

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
April 27, 2016 Session

STATE OF TENNESSEE v. JAMES DUSTIN SAMPLES

**Appeal from the Criminal Court for Bradley County
No. 14-CR-400 Sandra Donaghy, Judge**

No. E2015-01909-CCA-R3-CD – Filed June 16, 2016

The Defendant, James Dustin Samples, pleaded guilty in Bradley County Criminal Court to driving under the influence and received a sentence of eleven months and twenty-nine days, which the trial court suspended to supervised probation following seven days' incarceration. Pursuant to his plea agreement, the Defendant reserved a certified question of law concerning the trial court's denial of his Motion to Suppress evidence of the Defendant's intoxication obtained following the stop of his vehicle. Following our review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the Court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Kenneth L. Miller, Cleveland, Tennessee, for the appellant, James Dustin Samples.

Herbert H. Slatery III, Attorney General and Reporter; Lacy Wilber, Senior Counsel; Stephen Crump, District Attorney General; and Ashley Ervin, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On July 16, 2014, the Bradley County Grand Jury indicted the Defendant for driving under the influence under Tennessee Code Annotated section 55-10-401 and failure to maintain lane, a violation of Tennessee Code Annotated section 55-8-123. Thereafter, the Defendant filed a Motion to Suppress, claiming that the officer lacked

probable cause or reasonable suspicion for the traffic stop of the Defendant's vehicle. At a hearing on the motion, Trooper Phillip Reagan with the Tennessee Highway Patrol testified that on January 19, 2014, he was working in Bradley County when he received an alert from police dispatch concerning a vehicle that was traveling north on I-75 near Exit 20. The dispatcher reported that she had received a telephone call reporting that the vehicle had almost hit a cement barrier wall in the construction zone and provided Trooper Reagan with a description of the vehicle and the tag number. Trooper Reagan testified that a vehicle matching the dispatcher's description passed him in the left lane near mile marker 23. As the trooper followed, the vehicle

appeared to have drifted over almost crossing the yellow left line. The vehicle then went to the right lane abruptly in front of a vehicle pulling a trailer, almost ran that—appeared to run that vehicle off the road, and then the vehicle crossed over onto the shoulder of the exit, and crossed well over the white fog line

Trooper Reagan stated that the “whole right side” of the vehicle was “over halfway over the fog line from off the exit” and that he activated his blue lights when the vehicle crossed over the fog line. The State then introduced, as an exhibit, a video recording of Trooper Reagan's traffic stop of the Defendant's vehicle. On cross-examination, Trooper Reagan stated that he did not know the identity of the person who reported that the Defendant's vehicle almost hit the concrete barrier in the construction zone, but he knew that the individual provided police dispatch with his or her name and phone number.

Following the hearing, the trial court entered a written order denying the Defendant's Motion to Suppress. The trial court accredited Trooper Reagan's testimony and found that Trooper Reagan received an alert from police dispatch describing the Defendant's car and tag number and providing information that the Defendant's vehicle almost hit a cement barricade at Exit 20. As Trooper Reagan followed the Defendant, he observed the defendant's vehicle “drift within its lane of travel, change lanes in front of a vehicle pulling a trailer without signaling, and cross over the fog line near Exit #25.” The trial court further determined that the Defendant exited the interstate after traveling for a distance with “about one-half of the vehicle across the fog line” and that it was only after the Defendant crossed the fog line that the trooper activated his blue lights to stop the vehicle. The trial court also noted that there was not “a string of cars exiting the interstate at that time” but that, nonetheless, the Defendant's vehicle began “to execute the exit way before the lines for the exit[.]” The trial court concluded that the officer had reasonable suspicion, based upon specific and articulable facts, to support an investigatory stop of the Defendant's vehicle.

On August 28, 2015, the Defendant pleaded guilty to driving under the influence,¹ and as part of the plea agreement, the trial court entered an order reserving a certified question of law for appeal. Specifically, the order stated:

[Trooper Reagan] testified that he received a BOLO concerning [the] Defendant's vehicle almost hitting a concrete barrier and thereafter came into contact with the vehicle. He testified that the Defendant's vehicle drifted within its lane, changed lanes in front of [a] vehicle without signaling and crossed over the fog line near Exit #25 on Interstate 75.

A video was introduced which showed the Defendant's vehicle from the time it passed the trooper until the traffic stop. [The] Defendant submitted that the video did not support reasonable suspicion or probable cause because it showed the lane change did not affect any other vehicle and the crossing of the fog line was as he was entering onto the [e]xit [r]amp.

