

Affirmed and Opinion filed July 27, 2000.



In The

Fourteenth Court of Appeals

NO. 14-99-00868-CR

CHARLES WINGATE, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the County Criminal Court No. 9
Harris County, Texas
Trial Court Cause No. 99-07453**

OPINION

This case concerns the propriety of the trial court's denial of appellant's pretrial motion to suppress. After reviewing the record, we affirm its judgment.

Early one June morning, Harris County Deputy R. Waller was working an extra job controlling traffic for a construction crew on the feeder of Interstate 10. At one point, one of the construction crew needed to lean into a lane of traffic to operate a piece of machinery and notified Deputy Waller that traffic needed to be stopped in that lane. Deputy Waller, wearing a reflective vest and waving a flashlight, began to divert or stop traffic in that lane. While he

was performing this task, however, a vehicle driven by appellant proceeded directly at Deputy Waller at what he characterized as a high rate of speed. At one point Deputy Waller thought about moving out of the lane to dodge the vehicle, but it came to a stop a few feet away from him.

Fearing that something might be wrong with the driver of the vehicle, Deputy Waller walked over to the vehicle and asked appellant, through the vehicle's open window, whether appellant had seen his attempts to control traffic. Appellant mumbled incoherently to Deputy Waller, who noticed that appellant's eyes were glassy and a strong smell of alcoholic beverage emanated from him. Appellant also responded incoherently to other questions posed to him by Officer Waller. Based on these observations, the officer asked appellant to move his vehicle off the road and asked for appellant's driver's license. Officer Waller then contacted the Houston Police Department, who presumably, though it is not in the record, sent out an officer to arrest appellant.

Appellant filed a pretrial motion to suppress evidence, which was set for a hearing. At the hearing, appellant argued that the initial stop of appellant was not supported by probable cause, making any evidence flowing from the stop suppressible. Officer Waller testified that he stopped appellant's vehicle because he was controlling traffic. The court overruled appellant's motion and appellant pled guilty to the offense of driving while intoxicated.

The State argues that this case is controlled by *Florida v. Royer*, 460 U.S. 493 (1983). In that case, the Court held that an officer does not violate the Fourth Amendment by approaching an individual and questioning him. *See id.* at 497. This case, however, is somewhat different from *Royer* in that the appellant was questioned by Deputy Waller after he was stopped by the deputy. We find *Royer* persuasive, however, and hold that under the facts of this case, Deputy Waller did not violate appellant's Fourth Amendment rights.

Under the facts of this case, Deputy Waller did not need probable cause to stop appellant's vehicle. Police officers have the power to direct traffic. *See* TEX. TRANS. CODE ANN. § 542.501 (Vernon Supp. 2000). *See also Wright v. State*, 7 S.W.3d 148, 151 (Tex.

Crim. App. 1999). In the course of directing and controlling traffic, it is inevitable that they must occasionally direct a vehicle to stop. Thus, Deputy Waller had the power to stop appellant without probable cause or reasonable suspicion in the course of controlling traffic around the construction site. Once he was ordered to stop by Deputy Waller, he was not, as the State contends, free to leave, but was rather subjected to a Fourth Amendment stop. *See* TEX. TRANS. CODE ANN. § 542.501.

Once appellant was stopped, however, we believe that Deputy Waller did not violate any of appellant's Fourth Amendment rights by approaching his vehicle to determine if appellant had seen his traffic control efforts. As in *Royer*, appellant had no compulsion to answer the questions posed to him by the officer. Regardless, appellant did answer these questions and it was because of appellant's answers that Deputy Waller developed probable cause to further detain and investigate appellant.

We affirm the judgment of the trial court.

/s/ Paul C. Murphy
Chief Justice

Judgment rendered and Opinion filed July 27, 2000.

Panel consists of Chief Justice Murphy and Justices Hudson and Wittig.

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