

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
July 26, 2023 Session

FILED

08/15/2023

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. KELLI M. CATES**

**Appeal from the Criminal Court for Knox County**  
**No. 119365 Steven W. Sword, Judge**

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**No. E2022-01667-CCA-R3-CD**

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The Defendant, Kelli M. Cates, pleaded guilty to driving under the influence (“DUI”) after the trial court denied her motion to suppress. As a part of her plea agreement, she sought to reserve five certified questions of law for appeal challenging the legality of the traffic stop leading to her arrest. However, following our review, we conclude that the certified questions are not dispositive of the case and do not clearly identify the scope and limits of the legal issues reserved as required by Tennessee Rule of Criminal Procedure 37(b)(2)(A). Accordingly, we are without jurisdiction to consider the appeal, and the case is dismissed.

**Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed**

KYLE A. HIXSON, J., delivered the opinion of the court, in which JOHN W. CAMPBELL, SR., and TOM GREENHOLTZ, JJ., joined.

T. Scott Jones (at hearings and on appeal), and Donovan Justice (at guilty plea hearing), Knoxville, Tennessee, for the appellant, Kelli M. Cates.

Jonathan Skrmetti, Attorney General and Reporter; Ronald L. Coleman, Assistant Attorney General; Charme P. Allen, District Attorney General; and Liza Guben, Greg Eshbaugh, and Robert DeBusk, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

**I. FACTUAL AND PROCEDURAL HISTORY**

Following her October 6, 2019 arrest, a Knox County grand jury returned an indictment charging the Defendant with DUI and violation of the implied consent law. *See* Tenn. Code Ann. §§ 55-10-401, -406. Thereafter, the Defendant filed a motion to suppress “any real evidence seized as a result of her unlawful and unconstitutional seizure by the officers.” Specifically, she argued that her seizure was unlawful because the seizing officer

did not have reasonable suspicion that a criminal offense had been or was about to be committed. She cited Tennessee Code Annotated section 55-8-123(1) and *State v. Binnette*, 33 S.W.3d 215 (Tenn. 2000), and reasoned that “drifting within one’s lane of travel [was] not a valid reason for a warrantless stop.” She further submitted that the pretextual stop lasted longer than necessary to pass constitutional muster, citing *State v. Morelock*, 851 S.W.2d 838 (Tenn. Crim. App. 1992). Finally, she requested suppression “of any alleged statement” made by her, while in custody, to the officers on the scene in response to interrogation, or its equivalent, by said officers without *Miranda*<sup>1</sup> warnings.

The trial court held a hearing on the motion to suppress on June 2, 2022. At the suppression hearing, Knox County Sheriff’s Officer Brandon Smith<sup>2</sup> testified that, around “midnight-ish” on October 5, 2019, he received a call from dispatch to be on the look-out (“BOLO”) for a black Jeep suspected of being driven by an impaired driver on East Beaver Creek Drive. Within five minutes of patrolling the area, Officer Smith encountered a black Jeep, so he moved behind it and began to follow it. As he was following the Jeep, he observed the vehicle swerve within the lane driving onto the double yellow lines in the middle of the road and onto the fog line on the right side of the road. Officer Smith later described it as “seeing her jerk inside her lane[,]” and he agreed that improper lane control was a potential sign of impairment. Based upon his observations, he believed this to be the vehicle reported in the BOLO, so he activated his emergency lights and stopped the vehicle. Following her poor performance of field sobriety tests, the Defendant was arrested and read her *Miranda* rights.

Thereafter, on June 10, 2022, the trial court filed an order denying the Defendant’s motion to suppress. The trial court first recounted Officer Smith’s testimony that he received a report from dispatch of “a Black Jeep suspected of being driven by an impaired driver,” that he “encountered a black Jeep in the area within five minutes of receiving the BOLO,” and that he “observed the car swerve in the lane driving onto the double yellow lines in the middle of the road and onto the fog line on the right side of the road.” The trial court found that Officer Smith “was investigating whether or not the driver of the black Jeep was impaired.” The trial court determined that Officer Smith “had reasonable suspicion that the driver was driving while under the influence.” In addition, the trial court ruled that the detention was not extended longer than necessary for the officers to investigate their suspicion that the Defendant was driving under the influence. Finally, the trial court determined that the Defendant “was not placed in custody for *Miranda* purposes

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<sup>1</sup> See *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

<sup>2</sup> At the time of the suppression hearing, Officer Smith worked at Oak Ridge National Laboratory as a security guard.

until the officer told her she was under arrest for DUI” and that, accordingly, “[t]he questions prior to her formal arrest did not violate [her] Fifth Amendment rights.”

