IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs November 14, 2006

STATE OF TENNESSEE v. ROY ERNEST RUSSELL

Direct Appeal from the Circuit Court for Sevier County
No. 10854 Richard R. Vance, Judge

No. E2006-00410-CCA-R3-CD - Filed May 31, 2007

The defendant, Roy Ernest Russell, appeals pursuant to Rule 37 of the Tennessee Rules of Criminal Procedure. The certified question of law for review is whether the defendant's stop was constitutionally permissible. We conclude, based on the staleness of the information, no reasonable suspicion, supported with specific and articulable facts, existed that permitted a constitutional stop of the defendant's vehicle. We further conclude that all evidence gathered from this constitutionally impermissible stop must be suppressed, and the evidence is dispositive to the case at hand. We reverse the judgment from the trial court and dismiss this case.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed and Dismissed

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which DAVID H. WELLES and NORMA MCGEE OGLE, JJ., joined.

Richard L. Burnett (on appeal) and Bryan E. Delius (at trial), Sevierville, Tennessee, for the appellant, Roy Ernest Russell.

Michael E. Moore, Acting Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; James B. (Jimmy) Dunn, District Attorney General; and Johnnie D. Sellars, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The defendant pled guilty to driving under the influence, fourth offense, and received a two-year sentence with all but 150 days suspended. The defendant properly reserved a certified question of law pursuant to Tennessee Rule of Criminal Procedure 37(b)(2)(A). The issue presented is dispositive.

Analysis

Initially, the State requests that this court dismiss this appeal as untimely filed. The defendant's response and a review of the record satisfy this court that a timely notice of appeal was filed, and we will proceed to the merits of the defendant's case.

At issue is whether the stop of the defendant was constitutionally permissible. This court must look to the evidence and facts accredited by the trial court, which are most favorable to the State as the prevailing party. State v. Daniel, 12 S.W.3d 420, 423 (Tenn. 2000). The appealing party bears the burden of demonstrating that the evidence preponderates against the trial court's findings. State v. Harts, 7 S.W.3d 78, 84 (Tenn. Crim. App. 1999). Findings of fact made by the trial judge on a motion to suppress are conclusive and are afforded the weight of a jury verdict. This court may not set aside the trial court's decision unless the evidence contained within the record preponderates against the findings of the trial court. State v. Jackson, 889 S.W.2d 219, 222 (Tenn. Crim. App. 1993). Questions of the witness's credibility, the weight and value of the evidence, and the resolution of conflicts in the evidence are matters entrusted to the trial judge. State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996).

The only testimony during the suppression hearing was that of Matt Terrier, the arresting officer. He testified that, approximately two and one-half hours prior to stopping the defendant, he responded to a call at 986 Jamesena Miller Drive. It was there that he met the defendant's niece, Rebecca King, who reported that the defendant was causing an ongoing problem by harassing her, phoning her, and appearing at her residence. She reported that the defendant had beat on the door to her home earlier in the day (approximately 10:30 a.m.) and that she had told him to leave her alone. The officer advised Ms. King how to obtain a warrant. The officer also interviewed three additional witnesses who reported that they had seen a man beating on Ms. King's door and screaming. They also said that this man drove a green pickup truck and appeared to be intoxicated. The officer left with the defendant's name, and a description of the defendant's truck, and the truck's tag number. Some two and one-half hours later, at approximately 6:25 p.m., the officer received a BOLO (Be On The Lookout) for the defendant's truck. Within minutes, the officer observed the truck in the parking lot of Patriot Mart. Before the truck exited the Patriot Mart onto Teaster Lane, the officer activated his police lights, stopped the defendant, and, after viewing him, arrested him for driving while intoxicated.

It is the State's position that the defendant's previous behavior, coupled with the BOLO dispatch, provided reasonable suspicion for the stop of the defendant's vehicle. The defendant contends that the information possessed by Officer Terrier was stale and insufficient to establish reasonable suspicion. The defendant further contends that the information found in the record regarding the BOLO is insufficient to establish any connection with previous behavior. Upon our review of this record, we agree with the defendant that the State did not introduce any proof through Officer Terrier as to the nature or extent of the information conveyed to the officer from the BOLO.

We note that the State argued, "In this situation this stop occurred 15 minutes after he got a second call at the same residence involving the same person. He - - he not only got this call, he got a specific vehicle description and a specific tag number. He stopped the vehicle in the general area where this - - where it was supposed to be headed. He stopped the vehicle. . . ."

Officer Terrier's testimony is devoid of any information regarding the nature of the BOLO, the complaint behind the BOLO, the complaining party, or the location of the residence in relationship to the defendant's location. For this reason, the evidence of the BOLO is of no value in our determination of whether this officer had reasonable suspicion to stop this defendant. Furthermore, to the extent the trial court relied upon the State's statements in argument as a basis for reasonable suspicion, the evidence preponderates against such a finding.

We conclude that Officer Terrier had reliable information that formed a basis for reasonable suspicion, based upon specific and articulable facts, during his initial investigation. However, that reliable information became stale with time, and we conclude, upon this record, that the reasonable suspicion that the defendant was driving while intoxicated at 10:30 a.m. was not reasonable some eight hours later, at 6:30 p.m. Without some additional information or evidence, we determine that an eight-hour passage of time greatly diminishes the probability that this defendant would be driving while intoxicated. We note that we have no other additional information relative to this defendant's driving that would confirm any suspicion originally valid.

Conclusion

Based on the foregoing and the record as a whole, we reverse the judgment from the trial court and dismiss this case.

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JOHN EVERETT WILLIAMS, JUDGE