

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Appellant,

v.

STEVEN ALLEN RIDGE,

Appellee.

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Case No. S-2013-322

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
OCT 23 2013

OPINION

A. JOHNSON, JUDGE:

MICHAEL S. RICHIE
CLERK

The State of Oklahoma appeals from an order entered on March 20, 2013, by the Honorable William Hiddle of the District Court of Tulsa County in Case No. CM-2012-4076. Judge Hiddle heard Defendant Ridge's motion to reconsider and sustained Ridge's motion to quash seizure and suppress evidence that had been denied previously.¹ We exercise jurisdiction pursuant to 22 O.S.2011, § 1053, and affirm the district court's suppression order.

BACKGROUND

On August 13, 2012, Broken Arrow Police Detective Mike Jackson observed what he believed was a drug deal between Ridge and another person in the parking lot of Quick Trip in Broken Arrow. He saw Ridge seated in a Ford Probe parked on the west side of the convenience store by itself and a silver Dodge Charger pull up next to it. Ridge got out of the Probe, got into the Charger

¹ The Honorable Sarah Day Smith heard and denied Ridge's motion to quash and suppress on December 12, 2012. He filed a motion to reconsider on February 22, 2013, asking the court to reconsider its ruling in light of *Perez v. State*, an unpublished decision from this Court.

for approximately one minute, then got out of the Charger and back into the Probe. Detective Jackson, based on his training and experience, believed he had witnessed a drug transaction and pulled his unmarked vehicle behind the Probe blocking it. When he approached the Probe from the driver's side, he smelled the odor of marijuana coming from inside the car. He asked Ridge to step out of the car and explained his observations and suspicions. Ridge told Detective Jackson that the other person was merely delivering "papers" for a puppy Ridge had purchased. When Detective Jackson radioed for a K-9 unit, Ridge admitted there was marijuana in the car under his seat. Detective Jackson shined his flashlight in the window and saw a bag of marijuana in the car. Another officer arrived, took custody of the marijuana and placed Ridge under arrest.

The State appeals the district court's order sustaining Ridge's motion to suppress raising two issues:

- (1) whether Judge Hiddle was barred by issue preclusion from reviewing the matter urged in Ridge's motion to reconsider; and
- (2) whether Judge Hiddle abused his discretion by suppressing evidence obtained during the investigative detention.

DISCUSSION

1.

The State challenges Judge Hiddle's authority to rule on Ridge's motion to reconsider the earlier denial of his motion to suppress. It argues the matter had been decided and reconsideration was barred by issue preclusion. The State also maintains that a motion to reconsider is not a proper vehicle to challenge the original denial of Ridge's motion to suppress and that Judge

Hiddle had no jurisdiction to hear an appeal via a motion to reconsider. We disagree.

Ridge filed a motion to suppress evidence, and the assigned judge, the Honorable Sarah Day Smith, denied the motion before trial. The misdemeanor docket, including this case, was then transferred from Judge Smith to Judge Hiddle for trial. On the day of the pretrial conference, Ridge filed a motion to reconsider his motion to suppress before Judge Hiddle who set the matter for a hearing and ultimately ruled in Ridge's favor.

The facts and reasoning in *State v. Greenwood*, 1977 OK CR 202, ¶¶ 6 & 7, 565 P.2d 701, 703 guide us here. In *Greenwood*, the defendant was charged with a felony drug charge and a misdemeanor drug charge based on the seizure of heroin and marijuana found during the execution of a search warrant of the defendant's residence. *Id.* at ¶ 2, 565 P.2d at 702. Greenwood filed a motion to suppress the heroin in the felony case and the motion was granted. *Id.* at ¶ 3, 565 P.2d at 702. The misdemeanor case went to non-jury trial and the defendant orally moved to suppress the marijuana because the motion to suppress had been sustained in the felony case. *Id.* at ¶ 4, 565 P.2d at 702. The State asked the trial judge to consider the validity of the warrant, but the trial judge sustained the motion based solely on the ruling in the felony case, without any consideration of the validity of the search warrant, and entered judgment for the defendant. *Id.*

This Court found error stating:

The pre-trial ruling on the motion to suppress in the felony case was not binding upon the court in the instant [misdemeanor] case. Collateral estoppel only applies when there has been a final adjudication of an ultimate issue of fact . . . It is elementary that a trial court may overrule a motion to suppress and proceed to trial; thereafter, the defendant may renew his objection to the introduction of the evidence and the trial court is not bound by the prior ruling, but may reconsider the objection and sustain the same. Conversely, if the trial court sustained a pre-trial motion to suppress, the State may thereafter, during trial, offer said evidence and the trial court may reconsider the pretrial order and is not bound thereby.

