Cite as 2012 Ark. App. 128

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR11-969

SCOTT C. MITCHELL APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** February 8, 2012 APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT, [NO. CR2010-388IV] HONORABLE MARCIA R. HEARNSBERGER, JUDGE AFFIRMED

RAYMOND R. ABRAMSON, Judge

Appellant Scott Mitchell entered a conditional plea of guilty to driving while intoxicated (DWI), third offense, and making an improper turn at an intersection. He was sentenced to one year in the Garland County Detention Center with 215 days suspended, and he was assessed fines, costs, and fees. On appeal, Mitchell contends that the trial court erred in denying his motion to suppress evidence because he had not committed a traffic violation and the arresting officer therefore did not have probable cause to stop him.

After appellant appealed from district court to Garland County Circuit Court, he filed a motion to suppress. Appellant contended that because there was no traffic around when he turned, he was not required to use his turn signal; because he had not committed a traffic violation, the officer had no probable cause to stop him.

A hearing on appellant's motion to suppress was held on November 9, 2010. Trooper Josh Heckel with the Arkansas State Police testified that on January 30, 2010, he saw appellant

turn left from Papa Go Road onto Old Bear Road without using his signal. Heckel did not immediately pull appellant over because the road was too narrow to do so safely.[1] Instead, Heckel turned left onto Highway 270 and pulled over onto the shoulder. When appellant passed, he stopped appellant for not using his turn signal; there were no other violations. Heckel noticed the smell of intoxicants on appellant's breath, performed field-sobriety tests, and arrested appellant for DWI. During cross-examination, Heckel agreed that it is approximately half a mile from the intersection where appellant failed to use his turn signal to Highway 270, where he pulled appellant over. He saw in his rear and side mirrors that appellant did not use his turn signal at the intersection. Heckel stated that, while he did not recall whether there was any other traffic in the area, there were no vehicles between his and appellant's.

Appellant testified at the hearing that he did not see Trooper Heckel at the intersection of Papa Go and Old Bear Roads. The first time he saw Heckel was when he was going over the bridge on Highway 270 and the blue lights were flashing. Appellant believed that he used his turn signal, but he was not sure. In response to questioning by the court, appellant stated that it was possible that Heckel had a reason to believe he was intoxicated because he may have seen his Jeep, which had distinctive markings, parked at the Water-n-Hole bar that afternoon.

In a one-page order entered on December 8, 2010, the court denied appellant's motion to suppress. Appellant then filed a motion for reconsideration or clarification, to which the

[1]As shown in a videotape of the stop, the roads were snowy and icy.

State responded. The trial court entered a letter order denying appellant's motion to suppress and making specific findings of fact. Appellant later entered into a conditional plea agreement under Arkansas Rule of Criminal Procedure 24.3, reserving the right to appeal the denial of his motion to suppress. A judgment and commitment order was entered on July 11, 2011, and he filed a timely notice of appeal.

In reviewing the denial of a motion to suppress, we conduct a de novo review based on the totality of the circumstances, giving respectful consideration to the findings of the trial judge, *Blanchett v. State*, 368 Ark. 492, 495, 247 S.W.3d 477, 479 (2007), and reversing only if the circuit court's ruling denying the motion is clearly against the preponderance of the evidence. *Sheridan v. State*, 368 Ark. 510, 514, 247 S.W.3d 481, 483 (2007). We review issues of statutory construction de novo, as it is for the appellate court to determine what a statute or rule means. *See Blanchett*, *supra*.

In order for a police officer to make a traffic stop, he must have probable cause to believe that the vehicle has violated a traffic law. *Sims v. State*, 356 Ark. 507, 512, 157 S.W.3d 530, 533 (2004). Whether a police officer has probable cause to make a traffic stop does not depend on whether the driver was actually guilty of the violation that the officer believed to have occurred. *Id*. Probable cause is defined as "facts or circumstances within a police officer's knowledge that are sufficient to permit a person of reasonable caution to believe that an offense has been committed by the person suspected." *Hinojosa v. State*, 2009 Ark. 301, at 6, 319 S.W.3d 258, 262. In assessing the existence of probable cause, this court's review is liberal rather than strict. *Id*.

> In this case, Trooper Heckel believed that appellant violated the following traffic law:
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> Signals required for turning, stopping, changing lanes, or decreasing speed.
>
> (a) No person shall turn a vehicle from a direct course upon a highway unless and until the movement can be made with reasonable safety and then only after giving a clearly audible signal by sounding the horn if any pedestrian may be affected by the movement or after giving an appropriate signal in the manner provided in subsection (b) of this section in the event any other vehicle may be affected by the movement.
>
> (b) A signal of intention to change lanes or to turn right or left shall be given continuously during not less than the last one hundred feet (100') traveled by the vehicle before changing lanes or turning.

Ark. Code Ann. § 27-51-403 (Repl. 2010). Appellant argues that, since the evidence was uncontroverted that there was no other traffic in the immediate vicinity, he could not have violated the turn-signal statute. He essentially contends that Heckel, who was in front of him and had already made the turn, could not have been "affected by [his] movement."

Appellant cites case law from other jurisdictions that have interpreted similar traffic laws. *E.g.*, *State v. Ivey*, 360 N.C. 562, 633 S.E.2d 459 (2006); *State v. Anaya*, 176 P.3d 1163 (N.M. Ct. App. 2007). Those cases have interpreted the "may be affected" language to mean that a turn signal is not required if other traffic is not present. Similarly, our statute has been interpreted to mean that other traffic must be present before the obligation to signal arises, with subsection (b) prescribing the manner of signaling if signaling is required by subsections (a) or (c). *See* Op. Ark. Att'y Gen. No. 142 (2010). We agree with that interpretation.

A review of the circuit court's letter opinion reveals that it misinterpreted the statute. The court wrote that while appellant cited Arkansas Code Annotated section 27-51-403(a), he "neglect[ed] to cite [section] 27-51-403(b) which is also law in this state. It requires '[a]

signal of intention to turn right or left shall be given continuously during not less than the last one hundred feet (100') traveled by the vehicle before turning.'" The court apparently believed that subsection (b) operated independently to require a signal for every turn or lane change. However, the court also found that appellant violated subsection (a) because the trooper's vehicle was in fact affected by the direction of appellant's turn.

We need not decide whether appellant was required to use a turn signal when the only vehicle around was in front of him. Whether a police officer has probable cause to make a traffic stop does not depend on whether the driver was actually guilty of the violation which the officer believed to have occurred. *Hinojosa v. State*, 2009 Ark. 301, at 6, 319 S.W.3d 258, 262. Thus, the issue is whether there were facts or circumstances known to Heckel that were sufficient to permit a person of reasonable caution to believe that appellant committed a violation of section 27-51-403. Here, it is a close enough question whether a vehicle that was in front of appellant "may be affected by the movement" of appellant's vehicle that a person of reasonable caution might believe that a turn-signal offense had occurred. Accordingly, the circuit court's denial of the motion to suppress was not clearly against the preponderance of the evidence.

Affirmed.

VAUGHT, C.J., and HOOFMAN, J., agree.

Lawrence C. Honeycutt, for appellant.

Dustin McDaniel, Att'y Gen., by: *William Andrew Gruber*, Ass't Att'y Gen., for appellee.