

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-001219-MR

STEPHEN C. PARSONS

APPELLANT

v. APPEAL FROM ANDERSON CIRCUIT COURT
HONORABLE CHARLES R. HICKMAN, JUDGE
ACTION NO. 18-CR-00035

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: JONES, MAZE, AND L. THOMPSON, JUDGES.

JONES, JUDGE: Stephen Parsons appeals the Anderson Circuit Court’s judgment convicting him of first-degree possession of methamphetamine,¹ possession of drug paraphernalia,² second-degree possession of unspecified controlled

¹ Kentucky Revised Statute (“KRS”) 218A.1415.

² KRS 218A.500.

substance,³ possession of marijuana,⁴ and DUI first offense.⁵ The judgment was entered following Parsons's conditional guilty plea.⁶ Prior to pleading guilty, Parsons filed a motion to suppress seeking to exclude all evidence obtained by the Commonwealth on the grounds that the arresting officer lacked probable cause to make a DUI arrest and that the officer failed to advise Parsons of his *Miranda* rights.⁷ Parsons argued that because he was sitting in a parked car, there was no probable cause to believe that he had driven the vehicle while intoxicated or intended to drive while in his intoxicated state. Additionally, Parsons contends that because he was not advised of his *Miranda* rights, any evidence stemming from admissions made to the arresting officer should have been suppressed. The trial court denied Parsons's motion. Parsons expressly reserved the right to appeal the trial court's denial of his motion as part of his conditional guilty plea. Having reviewed the record in conjunction with all applicable legal authority, we

AFFIRM.

³ KRS 218A.1416.

⁴ KRS 218A.1422.

⁵ KRS 189A.010(1) and (5)(a).

⁶ See Kentucky Rules of Criminal Procedure ("RCr") 8.09 ("With the approval of the court a defendant may enter a conditional plea of guilty, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified trial or pretrial motion. A defendant shall be allowed to withdraw such plea upon prevailing on appeal.").

⁷ *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

I. BACKGROUND

On January 25, 2018, at approximately 1:34 a.m., Officer Brian Brashears of the Lawrenceburg Police Department was driving past the Five Star gas station on West Broadway in Lawrenceburg, Kentucky, when he noticed a white Toyota Camry parked near the air hose and kerosene pump. While the inside of Five Star was closed for the night, the air hose and gas pumps remained open to customers at all times. Upon reaching the intersection of Broadway and 127, Officer Brashears noticed that he needed gas. As such, he turned his cruiser around and went back to the Five Star. When Officer Brashears returned to the Five Star, he noticed that the white Camry was still parked in the same location. After filling his gas tank, Officer Brashears decided to approach the vehicle and make contact with its occupant.

Officer Brashears testified that the vehicle's engine was running but its lights were turned off. He could not make out whether anyone was inside because the windows were tinted. Officer Brashears knocked on the driver's window. Parsons opened the door. Officer Brashears asked Parsons what he was doing, and Parsons stated he was waiting at the gas station to pick up a female. Parsons then began reaching into the passenger seat of the vehicle. At that time, Officer Brashears noticed a handgun box in the backseat. Officer Brashears asked Parsons to place both hands on the steering wheel of the vehicle and requested

backup. Officer Trey Burrus quickly arrived on scene. Upon Officer Burris's arrival, Officer Brashears asked Parsons for identification. Because Parsons had no identification on hand, he provided officers, instead, with his name and Social Security number and/or driver's license number. The officers ran this information and confirmed Parsons's identity. The search also disclosed that Parsons was a convicted felon and registered sex offender. Officer Brashears testified that this information allowed him to determine that Parsons would be prohibited from possessing a firearm. Given Officer Brashears's prior sighting of the handgun box in the backseat, Officer Brashears believed he had probable cause to search Parsons's vehicle.

Prior to conducting the search, Officer Brashears asked Parsons if there was anything in the vehicle that would cause him injury, such as a poke or cut. Parsons admitted that a bag in the passenger seat contained narcotics, methamphetamine, and other illegal substances or paraphernalia. When Officer Brashears searched the vehicle, he was able to locate the bag in the place where Parsons said it would be found. After examining the contents of the bag, Officer Brashears confirmed that it contained various drugs and drug paraphernalia. During the course of his interactions with Parsons, Officer Brashears noticed that Parsons's pupils were two different sizes. Parsons was ultimately arrested for

DUI, possession of the controlled substances, and possession of drug paraphernalia.

