IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
MARCH SESSION, 1995

FILED

November 16, 1995

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	)	
	)	No. 01C01-9411-CC-00377
Appellee	)	
	)	COFFEE COUNTY
vs.	)	
	)	Hon. **Gerald L. Ewell, Sr.**, Judge
WAYNE LEE YEARGAN,	)	
	)	(Driving under the influence, second
Appellant		offense; Driving on a revoked license)

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, Wayne Lee Yeargan, appeals from convictions for driving under the influence, second offense, and driving on a revoked license, entered by the Circuit Court for Coffee County. On February 27, 1994, the appellant pled guilty to both offenses, reserving the right under Tenn. R. Crim. P. 37(b)(2)(i) to appeal certified questions of law, dispositive of his case. In essence, the appellant contends that the officer who initially detained the appellant lacked probable cause or reasonable suspicion to conduct the investigatory traffic stop, as required by the Fourth and Fourteenth Amendments of the United States Constitution and Article 1, Section VII of the Tennessee Constitution.[1]

After reviewing the record, we affirm the trial court's judgment.

I. Factual Background

On January 28, 1993, at approximately 2:20 p.m., Officer Jason Ferrell, a Tullahoma City police officer, observed the appellant in a blue Dodge pickup truck travelling north on Jackson Street in Tullahoma. Officer Ferrell was in the southbound lane. He recognized the appellant because he had arrested the appellant in March, 1992, for driving under the influence of an intoxicant. Ferrell was also present when the appellant pled guilty to driving under the influence in the General Sessions Court of Coffee County on July 2, 1992. Ferrell was aware that the sentence imposed by the court included the revocation of the appellant's driver's license for one year. Therefore, Ferrell turned around and began following the appellant. The appellant accelerated and "attempted to put some traffic between" himself and Ferrell's patrol car. When the appellant turned into

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[1] The appellant also argues in his brief that the officer lacked authority under Tenn. Code Ann. § 55-50-351 (1993) to detain the appellant for the purpose of checking his driver's license. However, we find that the appellant has waived this issue as it is not within the scope of the questions preserved by the appellant for appeal pursuant to Tenn. R. Crim. P. 37(b)(2)(i). See discussion infra part II.A.

the parking lot of Ruby's Lounge, a local bar, Ferrell activated his blue lights.

Upon stopping the appellant, Officer Ferrell requested production of a driver's license. The appellant produced a restricted license. After observing the appellant's demeanor during the course of this initial contact, Ferrell concluded that the appellant was intoxicated. Ferrell then conducted field sobriety tests and, as a result of those tests and his earlier observations, arrested the appellant for driving under the influence and driving on a revoked license. [2]

In subsequent proceedings, the appellant moved to suppress all evidence seized as a result of the traffic stop. On September 17, 1993, the trial court conducted a suppression hearing. The State called Officer Ferrell to recount the events leading to the appellant's arrest. The appellant introduced into evidence a copy of the arrest warrant and judgment in his first DUI case, as well as the order for a restricted license. On October 15, 1993, the circuit court denied the appellant's motion.

II. Analysis

A.

Initially, we examine the scope of the issues preserved by the appellant for appeal pursuant to Tenn. R. Crim. P. 37(b)(2)(i). Rule 37 provides that an appeal lies from any judgment of conviction upon a plea of guilty if the appellant "explicitly" reserved the right to appeal the certified question of law, dispositive of the case, with the consent of the state and the court. The appellant preserved the following issues for appeal:

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[2] The appellant possessed a restricted license that authorized him to drive between 7 a.m. and 7 p.m. for work purposes. The restricted license, however, did not allow him to drive while under the influence. The state's charge of driving on a revoked license was premised upon the theory that because the appellant was driving outside the authority of his restricted license at the time of the stop, operation of the vehicle was conducted under his revoked status. The appellant does not contest this theory.

> [W]hether the trial court erred in denying the motion to suppress and denied defendant's rights under the Constitution and State of Tennessee where defendant, known by the arresting officer to have been convicted within the past year of first offense DUI, and therefore, having his driver's license revoked, is stopped upon the mere suspicion that he is driving on a revoked license, particularly in light of the likelihood that the individual has a restricted license allowing him to drive for business purposes and the fact that the stop is made during normal business hours; and Whether information that an individual's driver's license was revoked for first offense DUI over six months prior is stale for the purpose of creating a reasonable and articulable suspicion that an individual is driving on a revoked license, especially in light of the ability to obtain a restricted license.

In his brief and in oral argument, the appellant further argued that Ferrell did not have authority pursuant to Tenn. Code Ann. § 55-50-351 (1993) to stop the appellant in order to ascertain the status of the appellant's driver's license, even assuming that Ferrell possessed probable cause to believe that the appellant's driver's license was revoked.

