FILED
08/24/2023
Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
March 28, 2023 Session

STATE OF TENNESSEE v. CASEY DEWAYNE HODGE

Appeal from the Criminal Court for Knox County
No. 118310 Steven Wayne Sword, Judge

No. E2022-00303-CCA-R3-CD

Pursuant to Tennessee Rule of Criminal Procedure 37, the defendant, Casey DeWayne Hodge, appeals one certified question of law related to the trial court's denial of his motion to dismiss in which he alleged a speedy trial violation and two certified questions of law related to the trial court's denial of his motion to suppress in which he challenged the constitutionality of a traffic stop. Discerning no error, we affirm. We remand for entry of judgments on Counts 2 and 3 reflecting that the charges were dismissed in accordance with the plea agreement.

Tenn. R. App. P. 3; Judgments of the Criminal Court Affirmed; Remanded

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JILL BARTEE AYERS and KYLE A. HIXSON, JJ., joined.

Eric Lutton, District Public Defender; and Jonathan Harwell (on appeal), Chelsea Harris, and Christopher Martin (at trial), Assistant Public Defenders, for the appellant, Casey DeWayne Hodge.

Jonathan Skrmetti, Attorney General and Reporter; Jonathan H. Wardle, Senior Assistant Attorney General; Charme P. Allen, District Attorney General; and Robert Debusk and Greg Eshbaugh, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Following a traffic stop on June 1, 2019, the defendant was arrested and charged with driving under the influence of an intoxicant ("DUI") and the failure to drive within a single lane of traffic in violation of Tennessee Code Annotated section 55-8-123.

On December 9, 2020, the Knox County Grand Jury returned an indictment charging the defendant with DUI per se, DUI, and the failure to drive within a single lane of traffic.

The defendant appeared before the trial court for arraignment on January 13, 2021. The trial court appointed counsel to represent the defendant and scheduled a status hearing for February 25, 2021. During the February 25 hearing, the defendant, through counsel, announced that he had received discovery and planned to file additional discovery requests, and he requested that the case be scheduled for a status hearing in 30 days. The State did not object but suggested that a status hearing in 45 to 60 days would be "more realistic." The defendant announced that he did not object to a 45-day continuance, and the trial court scheduled a status hearing for April 23. The State questioned whether the defendant intended to address "this motion," and the trial court stated that no motions were pending. The defendant explained that he filed a pro se "motion to dismiss" while the case was pending before the grand jury and that another judge ruled on the motion. The defendant stated that as a result, he did not plan to address the motion.

During the April 23 status hearing, the defendant requested a scheduling order and a trial date, and the State announced that a plea deadline was likely unnecessary because prior attempts to negotiate a plea agreement had been unsuccessful. Due to the crowded trial calendar, the trial court expressed hesitancy about setting the case for trial without knowing whether the case would actually proceed to trial. The trial court stated that if it set the case for trial, it also would "cut off" plea negotiations. The trial court offered to reset the case for 30 days to allow the parties to negotiate. The defendant requested that the trial court reset the case 30 days for a plea deadline to allow the defendant to discuss "pretrial litigation" and discovery issues with the State. The trial court set a plea deadline for June 10 and stated that it would set the case for trial if no agreement had been reached.

During the June 10 hearing, the trial court scheduled the trial for February 22, 2022, and a hearing on any motions for August 19, 2021. The defendant offered no objection to the trial date. The record does not include any information regarding the August 19 hearing.

On October 27, 2021, the defendant filed a motion to dismiss, alleging that his right to a speedy trial had been violated, and a motion to suppress, arguing that the police officer lacked probable cause or reasonable suspicion to conduct the traffic stop. The defendant alleged in the motion to dismiss that the delay was not due to his actions but was due to the COVID-19 pandemic and the State's failure to provide video footage of the traffic stop from the police cruiser in a timely manner while the case was pending in the general sessions court. The defendant argued that the delay was primarily the result of bureaucratic indifference and was avoidable. He asserted that his pro se motion to dismiss

filed in November 2020 was a formal demand for a speedy trial. He alleged that as a result of the delay, he suffered "overwhelming anxiety" and "severe emotion[al] and psychological distress," lost wages due to missing work, incurred litigation costs, and lost contact with a witness who was with him during the evening prior to his arrest and could have attested to his sobriety.

During a hearing on October 29, 2021, the defendant requested that the motions be heard in December when the officers were available to testify and to allow the State time to file a response. The trial court set a hearing for December 14, 2021.

The State filed responses to both motions on November 15, 2021. The State maintained that the officer who conducted the traffic stop formed sufficient probable cause or reasonable suspicion based upon the observations and report of another officer. With regard to the speedy trial claim, the State acknowledged that the case was "forcibly reset" due to the COVID-19 pandemic from April 2020 until August 2020 and asserted that the defendant either requested or acquiesced in almost all of the delays unrelated to COVID-19. The State set forth the following timeline of the proceedings in the general sessions court:

June 10, 2019	The defendant was arraigned, and the case was reset to August 19 after the defendant requested appointed counsel.
August 19, 2019	The defendant agreed to a continuance, and the matter was reset for November 12, 2019.
November 12, 2019	The matter was reset to January 21, 2020, "awaiting the video in this matter." On November 13, 2019, the State requested the in-car videos of the officers.
January 21, 2020	The matter was "reset by agreement" to February 24.
February 24, 2020	"[T]he State agreed to a reset to allow the defense time to review videos and to either plead or set the matter for a preliminary hearing on April 6th, 2020." Per the defendant's motion, he retained private counsel in March 2020. Resets related to COVID-19 occurred until August 10, 2020.
August 10, 2020	"[T]he State agreed to a reset to October 5th, 2020[,] to allow the defense more time to review the videos and discuss a potential plea resolution."
October 5, 2020	A preliminary hearing was scheduled, but both parties agreed to continue the hearing until October 30.
October 30, 2020	The defendant agreed to bind the matter over to the grand jury without a preliminary hearing.

The State maintained that the defendant did not assert his right to a speedy trial, that even if his pro se filing was an assertion of his right to a speedy trial, his actions thereafter "diluted his assertion and show that [he] did not sincerely want a speedy trial," and that he failed to establish prejudice.

An evidentiary hearing on both motions was held in the trial court on December 14, 2021. The State presented Officer Travis Harvey and Sergeant Samuel Henard with the Knoxville Police Department ("KPD") as witnesses in support of the State's claim that the traffic stop was constitutional. The defendant testified in support of his speedy trial claim.

