

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs August 15, 2023

FILED

08/24/2023

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. RODNEY PAUL BEECH**

**Appeal from the Circuit Court for Williamson County  
No. W-C200335 Joseph A. Woodruff, Judge**

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**No. M2022-01213-CCA-R3-CD**

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Following the denial of his motion to suppress, the defendant, Rodney Paul Beech, pled guilty to driving under the influence (“DUI”) and DUI per se and was sentenced to eleven months and twenty-nine days suspended to probation after service of forty-eight hours in jail. As a condition of his plea, the defendant reserved the right to appeal a certified question of law pursuant to Rule 37(b)(2) of the Tennessee Rules of Criminal Procedure, challenging the denial of his motion to suppress based on lack of reasonable suspicion for the stop of his vehicle. Upon our review, we conclude the defendant failed to properly certify the question of law pursuant to Rule 37(b)(2). Accordingly, this Court is without jurisdiction, and the appeal is dismissed.

**Tenn. R. App. 3 Appeal as of Right; Appeal Dismissed**

J. ROSS DYER, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and ROBERT L. HOLLOWAY, JR., JJ., joined.

M. Todd Ridley, Assistant Public Defender, Tennessee Public Defenders Conference, Franklin, Tennessee (on appeal); Richard C. Strong, Assistant Public Defender, Franklin, Tennessee (at hearing), for the appellant, Rodney Paul Beech.

Jonathan Skrmetti, Attorney General and Reporter; Jonathan H. Wardle, Senior Assistant Attorney General; Stacey Edmonson, District Attorney General; and Dale Evans, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

***Facts and Procedural History***

The defendant was indicted on charges of DUI and DUI per se, arising out of the stop of his vehicle on December 29, 2019, by Officer Aaron Moore with the Franklin Police Department in response to a 911 call from a gas station store clerk regarding an intoxicated individual.

On August 27, 2021, the defendant filed a motion to suppress in which he argued Officer Moore did not have reasonable suspicion or probable cause to initiate the stop of his vehicle. The defendant averred that the 911 call failed to show that the caller had a factual basis for his assertion that the defendant was intoxicated other than interactions on a previous date, and Officer Moore did nothing to investigate the truthfulness of the caller's allegations such as observing the defendant's driving prior to initiating the stop. The State filed a response asserting Officer Moore had reasonable suspicion to stop the defendant's vehicle because the caller provided sufficient information identifying himself, as well as what the defendant was wearing and driving and the actions of the defendant indicative of intoxication. In the alternative, the State argued that the stop of the defendant's vehicle was justified as a community caretaking function. The defendant filed a reply in which he argued that the community caretaking exception to the warrant requirement was inapplicable in his case.

The trial court conducted a hearing on the motion, at which Officer Moore testified he was on patrol in the area near the Shell gas station on Highway 96 West when he received a call from dispatch concerning a "possible intoxicated subject who had assaulted a gas station attendant." Specifically, the dispatcher told Officer Moore that "there was an intoxicated subject . . . and that one of the clerks was hit." Officer Moore was given a description of the suspect as being an African-American male driving a black sedan. When Officer Moore arrived at the gas station, the store clerk pointed at a black sedan and yelled, "[T]hat is him, that's the vehicle, that's the vehicle." Relying on the dispatch report of an assault, seeing a vehicle matching the dispatch report, and the clerk's words and gestures, Officer Moore initiated a traffic stop of the black sedan almost immediately after the sedan pulled out of the gas station parking lot. Officer Moore reiterated that the dispatch had also included a report that the individual was intoxicated.

Officer Moore made contact with the driver, the defendant, and asked him questions about what happened at the gas station. While talking to the defendant, Officer Moore noticed a strong odor of alcohol and observed that the defendant's eyes were bloodshot red and his speech was slurred. At that time, Officer Moore began a routine DUI investigation and determined the defendant was intoxicated. Meanwhile, a second officer reported to the gas station, talked to the store clerk, and determined that no assault had taken place.

