illegal drugs were discovered at those locations.

Moffett was charged with one count of trafficking in marijuana and failure to illuminate headlamps. Moffett sought to suppress the illegal drugs from evidence by contending that the length of time of the traffic stop was unreasonably

prolonged and he should have been allowed to leave when it was determined that he had no outstanding warrants.

The trial court found the length of the stop was not unreasonable. It determined that approximately thirteen minutes elapsed from the time it was discovered that Moffett had no outstanding warrants and the canine unit arrived. The walk-around performed by the canine took “such a short period that neither party could attribute even one minute” to it. (R. 103). The trial court reasoned that Goodman’s and Sawyers’ prior drug records were a sufficient basis to request a canine for a sniff test. Upon this reasoning, the trial court denied Moffett’s motion to suppress.

After the denial, Moffett entered a conditional guilty plea, reserving his right to appeal the adverse ruling on his motion to suppress. He was sentenced to one year of imprisonment for the trafficking charge and fined \$250 for failure to illuminate headlamps. This appeal followed.

II. Standard of Review

The standard of review of the trial court’s ruling on a motion to suppress requires a *de novo* examination of the trial court’s application of the law to the undisputed facts. *Bagby v. Commonwealth*, 376 S.W.3d 620, 622 (Ky. App. 2012).

III. Analysis

We agree with the trial court's initial determination that the traffic stop was proper. The officer witnessed Moffett committing the traffic violation of driving a motor vehicle at night without illuminating his headlights. Kentucky Revised Statutes (KRS) 189.030. A police officer is authorized to conduct a traffic stop when he or she reasonably believes that a traffic violation has occurred. *Commonwealth v. Bucalo*, 422 S.W.3d 253, 258 (Ky. 2013).

“[A] properly-conducted routine traffic stop encompasses several tasks reasonably incident to the stop, such as checking the validity of the driver's license, determining the vehicle's registration and proof of insurance, and ascertaining if *the driver* is wanted on outstanding warrants.” *Commonwealth v. Lane*, 553 S.W.3d 203, 205 (Ky. 2018) (emphasis added). The officers involved in the routine traffic stop must pursue these tasks with reasonable diligence. *Id.*

Stopping Moffett's vehicle did not detain Moffett only. It also detained Sawyers and Goodman. To paraphrase the Supreme Court, “If the traffic citation was deferred to [obtain the passengers' identifications and check for warrants regarding them], then the officer did not act with reasonable diligence to pursue the legitimate object of the traffic stop.” *Commonwealth v. Smith*, 542 S.W.3d 276, 282 (Ky. 2018). Beyond that which was thus lawful, “[t]he continued detention of Appellant and his passengers was never justified by any form of

articulable suspicion.” *Turley v. Commonwealth*, 399 S.W.3d 412, 422 (Ky. 2013).

Lacking articulable suspicion regarding the passengers’ conduct, Detective Thomason nevertheless “detain[ed them] . . . to see who they [we]re, and determine if they [we]re ‘wanted persons.’” *Id.* But the detective “had no authority to detain . . . the passengers for that purpose.” *Id.*

The authority for stopping Moffett and prohibiting his departure “end[ed] when tasks tied to the traffic infraction [we]re—or reasonably should have been—completed.” *Lane*, 553 S.W.3d at 206 (citation and internal quotation marks omitted). If the detective checked for warrants relative to Moffett first, authority for the stop ended then and there; any further detention, to run warrants for the passengers, violated Moffett’s Fourth Amendment protections. If the search for warrants started with the passengers, there was already an unreasonable delay, and that would have violated the Fourth Amendment.

Additionally, when Detective Thomason discovered Goodman had outstanding warrants and arrested him, his decision to bring in the K-9 unit set in motion additional violations of the Fourth Amendment. That is because the only justification for searching the vehicle relative to Goodman’s arrest is if the officer “has a reasonable suspicion that the vehicle harbors evidence of the *crime of arrest*[.]” *Rose v. Commonwealth*, 322 S.W.3d 76, 80 (Ky. 2010) (emphasis in original). The “crime of arrest” was Goodman’s pre-existing probation violation.

The detective could not possibly have possessed the requisite reasonable suspicion that, in Moffett’s vehicle, there was evidence of Goodman’s prior probation violation. “Thus, we cannot conclude that the search satisfies constitutional muster under [*Arizona v. Gant*, 556 U.S. 332, 346, 129 S. Ct. 1710, 1721, 173 L. Ed. 2d 485 (2009)]. . . . Therefore, we hold that the search in this case was unconstitutional and the evidence procured the fruit of a poisonous tree.” *Rose*, 322 S.W.3d at 80.

IV. Conclusion

The judgment of the Daviess Circuit Court is reversed as to the count of trafficking in marijuana. The conviction for failing to illuminate headlamps is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Erin Hoffman Yang
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

J. Hays Lawson
Assistant Attorney General
Frankfort, Kentucky