

ORIGINAL



**IN THE COURT OF CRIMINAL APPEALS OF
THE STATE OF OKLAHOMA**

STATE OF OKLAHOMA,

Appellant,

v.

LESLYE SOTO,

Appellee.

)
)
) NOT FOR PUBLICATION
)

) Case No. S-2018-438
)
)

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUL 11 2019

JOHN D. HADDEN
CLERK

OPINION

LEWIS, PRESIDING JUDGE:

Leslye Soto was charged with, Count 1, aggravated trafficking in illegal drugs, in violation of 63 O.S.Supp.2014, § 2-415, in Oklahoma County district court case number CF-2015-5312. The district court, Honorable Ray C. Elliott, District Judge, suppressed evidence obtained by law enforcement prior to the trial. The State now appeals pursuant to 22 O.S.2011, §§ 1053 and we find that the State's appeal is proper. The State presents the following proposition:

Master Sergeant Burris had reasonable articulable suspicion to extend the detention.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits, and briefs, we have determined that the trial court's decision suppressing the evidence should be reversed.

FACTS

Leslye Soto was a passenger in a vehicle being driven by her husband, Jorge Soto. The Sotos were traveling east on I-40 near Meridian Avenue. Sergeant Keegan Burris, a member of the Oklahoma City Police Department K-9 unit and the multi-jurisdictional Central Oklahoma Metro Interdiction Team, stopped the vehicle for making an improper lane change at about 10:15 p.m. The Sotos exited onto the Meridian exit ramp, traveled to Meridian, turned south on Meridian, and then turned west onto the I-40 access road and finally stopped on the service road.

Burris testified that there were numerous places to pull over and stop. The vehicle, however, traveled for about 90 seconds before coming to a stop after Burris initiated his emergency lights.

Burris testified that the vehicle had clothing hanging in the back and the car had a lived in look, with fast food bags. He noticed

a disassembled phone on the center console with the battery removed.

These were all significant to him based on his training and experience as signs of drug trafficking. He also noticed that the driver's hands were shaking like he was extremely nervous and the nervousness never subsided throughout the traffic stop. In fact, he testified that the nervousness got worse. Burris testified that even the passenger seemed extremely nervous.

Both the driver and the passenger said they were going to Wichita, Kansas from Tucson, Arizona for a cousin's wedding. In Burris's opinion, however, none of the clothing he observed would be considered wedding attire. The driver said they were going to be there for two to three days, but the passenger said they would be there for four days. Burris thought it strange that their stories were inconsistent on the time range because they had kids back at home.

Burris brought Mr. Soto back to his vehicle and issued a warning citation. After returning Mr. Soto's paperwork to him, he permitted Mr. Soto to exit his vehicle. Burris then asked if he could ask him a few more questions, and Mr. Soto consented. Burris

asked Mr. Soto if he would consent to a search of the vehicle and Mr. Soto replied that he does not consent to searches. Approximately fourteen minutes had elapsed since the inception of the stop.

Burris testified that from then on Soto was in "secondary detention due to suspicion from the previously listed indicators." Burris then made preparations to take his canine around the Sotos' vehicle. He had to have Ms. Soto exit the vehicle in order to deploy his drug sniffing canine. Once initially deployed, the canine alerted at the front passenger window by standing on its hind legs and putting its muzzle inside the open window. The canine was then walked around the vehicle a second time. The Sotos were informed of the alert. The canine procedure extended the stop an additional three minutes.

The search of the interior of the vehicle commenced and three containers were found in the back of the vehicle. They were removed and the canine alerted on all three. Soto seems to call this a second extension and search because no contraband had been found prior to the packages being removed from the vehicle. However, once a physical search of the packages could be made,

twenty-five pounds of cocaine was found in the neatly wrapped wedding present.

The video of the traffic stop and a transcription of the conversations were introduced by the defendant. After hearing these facts and viewing the exhibits, the trial court found that Burris lacked reasonable suspicion to extend the traffic stop beyond the time needed for the purpose of the stop.

The trial court specifically found that the articulated factors utilized by Burris were insufficient to support a finding of reasonable suspicion. The factors were (1) the lived in nature of the vehicle, (2) the nervous hands (3) the disassembled phone, (4) the clothes hanging in the car, and (5) the travel from a "source city" to a "destination city."

The trial court concluded that "looking at the totality of the circumstances and using my reasonable life experiences which I'm allowed to do as a finder of the facts, I don't believe there was sufficient grounds here to . . . allow the traffic stop to be extended."

The State announced its intent to appeal and presents this appeal challenging the trial court's ruling.

ANALYSIS

This Court reviews a ruling on a motion to suppress for an abuse of discretion. *See State v. Wallace*, 2019 OK CR 10, ¶ 4, ___ P.3d ___; *Bench v. State*, 2018 OK CR 31, ¶ 36, 431 P.3d 929, 948; *Runnels v. State*, 2018 OK CR 27, ¶ 41, 426 P.3d 614, 624. “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 or a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented.” *Runnels*, 2018 OK CR 27, ¶ 41, 426 P.3d at 624.

