

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
July 2007 Session

STATE OF TENNESSEE v. WILLIAM LEE COLLINS

**Direct Appeal from the Criminal Court for Bradley County
No. 06-092 Amy A. Reedy, Judge**

No. E2007-00531-CCA-R3-CD - Filed September 27, 2007

The Defendant, William Lee Collins, pled guilty to the following crimes: (1) possession of more than 0.5 grams of methamphetamine with intent to sell; (2) possession of a Schedule II drug with intent to sell; and (3) possession of marijuana. He was sentenced to an effective sentence of eight years on probation. In accordance with Tennessee Rule of Criminal Procedure 37, the Defendant reserved as a certified question of law the issue of whether the search and seizure that led to his indictment and guilty plea were constitutional. We conclude that the search and seizure were constitutional, and, therefore, we affirm the trial court's judgment.

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

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which J.C. MCLIN and D. KELLY THOMAS, JJ., joined.

William J. Brown, Cleveland, Tennessee, for the Appellant, William Lee Collins.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Rachael West Harmon and John H. Bledsoe, Assistant Attorneys General; Steven Bebb, District Attorney General; M. Drew Robinson and Michelle McFayden, Assistant District Attorneys General, for the Appellee, State of Tennessee.

OPINION

I. Facts

This case arises from a search of the Defendant's truck and trailer during which police officers found evidence supporting the crimes of possessing methamphetamine with intent to sell, possessing dihydrocodeinone (a Schedule II drug) with intent to sell, possessing marijuana,

possessing drug paraphernalia, and driving with a suspended, cancelled, or revoked license. Prior

to entering a guilty plea, the Defendant filed a motion to suppress evidence found during the search. At the suppression hearing, Officer Smith testified that on July 6, 2005, a truck with a broken windshield and pulling a trailer passed him on a four-lane road traveling “at a high rate of speed.” Officer Smith said that he tried to catch the speeding truck, but had to stop at a traffic light. He also said that he watched the truck “[go] between the two [vehicles in the left and right lanes] without signaling.” Officer Smith testified that he called Officer Stone, who was further up the road, to have him stop the speeding truck.

Officer Stone testified that he received Officer Smith’s message about seeing a vehicle that was speeding, had a broken windshield, and “conduct[ed] a lane change in close proximity to other vehicles.” Officer Stone soon saw and stopped the vehicle, which belonged to and was driven by the Defendant. After Officer Stone approached the vehicle, he noticed the drugs and paraphernalia.

At the suppression hearing, the trial court found that the police officers had reason to stop the Defendant, and, as such, the evidence was rightfully attained. The Defendant filed a Motion to Reconsider Suppression of Evidence, but the trial court again denied the motion and ruled the evidence admissible. It is from this judgment that the Defendant now appeals.

II. Analysis

The Defendant contends that the police officers lacked probable cause to stop his vehicle, rendering the illegally gathered evidence inadmissible. The State responds that the trial court properly admitted the evidence because the police officers had reasonable suspicion that criminality was afoot, and, therefore, could conduct a brief investigatory stop.

A. Certified Question of Law

We must first determine whether the question presented is dispositive, because this appeal comes as a certified question of law, pursuant to Rule 37(b) of the Tennessee Rules of Criminal Procedure. Tennessee Rule of Criminal Procedure 37(b) provides the requirements for an issue being dispositive:

An appeal lies from any order or judgment in a criminal proceeding where the law provides for such appeal, and from any judgment of conviction . . . upon a plea of guilty . . . [if] . . . [t]he defendant entered into a plea agreement under Rule 11(e) but explicitly reserved with the consent of the state 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:

(A) The judgment of conviction, or other document to which such judgment refers that is filed before the notice of appeal, must contain a statement of the certified question of law reserved by the defendant for appellate review;

(B) The question of law must be stated in the judgment or document so as to identify clearly the scope and limits of the legal issue reserved;

- (C) The judgment or document must reflect that the certified question was expressly reserved with the consent of the state and the trial judge; and
- (D) The judgment or document must reflect that the defendant, the state, and the trial judge are of the opinion that the certified question is dispositive of the case

Tenn. R. Crim. P. 37(b)(2); *see State v. Preston*, 759 S.W.2d 647, 650 (Tenn. 1988).