Sergeant Henard, who had been a KPD officer for 18 years, testified that on the evening of June 1, 2019, he dropped off his police cruiser and retrieved another vehicle for a special event on the following morning. The vehicle was half police car and half taxi and was used for special events and not for patrol purposes. While traveling from downtown toward South Knoxville, Sergeant Henard began driving behind a black Nissan car, and he testified that the car was swerving in the roadway and crossing the double yellow center line. While on Sevier Avenue, Sergeant Henard saw the car go "all the way across the double yellow line in the other lane." He attempted to activate the lights on his vehicle, but the lights were not operational. He stated that he flashed his lights in an effort to stop the car because he believed the car would strike another vehicle, but his efforts were unsuccessful. He requested the assistance of an on-duty officer through the radio dispatch.

Sergeant Henard testified that he followed the car for approximately five miles and seven to ten minutes before another officer arrived and that he observed the car swerve and cross the center line multiple times. Sergeant Henard updated his location through the radio dispatch until Officer Travis Harvey arrived, and Sergeant Henard affirmed that he stopped the car with Officer Harvey's assistance.

Sergeant Henard approached the car and observed a beer bottle on the back floorboard of the car. While Officer Harvey was verifying the defendant's information, Sergeant Henard spoke with the defendant and informed him of the reason for the stop. Sergeant Henard asked the defendant if he would be willing to take field sobriety tests, but the defendant "wouldn't say yes. He wouldn't say no. He was just saying, if there's not a problem here, I'm just going to leave." Sergeant Henard informed the defendant that the officers were conducting a DUI investigation and would not allow someone who they believed to be intoxicated to leave. The defendant eventually agreed to the field sobriety tests but performed poorly on the tests. Sergeant Henard smelled alcohol when speaking to the defendant, and the defendant acknowledged that he had consumed alcohol. Sergeant Henard testified that based on the "totality of the circumstances," including the defendant's driving, the presence of alcohol in his car, the odor of alcohol, his admission to drinking

alcohol, and his poor performance on the field sobriety tests, Sergeant Henard believed the defendant was intoxicated.

During cross-examination, Sergeant Henard testified that when he initially contacted the dispatcher, he provided his location and the tag number and description of the car and announced a "possible 10-49," which means a suspected intoxicated driver. He did not know whether he provided any information through the radio dispatch regarding the defendant's driving. While following the defendant, Sergeant Henard did not speak to Officer Harvey on their cell phones, and Sergeant Henard provided information only through the radio dispatch. Before speaking to the defendant, Sergeant Henard asked Officer Harvey whether he smelled any alcohol on the defendant, and Officer Harvey reported that he had not. Sergeant Henard stated that once he spoke to the defendant, he smelled alcohol on the defendant's person.

Officer Harvey testified that on June 1, 2019, he heard a request for assistance with a possibly intoxicated driver from Sergeant Henard over the radio and responded to the location. Officer Harvey stated that Sergeant Henard was not on duty and was in a vehicle half of which had been converted into a police cruiser and half of which had been converted into a taxi. The vehicle was used in providing education in intoxicated driving, and the vehicle was not equipped with an audio or video recording device or the lights necessary to initiate a traffic stop. Officer Harvey noted that according to the video recording from his vehicle's dash camera, Sergeant Henard stated over the radio that he needed assistance with a "possible 10-49," which Officer Harvey explained was "10-code for a possible intoxicated driver." Sergeant Henard continued speaking over the radio and guiding Officer Harvey to the location.

Officer Harvey testified that the video recording showed that after the defendant was stopped, Officer Harvey approached the defendant's car on the driver's side, and Sergeant Henard approached the car on the passenger's side. Sergeant Henard said a beer bottle was in the back of the car. Officer Harvey stated that he did not smell any alcohol on the defendant initially but detected an odor of alcohol as he continued speaking to the defendant. After the defendant performed the field sobriety tests, Officer Harvey transported him to conduct a breathalyzer test. Officer Harvey advised the defendant of his rights, and the defendant agreed to the breathalyzer.

During cross-examination, Officer Harvey testified that he was the arresting and reporting officer. He stated that prior to initiating his blue lights, he did not speak to Sergeant Henard directly about Sergeant Henard's observations. Officer Harvey did not recall whether Sergeant Henard provided details regarding the defendant's driving over the radio. Officer Harvey agreed that he arrived at Sergeant Henard's location approximately five minutes after receiving the dispatch. Officer Harvey agreed that he activated his blue

lights once he was behind the defendant's car and that he did not observe the defendant's driving. He also agreed that the defendant was in his proper lane and that Officer Harvey was not pacing the defendant and did not know the speed at which the defendant was traveling.

Officer Harvey agreed that he handcuffed the defendant shortly after the stop because Officer Harvey smelled alcohol on the defendant, Sergeant Henard observed the defendant driving erratically, and the defendant stumbled when exiting his car. Officer Harvey did not hear the defendant's slurring his speech while interacting with him.

The video recording from Officer Harvey's dash camera was entered as an exhibit. In the video, Sergeant Henard requested assistance for a "possible 10-49" over the radio and updated his location multiple times as Officer Harvey drove to the area. Officer Harvey activated his blue lights shortly after approaching the defendant's car, and the defendant stopped his car on the side of the road. Officer Harvey walked up to the car on the driver's side while Sergeant Henard approached on the passenger's side. Officer Harvey informed the defendant that he was stopped due to his erratic driving witnessed by Officer Harvey's "partner," and Officer Harvey asked the defendant for his driver's license. Once the defendant provided his driver's license, Officer Harvey and Sergeant Henard spoke briefly. Sergeant Henard stated that he saw a beer bottle in the car and asked Officer Harvey whether he smelled alcohol, and Officer Harvey stated that he had not. As Officer Harvey was calling in the defendant's information, Sergeant Henard spoke to the defendant, but their conversation could not be heard in the recording.

Both officers approached the driver's side and requested that the defendant exit his car. Once the defendant exited his car, the officers handcuffed him and informed him that he was suspected of DUI. The defendant asked about conducting field sobriety tests, and one of the officers stated that the defendant had refused to take them. The defendant argued with the officers and maintained that he only stated that he was not intoxicated and that he did not decline the field sobriety tests "outright." The defendant also maintained that the amount of alcohol that he had consumed did not affect his ability to drive and that he was driving within his lane. The officers removed the defendant's handcuffs and had him perform a series of field sobriety tests after which the officers informed him that was under arrest for DUI and handcuffed him. The defendant maintained that he did not fail the field sobriety tests and agreed to submit to a breathalyzer. Officer Harvey then transported the defendant from the scene.

The defendant testified that he was arrested on June 1, 2019, and that he was arraigned in general sessions court on June 10. The general sessions court appointed counsel to represent the defendant and scheduled another court date for approximately two months later. The defendant stated that his case was reset several times in 2019 because

"[w]e were waiting on the State to provide evidence." He said that the State was to provide two video recordings and that he assumed that the State would be providing recordings from the officers' body cameras. He stated that his case was reset several times in 2020, that some resets were due to the actions of the State, and that others were the result of the COVID-19 pandemic.