Id., 1977 OK CR 202, ¶¶ 6 & 7, 565 P.2d at 703 (citations omitted).

Judge Hiddle was the assigned trial judge with jurisdiction over this case. This case involves nothing more than a pretrial ruling on the admissibility of evidence that was subject to re-examination during the proceedings. The issue of the admissibility of the evidence was not barred by issue preclusion or collateral estoppel because it was not a final adjudication of an ultimate issue of fact.² Nor was the motion to reconsider an appeal of Judge Smith's previous order. *Greenwood* is good authority here; Judge Hiddle was not bound by the earlier ruling on the motion to suppress and was free to reconsider it and rule accordingly. This claim is denied.

2.

The State argues Judge Hiddle abused his discretion in finding that Detective Jackson lacked the necessary reasonable suspicion to detain Ridge when he pulled his vehicle in behind Ridge and blocked him in.

² "The doctrine of collateral estoppel, or issue preclusion, holds that when an ultimate issue has been determined by a valid and final judgment, it cannot be re-litigated by the parties in some future lawsuit." *Smith v. State*, 2013 OK CR 14, ¶ 14, 306 P.3d 557, 564.

We review a district court's ruling on a motion to suppress evidence for an abuse of discretion. *State v. Goins*, 2004 OK CR 5, ¶ 7, 84 P.3d 767, 769. "An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue." *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170. In reviewing the district court's suppression order, we accept the district court's factual findings unless clearly erroneous, review questions of law *de novo*, and view the evidence in the light most favorable to Ridge, the prevailing party below. *Underwood v. State*, 2011 OK CR 12, ¶ 12, 252 P.3d 221, 232, *cert. denied*, ___U.S.___, 132 S.Ct. 1019, 181 L.Ed.2d 752 (2012); *Coffia v. State*, 2008 OK CR 24, ¶ 5, 191 P.3d 594, 596.

A police officer may detain a person for investigation without probable cause to arrest when the officer "has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot.'" *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1 (1989) (quoting *Terry v. Ohio*, 392 U.S. 1, 30, 88 S.Ct. 1868, 1884-85, 20 L.Ed.2d 889 (1968)). A reasonable suspicion has been defined as "some minimal level of objective justification." *I.N.S. v. Delgado*, 466 U.S. 210, 217, 104 S.Ct. 1758, 1763, 80 L.Ed.2d 247 (1984). In order to meet the reasonable suspicion threshold, "[t]he officer, of course, must be able to articulate something more than an inchoate and unparticularized suspicion or hunch." *Sokolow*, 490 U.S. at 7, 109 S.Ct. at 1585 (quoting *Terry*, 392 U.S. at 27, 88 S.Ct. at 1883) (internal quotation marks omitted). "The concept of reasonable suspicion ... is not 'readily, or even usefully, reduced to a neat set of legal rules.'" *Sokolow*, 490 U.S. at 7, 109 S.Ct.

at 1585 (citation omitted). And, whether a detention is supported by reasonable suspicion of illegal activity depends on “the totality of the circumstances—the whole picture” rather than upon any one factor. *United States v. Cortez*, 449 U.S. 411, 417, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981). See also *State v. Bass*, 2013 OK CR 7, ¶ 12, 300 P.3d 1193, 1196.

The court found that Detective Jackson detained Ridge when he blocked him in with his unmarked police car and that Detective Jackson’s observation of Ridge getting into the Dodge Charger for a brief time and then returning to his own car was insufficient objective justification to detain Ridge under *Terry*.³ The court properly considered the facts and law pertaining to this *Terry* stop and its ruling is neither unreasonable nor arbitrary. This claim is denied.

DECISION

The Order of the District Court of March 20, 2013, sustaining the defendant’s motion to suppress evidence is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2013), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE WILLIAM HIDDLE, SPECIAL JUDGE

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³ Detective Jackson agreed with defense counsel that the detention was based on “two guys sitting in the car together for a couple of minute (sic).”

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LEWIS, P.J.: Concur
SMITH, V.P.J.: Concur
LUMPKIN, J.: Concur
C. JOHNSON, J.: Concur