When asked about his decision to arrest Parsons for DUI, Officer Brashears stated that Parsons told him that he had driven from his residence to the Five Star parking lot to meet a female. Officer Brashears testified that Parsons told him that he had used some illegal narcotics a few hours before the stop, and he observed during the stop that Parsons's pupils were not the same size causing him to believe that Parsons was still under the influence.

On April 3, 2018, Parsons was indicted on an eight-count indictment for first-degree possession of methamphetamine, possession of drug paraphernalia, second-degree possession of an unspecified controlled substance, possession of marijuana, DUI, failure to be in possession of an operator's license, and having excessive window tint.⁸

On July 17, 2018, Parsons moved the trial court to suppress evidence obtained by the Commonwealth. The trial court held a suppression hearing on July 31, 2018, at which Officer Brashears testified. Following the hearing, both Parsons and the Commonwealth submitted memoranda to support their respective arguments. On September 19, 2018, the trial court entered its order denying

⁸ Ultimately the charges of failure to be in possession of an operator's license and excessive window tint were dismissed.

Parsons's motion to suppress. Thereafter, Parsons entered his conditional plea of guilt, preserving his right to appeal the trial court's denial of his motion to suppress. Parsons was sentenced on June 18, 2019. This appeal followed.⁹

II. STANDARD OF REVIEW

Following a motion to suppress, the trial court must make both findings of fact and legal conclusions based on those findings. As a reviewing court, we must apply the constitutional standards to the facts of the case. *Goben v. Commonwealth*, 503 S.W.3d 890, 903 (Ky. 2016). This requires us to apply a dual standard of review: “*de novo* for legal questions and clear error for questions of fact.” *Id.* Under this dual standard, we first examine the trial court's findings of fact. We must “defer to the trial court's findings of fact if they are not clearly erroneous.” *Commonwealth v. Jennings*, 490 S.W.3d 339, 346 (Ky. 2016). Findings of fact are not clearly erroneous if they are supported by substantial evidence. *Davis v. Commonwealth*, 484 S.W.3d 288, 290 (Ky. 2016). Assuming that the facts were correctly decided, we then “undertake a *de novo* review of the trial court's application of the law to the facts to determine whether its decision to deny the motion to suppress was correct as a matter of law.” *Id.*

⁹ On January 3, 2019, after entering his guilty plea but before final sentencing, Parsons filed a notice of appeal. On January 24, 2019, this Court ordered Parsons to show cause as to why the appeal should not be dismissed for being interlocutory inasmuch as Parsons had not yet been sentenced. Ultimately, Parsons's first appeal was dismissed by this Court as interlocutory.

III. ANALYSIS

Parsons's first argument is that Officer Brashears lacked probable cause to arrest Parsons for DUI because there was no affirmative evidence indicating that Parsons had or was in the course of operating his vehicle at the time of the arrest. To this end, Parsons points out that he was parked in a gas station parking lot with his lights off. He asserts that Officer Brashears had no idea how long he had been in the parking lot or whether he planned to drive away from it in the immediate future.

“To determine whether an officer had probable cause to make an arrest, a court must examine the events leading up to the arrest, and then decide ‘whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to’ probable cause.” *Jackson v. Commonwealth*, 343 S.W.3d 647, 653-54 (Ky. App. 2011) (quoting *Maryland v. Pringle*, 540 U.S. 366, 371, 124 S.Ct. 795, 800, 157 L.Ed.2d 769 (2003)). “Probable cause exists when the totality of the evidence then known to the arresting officer creates a ‘fair probability’ that the arrested person committed the [offense].” *White v. Commonwealth*, 132 S.W.3d 877, 883 (Ky. App. 2003).

In *Wells v. Commonwealth*, this Court adopted a four-factor test to determine whether a defendant was in control of or operated a vehicle while intoxicated in violation of KRS 189A.010:

(1) whether or not the person in the vehicle was asleep or awake; (2) whether or not the motor was running; (3) the location of the vehicle and all of the circumstances bearing on how the vehicle arrived at that location; and (4) the intent of the person behind the wheel.