The Tennessee Supreme Court in State v. Preston, 759 S.W.2d 647, 650 (Tenn. 1988), explained the requirements of Rule 37. Among these requirements, the final order of judgment "must contain a statement of the dispositive certified question of law reserved by the defendant for appellate review and the question of law must be stated so as to clearly identify the scope and the limits of the legal issue reserved." Id. No issues beyond the scope of the certified question will be considered. Id. The requirements of Rule 37 must be strictly followed. State v. James, No. 02S01-9301-CR-00001 (Tenn. April 26, 1993). The burden is on the defendant to ensure that the requirements of Rule 37 are fully met. Preston, 759 S.W.2d at 650. The statutory issue raised by the appellant is beyond the scope of the issues he preserved for appeal pursuant to Rule 37. Therefore, this issue is waived.

Notwithstanding waiver, this issue is meritless. Tenn. Code Ann. § 55-50-351 (1993) provides:

> [I]t is unlawful for any law enforcement officer of this state, except a state patrol officer or officer of the [Department of Safety], to demand the exhibition of ... licenses, *unless the operator of the motor vehicle is then engaged in, or immediately prior to such demand has been engaged in, a violation of any municiple ordinance or statute law of this state*.

(Emphasis added). The appellant contends that local law enforcement officers may not require the exhibition of a driver's license even when the officer possesses probable cause to believe that the driver's license has, in fact, been revoked. Yet, Tenn. Code Ann. § 40-7-103 (Supp. 1994) provides that local officers *may* stop a motor vehicle for the sole purpose of examining a driver's license if the officer has probable cause to believe that an offense has been committed. Courts should construe statutes relating to the same subject matter to reconcile different provisions in order to give them a consistent meaning. State v. Banks, 875 S.W.2d 303, 308 (Tenn. Crim. App. 1993). Thus, clearly, Tenn. Code Ann. § 55-50-351(1993) must also include an exception to the prohibition against investigatory stops for the purpose of checking licenses when local law enforcement officers have probable cause to believe that a driver's license has been revoked.

Moreover, this court, in addressing an identical prohibition under a prior statute, made the following observation.

> Suppose ... that a police officer arrests a man for driving while drunk, he attends as a witness at the trial and observes that the man's license to drive an automobile is revoked for a period of one year. Suppose then that the following day, or the following week, he observes this man driving an automobile in a manner that is not in violation of any other statute except that relating to the driver's license. Must he stand idly by and see this man whom he knows to be without a driver's license drive a car on the street or highway and be powerless to arrest him for driving without a license? We think the law does not contemplate any such absurd restriction as this.

Roberson v. Metropolitan Government, 412 S.W.2d 902, 905 (Tenn. App. 1966). See also State v. McCulloch, No. 03C01-9405-CR-00176 (Tenn. Crim. App. at Knoxville, March 8, 1995). In McCulloch, the officer observed an individual whom he thought he had previously arrested for DUI and driving on a revoked

license. Id. This court observed that the officer possessed sufficient knowledge at this point to stop the vehicle.[3] Id. This observation was made in the context of a subsequent discussion in which the court specifically rejected the application of the prohibition contained in Tenn. Code Ann. § 55-50-351(1993). Id.

B.

We then turn to the issue of whether Ferrell had probable cause or reasonable suspicion to detain the appellant. We note that "stopping an automobile and detaining its occupants constitute a 'seizure' within the meaning of [Fourth and Fourteenth Amendments of the United States Constitution], even though the purpose of the stop is limited and the resulting detention quite brief." Delaware v. Prouse, 440 U.S. 648, 653, 99 S.Ct. 1391, 1396 (1979). Under both the Tennessee and United States Constitutions, a police officer may make an investigatory stop of a motor vehicle when the officer possesses "reasonable suspicion," supported by specific and articulable facts, that a criminal offense has been or is about to be committed. Probable cause is not required.[4] Prouse, 440 U.S. at 663, 99 S.Ct. at 1401; Terry v. Ohio, 392 U.S. 1, 21-22, 88 S.Ct.

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[3] The officer in McCulloch, No. 03C01-9405-CR-00176, obtained additional information which supplemented his basis for the stop.