On cross-examination, Officer Moore acknowledged that he did not personally observe the defendant commit any traffic violations or an assault. Officer Moore also did

not personally observe any evidence of the defendant's intoxication prior to pulling him over, nor did he talk to the clerk beforehand to understand why the clerk thought the defendant was intoxicated. Officer Moore said he did not have time to observe the veracity of the complaint because the defendant "would have driven off" if he had first stopped to interview the clerk. Officer Moore did not hear the 911 call, he only received the information the dispatcher relayed to him. Officer Moore agreed that he did not mention in his Affidavit of Complaint in support of a search warrant that there had been an allegation of an assault.

A recording of the store clerk's 911 call was submitted as a late-filed exhibit. In the recording, the store clerk stated that he did not know the name of the intoxicated individual but gave a description of what the individual was wearing and driving. The clerk explained that he could tell the individual was intoxicated by the unsteady way he walked and the need to lean on his car while standing outside the vehicle. The clerk indicated that he had encountered the individual many times at the store and that the individual was often intoxicated and behaved in a disruptive manner. The clerk said the individual was "mean," "rude," and liked to "cuss" at others in the store when he was "drunk." The clerk also said something that could be interpreted as reporting that the individual had just "hit" him or that the individual was just going to "sit" in his car like he usually did when he was "drunk." It appears that the 911 operator believed the clerk had said the individual had "hit" him based on the 911 operator's follow-up questions.

After the suppression hearing, the trial court took the matter under advisement in order to review the recording of the 911 call. Thereafter, the trial court entered an order denying the defendant's motion to suppress. The court determined that Officer Moore had reasonable suspicion to initiate the traffic stop of the defendant's vehicle. The court noted that when Officer Moore arrived on the scene, he saw the store clerk pointing at a black sedan and yelling "That's him. That's him. That's him." The court further noted that the dispatch report identified the store clerk as the person making the 911 call, described a car that matched the style and color of the car the clerk pointed out to the officer, and reported the suspected offenses of intoxicated driving and assault of the clerk. The court observed that because the suspect vehicle was leaving the premises of the Shell station and entering onto a public highway, the urgency of conducting an investigative detention of the suspect substantially outweighed any benefit derived from delaying in order to further question the store clerk. The court agreed with the defendant that the community caretaking exception was inapplicable to the facts of the case.

Following the denial of his motion to suppress, the defendant entered a guilty plea to DUI and DUI per se, which merged, in exchange for a sentence of eleven months and twenty-nine days suspended to probation after service of forty-eight hours in jail. The trial

court entered an order accepting the defendant's guilty plea and reserving the following certified question of law:

Whether the trial court erred in denying the [defendant]'s motion to suppress by ruling that Officer Aaron Moore did not violate the Fourth Amendment to the United States Constitution and Article I Section 7 of the Tennessee Constitution, finding he possessed specific and articulable facts that led to reasonable suspicion of criminal activity before he seized [the defendant] by conducting a traffic stop on his vehicle?

The parties consented to the reservation of the certified question and agreed that it was dispositive.

### *Analysis*

The defendant argues that the trial court erred in denying his motion to suppress because the officer did not have reasonable suspicion supported by specific and articulable facts in order to conduct a traffic stop of his vehicle. The State asserts that the appeal should be dismissed because the defendant's certified question is overly broad in that it fails to identify any of the reasons the defendant relied on in his motion to suppress regarding the issue of reasonable suspicion and, alternatively, that the trial court properly denied the motion.

Tennessee Rule of Criminal Procedure 37(b)(2)(A) provides that a certified question may be reserved when:

(A) the defendant entered into a plea agreement under 11(c) but explicitly reserved – with the consent of the [S]tate and of the court – the right to appeal a certified question of law that is dispositive of the case, and the following requirements are met:

(i) the judgment of conviction or order reserving the certified question that is filed before the notice of appeal is filed contains a statement of the certified question of law that the defendant reserved for appellate review;

(ii) the question of law as stated in the judgment or order reserving the certified question identified clearly the scope and limits of the legal issue reserved;

(iii) the judgment or order reserving the certified question reflects that the certified question was expressly reserved with the consent of the [S]tate and the trial court; and

(iv) the judgment or order reserving the certified question reflects that the defendant, the state, and the trial court are of the opinion that the certified question is dispositive of the case

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Tenn. R. Crim. P. 37(b)(2)(A)(i)-(iv). In addition to the above requirements, our Supreme Court instructs:

[T]he question of law must be stated so as to clearly identify the scope and the limits of the legal issue reserved. For example, where questions of law involve the validity of searches and the admissibility of statements and confessions, etc., the reasons relied upon by defendant in the trial court at the suppression hearing must be identified in the statement of the certified question of law and review by the appellate courts will be limited to those passed upon by the trial judge and stated in the certified question, absent a constitutional requirement otherwise.

