

State v. Guffey

Court of Criminal Appeals of Tennessee, At Knoxville

June 24, 2003, Session ; November 19, 2003, Filed

No. E2002-02527-CCA-R3-CD

Reporter

2003 Tenn. Crim. App. LEXIS 969 *; 2003 WL 22721564

STATE OF TENNESSEE v. KEVIN D. GUFFEY

Prior History: [*1] Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed. No. 237294. Rebecca Stern, Judge. Direct Appeal from the Criminal Court for Hamilton County.

Disposition: Affirmed.

Core Terms

shoulder, trial court, blue light, patrol car, activated, reasonable suspicion, motion to suppress, articulable, suppression

Case Summary

Procedural Posture

The Criminal Court for Hamilton County, Tennessee, convicted defendant of driving under the influence (DUI), a Class A misdemeanor, and sentenced him to 11 months and 29 days in the county workhouse, to be suspended after serving 48 hours, and imposed a fine. The trial court also suspended defendant's driver's license for one year and ordered him to attend DUI school Defendant appealed.

Overview

Defendant reserved the right to appeal a certified question of law challenging the trial court's denial of his motion to suppress. Defendant argued that there was no reasonable or articulable suspicion to stop defendant's car. The appellate court disagreed. The police officer testified at the suppression hearing that he was parked on the shoulder of the highway when a vehicle in the far right lane, close to the shoulder where the officer was sitting, almost hit the patrol car. The officer testified that prior to the activation of the blue lights, he observed defendant's vehicle nearly strike his patrol car and then cross "halfway" onto the shoulder of the highway. Thus,

defendant's driving was both erratic and dangerous, nearly causing an accident. The officer was justified in stopping defendant's vehicle.

Outcome

The judgment was affirmed.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Standards of Review > Substantial Evidence > General Overview

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Suppression of Evidence

HN1[[↓](#)] Standards of Review, Substantial Evidence

The trial court's findings of fact in a suppression hearing will be upheld on appeal unless the evidence preponderates against those findings.

Criminal Law & Procedure > Trials > Witnesses > Credibility

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Suppression of Evidence

Criminal Law & Procedure > ... > Standards of Review > Substantial Evidence > General Overview

HN2[[↓](#)] Witnesses, Credibility

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. The party prevailing 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.

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > General Overview

HN3 **Standards of Review, De Novo Review**

The application of the law to the trial court's findings of fact is a question of law subject to de novo review.

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > General Overview

Constitutional Law > ... > Fundamental Rights > Search & Seizure > General Overview

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

Criminal Law & Procedure > Search & Seizure > General Overview

Criminal Law & Procedure > Search & Seizure > Exclusionary Rule > General Overview

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Suppression of Evidence

HN4 **Search & Seizure, Warrantless Searches**

Both the Fourth Amendment to the United States Constitution and Tenn. Const. art. I, § 7 prohibit unreasonable searches and seizures by law enforcement officers. The purpose of the Fourth Amendment and Tenn. Const. art. I, § 7 is to safeguard the privacy and security of individuals against arbitrary invasions of government officials. Under both 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.

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Investigative Stops

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > General Overview

HN5 **Warrantless Searches, Investigative Stops**

One exception to the warrant requirement exists when a law enforcement officer conducts an investigatory stop based upon a reasonable suspicion supported by specific and articulable facts that a criminal offense has been or is about to be committed. Upon turning on the blue lights of a vehicle, a police officer has clearly initiated a stop and has seized the subject of the stop within the meaning of the Fourth Amendment of the Federal Constitution and Tenn. Const. art. I, § 7. When evaluating whether a police officer's reasonable suspicion is supported by specific and articulable facts, a court must consider the totality of the circumstances surrounding the stop.

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Investigative Stops

HN6 **Warrantless Searches, Investigative Stops**

The number of times that a vehicle touches the center line or drifts within a lane is not dispositive of whether reasonable suspicion existed to validate a traffic stop. Rather, a court must consider the totality of the circumstances in determining whether reasonable suspicion was present at the time a stop was initiated. Moreover, the appellate court has refused to find that an officer had reasonable suspicion to stop a driver whose driving was found not to be erratic or improper and which had not caused a hazard to other vehicles.