[4] As previously discussed, Tenn. Code Ann. § 40-7-103(Supp. 1994) does require that local law enforcement officers possess *probable cause*, and not merely reasonable suspicion, to believe that an offense has been committed before stopping a motor vehicle for the sole purpose of examining the operator's license of the driver. This limitation on traffic stops is not, however, constitutionally required, and a violation of the statutory provision may or may not require application of the exclusionary rule. State v. Blankenship, 757 S.W.2d 354, 357 (Tenn. Crim. App. 1988); State v. Bryant, 678 S.W.2d 480, 483 (Tenn. Crim. App. 1984), cert. denied, 469 U.S. 1192, 105 S.Ct. 967 (1985).

> A motion to suppress evidence is a procedural device used to exclude evidence that has been obtained by law enforcement officers in violation of a right guaranteed by the United States or Tennessee Constitution, *or possibly a right guaranteed by a statute, rule or regulation*.

State v. Fuqua, No. 01-C-019003CC00076 (Tenn. Crim. App. at Nashville, April 26, 1991)(emphasis added). We note that this court has applied "reasonable suspicion" analysis in the context of facts almost identical to those in the instant case. State v. Goltrie, No. 03C01-9211-CR-00392 (Tenn. Crim. App. at Knoxville), perm. to appeal denied, (Tenn. 1993); State v. Cunningham, No. 03C01-9203-CR-85 (Tenn. Crim. App. at Knoxville, July 22, 1992). In any event, this issue is beyond the scope of the certified questions preserved for appeal and, moreover, we conclude that the more stringent probable cause standard was met.

1868, 1879-1880 (1968); State v. Watkins, 827 S.W.2d 293, 294 (Tenn. 1992); Griffin v. State, 604 S.W.2d 40, 42 (Tenn. 1980); State v. Brothers, 828 S.W.2d 414, 415 (Tenn. Crim. App. 1991), perm. to appeal denied, (Tenn. 1992). Nevertheless, we conclude that Officer Ferrell possessed probable cause to conduct an investigative stop.

The standard for probable cause is whether "the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [appellant] had committed or was committing an offense." Beck v. Ohio, 379 U.S. 89, 91, 85 S.Ct. 223, 225 (1964). In determining probable cause, what is controlling are the facts and circumstances within the officer's knowledge at the time of the arrest or seizure. State v. Duer, 616 S.W.2d 614, 616 (Tenn. Crim. App. 1981). Finally, "[i]n dealing with probable cause, ... as the very name implies, we deal with probabilities. These are not technical; they are factual and practical considerations of every day life on which reasonable and prudent [individuals], not legal technicians act." Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 2328 (1983); State v. Tays, 836 S.W.2d 596, 599 (Tenn. Crim. App. 1992).

At the time of the investigatory stop, Officer Ferrell was aware that the appellant's driver's license had been revoked for a period of one year. Moreover,

when Ferrell began to follow the appellant, the appellant increased his speed and "attempted to put some traffic between" himself and Ferrell's patrol car. Yet, the appellant contends that because his driver's license was revoked more than six months before the investigatory stop, Ferrell's knowledge was stale for the purpose of establishing probable cause. Ferrell also knew that the appellant was eligible to receive a restricted license following the appellant's DUI conviction. Nevertheless, the investigatory stop occurred well within the one

year term of revocation. Moreover, contrary to appellant's assertion in his brief, §55-10-403(d)(Supp. 1994) "does not *require* the issuance of a restricted operator's license, but simply makes the defendant eligible for that privilege and vests the trial judge with authority and discretion in the matter." Bryant, 678 S.W.2d at 483 (emphasis added). Therefore, a prudent officer could reasonably have believed that the appellant was driving on a revoked license.

The appellant additionally contends that Ferrell lacked probable cause to detain the defendant because the officer could have called the police department communications center before the investigatory stop and discovered that the appellant possessed a restricted license. Ferrell testified at the suppression hearing that he could have obtained the necessary information in approximately fifteen minutes. However, while probable cause must be more than mere suspicion, neither must it be absolute certainty. Tays, 836 S.W.2d at 599. In essence, the appellant asks that we impose a standard of "certain cause," rather than probable cause, upon the actions of the officer in this case. This we decline to do.

Following a suppression hearing, the trial court denied the appellant's motion to suppress evidence obtained as a result of the investigatory stop conducted by Officer Ferrell. "The findings of fact and conclusions of law made

by the trial court after an evidentiary hearing are afforded the weight of a jury verdict; this court will not set aside the judgment of the trial court unless the evidence contained in the record preponderates against its findings." State v. Dick, 872 S.W.2d 938, 943 (Tenn. Crim. App.), perm. to appeal denied, (Tenn. 1993). We conclude that the appellant has not carried his burden. Accordingly, the judgment of convictions as entered by the trial court are affirmed.

DAVID G. HAYES, Judge

CONCUR:

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JERRY SCOTT, Presiding Judge

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JOSEPH M. TIPTON, Judge