The record shows that these requirements have been met. Each guilty plea contains a hand-written statement of the certified question of law, with the judge's signature below it. The certified question is clearly identified, both in scope and legal limits, and an additional hand-written statement also verifies that the trial court and State both consented to the reserving of the certified question. Finally, the certified question is dispositive of this case. A dispositive issue is one where the "appellate court 'must either affirm the judgment or reverse and dismiss.'" *State v. Walton*, 41 S.W.3d 75, 96 (Tenn. 2001 (quoting *State v. Wilkes*, 684 S.W.2d 663, 667 (Tenn. Crim. App. 1984)). In this case, if the police officers lacked probable cause to stop the Defendant, then all evidence supporting the guilty pleas would be excluded. As such, this issue is dispositive on appeal, and we will address it.

B. Motion to Suppress

The Defendant claims the police stopped him without probable cause, and, therefore, all evidence supporting his guilty pleas should be excluded. The Defendant bases his argument on the Fourth Amendment to the United States Constitution and article I, section 7 of the Tennessee Constitution, both of which provide citizens with a right against unreasonable searches and seizures.

The right to freedom from unreasonable searches and seizures is protected by both the United States Constitution and the Tennessee Constitution. The Fourth Amendment of the U.S. Constitution proclaims that "the right of the people to be secure . . . against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause." The Tennessee Constitution provides "that people shall be secure in their persons, houses, and papers and possessions, from unreasonable searches and seizures." Tenn. Const. art. I, §7. Generally, to search a person's property, a warrant is needed; however, one exception to the warrant requirement is when an officer has probable cause to believe there has been some criminal action involving a vehicle. At that point, a police officer may search a vehicle for evidence supporting that belief. *State v. Troxell*, 78 S.W.3d 866, 870-71 (Tenn. 2002). Moreover, a police officer will have probable cause to stop a vehicle if the driver violated the traffic code. *Whren v. United States*, 517 U.S. 806, 814-17 (1996); *State v. Vineyard*, 958 S.W.2d 730, 734-35 (Tenn. 1997).

The standard of review for a trial court's findings of fact and conclusions of law in a suppression hearing mandates that "a trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996); *accord Randolph*, 74 S.W.3d at 333. The prevailing party in the trial court is "entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." *Odom*, 928 S.W.2d at 23. Furthermore, "[q]uestions 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.* However, this Court reviews the trial court’s application of the law to the facts de novo, without any deference to the determinations of the trial court. *State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001). The defendant bears the burden of demonstrating that the evidence preponderates against the trial court’s findings. *Odom*, 928 S.W.2d at 22-23; *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997).

The Defendant analogizes his changing lanes without using a turn signal to the facts in *State v. Smith*, 21 S.W.3d 251 (Tenn. Crim. App. 1999). In *Smith*, the defendant was traveling in the right hand lane of a four-lane divided highway when he passed the car in front of him and failed to use a signal when he moved to the left or back to the right. Interpreting Tennessee Code Annotated sections 55-8-142 and 55-8-143, this Court held that “the only time a driver must signal before changing lanes appears to be when that change will affect other vehicles.” *Id.* at 257. The Court held that defendant Smith’s lane-changing without signals did not affect other vehicles, and therefore, the stop was illegal for lack of probable cause. When analyzing whether the defendant’s vehicle affected other vehicles on the road, the Court noted the particular traffic conditions at the exact time when the defendant made the lane changes without a signal:

“[t]here was no evidence that any other vehicles, other than the [d]efendant’s vehicle and the vehicle [d]efendant passed, were in the near vicinity. This was certainly not a situation in which the [d]efendant was changing lanes during rush hour or other time of high traffic flow, where almost every movement of every vehicle will likely affect the travel of other vehicles on the road . . . [The car that the defendant passed] would not have had to slow down, speed up, or in any way alter its course due to the [d]efendant’s lane change.”

Id. at 257.

In this case, Officer Smith witnessed the Defendant driving at “a high rate of speed” and with a broken windshield. He also watched the Defendant drive “between the two vehicles” that were in the left and right lanes of the four-lane divided highway without signaling to the other drivers. Officer Stone recalled receiving a call that the Defendant conducted a lane change in “close proximity” to the other vehicles. Based on this evidence, which the trial court found credible, we conclude that the trial court properly held that the police had probable cause to stop the Defendant for violating traffic laws. In contrast to *Smith*, the evidence shows that the Defendant’s behavior affected other drivers and that his failure to signal violated traffic laws. Therefore, pursuant to *Whren v. United States*, the police officer had probable cause to stop the Defendant and the evidence attained from that legal stop should have been admitted. 517 U.S. at 810; *see also Vineyard*, 958 S.W.2d. at 734-35.

III. Conclusion

Based on the foregoing reasoning and authorities, we conclude that the state’s action was constitutional. Accordingly, we affirm the judgment of the trial court.

ROBERT W. WEDEMEYER, JUDGE