709 S.W.2d 847, 849 (Ky. App. 1986).

In considering these factors, the trial court found:

[U]pon contact with Officer Brashears, Parsons was awake, he was in the driver's seat, he was the only occupant of the car, and the car was running as it sat in the Five Star parking lot, according to the testimony at the suppression hearing. Officer Brashears testified that Parsons stated that he had driven to the Five Star to pick up a female who was to meet him there. One can infer that Parsons intended to drive back to his residence once he had picked up his female companion that was to meet him at the Five Star. Officer Brashears, during the investigatory phase of the stop observed that Parsons [sic] pupils were each different size [sic], and Parsons informed Officer Brashears that he had used drugs approximately two hours earlier. The evidence is sufficient to infer that Parsons drove to the Five Star and he intended to drive back home, and there was evidence that he was under the influence of drugs when he drove to Five Star.

(Record ("R.") at 61-62).

Having reviewed the record, we cannot hold the trial court erred when it concluded that Parsons had driven his vehicle to the Five Star while under the influence and that he intended to drive it back to his residence once the female he was supposed to meet arrived. The car was running with Parsons sitting inside the driver's seat. It was parked at a gas station, a location one would generally only

stay at for a limited time. Parsons admitted having driven the vehicle to the parking lot, and was waiting in the car for a female to arrive. Parsons also told Officer Brashears he had ingested illegal substances earlier in the evening, and Officer Brashears observed that Parsons's pupils were not evenly dilated. Based on these facts, it was reasonable for Officer Brashears to assume that Parsons had driven his vehicle to the Five Star while in an intoxicated state and that he planned to do so again to return to his residence.

Parsons argues that because Officer Brashears does not know how long Parsons was at the Five Star and did not see the vehicle move, his case is analogous to *Commonwealth v. Crosby*, 518 S.W.3d 153 (Ky. App. 2017). In *Crosby*, Kelly Martin was arrested for DUI when an officer found her sitting in her car while intoxicated. The car was running with the headlights on; it was legally parked on a residential street. Martin testified that she told the arresting officer she was at a party down the road where she planned to stay and had come out to her car to smoke a cigarette before returning to the party. After reviewing the evidence, we concluded the district court did not err in concluding that "Martin was merely using the vehicle for its seat from which she could comfortably smoke and text, rather than as a mode of imminent transportation." *Id.* at 158.

This case is markedly different. Parsons admitted using narcotics a few hours earlier. He further admitted having recently driven to the Five Star to

meet a female. Officer Brashears believed Parsons was still under the influence given the state of his pupils. Likewise, unlike Martin, Parsons's responses were sufficient to cause Officer Brashears to believe that Parsons was likely to use his vehicle as a mode of "imminent transportation" to return to his residence. Indeed, there is no suggestion that he planned to spend the night at the Five Star, and he did not indicate that he planned to leave his car at the Five Star and depart with the female. Based on the evidence and Parsons's responses, it was reasonable for Officer Brashears to believe that Parsons planned to drive in his vehicle away from the Five Star after the female arrived. This is clearly distinguishable from *Crosby*, where Martin's only admission was that she was using her vehicle as a safe, warm place to answer text messages and smoke a cigarette before returning to the party.

Based on the totality of the circumstances, we can find no error with respect to the trial court's conclusion that Officer Brashears had probable cause to arrest Parsons for DUI.

Next, Parsons argues that the trial court erred in denying his motion to suppress evidence because Officer Brashears failed to inform Parsons of his *Miranda* rights. Parsons asserts that when Officer Brashears ordered him to place his hands on his steering wheel, Parsons was then placed in custody, and any questioning thereafter was a custodial interrogation.