Counsel: Bryan H. Hoss, Lee Davis, and David W. Wallace, Chattanooga, Tennessee, for the appellant, Kevin D. Guffey.

Paul G. Summers, Attorney General and Reporter; David H. Findley, Assistant Attorney General; William H. Cox, District Attorney General; and **Mary Sullivan**

Moore, Assistant District Attorney General, for the appellee, State of Tennessee.

Judges: NORMA MCGEE OGLE, J., delivered the opinion of the court, in which GARY R. WADE, P.J., and DAVID H. WELLES, J., joined.

Opinion by: NORMA MCGEE OGLE

Opinion

The appellant, Kevin D. Guffey, pled guilty in the Hamilton County Criminal Court to driving under the influence (DUI), a Class A misdemeanor. The trial court sentenced the appellant to eleven months and twenty-nine days in the county workhouse, to be suspended after serving forty-eight hours, and imposed a fine in the amount of three hundred sixty dollars (\$ 360). The trial court also suspended the appellant's driver's license for one year and ordered the appellant to [*2] attend "DUI school." Pursuant to the plea agreement, the appellant reserved the right to appeal a certified question of law challenging the trial court's denial of his motion to suppress. Upon review of the record and the parties' briefs, we affirm the judgment of the trial court.

I. Factual Background

At the suppression hearing, Soddy-Daisy Police Officer Jerry Workman testified that in the early morning hours of January 1, 2001, he was on "DUI patrol." He testified that he parked his patrol car on the shoulder of the northbound lane of Highway 27, approximately one mile from the Morrison Springs Road exit. Officer Workman related that shortly after midnight, "a vehicle in the far right lane, close to the [shoulder] where I was [parked], almost hit my patrol car." Officer Workman testified that the vehicle proceeded north and he "started taking off after it." Officer Workman explained,

This particular car crossed over into the shoulder of the road again, half of the car did. Blue lights, siren was activated. The vehicle failed to stop. I radioed in. . . . The other cars that were working this DUI program came and several officers was at the end of the exit [*3] ramp and blocked the car in on Morrison Springs Road.

On cross-examination, Officer Workman acknowledged that the area where he had parked on the side of the road was "very dark," and his patrol car was not visible to oncoming traffic. The officer further conceded that the shoulder of the road at that location was approximately

"a patrol car width wide." However, Officer Workman reiterated that the appellant's vehicle almost struck his patrol car, crossed over the solid line onto the shoulder in front of Officer Workman's patrol car, and failed to stop when Officer Workman activated his blue lights and siren.

Based upon the foregoing, the trial court denied the appellant's motion to suppress, stating,

From the testimony of the officer, here is how I heard the facts. [Officer Workman] was sitting over in the dark, off on the shoulder, and the [appellant] came by, crossed over the shoulder line. [Officer Workman] saw [the appellant cross over the shoulder] two more times before [reaching] the exit ramp. The way I took the proof was at least he saw it one more time almost immediately and then activated his blue lights. . . . I find there is reasonable and articulable [*4] suspicion for [Officer Workman] to activate his blue lights and I find that's when the stop occurred Motion to suppress is overruled.

Upon the trial court's denial of his motion to suppress, the appellant pled guilty to DUI. Tenn. Code Ann. § 55-10-401 (1998). Thereafter, the trial court sentenced the appellant to eleven months and twenty-nine days in the county workhouse, to be suspended after service of forty-eight hours, and imposed a fine of three hundred sixty dollars (\$ 360). The trial court also suspended the appellant's driver's license for one year and ordered the appellant to attend "DUI school." Pursuant to the plea agreement, the appellant reserved the right to appeal a certified question of law challenging the trial court's denial of his motion to suppress. See Tenn. R. Crim. P. 37(b)(2)(i). On appeal, the appellant contends that "there was no reasonable or articulable suspicion to stop the [appellant's] car."

II. Analysis

HN1 The trial court's findings of fact in a suppression hearing will be upheld on appeal unless the evidence preponderates against those findings. *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996). [*5]

HN2 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. The party prevailing 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.