Subsequently, on November 10, 2022, the Defendant pleaded guilty to DUI, and the violation of the implied consent law charge was dismissed. In exchange for her plea, she received a sentence of eleven months and twenty-nine days to be suspended to unsupervised probation after service of forty-eight hours in the county jail. As part of her guilty plea, the Defendant sought to reserve five certified questions of law pursuant to Tennessee Rule of Criminal Procedure 37(b)(2)(A).

Judgments were filed on November 14, 2012. In the “Special Conditions” section of the DUI judgment form, the following certified questions were listed:

1. Whether evidence from an automobile stop can be used against a person when the stop was made by a law enforcement officer who did not observe nor believe the driver had crossed the roadway boundary line as required by the Tennessee Supreme Court’s interpretation of Tenn. Code Ann. § 55-8-115(a)<sup>3</sup> in its ruling of *State v. Davis* (2015).

2. Under Tenn. Code Ann. § 55-8-123(1),<sup>4</sup> can evidence from an automobile stop be used against a person when the stop was made by a law enforcement officer who did not observe the driver exit their lane of travel, but whose automobile tires merely touched the boundary line.

3. Whether the evidence collected from [the Defendant’s] initial stop should have been suppressed because there was no reasonable grounds and/or probable cause as required under the Tennessee Supreme Court’s interpretation of Tenn. Code Ann. § 55-8-115(2) [sic] in its ruling of *State v. Davis* to believe that [the Defendant] violated the prohibition of crossing the roadway boundary lines prior to being detained.

4. Whether the evidence collected from [the Defendant’s] detention should have been suppressed because the law enforcement officer who

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<sup>3</sup> Tennessee Code Annotated Section 55-8-115(a) requires drivers to operate vehicles on the right half of the roadway unless an enumerated exception applies.

<sup>4</sup> Tennessee Code Annotated section 55-8-123(1) directs that when driving on roadways laned for traffic, vehicles should be driven “as nearly as practicable within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety[.]”

stopped her automobile did not have reasonable suspicion, supported by specific and articulable facts that she violated Tenn. Code Ann. § 55-8-123(1) as her vehicle never crossed her lane of travel.

5. Under Fourth Amendment protections against unreasonable search and seizures, should the subsequent evidence discovered during [the Defendant's] detention be deemed inadmissible, as the law enforcement officer conducting the traffic stop did not have reasonable suspicion nor probable cause supported by specific and articulable facts to believe a violation of Tenn. Code Ann. § 55-8-115(a) and/or 55-8-123(1) had occurred.

(Footnotes added). The DUI judgment form also provided that both the State and the trial court consented to the reservation and were of the opinion that the certified questions were dispositive of the case. The Defendant filed a timely notice of appeal.

## II. ANALYSIS

On appeal, the Defendant challenges the denial of her motion to suppress, seeking our review of the certified questions memorialized on the DUI judgment form. The State responds that the Defendant's five certified questions do not meet the procedural requirements because they are not dispositive and because they fail to clearly identify the scope and limits of the legal issues reserved. We agree with the State.

In relevant part, Rule 3 grants a right of appeal to defendants who plead guilty so long as they “explicitly reserved the right to appeal a certified question of law dispositive of the case pursuant to and in compliance with the requirements of Rule 37(b)(2)(A) or (D) of the Tennessee Rules of Criminal Procedure[.]” Tenn. R. App. P. 3(b). Our supreme court first set forth the prerequisites for certifying a question of law in *State v. Preston*, 759 S.W.2d 647, 650 (Tenn. 1988). In 2002, our legislature amended Rule 37 to expressly adopt the *Preston* requirements. The current version of Rule 37(b) states that a criminal defendant may plead guilty and appeal a certified question of law when the defendant has entered into a plea agreement under Rule 11(c) of the Rules of Criminal Procedure and has “explicitly reserved—with the consent of the [S]tate and of the court—the right to appeal a certified question of law that is dispositive of the case[.]” Rule 37 further imposes the following technical requirements that a defendant must follow in order to properly reserve a certified question:

(i) the judgment of conviction or order reserving the certified question that is filed before the notice of appeal is filed contains a statement of the certified question of law that the defendant reserved for appellate review;

(ii) the question of law as stated in the judgment or order reserving the certified question identifies clearly the scope and limits of the legal issue reserved;

(iii) the judgment or order reserving the certified question reflects that the certified question was expressly reserved with the consent of the [S]tate and the trial court; and

(iv) the judgment or order reserving the certified question reflects that the defendant, the [S]tate, and the trial court are of the opinion that the certified question is dispositive of the case[.]

Tenn. R. Crim. P. 37(b)(2)(A).

