

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,)
)
 Appellant,)
 vs.)
)
 JOHN C. ANGULO,)
)
 Appellee.)

NOT FOR PUBLICATION

No. S-2016-95

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

SEP 27 2016

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

SMITH, PRESIDING JUDGE:

Appellee is charged in Sequoyah County District Court, Case No. CF-2014-30, with Acquiring Proceeds from Illegal Drug Activity (63 O.S.2011, § 2-503.1), After Conviction of Several Drug-Related Felonies. Preliminary hearing was held August 13, 2014, before the Honorable Lawrence L. Langley, Special Judge. On July 24, 2015, Appellee filed a Motion to Suppress Evidence with Brief in Support. The State filed a response brief on August 17, 2015. A hearing on the motion was held January 21 and February 4, 2016 before the Honorable Jeffrey Payton, District Judge. After considering the transcript of the preliminary hearing and a video recording of the traffic stop at issue, the district court granted Appellee's motion to suppress, and issued a written order memorializing its findings and conclusions. The State gave timely notice of its intention to appeal the court's ruling. This appeal is properly brought under 22 O.S.2011, § 1053(5), and we accept the State's assertion (not disputed by Appellee) that appellate review is in the best interests of justice. *See id.*

The State raises one proposition of error in support of its appeal:

PROPOSITION I. THE TRIAL COURT ERRED IN SUSTAINING THE APPELLEE'S MOTION TO SUPPRESS ON THE GROUNDS THAT THE OFFICER DID NOT HAVE SUFFICIENT REASONABLE SUSPICION TO DETAIN THE APPELLEE FOR THE TIME NEEDED TO RUN A DRUG DETECTION DOG AROUND APPELLEE'S VEHICLES.

This case stems from a traffic stop by the Oklahoma Highway Patrol for speeding. Appellee was the driver and sole occupant of the vehicle. The trooper checked Appellee's license and vehicle information, asked him about his travel plans, and issued him a warning. After returning Appellee's documents to him, the trooper sought permission to run his drug-sniffing canine around Appellee's truck. Appellee declined, and expressed a desire to be on his way. Nevertheless, the trooper asked Appellee to get back in the patrol vehicle, and proceeded to deploy the canine. Eventually the canine led the trooper to a large quantity of cash secreted in the truck's spare tire.

The State appeals the district court's ruling that the trooper lacked reasonable suspicion to continue detaining Appellee after the business of the traffic stop was completed. The trooper testified that (1) Appellee appeared very nervous during the encounter; (2) the interior of Appellee's truck was very clean, smelled strongly of air freshener, and appeared to have been wiped down with protectant; and (3) Appellee had two cell phones in his possession. This was the extent of the factual basis for the continued detention in order to deploy the drug-sniffing canine.

When the State appeals a district court's adverse ruling on a motion to suppress evidence, we review that ruling for an abuse of discretion. *State v. Hooley*, 2012 OK CR 3, ¶ 4, 269 P.3d 949, 950. An "abuse of discretion" is any unreasonable or arbitrary action made without proper consideration of the relevant

facts and law, also described as a clearly erroneous conclusion and judgment, clearly against the logic and effect of the facts. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170. We consider the evidence in a light most favorable to the trial court's ruling. We accept any factual determinations supported by evidence, but review any legal conclusions *de novo*. *Coffia v. State*, 2008 OK CR 24, ¶ 5, 191 P.3d 594, 596; *Seabolt v. State*, 2006 OK CR 50, ¶ 5, 152 P.3d 235, 237.

While an arrest requires probable cause to believe the person has committed a crime, police may temporarily detain on less than probable cause if they have reasonable suspicion that criminal activity is afoot. *Terry v. Ohio*, 392 U.S. 1, 19-20, 88 S.Ct. 1868, 1879, 20 L.Ed.2d 889 (1968). When an officer stops a motorist for violating traffic laws, he should expeditiously take care of the business at hand, *e.g.* checking driver's license, vehicle registration and insurance, and issuing any warning or citation for the offense. *United States v. Hunnicutt*, 135 F.3d 1345, 1349 (10th Cir. 1998). *See also Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 1325, 75 L.Ed.2d 229 (1983) (an investigative detention should last no longer than is necessary to effectuate the purpose of the stop, and its scope must be carefully tailored to its underlying justification). An officer may prolong the detention after the business of the traffic stop has been completed, if he has an objectively reasonable suspicion that illegal activity may be occurring. Facts that may contribute to such suspicion include (but certainly are not limited to) inconsistent statements about destination, and questionable proof of ownership or authority to operate the vehicle. *State v. Paul*, 2003 OK CR 1, ¶ 3, 62 P.3d 389, 390.

Having reviewed the testimony of the trooper who conducted the stop, the video of the encounter as recorded by the trooper's dashboard camera, and the arguments of counsel, we cannot say the trial court abused its discretion in concluding that the continued detention of Appellee, based solely on the three factors identified above, was unreasonable under the totality of the circumstances. *Hooley*, 2012 OK CR 3, ¶ 4, 269 P.3d at 950. The State's claim of error is denied.

DECISION

The Judgment of the District Court of Sequoyah County sustaining appellee's Motion to Suppress is **AFFRIMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF SEQUOYAH COUNTY
THE HONORABLE JEFFREY PAYTON, DISTRICT JUDGE

**ATTORNEYS AT HEARING
ON MOTION TO SUPPRESS**

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OPINION BY: SMITH, P.J.

LUMPKIN, V.P.J.: CONCUR IN RESULT
JOHNSON, J.: CONCUR
LEWIS, J.: CONCUR
HUDSON, J.: DISSENT

HUDSON, JUDGE: DISSENT

I respectfully dissent and find—as this Court did in *State v. Bass*—that the district court abused its discretion in granting Angulo’s Motion to Suppress. 2013 OK CR 7, ¶¶ 10-19, 300 P.3d 1193, 1196-98. Evoking a sense of déjà vu, the stop, investigation and ensuing search that occurred in this matter is reminiscent of the events that transpired in *Bass*, including the same county, same judge, same trooper, and potentially the same drug-sniffing dog already on the scene. As was found in *Bass*, the record evidence here—which included video from the trooper’s dashboard camera—demonstrates the trooper had more than adequate reasonable suspicion to detain Angulo for additional investigation. 2013 OK CR 7, ¶¶ 16-17, 300 P.3d at 1197. In addition to the suspicious circumstances listed by the Majority, Angulo’s inconsistent and “shifting stories” did not add up thus justifying his further detention. *Id.* Consequently, I find the decision of the district court granting Angulo’s Motion to Suppress should be reversed.