The Defendant therefore expressly reserves the question of whether the Trial Court erred in denying the Defendant's Motion to Suppress by holding that the above proof gave the officer reasonable suspicion to justify stopping the Defendant's vehicle.

This timely appeal follows.

Analysis

On appeal, the Defendant argues that the trial court erred in finding that the traffic stop was supported by reasonable suspicion. He asserts that his crossing the fog line immediately before he entered the exit ramp did not constitute reasonable suspicion sufficient for Trooper Reagan to initiate a traffic stop.

Tennessee Rule of Criminal Procedure 37(b)(2)(A) allows for an appeal from any order or judgment on a plea of guilty or nolo contendere if the defendant reserves, with the consent of the State and the court, the right to appeal a certified question of law that is dispositive of the case, so long as the following four 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

¹ The State entered a nolle prosequi on the charge of failure to maintain lane.

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 identifies 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 state 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[.]

Tenn. R. Crim. P. 37(b)(2)(A)(i)-(iv).

Before reaching the merits of a certified question of law, the appellate courts must determine if the record on appeal demonstrates how the certified question is dispositive of the case and should deny appellate review if the court does not agree that the question is dispositive. State v. Preston, 759 S.W.2d 647, 651 (Tenn. 1988). Additionally, the defendant must draft the certified question so that its scope and limits are clearly stated for the reviewing court. State v. Day, 263 S.W.3d 891, 899-900 (Tenn. 2008). Appellate courts lack jurisdiction to hear any issue beyond the scope of the certified question. See id. at 900; State v. Irwin, 962 S.W.2d 477, 478-79 (Tenn. 1998); Preston, 759 S.W.2d at 650. The defendant bears the burden of ensuring that the final order complies with the requirements of Rule 37 and that the appellate record is sufficient for review. Preston, 759 S.W.2d at 650.

In this case, the record shows that all of the requirements of Rule 37(b)(2)(A) were in fact satisfied. Before the filing of the notice of appeal, the trial court entered an order reserving the certified question. The order contains a statement of the certified question of law that clearly identifies the scope and limits of the issue reserved. Additionally, the order reflects that the question was reserved with the consent of the trial court and the State. The order also indicates that the parties agreed the certified question was dispositive of the case. We agree that the certified question is dispositive of the case because the evidence of the Defendant's intoxication was obtained only as a result of the traffic stop. Moreover, the question identifies the scope and limits of the issue reserved. We therefore will consider the question on its merits.

In reviewing a trial court's determinations regarding a suppression hearing, a trial court's findings of fact are binding on this court unless the evidence in the record preponderates against them. State v. Echols, 382 S.W.3d 266, 277 (Tenn. 2012) (citing State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996)). "Questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." Id. The prevailing party is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing and all reasonable and legitimate inferences that may be drawn therefrom. Id. The trial court's application of law to the facts is reviewed under a de novo standard with no presumption of correctness. Id. (citing State v. Walton, 41 S.W.3d 75, 81 (Tenn. 2001)).

The United States and Tennessee protect citizens from unreasonable searches and seizures. U.S. Const. amend. IV; Tenn. Const. Art. I, § 7; see also State v. Binette, 33 S.W.3d 215, 218 (Tenn. 2000). Generally, "under both the federal and state constitutions, a warrantless search or seizure is presumed unreasonable, and evidence discovered as a result thereof is subject to suppression unless the State demonstrates that the search or seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement." State v. Yeargan, 958 S.W.2d 525, 629 (Tenn. 1997).

The stop of a vehicle and the detention of its occupants constitute a seizure within the meaning of both the Fourth Amendment to the United States and article I, section 7, of the Tennessee Constitution. See Whren v. United States, 517 U.S. 806, 809-10 (1996); Binette, 33 S.W.3d 218. A warrant is not required for a brief investigatory stop "when the officer has a reasonable suspicion, supported by specific and articulable facts, that a criminal offense has been or is about to be committed." State v. Bridges, 963 S.W.2d 487, 492 (Tenn. 1997); see also Terry v. Ohio, 392 U.S. 1, 21 (1968); Binette, 33 S.W.3d at 218; Yeargan, 958 S.W.2d at 630. Reasonable suspicion is "a particularized and objective basis for suspecting the subject of a stop of criminal activity [], and it is determined by considering the totality of the circumstances surrounding the stop[.]" Binette, 33 S.W.3d at 218 (citing Ornelas v. United States, 517 U.S. 690, 696 (1996); Alabama v. White, 496 U.S. 325, 330 (1990)). The objective facts upon which the officer relied may include, but are not limited to, the officer's observations, information received from fellow officers, information received from citizens, and the "pattern of operation of certain offenders." State v. Watkins, 827 S.W.2d 293, 294 (Tenn. 1992). In determining whether an investigatory detention is based upon reasonable suspicion, appellate courts engage in a fact-intensive and objective analysis, "reviewing the record for specific and articulable facts, that the defendant had committed, or was about to commit, a criminal offense." State v. Hanning, 296 S.W.3d 44, 49 (Tenn. 2009) (internal quotation marks omitted); see also Day, 263 S.W.3d at 903 (recognizing that a court must