The defendant testified that while his case remained in the general sessions court from June 10, 2019, to October 30, 2020, he requested two continuances. He stated that he requested the first continuance in order to retain other counsel. The defendant stated that his appointed counsel told him that the officers did not have sufficient probable cause to justify the traffic stop, but counsel did not want to argue the case. The defendant said that he asked counsel whether police officers would be untruthful and that his counsel affirmed that they would. The defendant stated that when he asked counsel whether officers would be untruthful on police reports, counsel "rolled his eyes at me and went back in and requested a reset."

The defendant testified that his second request for a continuance occurred on October 5, 2020, after he retained counsel in March 2020. He stated that as a result of the COVID-19 pandemic, he did not have another hearing in general sessions court until October 5, 2020. He said that during the interim, he did not meet with retained counsel and experienced difficulty in contacting retained counsel. The defendant stated that when he appeared in court on October 5, 2020, retained counsel informed him of the same offer that the State previously had made and pressured him to accept the offer. The defendant requested a continuance for a brief period to allow him to consider the offer, and he ultimately rejected the offer. During his court appearance on October 30, 2020, the defendant agreed to have his case bound over to the grand jury, explaining that he was not confident in retained counsel's ability to present a defense during the preliminary hearing and that retained counsel stated that, regardless, the grand jury would return an indictment against him. Retained counsel did not continue to represent the defendant after October 30.

The defendant said that during his first meeting with retained counsel in March 2020, he told retained counsel that he believed his right to a speedy trial had been violated. The defendant testified that his appointed counsel had requested the video evidence from the State and that his case was reset several times because the State failed to provide the video. The defendant contacted the KPD in an effort to obtain the video recording from Sergeant Henard's vehicle, and he was told that the video recording could not be located. The defendant testified that on November 16, 2020, after his case was bound over to the grand jury but before the grand jury returned an indictment, he filed a pro se motion to dismiss and that he later learned that the motion was "dismissed without prejudice because it was not yet ripe." The trial court noted that according to the court

records, the defendant filed the motion on November 16 and that another criminal court judge entered an order denying the motion on November 17.

The defendant testified that as a result of the delay, he lost contact with a witness, a woman who he met on the night of the offense and with whom he went on a date. He stated that the woman had since "moved on" and "changed numbers" so that he had no way in which to contact her. He stated that he could have contacted the woman "within the first nine months or so" and that her telephone number was "no longer valid." The defendant testified that as a result of the delay, he had been stressed, had missed work in order to attend meetings with attorneys, had paid legal fees, and had gained 75 pounds. He stated that in December 2017, he began making plans to move to the Pacific Northwest for job opportunities but that his plans were "suspended indefinitely" due to the pending charges. He said, "I can't leave the state without calling the bondsman. I can't even get a Small Business Administration loan while the case is pending. I can't even enumerate the amount of ways that this has affected me negatively."

During cross-examination, the defendant testified that he first became aware of the video recording from Officer Harvey's vehicle approximately six months after the defendant's arrest. The defendant met with counsel 13 days prior to the February 2020 court setting and watched the video. The defendant continued searching for the video recording from Sergeant Henard's vehicle. He stated that he "was told they said they don't have it" and that he "contacted the person in charge and tried to get that video to make sure that it wasn't just a misstep."

The defendant believed the female witness would have testified that his driving was "fine" and that "we did not drink that much." He said that he dropped her off at her hotel and that she was not with him when the police officers stopped him. The defendant was unable to recall the woman's name, stating that "[h]er name started with an A. It was, like, Ariel or Arias or April or . . . I was dating a lot during that time." The defendant testified that they "talked for a little bit after the date," but they "just kind of fell out of contact." He stated that they stopped exchanging text messages a few weeks after the date but that "she was still available to me at the time." He said that he lost her contact information "[a]bout nine months later, when my phone suddenly died" and that her contact information did not transfer to his new cell phone.

The defendant acknowledged that since filing his pro se motion, he had agreed to a trial date. He stated that the plea deadline was the only other deadline or continuance about which he was aware. The trial court noted that the defendant "blew a .13" on the breathalyzer, and the defendant stated, "I did."

After the presentation of the evidence, the defendant's argument with respect to the speedy trial claim focused upon the delay in general sessions court, and the defendant argued that the delay resulted in prejudice. The State argued that the defendant failed to establish prejudice. Regarding the reason for the delay, the State asserted that the defendant caused or acquiesced to the majority of the continuances, "had knowledge of the video six months in," and had the ability to view the video and "to have the statement and show it clear[ly] that there was no other video to be found." The State contended that according to the records from the general sessions court, the case was set for a preliminary hearing twice and that "multiple delays were caused, again, by request for a second video, which this video demonstrates never existed."

The trial court took the matter under advisement, and on December 15, 2021, the court entered two orders denying the defendant's motions. In denying the defendant's motion to suppress, the court credited Sergeant Henard's testimony that he observed the defendant driving erratically, swerving in the road, crossing the double yellow center line, and completely crossing into the oncoming traffic and that Sergeant Henard then called dispatch and requested a police cruiser to effectuate the stop due to suspicion of DUI. The court stated that "[e]ven if he didn't suspect that the defendant was driving under the influence, he directly observed multiple driving offenses. Thus, he had probable cause to stop the defendant." The court rejected the defendant's assertion that the stop was unconstitutional because Officer Harvey conducted the stop and did not observe any traffic violations, finding that Sergeant Henard was present when the stop was conducted and approached the defendant's car with Officer Harvey, that the fact that the officers had to use the lights on Officer Harvey's car to "communicate the seizure to the defendant" was not relevant, and that both officers made the seizure. The court found that, regardless, Sergeant Henard's knowledge of the defendant's traffic violations was imputed to Officer Harvey under the "doctrine of collective knowledge." The court concluded that "the stop of the defendant's vehicle was justified on the basis that Sergeant Henard personally observed the defendant commit traffic violations and that he had reasonable suspicion that the defendant was driving under the influence. This knowledge may be imputed to Officer [Harvey]. Both officers conducted the stop."

In denying the defendant's motion to dismiss, the trial court found that the case had been pending for more than two years and that, therefore, there was a "presumptive delay." Regarding the reason for the delay, the trial court found that the defendant was arraigned in general sessions court on June 10, 2019, that his case was bound over to the grand jury on October 30, 2020, and that there were a total of eleven court dates in the general sessions court. The trial court also found that "the delay in this case was necessary for the fair and effective prosecution of the case and was caused or acquiesced in by the defense." The trial court stated that although part of the delay in general sessions court was needed to obtain a video recording of the stop from the police cruiser to assist

the parties in negotiations, there is no right to discovery in general sessions court and that the defendant, therefore, had "no valid demand for the cruiser video" and "could have easily requested a preliminary hearing at any point." The trial court noted that "the record reflects that the case was set for 'other than trial' eight times. This could only be do[ne] by agreement of the defendant." The trial court stated that although the defendant did not understand the delay in obtaining the cruiser video, "he has offered no proof that the State was at fault or even negligent in the delay. This court simply has no proof before it as to the cause of the delay." The trial court further stated that the defendant's changing counsel while the case was pending in general sessions court would have caused some delay as new counsel began investigating the case. The trial court found little evidence before the court regarding the effect of the pandemic on the case and noted that jury trials had resumed in criminal court prior to the plea deadline.