*State v. Preston*, 759 S.W.2d 647, 650 (Tenn. 1988). The defendant bears the burden of satisfying the requirements of Rule 37(b)(2). *State v. Pendergrass*, 937 S.W.2d 834, 837 (Tenn. 1996).

We have considered the State’s initial assertion that the certified question is overly broad, as well as analyzed numerous opinions from the Tennessee Supreme Court and this Court addressing certified questions. After doing so, we determine that the defendant’s certified question is overly broad, and we, therefore, are without jurisdiction to consider the appeal. Although the defendant used the terms “reasonable suspicion” and “specific and articulable facts” in his certified question, he failed to provide any of the reasons supporting his claim that he relied on in his motion to suppress or at the suppression hearing. A certified question must clearly identify the scope and limits of the legal issue and articulate the reasons relied on by the defendant in the trial court. *See State v. Hall*, No. E2019-00024-CCA-R3-CD, 2020 WL 2126509, at \*3 (Tenn. Crim. App. May 5, 2020); *State v. Davis*, No. W2017-02145-CCA-R3-CD, 2018 WL 3409678, at \*5-\*6 (Tenn. Crim. App. Apr. 3, 2018) (citing *State v. Wilson*, No. E2015-01009-CCA-R3-CD, 2016 WL 537083, at \*4 (Tenn. Crim. App. Feb. 11, 2016)), *perm. app. denied* (Tenn. June 23, 2016). For instance, the defendant’s certified question does not mention his allegation that there was not a factual basis for the caller’s assertion that the defendant was intoxicated or that the officer did not independently verify the report of intoxication by questioning the

caller as to the basis for his allegations and/or personally observing the defendant's driving.<sup>1</sup> In addition, the question does not identify what evidence the defendant seeks to suppress. *See Davis*, 2018 WL 3409678, at \*5-\*6 (citing *Yarbrough*, No. M2013-02125-CCA-R3-CD, 2014 WL 3735927, at \*3 (Tenn. Crim. App. July 29, 2014)).

The defendant's certified question in this case is very similar to the certified question presented in *Yarbrough*, 2014 WL 3735927, at \*2, and in some ways even less precise because the certified question in *Yarbrough* contained some facts. In *Yarbrough*, this Court determined that the following question was overly broad:

Whether the trial court erred in denying [d]efendant's Motion to Suppress any and all evidence the State might introduce in the matter because the [d]efendant was seized without reasonable suspicion or probable cause, for DUI, in violation of the Fourth, Fifth[,] and Sixth Amendment[s], for DUI where [d]efendant asserts he was not in physical control of the vehicle at the time of his arrest.

*Id.* at \*2-\*3.

We conclude the defendant has presented a certified question that is overly broad and, therefore, fails to meet the strict requirements of Rule 37. Accordingly, the appeal is dismissed.

### ***Conclusion***

Upon review, we conclude that we are without jurisdiction to consider the defendant's appeal because the defendant has not properly reserved a certified question of law under Rule 37. The appeal is dismissed.

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J. ROSS DYER, JUDGE

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<sup>1</sup> We acknowledge an unpublished opinion of this Court where we determined that a similarly worded certified question satisfied jurisdictional requirements. *See State v. Bell*, No. M2015-01999-CCA-R3-CD, 2016 WL 4036392, at \*3 (Tenn. Crim. App. July 25, 2016). However, we specifically noted in *Bell* that the order accompanying the certified question delineated the facts underlying the traffic stop and subsequent arrest. *Id.* Whereas, here, the addendum to the judgment reserving the certified question does not provide such additional information.