In determining issues in an appeal of an unfavorable ruling on a motion to suppress, this court has held that “the credibility of witnesses and the weight given their testimony is within the exclusive province of the trier of fact, who may believe or disbelieve the witnesses as it desires.” *State v. Kudron*, 1991 OK CR 92, ¶ 19, 816 P.2d 567, 570-71. This Court will not disturb the factual findings of the trial court unless they have no support in the record. *Id.*

The issue arising from the facts of this case is whether Burris's extension of the stop was unreasonable.

"[A] police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." *Rodriguez v. United States*, 575 U.S. ___, 135 S.Ct. 1609, 1612, 191 L.Ed. 2d 492 (2015). In this sense, "the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's mission' — to address the traffic violation that warranted the stop and attend to related safety concerns." *Id.*, 135 S.Ct. at 1614 (internal citations omitted). "Authority for the seizure thus ends when tasks tied to the traffic infraction are — or reasonably should have been — completed." *Id.*

State v. Strawn, 2018 OK CR 2, ¶ 23, 419 P.3d 249, 254.

A vehicle stop may be extended based on reasonable suspicion or consent. *State v. Goins*, 2004 OK CR 5, ¶ 20, 84 P.3d 767, 771. The State did not rely on consent and it does not appear that Burris was relying on consent when he extended the stop. The burden is, therefore, on the State to show a reason for the extension of the stop that satisfies Fourth Amendment requirements for warrantless seizures.

In the present case, the trial court's determination of the facts was clearly supported by the record. The trial court, however, determined incorrectly that this case was indistinguishable from

Rodriguez v. United States, 575 U.S. ___, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015), where a traffic stop was extended for a dog sniff, and the extension was not supported by reasonable suspicion.

Here, the officer articulated facts which gave him a reasonable suspicion, based on his training and experience, that the Sotos were transporting illegal drugs. The trial court, however, used its own experience to determine whether reasonable suspicion existed instead of relying on the officer's training and experience.

The likelihood of criminal activity need not rise to the level of probable cause. *United States v. Arvizu*, 534 U.S. 266, 274, 122 S.Ct. 744, 751, 151 L.Ed.2d 740 (2002). Reasonable suspicion is clearly a lesser standard than probable cause, but the tests for each are comparable. The test for judging the existence of probable cause is whether a reasonably prudent officer, considering the totality of the circumstances, and drawing from his training and experience, would be warranted in the belief that an offense has been or is being committed. *Halcy v. State*, 2007 OK CR 2, ¶ 13, 153 P.3d 66, 69. An officer may rely on his training and experience to draw inferences and make deductions that might well elude an untrained person. *See Arvizu*, 534 U.S. at 273, 122 S.Ct. at 750-51; *United*

States v. Cortez, 449 U.S. 411, 418, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981).

There are obviously two elements to a particularized reasonable suspicion determination. First, the determination must be based upon all the circumstances. The analysis proceeds with various objective observations “of the modes or patterns of operation of certain kinds of lawbreakers.” *Cortez*, 449 U.S. at 418, 101 S.Ct. at 695. The second element is the concept that the process just described must raise a suspicion that the particular individual being stopped is engaged in wrongdoing. *Id.*, see also *Navarette v. California*, 572 U.S. 393, 396-97, 134 S.Ct. 1683, 1687, 188 L.Ed.2d 680 (2014).

The trial court concluded, based on its own travel behavior, that the Sotos’ behavior was no different than its own while traveling for some distance. The trial court also examined the circumstances individually instead of making a totality of the circumstances determination. He gave no deference to the officer’s training, experience, and ability to distinguish from criminal and innocent behavior. In doing so, the trial court abused its discretion.

Burris's articulation of the facts, when viewed in a totality of the circumstances, amounted to an objectively reasonable and articulable suspicion that illegal activity may be occurring. His conclusion that illegal activity was occurring was reasonable and based on facts which, in his experience and training, would be associated with drug trafficking. His reasonable suspicion allowed the extension of the traffic stop beyond what is "reasonably required to complete [the stop's] mission." *Cf. Rodriguez*, 575 U.S. at ___, 135 S.Ct. at 1616. The canine alert during this reasonable extension gave Burris probable cause to search the vehicle and containers therein. *State v. Bass*, 2013 OK CR 7, ¶ 18, 300 P.3d 1193, 1198; *see Gomez v. State*, 2007 OK CR 33, ¶ 8, 168 P.3d 1139, 1143 (holding probable cause justifying the search of the car justifies search of containers that may contain contraband without individualized probable cause for each container, citing *Wyoming v. Houghton*, 526 U.S. 295, 300–01, 119 S.Ct. 1297, 1300–01, 143 L.Ed.2d 408 (1999)). We, therefore, find that the extension of the stop was properly based on an articulable suspicion which permitted further investigation including the canine sniff of the

exterior of the vehicle. The canine alert then gave officers probable cause to search the vehicle.

Here, the trial court's finding constituted an abuse of discretion because it was not reasonably based in law and fact. Therefore, the trial court's suppression of the evidence is reversed.

DECISION

The ruling of the trial court suppressing the evidence in this case is **REVERSED**. This case is **REMANDED** to the district court for further proceedings not inconsistent with this Opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE RAY C. ELLIOTT, DISTRICT JUDGE

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KUEHN, V.P.J.: Concur
LUMPKIN, J.: Concur
HUDSON, J.: Concur
ROWLAND, J.: Concur