The trial court found that the defendant's pro se motion to dismiss filed on November 16, 2020, qualified as an assertion of his right to a speedy trial. The trial court noted that the defendant did not renew the assertion when he appeared before the trial court, that the trial court was unaware that the motion had been filed, and that the defendant did not request a trial date until after several status hearings before the trial court. Regarding prejudice, the trial court noted that the defendant was not incarcerated during the delay, but the trial court credited the defendant's testimony that the charges caused increased anxiety and interfered with his ability to obtain his preferred employment. The trial court stated that it "does not find the defendant credible when he claims that he has been prejudiced by the delay because he has lost a witness who could testify as to the amount of alcohol he consumed." The trial court stated that "[t]here is no evidence that the delay resulted in the loss of the witness or even that she would provide testimony that could assist the defendant." The trial court noted that the results of the defendant's breathalyzer test showed that his blood-alcohol concentration was almost twice the legal limit and that "[i]t is unlikely that the testimony of someone whose name the defendant doesn't recall would make any difference on this topic." The trial court also noted that the defendant made no effort to locate the witness while the case was pending in general sessions court.

Upon examining the factors related to a speedy trial claim, the trial court found that the delay "was necessary for the fair administration of justice and/or the defendant acquiesced or caused the delay." The trial court stated that although the defendant "suffered prejudice of stress and negative effects on his life from the delay," his ability to present a defense had not been affected. The trial court concluded that the defendant's right to a speedy trial had not been violated.

On February 23, 2022, the defendant pleaded guilty to DUI per se, and the State agreed to dismiss the remaining charges. The defendant received an agreed sentence of 11 months and 29 days with five days to be served in confinement and the remainder to

be served on supervised probation. The defendant reserved, pursuant to Tennessee Rule of Criminal Procedure 37(b)(2), three certified questions of law. The trial court's order, which was incorporated by reference into the judgment forms, included the following questions of law:

> 1. Whether, where the defendant was arrested on June 1, 2019 for driving under the influence and failure to maintain lane, bound over to the grand jury on October 30, 2020, indicted on January 13, 2021, and set for trial in February, 2022; where there was a substantial delay in the Sessions Court which the defendant alleged was due to the State's inability to locate a copy of relevant video footage; where the defendant made a pro se motion for a speedy trial while his case was in the grand jury; where the defendant asserted he lost work wages and endured anxiety and emotional distress due to the continued litigation; and where the defendant asserts that the delay has caused him to lose access to a key witness who could verify his sobriety, did the trial court err in denying the motion to dismiss under the Sixth Amendment, Article I, Section 9 of the Tennessee Constitution, Tenn. Code Ann. 40-14-101, and Tenn. R. Crim. P. 48?
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> 2. Whether the trial court erred in denying the motion to suppress where the defendant argued that the initial stop was constitutionally unlawful, under Article I, Section 7 and the Fourth Amendment, because it lacked reasonable suspicion, including the trial court's application of the collective knowledge doctrine, to find that the stop of the defendant's vehicle was supported by reasonable suspicion that the defendant was intoxicated based on Sergeant Henard's observation of a possible intoxicated driver?
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> 3. Did the trial court err in finding the stop lawful under Article I, Section 7 and the Fourth Amendment on the grounds that it was supported by probable cause where the defendant contended that the officer had insufficient justification for believing that he had violated any traffic or other law?

The order indicated that the parties agreed that the certified questions of law are dispositive of the case. The defendant subsequently filed a timely notice of appeal.

A. Speedy Trial

Both the Sixth Amendment to the United States Constitution and Article I, Section 9 of the Tennessee Constitution guarantee an accused the right to a speedy trial. *See* U.S. Const. amend. VI; Tenn. Const. art. I, § 9. An accused also has a statutory right to a speedy trial. *See* T.C.A. § 40-14-101. "The right to a speedy trial is implicated when there is an arrest or a formal grand jury accusation." *State v. Hudgins*, 188 S.W.3d 663, 667 (Tenn. Crim. App. 2005), *abrogated on other grounds by State v. Moon*, 664 S.W.3d 72, 77-78 (Tenn. 2022); *see also Betterman v. Montana*, 578 U.S. 437, 441 (2016) (noting that the Sixth Amendment Speedy Trial Clause attaches "when a defendant is arrested or formally accused"). When evaluating whether a defendant's right to a speedy trial was violated, this court considers the "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Barker v. Wingo*, 407 U.S. 514, 530 (1972). "If a court determines . . . that a defendant has been denied a speedy trial," the only available remedy is "the reversal of the conviction and dismissal of the criminal charges" with prejudice. *State v. Simmons*, 54 S.W.3d 755, 759 (Tenn. 2001) (citations omitted).

The issue of whether a defendant's constitutional right to a speedy trial has been violated involves "a mixed question of law and fact." *Moon*, 644 S.W.3d at 78. Our standard of review on appeal is "de novo review with respect to whether the court correctly interpreted and applied the law." *Id.* We must "give deference to the trial court's findings of fact unless the evidence preponderates otherwise." *Id.*

1. Length of Delay

Generally speaking, "post-accusation delay must approach one year to trigger a speedy trial inquiry," and although "[t]he reasonableness of the length of the delay depends upon the complexity and nature of the case, . . . presumption that delay has prejudiced the accused intensifies over time." *Simmons*, 54 S.W.3d at 729 (citing *Doggett v. United States*, 505 U.S. 647, 652 (1992); *State v. Utley*, 956 S.W.2d 489, 494 (Tenn. 1997); *State v. Wood*, 924 S.W.2d 342, 346 (Tenn. 1996)). "To take but one example, the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge." *Barker*, 407 U.S. at 531. In this case, a period of more than two years elapsed between the defendant's arrest for misdemeanor offenses and his pleading guilty, which period of delay is sufficient to warrant review of the remaining factors.

2. Reason for the Delay

Reason for the delay

> generally falls into one of four categories: (1) intentional delay to gain a tactical advantage or to harass the defendant; (2) bureaucratic indifference or negligence, including overcrowded dockets or lack of diligence; (3) delay necessary to the fair and effective prosecution of the case, such as locating a missing witness; and (4) delay caused, or acquiesced, in by the defense, including good faith attempts to plea-bargain or repeated defense requests for continuances.

