IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA, Appellant, vs. ISAAC PAUL BELL, Appellee.	)	NOT FOR PUBLICATION No. S-2013-127

SUMMARY OPINION

SMITH, VICE PRESIDING JUDGE:

Isaac Paul Bell was charged with Possession of Weapon on School Property in violation of 21 O.S.2011, § 1280.1, in the District Court of Tulsa County, Case No. CF-2012-4704. On January 28, 2013, Bell filed a Motion to Quash and Dismiss. The Honorable Kurt Glassco sustained that motion after a February 4, 2013 hearing. The State appeals.

The State raises three propositions of error in support of its petition:

I. The district court erred in suppressing the evidence because the presence of weapons in plain view justified detention of the defendant and provided reasonable suspicion to search the vehicle;

II. The district court erred in suppressing the evidence because defendant's consent to search was in response to the officer's valid inquiry as to other weapons in the vehicle under the public safety exception to *Miranda*; and

III. The district court erred in quashing the bindover because the State showed probable cause that defendant was in violation of the statute relating to handguns on school property since he was not licensed to carry the gun under the Oklahoma self-defense act.

After thorough consideration of the entire record before us, including the original record, transcripts, exhibits and briefs, we find that the law and evidence do not require relief.

In its Petition in Error, the State describes the appeal as brought under 22 O.S.2011, §§ 1053(4) and (5). Subsection 5 of § 1053 allows for expedited State appeals where a trial court has suppressed or excluded evidence and appellate review would be in the best interests of justice. This statutory provision was added to allow the State to bring what is essentially an interlocutory appeal, where evidence has been suppressed but the case continues. Bell's case was dismissed. Whatever relief this Court may grant, it cannot include remanding the case for further proceedings. As the case has been dismissed, § 1053(5) is not the appropriate avenue for this appeal. *State v. Love*, 2004 OK CR 11, ¶1 n.1, 85 P.3d 849, 849 n.1. The appropriate statutory section for the State's appeal of the trial court's decision quashing and dismissing the case is § 1053(4).

We find in Propositions I and II that the trial court did not abuse its discretion in sustaining Bell's motion. We review a ruling on a motion to quash for abuse of discretion. *State v. Delso*, 2013 OK CR 5, ¶ 5, 298 P.3d 1192, 1193-94. An abuse of discretion is an unreasonable or arbitrary action taken without proper consideration of the facts and law at issue, a clearly erroneous conclusion and judgment, against the logic and effect of the facts presented. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170. An officer conducting an investigative stop must have, at least, an articulable and reasonable suspicion that the vehicle or driver is in violation of the law. *McGaughey v. State*, 2001 OK CR 33, ¶ 24, 37 P.3d 130, 136. The question is whether the officer's action was justified when it began, and whether his subsequent actions were reasonably related in scope to the circumstances which justified the initial interference. *Id.*; *United States v. Sharpe*,

470 U.S. 675, 682, 105 S.Ct. 1568, 1573, 84 L.Ed.2d 605 (1985); *Terry v. Ohio*, 392 U.S. 1, 20, 88 S.Ct. 1868, 1879, 20 L.Ed.2d 889 (1968). The State must show that an investigative detention is temporary, lasts no longer than necessary for the purposes of the stop, and used the least intrusive means reasonably available to verify or dispel an officer's suspicion in a short period of time. *McGaughey*, 2001 OK CR 33, ¶ 27, 37 P.3d at 137. The State suggests *McGaughey* does not apply to this case. Although the factual circumstances differ, the legal test remains the same.

Officer Berenger approached Bell to discuss a student parking permit. As Bell got out of his truck, Berenger saw two sheathed hunting knives stored in the driver's door side pocket. Without discussing the parking permit, Berenger immediately handcuffed Bell and asked if he had anything else in the truck. Nothing in the record supports any conclusion that Bell responded inappropriately or threatened Berenger in any way, or that Berenger's actual personal safety, or the safety of the school, were at issue. Nor was Bell breaking any state law. State law allows hunting knives, properly stored, and in a privately owned vehicle, to be brought on school property, where the vehicle is used to transport a student and is not left unattended on school property. 21 O.S.Supp.2012, § 1280.1(C). This precisely describes Bell's possession of the hunting knives at the time he was approached by Berenger. Bell's detention was not reasonably related in scope to the circumstances justifying the initial stop – the parking permit; nor did Berenger use the least intrusive means reasonably available to dispel or verify his suspicions in a short amount of time. The State relies on several cases to argue that detention was justified because the knives were in plain view, or that Berenger had a

reasonable, articulable suspicion justifying Bell's detention. All these cases differ significantly in facts from Bell's case. Although Berenger's initial reason for approaching Bell's truck was valid, it did not constitute a violation of state law. The record shows Berenger observed nothing constituting a violation of state law, Bell was neither threatening nor nervous, nor were there any other circumstances which might have aroused Berenger's suspicion, apart from the properly sheathed and stored knives.

The State argues that Bell's subsequent consent to search his car was valid, because the public safety exception justified Berenger in questioning Bell without first giving *Miranda* warnings. *Miranda* warnings must be given if a person is in custody or otherwise significantly deprived of freedom of action. *Bryan v. State*, 1997 OK CR 15, ¶ 15, 935 P.2d 338, 351. A person is in custody if, in the same circumstances, a reasonable person would not feel free to leave. *Michigan v. Chesternut*, 486 U.S. 567, 573, 108 S.Ct. 1975, 1979, 100 L.Ed.2d 565 (1988). The public safety exception applies where the situation demands that officers ask questions necessary to secure their own safety or that of the public. *New York v. Quarles*, 467 U.S. 649, 659, 104 S.Ct. 2626, 2633, 81 L.Ed.2d 550 (1984). The United States Supreme Court described this as having "an objectively reasonable need to protect the police or the public from any immediate danger associated with the weapon." *Quarles*, 467 U.S. at 659 n.8, 104 S.Ct. at 2633 n. 8. The record does not support a conclusion that the public safety exception applies here.

We must consider whether Bell's illegal detention tainted his subsequent consent to the search of his truck. Again, *McGaughey* is instructive. There, we

discussed the issue of consent to search during unlawful detention, setting forth three factors for consideration: "(1) the temporal proximity of the illegal detention and the consent, (2) any intervening circumstances, and (3) the purpose and flagrancy of the officer's unlawful conduct." *McGaughey*, 2001 OK CR 33, ¶ 38, 37 P.3d at 141. Here, Bell's consent followed immediately his illegal detention and there were no intervening circumstances. Berenger immediately handcuffed Bell before engaging in any investigation, and Bell had at that point broken no laws; the record does not suggest Berenger's further conduct was improper or had an illegal purpose. Weighing these factors, the State did not show Bell's consent was voluntary. Furthermore, Bell's "consent" was given only after he had been handcuffed, and an armed, uniformed officer questioned him without first giving *Miranda* warnings. Under these circumstances, we cannot find Bell's consent to search overcame the taint of his illegal detention.

Given our resolution of Propositions I and II, Proposition III is moot.

DECISION

The Order of the District Court of Tulsa County Sustaining the Defendant's Motion to Quash and Dismiss 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 the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE KURT G. GLASSCO, DISTRICT JUDGE

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LUMPKIN, J.: CONCUR IN RESULT
C. JOHNSON, J.: CONCUR
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