Because these procedural requirements are “explicit and unambiguous,” they must be strictly followed. *State v. Armstrong*, 126 S.W.3d 908, 912 (Tenn. 2003) (quoting *State v. Irwin*, 962 S.W.2d 477, 479 (Tenn. 1998); *State v. Pendergrass*, 937 S.W.2d 834, 838 (Tenn. 1996)). In *Preston*, our supreme court emphasized that the burden is on the defendant to ensure that the conditions for properly preserving a question of law pursuant to Rule 37(b)(2)(A) have been met:

[T]he question of law must be stated so as to clearly identify the scope and the limits of the legal issue reserved. For example, where questions of law involve the validity of searches and the admissibility of statements and confessions, etc., the reasons relied upon by the defendant in the trial court at the suppression hearing must be identified in the statement of the certified question of law and review by the appellate courts will be limited to those passed upon by the trial judge and stated in the certified question, absent a constitutional requirement otherwise. . . . No issue beyond the scope of the certified question will be considered.

759 S.W.2d at 650. Failure to properly reserve a certified question of law will result in the dismissal of the appeal for lack of jurisdiction. *See Pendergrass*, 937 S.W.2d at 838; *see also State v. Walton*, 41 S.W.3d 75, 96 (Tenn. 2001).

First, we conclude that the Defendant’s certified questions of law are not dispositive of her DUI conviction. While the trial court and parties in this case agreed that the certified questions were dispositive, we are not bound by that determination and must make an independent judgment of whether the certified questions reserved are dispositive of the case. *State v. Dailey*, 235 S.W.3d 131, 134-35 (Tenn. 2007) (citations omitted). A “question is dispositive when the appellate court must either affirm the judgment or reverse and dismiss.” *Id.* at 134. The certified questions here focus on whether an officer can form reasonable suspicion or probable cause when a defendant did not “cross[] the roadway boundary line” or “exit their lane of travel.” However, the trial court ruled that Officer Smith “was investigating whether or not the driver of the black Jeep was impaired” and that he “had reasonable suspicion that the driver was driving while under the influence.” The certified questions do not challenge or even address the trial court’s finding that Officer Smith stopped the Defendant’s vehicle based upon reasonable suspicion of DUI. Accordingly, whether the stop was permissible based upon reasonable suspicion or probable cause for a statutory traffic violation is not dispositive of the case.<sup>5</sup> *See, e.g., State v. Catalano*, No. M2016-02272-CCA-R3-CD, 2017 WL 6467339, at \*3 (Tenn. Crim. App. Dec. 18, 2017) (holding that the certified question was not dispositive because it was limited to whether the BOLO justified the traffic stop and did not account for the officer’s independent observations of the defendant’s failing to maintain his lane of travel).

Moreover, the Defendant’s certified questions do not clearly identify the scope and the limits of the legal issues reserved. The Defendant bears the burden of “reserving, articulating, and identifying the issue.” *Pendergrass*, 937 S.W.2d at 838. The scope and limits of the legal issue reserved, the reasons relied upon by Defendant in the trial court at the suppression hearing, and the trial court’s reasoning for denying the motion to suppress should be discernable from the certified question of law without the need to analyze any other portions of the appellate record, including hearing transcripts, exhibits, briefs, and pleadings. *See State v. Van Garrett*, No. E2018-02228-CCA-R3-CD, 2020 WL 1181805, at \*3 (Tenn. Crim. App. Mar. 11, 2020). This court has recently emphasized that it was “mindful of *Preston*’s specific admonition that the reasoning of the defendant and the trial court must appear in the certified issue itself.” *State v. Elliott*, No. M2022-00789-CCA-R3-CD, 2023 WL 2727587, at \*8 (Tenn. Crim. App. Mar. 31, 2023), *perm. app. denied* (Tenn. June 28, 2023). The certified questions in the instant case do not clearly state the reasoning the Defendant relied upon at the suppression hearing, nor do the questions state the trial court’s reasoning for denying the motion to suppress, so the questions are, therefore, not properly preserved. *See, e.g., State v. Treat*, No. E2010-02330-CCA-R3-CD, 2011 WL 5620804, at \*5 (Tenn. Crim. App. Nov. 18, 2011) (holding that a certified

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<sup>5</sup> On appeal, the Defendant challenges the trial court’s ruling that Officer Smith had reasonable suspicion at the time he initiated the traffic stop to believe that the Defendant was driving while impaired. However, this issue is outside the scope of the certified questions.

question of law that did not “articulate the reasons previously relied upon by the [d]efendant in support of his arguments [and did not] describe the trial court’s holdings on the constitutional issues presented” was overly broad).

The Defendant’s failure to satisfy the threshold requirements—clearly identifying the scope and the limits of the legal issues reserved and establishing the dispositive nature of the questions—are fatal to this appeal.

### **III. CONCLUSION**

In consideration of the foregoing, we are without jurisdiction to review the Defendant’s certified questions. The appeal is dismissed.

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KYLE A. HIXSON, JUDGE