Simmons, 54 S.W.3d at 759 (citations omitted). The first category, intentional delay, "is weighed heavily against the State." *State v. Wood*, 924 S.W.2d 342, 347 (Tenn. 1996). Delay due to bureaucratic indifference or negligence "is also weighed against the State although not as heavily as deliberate delay." *Id.* Delay necessary to the fair and effective prosecution of the case "is, by definition, justifiable and is not weighed against either party." *Id.* Delay caused or acquiesced in by the defendant is weighed against the defendant. *Id.*

The defendant asserts that the delay in the general sessions court was attributable to the State. Specifically, he contends that his case was delayed due to the State's failure to provide him with the video recording of the stop from Officer Harvey's patrol car in a timely manner and due to confusion regarding the existence of a video recording from Sergeant Henard's vehicle. The defendant further asserts that his case was delayed in the general sessions court due to the COVID-19 pandemic and that this delay should be attributed to the State.

The defendant's assertion that the entire delay in the general sessions court is attributable to the State is not supported by the record or the trial court's factual findings. The trial court found that the defendant caused delay in the general sessions court due to his dissatisfaction with appointed counsel and his decision to retain other counsel. The defendant acknowledged that appointed counsel requested a continuance in general sessions court after which the defendant retained other counsel. The defendant testified that, even after his case had been pending for a long period of time in general sessions court, he requested another continuance to consider a plea offer about which he had been aware for a period of time.

Furthermore, our review of what portion of the delay is attributable to the State is hindered by the limited proof presented at the evidentiary hearing and the incomplete appellate record. The evidence presented at the evidentiary hearing did not reflect when the defendant requested the video recordings from the State, when the State agreed to provide any video recordings, the reason for the delay by the State in providing the video recording from Officer Harvey's car to the defendant, any representations made

by the State to the defendant regarding the existence of a video recording from Sergeant Henard's car, and the timing of any such representations.

The trial court found that the defendant was not entitled to discovery in general sessions court and, thus, had no valid basis upon which to demand the videos. *See State v. Willoughby*, 594 S.W.2d 388, 390 (Tenn. 1980) (holding that Tennessee Rule of Criminal Procedure 16, which governs discovery, does not apply in general sessions court). During oral argument, the defendant clarified that he was not alleging that he was entitled to video recordings while the case was in general sessions court based on Rule 16. Rather, he asserts that the State agreed to provide any video recordings to him in an effort to negotiate a resolution of the case and that the State caused a delay of several months by failing to provide any videos in a timely manner.

The trial court, however, also reviewed the records from the general sessions court and found that the defendant acquiesced in the delay. Although the records from the general sessions court were referenced during the evidentiary hearing and in the parties' pleadings, and the trial court relied on the records in its order, the records were never entered as an exhibit during the hearing and are not included in the appellate record. The appellant has a duty to prepare a record that conveys "a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal." Tenn. R. App. P. 24(b). "In the absence of an adequate record on appeal, this court must presume that the trial court's rulings were supported by sufficient evidence." *State v. Brown*, 373 S.W.3d 565, 571 (Tenn. Crim. App. 2011) (quoting *State v. Oody*, 823 S.W.2d 554, 559 (Tenn. Crim. App. 1991)); *see State v. Jones*, 568 S.W.3d 101, 137 (Tenn. 2019) (noting that the defendant had failed to include a transcript of a hearing but holding that, on the basis of the record provided, the defendant had not established error). Due to the absence of the general sessions records from the appellate record, we must presume that the trial court's factual finding that the defendant acquiesced in the delay based upon the record is supported by the evidence. *See Brown*, 373 S.W.3d at 571.

On appeal, the defendant relies upon what he claims is "a detailed chronology of court hearings in sessions and criminal court" set forth in the State's response to his motion to dismiss. We note that some of the information in the chronology differs from the defendant's testimony during the hearing and that the defendant did not stipulate to the accuracy of the chronology in the trial court. Even if we consider the chronology, we note that the State's chronology first mentioned the need to reset the case to obtain a video recording during the November 2019 hearing, approximately five months following the defendant's arrest, and that the State provided a video recording to the defendant by the February 24, 2020 hearing. According to the chronology, the other continuances either were requested or agreed to by the defendant or due to the pandemic. Thus, the chronology suggests, at most, a three-month delay in the State's providing a video recording to the

defendant. Furthermore, the chronology does not reflect the reason for the three-month delay, and no evidence was presented that the delay was intentional.

Although the defendant seeks to attribute the delay in the general sessions court due to the COVID-19 pandemic to the State, the trial court found that little proof was presented regarding the effect of the pandemic on the defendant's case. The defendant, however, argues that the State conceded in its response to the motion to dismiss filed in the trial court that the case was "forcibly reset" due to the pandemic from April until August of 2020. Regardless of any concession by the State, we note that the large majority of courts in other jurisdictions that have addressed a defendant's claim of a violation of his constitutional right to a speedy trial based, in part, on pandemic-related delays have declined to attribute such delays to the State. *See, e.g.*, *United States v. Keith*, 61 F.4th 839, 853 (10th Cir. 2023) (noting that "no circuit has yet published an opinion classifying delays under the second *Barker* factor," choosing to "treat COVID-19 as a truly neutral justification—not favoring either side," and concluding that "[t]he extenuating circumstances brought about by the pandemic prevented the government from trying [the defendant] in a speedy fashion"); *State v. Adams*, 876 S.E.2d 719, 725 (Ga. App. 2022) (declining to weigh the delay caused by pandemic-related suspension of jury trials against either party); *State v. Paige*, 977 N.W.2d 829, 838 (Minn. 2022) (concluding that "trial delays due to the statewide orders issued in response to the COVID-19 global pandemic do not weigh against the State"); *Ward v. State*, 346 So.3d 868, 871-72 (Miss. 2022) (noting that delays caused by the pandemic are "neutral" and that "unrelated delays occurring during the pandemic may not be neutral and should be considered by the trial court in its analysis"); *Ali v. Commonwealth*, 872 S.E.2d 662, 675 (Va. App. 2022) (holding that pandemic-related delays fell within the third category of delay, "which encompasses 'valid' reasons for delay that are not directly attributable to the government"); *Vlahos v. State*, 518 P.3d 1057, 1072 (Wy. 2022) (determining that delays due to the pandemic are "neutral" because the pandemic was an "extraordinary circumstance" that was not attributable to the State or the defendant); *cf. State v. Larry L. Labrecque*, No. 22-AP-314, 2023 WL 4381913, at *5-6 (Vt. July 7, 2023) (concluding that "COVID delays are attributable to the State" but that "we will accord those delays very little weight in this case"). Like the majority of the courts that have addressed the issue, we also decline to attribute the pandemic-related delays in the general sessions court to the State or the defendant in light of "[t]he extenuating circumstances brought about by the pandemic." *Keith*, 61 F.4th at 853.