Id. However, **HN3**^[↑] the application of the law to the trial court's findings of fact is a question of law subject to de novo review. *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997).

HN4^[↑] Both the Fourth Amendment to the United States Constitution and Article 1, section 7 of the Tennessee Constitution prohibit unreasonable searches and seizures by law enforcement officers. The purpose of the Fourth Amendment and Article 1, section 7 is to "safeguard the privacy and security of individuals against arbitrary invasions of government officials." *State v. Munn*, 56 S.W.3d 486, 494 (Tenn. 2001) (quoting *State v. Bridges*, 963 S.W.2d 487, 490 (Tenn. 1997)); see also *State v. Downey*, 945 S.W.2d 102, 106 (Tenn. 1997). **[*6]** Under both 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. Binette*, 33 S.W.3d 215, 218 (Tenn. 2000) (quoting *Yeargan*, 958 S.W.2d at 629); see also *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55, 91 S. Ct. 2022, 2032, 29 L. Ed. 2d 564 (1971).

HN5^[↑] One such exception to the warrant requirement exists when a law enforcement officer conducts an investigatory stop based upon a reasonable suspicion supported by specific and articulable facts that a criminal offense has been or is about to be committed. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889 (1968); see also *State v. Keith*, 978 S.W.2d 861, 865 (Tenn. 1998). Our supreme court has held that "upon turning on the blue lights of a vehicle, a police officer has clearly initiated a stop and has seized the subject of the stop with in the meaning of the Fourth Amendment of the Federal **[*7]** Constitution and Article I, section 7 of the Tennessee Constitution." *Binette*, 33 S.W.3d at 218 (citing *State v. Pulley*, 863 S.W.2d 29, 30 (Tenn. 1993)). Thus, in order for the investigatory stop of the appellant's vehicle to have been constitutionally valid, at the time Officer Workman activated his patrol car's blues lights, the officer must have had a reasonable suspicion, supported by specific and articulable facts, that a criminal offense had been or was about to be committed. *Id.* When evaluating whether a police officer's reasonable suspicion is supported by specific and articulable facts, a court must consider the totality of the circumstances surrounding the stop.

Watkins, 827 S.W.2d at 294.

On appeal, the appellant contends that at the time Officer Workman activated the blue lights, "there was no reasonable or articulable suspicion to stop the [appellant's] car." We disagree. As previously noted, Officer Workman testified at the suppression hearing that he was parked on the shoulder of Highway 27 when "a vehicle in the far right lane, close to the [shoulder] where I was setting [sic], almost hit my patrol car." **[*8]** Officer Workman further testified,

The [vehicle] proceeded north. As I started taking off after it, I kept it in sight because there was one other car on the roadway. This particular car crossed over into the shoulder of the road again, half of the car did. Blue lights, siren was activated.

Our supreme court has previously observed **HN6**^[↑] that "'the number of times that a vehicle touches the center line or drifts within a lane is not dispositive' of whether reasonable suspicion existed to validate a traffic stop. Rather, . . . a court must consider the totality of the circumstances in determining whether reasonable suspicion was present at the time a stop was initiated." *State v. Garcia*, 123 S.W.3d 335, 2003 Tenn. LEXIS 856, at **24-25 (Nashville, 2003) (citing *Binette*, 33 S.W.3d at 219). Moreover, this court has refused to find that an officer had reasonable suspicion to stop a driver whose driving was found not to be erratic or improper and which had not caused a hazard to other vehicles. *State v. Smith*, 21 S.W.3d 251, 258 (Tenn. Crim. App. 1999). However, in the instant case, Officer **[*9]** Workman testified that prior to the activation of the blue lights, he observed the appellant's vehicle nearly strike his patrol car and then cross "halfway" onto the shoulder of the highway. Thus, the appellant's driving was both erratic and dangerous, nearly causing an accident. Based upon these facts, we conclude that Officer Workman was justified in stopping the appellant's vehicle. The trial court did not err in denying the appellant's motion to suppress.

III. Conclusion

Accordingly, we affirm the judgment of the trial court.

NORMA McGEE OGLE, JUDGE