consider the “totality of the circumstances” when determining whether an officer’s reasonable suspicion is supported by specific and articulable facts).

Our supreme court recently addressed the issue of when an officer has reasonable suspicion to initiate a traffic stop based upon the failure to maintain a traffic lane under Tennessee Code Annotated section 55-8-123(1).² See State v. Linzey Danielle Smith, ___ S.W.3d ___, No. M2013-02818-SC-R11-CD, 2016 WL 537119, at *1 (Tenn. Feb. 11, 2016). In Smith, the court stated initially that it had “no trouble concluding that crossing over a fog line with two of a car’s four wheels is an instance of leaving one’s lane of travel.” Id. at *6. The court determined that section 55-8-123(1) “is violated when a motorist strays outside of her lane of travel when *either* (1) it is practicable for her to remain in her lane of travel *or* (2) she fails to first ascertain that the maneuver can be made with safety[.]” and stated that even minor lane excursions may establish a violation of the section “whether or not the excursion creates a specific, observed danger.” Id. at *8 (emphasis in original). The court concluded that “when an officer observes a motorist crossing a clearly marked fog line, the totality of the circumstances may provide a reasonable suspicion sufficient to initiate a traffic stop to investigate the possible violation of Section 123(1).” Id. at *10 (emphasis in original).

Under the facts and circumstances of this case, we agree with the trial court that Trooper Reagan had reasonable suspicion for a traffic stop of the Defendant’s vehicle. Although the Defendant argues that he simply entered the exit ramp “too early” when he crossed the fog line, when considering all relevant circumstances, Trooper Reagan could not know whether the Defendant actually violated section 55-8-123(1) except upon further investigation. See id. at *11. Trooper Reagan received certain information from police dispatch that caused him to be on alert for the Defendant’s vehicle.³ Once he got

² Tennessee Code Annotated section 55-8-123 provides, in relevant part:

Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic, the following rules, in addition to all others consistent with this section, shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety[.]

Tenn. Code Ann. § 55-8-123(1) (2012).

³ Although the Defendant did not challenge—either before the trial court or on appeal—the reliability of the informant who called police dispatch, we recognize that the name of the citizen alone is not sufficient to qualify the informant as a known “citizen informant” and that, for reliability to be

behind the Defendant's vehicle, Trooper Reagan saw the vehicle drift within its lane, change lanes in front of a vehicle pulling a trailer without signaling, and cross half-way over the fog line marking the outer right lane boundary of the interstate. The Defendant's vehicle crossed the fog line well in advance of the exit ramp, and the Defendant continued to drive up the exit ramp over the fog line. The Defendant was driving on an interstate highway, and a review of Trooper Reagan's video shows that the roadway was clearly marked. Additionally, the video recording reveals that the weather and roadway were dry, and it does not appear that the Defendant crossed the fog line in order to avoid some obstruction or pothole in the roadway. Moreover, as noted by the trial court, there was no line of cars on the exit ramp which might have necessitated the Defendant's leaving his lane of travel before reaching the exit ramp. We conclude that these facts gave Trooper Reagan a constitutionally sufficient basis to suspect at least that the Defendant was violating section 55-8-123(1). Accordingly, the trial court properly determined that Trooper Reagan had reasonable suspicion for a traffic stop of the Defendant's vehicle.

Conclusion

For the aforementioned reasons, we affirm the judgment of the trial court.

ROBERT L. HOLLOWAY, JR., JUDGE

presumed, information about the citizen's status or his or her relationship to the events or persons involved must be present. State v. Luke, 995 S.W.2d 630, 637 (Tenn. Crim. App. 1998). Accordingly, we have not relied upon the information provided by the informant concerning the Defendant's driving in our review of the constitutionality of the traffic stop.