Even after the defendant filed his pro se motion asserting his speedy trial rights, he requested that his case be reset on numerous occasions for an approximate five-month period once his case was in the trial court. During one of the initial status hearings before the trial court, the defendant declined to revisit his pro se motion when given the opportunity to do so, and the defendant did not file a motion to dismiss until approximately

five months after the trial court scheduled the trial. The defendant argues that he requested a trial date during the April 23, 2021 hearing and that the trial court declined his request. However, the record reflects that the trial court expressed hesitancy in providing a trial date in light of the trial court's crowded trial calendar if the parties believed a plea agreement could be reached. The trial court gave the parties the option of either providing them with a trial date while "cut[ting] off" plea negotiations or resetting the matter to allow the parties to negotiate. The defendant opted to request that the matter be reset. The defendant's repeated requests for resettings fall within the fourth category of delay and weigh against the defendant.

The defendant maintains that the delay of more than eight months between his request for a trial date during the June 10, 2021 hearing and the trial date of February 22, 2022, provided by the trial court during the hearing is attributable to the State. The court did not specify the reason for the delay in its order denying the defendant's motion to dismiss. As noted by the State on appeal, the defendant's arguments in his motion to dismiss and during the evidentiary hearing focused predominately on the delay in the general sessions court, and the defendant did not argue that any delay in the trial court was attributable to the State. *See State v. Bristol*, 654 S.W.3d 917, 925 (Tenn. 2022) (recognizing that this court's jurisdiction is "appellate only" and "extends to those issues that hav[e] been formulated and passed upon in some inferior tribunal" and that "[i]t has long been the general rule that questions not raised in the trial court will not be entertained on appeal") (citations and internal quotations omitted). Regardless, even if the delay is attributable to the State, no evidence was presented demonstrating that the delay was intentional. Furthermore, in light of the number of delays attributed to the defendant, any favorable weight afforded to the defendant for the second *Barker* factor, the reason for the delay, as a result of the delays attributed to the State is slight.

3. The Defendant's Assertions of the Right to a Speedy Trial

In *Barker*, the United States Supreme Court rejected the "demand-waiver doctrine," which provided that "a defendant waives any consideration of his right to a speedy trial for any period prior to which he has not demanded a trial." *Barker*, 407 U.S. at 525. The Court concluded that a defendant's assertion of or failure to assert his right to a speedy trial is one of four factors to be considered when determining whether the defendant's right to a speedy trial has been violated. *Id.* at 528-29. The Court reasoned that this approach "allows the trial court to exercise a judicial discretion based on the circumstances, including due application of any applicable formal procedural rule" and "to weigh the frequency and force of the objections as opposed to attaching significant weight to a purely pro forma objection." *Id.* The defendant's assertion of his right to a speedy trial "is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Id.* at 531-32.

In *Barker*, the Court considered the circumstances surrounding the defendant's objections to the government's continuance requests and held that the evidence established that the defendant did not want a speedy trial. *Id.* at 534. The Court noted that the defendant did not object to the government's continuance requests for a period of more than three years because the defendant was "gambling" on his accomplice's acquittal and thought that if his accomplice was acquitted, he would never be tried. *Id.* at 535. The Court noted that the defendant filed a "pro forma motion to dismiss" but did not object to the government's next two motions for continuances and that the defendant did not begin to object to further continuances until after his accomplice's convictions were final. *Id*. at 536. Likewise, this court has held that a defendant's motion asserting his right to a speedy trial was "diluted by the defendant's other acts evidencing that he did not sincerely desire a speedy trial." *State v. Walton*, 673 S.W.2d 166, 171 (Tenn. Crim. App. 1984). These "other acts" were the defendant's subsequent requests for and agreements to continuances. *Id.*

The trial court in the instant case found that the defendant's pro se motion to dismiss filed on November 16, 2020, qualified as an assertion of his right to a speedy trial. The trial court also found that the defendant did not renew his assertion upon appearing before the trial court, that the trial court was unaware that the motion had been filed, and that the defendant did not request a trial date until after several status hearings before the trial court. Although the defendant's pro se motion and the order denying the motion are not included in the appellate record, the record reflects that the defendant filed the motion after he waived his case to the grand jury but before he was indicted and that a different trial judge entered an order denying the motion before an indictment was returned. During the February 25, 2021 status hearing, the parties referenced the defendant's pro se "motion to dismiss," but they did not inform the trial court of the substance of the motion. The defendant, through counsel, informed the trial court that another judge had denied the motion, and the defendant declined to pursue the motion further. The defendant requested multiple continuances prior to requesting the trial date, did not object to the trial date provided by the trial court, and did not file the motion to dismiss that is the subject of this appeal until more than four months after the June 10, 2021 hearing during which the trial court provided the trial date. Based on these circumstances, we conclude that the defendant's initial assertion of his right to a speedy trial was "diluted" by his subsequent acts "evidencing that he did not sincerely desire a speedy trial," *see Walton*, 673 S.W.2d at 171, and that his initial speedy trial demand was "purely a pro forma objection," *see Barker*, 407 U.S. at 528-29.

4. Prejudice

"The final and most important factor" in our "analysis is whether the accused suffered prejudice from the delay." *Simmons*, 54 S.W.3d at 760 (citations omitted).

> Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.

Barker, 407 U.S. at 432. "Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Id*.

"[C]onsideration of prejudice is not limited to the specifically demonstrable, and . . . affirmative proof of particularized prejudice is not essential to every speedy trial claim." *Doggett*, 505 U.S. at 655. Prosecutorial negligence is not "automatically tolerable simply because the accused cannot demonstrate exactly how it has prejudiced him." *Id*. at 657. Instead, courts "generally have to recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify," and include this in their assessment of the defendant's speedy trial claim. *Id*. at 655; *Moore v. Arizona*, 414 U.S. 25, 26 (1973) ("*Barker v. Wingo* expressly rejected the notion that an affirmative demonstration of prejudice was necessary to prove a denial of the constitutional right to a speedy trial.")

The defendant asserts that as a result of the delay, he lost contact with a witness who had been with him prior to the stop and could testify to his sobriety and ability to drive in a safe manner. The trial court, however, found that the defendant's testimony was not credible, and we must give deference on appeal to the trial court's credibility determination. *See Moon*, 644 S.W.3d at 78.

The trial court credited the defendant's testimony that the charges interfered with his ability to obtain his preferred employment and resulted in increased stress and anxiety; however, pretrial "anxiety and concern are always present to some extent, and this absent some unusual showing [are] not likely to be determinative in [a] defendant's favor." *Id.* at 80 (quoting *State v. John Steven Hernandez*, No. M2016-02511-CCA-R3-CD, 2019 WL 2150171, at *40 (Tenn. Crim. App., Nashville, May 15, 2019); 5 Wayne Lafave, *Criminal Procedure*, § 18.2(e) (4th ed. 2017) (footnotes omitted)). Although the defendant may have experienced some anxiety and issues with employment due to the charges, the record does not establish that such issues experienced by the defendant are beyond those generally associated with being a defendant in a criminal case or otherwise affected his ability to present a defense.