Miranda v. Arizona requires that, prior to subjecting a suspect to a custodial interrogation, police officers advise the suspect of their rights against self-incrimination and to an attorney. 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). However, a *Miranda* warning is not required when a suspect is merely taken into custody, but rather when a suspect is subjected to interrogation while in custody. *Id.*, 384 U.S. at 478-79, 86 S.Ct. at 1630; *see also Watkins v. Commonwealth*, 105 S.W.3d 449, 451 (Ky. 2003). “A custodial interrogation means ‘questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.’” *Jackson v. Commonwealth*, 468 S.W.3d 874, 876 (Ky. App. 2014) (citing *Miranda*, 384 U.S. at 444, 86 S.Ct. at 1612). “As a general rule, ordinary traffic stops do not constitute custody for purposes of *Miranda*.” *Greene v. Commonwealth*, 244 S.W.3d 128, 135 (Ky. App. 2008) (citing *Pennsylvania v. Bruder*, 488 U.S. 9, 11, 109 S.Ct. 205, 207, 102 L.Ed.2d 172 (1988)).

“Furthermore, police officers are authorized to order passengers to exit a vehicle while a minor traffic stop is completed. Such authorization is justified, in part, as an attempt at minimizing the risk of assault an officer may face by a person seated in an automobile.” *Butler v. Commonwealth*, 367 S.W.3d 609, 613 (Ky. App. 2012) (citations omitted).

“Police officers are free to approach anyone in public areas for any reason.” *Commonwealth v. Banks*, 68 S.W.3d 347, 350 (Ky. 2001). After approaching a citizen, an officer may ask questions or request identification, and as long as the officer does not restrain the liberty of the person or indicate that compliance with his request is mandatory, the interaction does not amount to an investigatory stop or interrogation. *See I.N.S. v. Delgado*, 466 U.S. 210, 216, 104 S.Ct. 1758, 1762, 80 L.Ed.2d 247 (1984) (stating that an “interrogation relating to one’s identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure”). However, under certain circumstances, what begins as an encounter can turn into seizure. “Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.” *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S.Ct. 1870, 1877, 64 L.Ed.2d 497 (1980) (citations omitted).

Officer Brashears approached Parsons’s vehicle in the Five Star parking lot when he noticed that the vehicle had been parked there for an abnormal amount of time. He had the right to make contact with the occupant to ascertain the situation. However, the situation changed when Officer Brashears noticed the

handgun box in the backseat. At this point, he told Parsons to place his hands on the wheel and await further instruction. This was a directive, and no reasonable person would have felt free to just leave the scene.

The dispositive question, however, is whether Parsons was “interrogated” prior to his arrest to the extent *Miranda* warnings were required. Officer Brashears asked Parsons for a driver’s license. When he was unable to provide one, Officer Brashears was able to identify Parsons through either his Social Security number or his driver’s license number. At that point, Officer Brashears discovered that Parsons was a convicted felon. Therefore, it was unlawful for Parsons to be in possession of a firearm. *See* KRS 527.040. Because Officer Brashears had spotted, in plain view, the handgun box in the back seat of Parsons’s vehicle, Officer Brashears had reasonable, articulable suspicion that a crime might be taking place. Upon believing that he had probable cause to search the vehicle for the firearm, Officer Brashears asked a moderate number of questions in the interest of officer safety; namely if there was anything that could potentially harm him in the vehicle. At that time, Parsons voluntarily admitted to the illegal narcotics located in the passenger seat of the car. Parsons answered the question without objection and without coercion from Officer Brashears. *See Smith v. Commonwealth*, 312 S.W.3d 353, 358-59 (Ky. 2010). In fact, at this point, there was nothing to indicate to Parsons that he was being formally arrested.

See Berkemer v. McCarty, 468 U.S. 420, 440, 104 S.Ct. 3138, 3150, 82 L.Ed.2d 317 (1984); *see also Smith*, 312 S.W.3d at 358-59.

The types of questions Parsons was asked were not interrogation-type inquiries. They were basic questions designed to provide identification and ensure officer safety. The fact that Parsons volunteered additional information in connection with answering the questions did not transform the encounter into a formal interrogation requiring *Miranda* warnings. Accordingly, we do not find any error by the trial court in failing to suppress either Parsons's statements or the physical evidence discovered in relation thereto based on *Miranda*.

IV. CONCLUSION

For the foregoing reasons, we AFFIRM the Anderson Circuit Court.

ALL CONCUR.

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