Upon our de novo review, we conclude that the delay did not deprive the defendant of his right to a speedy trial. Accordingly, the defendant is not entitled to relief regarding this issue.

B. Constitutionality of the Stop

In challenging the constitutionality of the stop, the defendant asserts that although the trial court concluded that "Sergeant Henard had suspicion of a lane violation," Officer Harvey conducted a "DUI stop" and not a "lane-violation stop." The defendant further asserts that the trial court "declined to find that reasonable suspicion existed for DUI" and that, regardless, reasonable suspicion for DUI did not exist once Officer Harvey observed the defendant driving appropriately within his lane. The State responds that the officers had reasonable suspicion that the defendant was intoxicated and that the third certified question relating to probable cause is not dispositive.

When reviewing a trial court's findings of fact and conclusions of law on a motion to suppress evidence, we are guided by the standard of review set forth in *State v. Odom*, 928 S.W.2d 18 (Tenn. 1996). Under this standard, "a trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." *Id.* at 23. As in all cases on appeal, "[t]he prevailing party in the trial court is afforded the 'strongest legitimate view of the evidence and all reasonable and legitimate inferences that may be drawn from that evidence.'" *State v. Carter*, 16 S.W.3d 762, 765 (Tenn. 2000) (quoting *State v. Keith*, 978 S.W.2d 861, 864 (Tenn. 1998)). We review the trial court's conclusions of law under a de novo standard without according any presumption of correctness to those conclusions. *See, e.g., State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001); *State v. Crutcher*, 989 S.W.2d 295, 299 (Tenn. 1999).

The authority of a police officer to stop a citizen's vehicle is circumscribed by constitutional constraints. "As a general rule, if the police have probable cause to believe a traffic violation has occurred, the stop is constitutionally reasonable." *State v. Berrios*, 235 S.W.3d 99, 105 (Tenn. 2007) (citing *Whren v. United States*, 517 U.S. 806, 810 (1996)). Our supreme court has recognized that "probable cause exists when at the time of the [seizure], the facts and circumstances within the knowledge of the officers, and of which they had reasonably trustworthy information, are sufficient to warrant a prudent person in believing that the defendant had committed or was committing an offense." *State v. Smith*, 484 S.W.3d 393, 400 (Tenn. 2016) (alteration in original) (citations omitted). "[T]he strength of the evidence necessary to establish probable cause . . . is significantly less than the strength necessary to find a defendant guilty beyond a reasonable doubt." *State v. Davis*, 484 S.W.3d 138, 143-44 (Tenn. 2016) (quoting *State v. Bishop*, 431 S.W.3d 22, 41 (Tenn. 2014)). Furthermore, "the constitutional validity of the [seizure] does not

depend on whether the suspect actually committed any crime." *Id.* at 144 (alteration in original) (quoting *Wright v. City of Philadelphia*, 409 F.3d 595, 602 (3d Cir. 2005)). "[I]t is irrelevant to the probable cause analysis what crime a suspect is eventually charged with or whether a person is later acquitted of the crime for which he or she was arrested." *Id.* (quoting *Wright*, 409 F.3d at 602).

Police officers also are constitutionally permitted to conduct a brief investigatory stop supported by specific and articulable facts leading to a reasonable suspicion that a criminal offense has been or is about to be committed. *Terry v. Ohio*, 392 U.S. 1, 20-23 (1968); *State v. Binette*, 33 S.W.3d 215, 218 (Tenn. 2000). Whether reasonable suspicion existed in a particular case is a fact-intensive, but objective analysis. *State v. Garcia*, 123 S.W.3d 335, 344 (Tenn. 2003). The likelihood of criminal activity required for reasonable suspicion is not as great as that required for probable cause and is "considerably less" than would be needed to satisfy a preponderance of the evidence standard. *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

Furthermore, a court must consider the totality of the circumstances in evaluating whether a police officer's reasonable suspicion is supported by specific and articulable facts. *State v. Hord*, 106 S.W.3d 68, 71 (Tenn. Crim. App. 2002). The totality of the circumstances embraces considerations of the public interest served by the seizure, the nature and scope of the intrusion, and the objective facts on which the law enforcement officer relied in light of his experience. *See State v. Pulley*, 863 S.W.2d 29, 34 (Tenn. 1993). The objective facts on which an officer relies may include his or her own observations, information obtained from other officers or agencies, offenders' patterns of operation, and information from informants. *State v. Watkins*, 827 S.W.2d 293, 294 (Tenn. 1992).

As recognized by our supreme court, a law enforcement officer who "observes a driver actually commit a traffic infraction" has probable cause to initiate a traffic stop. *Davis*, 484 S.W.3d at 150 (citing *State v. Vineyard*, 958 S.W.2d 730, 736 (Tenn. 1997)). "If, however, the officer does not observe the motorist actually commit a traffic infraction but instead observes driving behavior sufficient to create a reasonable suspicion that the motorist is intoxicated, the officer may initiate a traffic stop to investigate further." *Id.* (footnote omitted) (citing *Terry*, 392 U.S. at 21; *Watkins*, 827 S.W.2d at 294). The defendant maintains that the trial court found that the officer had probable cause to initiate a stop based upon the commission of a traffic infraction but that the trial court did not find reasonable suspicion that the defendant was driving while intoxicated. However, the trial court stated in its order that Sergeant Henard "had reasonable suspicion that the defendant was driving under the influence" and that Sergeant Henard "directly observed multiple driving offenses" and, thus, had probable cause to stop the defendant.

The State maintains that the third certified question regarding the existence of probable cause to effectuate the stop is not dispositive. Jurisdiction for a direct appeal following a guilty plea generally must be predicated upon the provisions for reserving a certified question of law. One requirement is that the certified question must be dispositive of the case. *See* Tenn. R. Crim. P. 37(b). Because a basic requirement for a certified question appeal is that the question actually be dispositive of the case, "the reviewing court must make an independent determination that the certified question is dispositive." *State v. Dailey*, 235 S.W.3d 131, 135 (Tenn. 2007). "An issue is dispositive when this court must either affirm the judgment or reverse and dismiss." *State v. Wilkes*, 684 S.W.2d 663, 667 (Tenn. Crim. App. 1984); *see Dailey*, 235 S.W.3d at 134.

The State asserts that because the stop was supported by reasonable suspicion, the issue of probable cause is not dispositive. The State's argument is based on its mistaken belief that the issue raised in the certified question is whether the officers had probable cause to arrest the defendant following the stop. However, the certified question is whether the initial traffic stop was supported by probable cause. This court previously has concluded that certified questions raising issues of probable cause and reasonable suspicion as alternative means to support a single traffic stop were dispositive. *See, e.g., State v. Freddie Ali Bell*, No. M2015-01999-CCA-R3-CD, 2016 WL 3043692, at *3 (Tenn. Crim. App., Nashville, July 25, 2016); *State v. Thomas George Headla*, No. E2015-00560-CCA-R3-CD, 2015 WL 9586495, at *3 (Tenn. Crim. App., Knoxville, Dec. 30, 2015). We conclude that the certified questions regarding the traffic stop are dispositive of the case because the evidence of the defendant's intoxication was obtained as a result of the traffic stop and that reasonable suspicion or probable cause to support the traffic stop would not have existed absent the officers' observations. *See Freddie Ali Bell*, 2016 WL 3043692, at *3; *Thomas George Headla*, 2015 WL 9586495, at *3.

Because the State misconstrues this issue on appeal, the State does not argue any basis upon which the officers had probable cause to stop the defendant's car.[1] Nevertheless, the State also argues that the officers had reasonable suspicion that the defendant was intoxicated, and we conclude that the stop of the defendant's vehicle was supported by reasonable suspicion.

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[1] We note that based on Sergeant Henard's testimony, which the trial court credited, the defendant crossed the center lane line of the roadway multiple times. Our supreme court has construed Tennessee Code Annotated section 55-8-115(a), which requires that a vehicle "be driven upon the right half of the roadway," as "creating an offense that is committed upon a vehicle crossing the center line(s) of a roadway on even one occasion when none of the four delineated exceptions applies." *Davis*, 484 S.W.3d at 147. When an officer observes a motorist violate Code section 55-8-115, the officer has "probable cause to tun on his blue lights and stop the motorist." *Id.*

The trial court credited Sergeant Henard's testimony that he observed the defendant driving in an erratic manner by swerving, crossing the double yellow center line, and crossing completely into the opposite lane. Sergeant Henard testified that he saw the defendant's car go "all the way across the double yellow line in the other lane," and he feared that the car would strike another vehicle. He followed the defendant's car for approximately five miles before Officer Harvey arrived and had observed the car swerve and cross the center line multiple times.

Our supreme court has recognized that "it is the rare motorist indeed who can travel for several miles without occasionally varying speed unnecessarily, moving laterally from time to time in the motorist's own lane, nearing the center line or shoulder, or exhibiting some small imperfection in his or her driving." *State v. Binette*, 33 S.W.3d 215, 219 (Tenn. 2000) (citation omitted); *see State v. Garcia*, 123 S.W.3d 335, 345 (Tenn. 2003). The defendant's driving, however, "constituted more than garden variety imperfect driving." *See State v. Alan Bryant Minchew*, No. M2011-01863-CCA-R3-CD, 2012 WL 1589101, at *3 (Tenn. Crim. App., Nashville, May 3, 2012). Rather, Sergeant Henard's testimony, which the trial court credited, established "specific and articulable facts" upon which to base a reasonable belief that the defendant was intoxicated. *Terry*, 392 U.S. at 20-23.

The defendant argues that Officer Harvey effectuated the seizure by activating his blue lights, that the only information that Officer Harvey learned from the dispatch was that the driver was suspected of DUI, and that Officer Harvey was unaware of any details regarding the defendant's driving when he stopped the defendant. The trial court found that Sergeant Henard also participated in the seizure. He requested assistance because the lights on his vehicle did not work, followed behind Officer Harvey as Officer Harvey activated his lights, stopped when Officer Harvey and the defendant stopped, approached the defendant's car with Officer Harvey, and participated in the investigation at the scene. We conclude that due to Sergeant Henard's direct involvement or participation in the seizure, his observations of the defendant's driving may be considered in determining whether the stop was supported by reasonable suspicion.

We further conclude that, regardless of Sergeant Henard's direct participation in the stop, his knowledge establishing reasonable suspicion was imputed to Officer Harvey. Our supreme court has recognized that when determining whether an officer has probable cause to arrest a suspect,

> the courts should consider the collective knowledge that law enforcement possessed at the time of the arrest, provided that a sufficient nexus of communication existed between the arresting officer and any other officer or officers who

> possessed relevant information. Such a nexus exists when the officers are relaying information or when one officer directs another officer to act.

State v. Bishop, 431 S.W.3d 22, 36 (Tenn. 2014) (citing *State v. Echols*, 382 S.W.3d 266, 278 (Tenn. 2012); 2 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, § 3.5(a)-(c) (5th ed. 2012)). "It matters not whether the arresting officers themselves believed that probable cause existed." *Id.* (citing *State v. Huddleston*, 924 S.W.2d 666, 676 (Tenn. 1996)). This court has concluded that "[b]ecause the doctrine of collective knowledge applies when determining whether an arresting officer has probable cause to arrest a particular suspect, it is logical that this doctrine also applies when determining whether an officer possessed reasonable suspicion to stop an individual." *State v. Robert Lamar Kelley*, No. M2016-01425-CCA-R3-CD, 2017 WL 3721688, at *10 (Tenn. Crim. App., Nashville, Aug. 28, 2017); *see State v. Jeremy Lynn Myrick*, No. E2017-00588-CCA-R3-CD, 2018 WL 3430337, at *15-16 (Tenn. Crim. App., Knoxville, July 16, 2018) (applying "concept of collective knowledge" and determining that the detective's reasonable suspicion was "imputed" to the officer who the detective directed to act by stopping the defendant). This court has further recognized that "[a]n officer without knowledge of the details may conduct an investigative stop of a vehicle upon the request of another officer." *State v. Kelly*, 948 S.W.2d 757, 760 (Tenn. Crim. App. 1996).

We conclude that because Sergeant Henard had reasonable suspicion that the defendant was intoxicated due to his erratic driving and directed Officer Harvey to act by stopping the defendant, a sufficient nexus existed such that Sergeant Henard's reasonable suspicion was imputed to Officer Harvey. The defendant asserts that reasonable suspicion did not exist once Officer Harvey observed the defendant driving appropriately within his lane. However, Officer Harvey activated his blue lights shortly after he reached the defendant's car and did not have the opportunity to observe the defendant's driving to the extent to which Sergeant Henard was able to observe it. Officer Harvey's observations do not negate Sergeant Henard's observations that established reasonable suspicion.

We conclude that the stop was constitutional in that the officers had reasonable suspicion that the defendant was driving while intoxicated. Consequently, the trial court did not err by denying the defendant's motion to suppress the evidence obtained from the stop.

As noted by the State in its brief, the appellate record does not include the judgments for Counts 2 and 3, the charges of DUI and the failure to drive within a single lane, showing that the charges were dismissed in accordance with the plea agreement. During oral argument, neither party objected to this court's remanding the case to the trial court for entry of judgments reflecting the dismissal of the two charges. Accordingly, we

remand the case to the trial court for entry of judgments on Counts 2 and 3 reflecting dismissal of the charges in accordance with the plea agreement. We otherwise affirm the judgments of the trial court.

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JAMES CURWOOD WITT, JR., JUDGE