

RENDERED: April 4, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-001983-DG

LORENZO BAUTISTA

APPELLANT

ON DISCRETIONARY REVIEW FROM BOURBON CIRCUIT COURT
v. HONORABLE PAUL F. ISAACS, JUDGE
ACTION NO. 01-XX-00001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE AND McANULTY, JUDGES; AND JOHN WOODS POTTER,
SPECIAL JUDGE.¹

DYCHE, JUDGE. On March 25, 2000, at 10:00 p.m., Paris Police
Officer J. C. Sword heard loud music coming from an automobile
parked in front of the Bourbon County Courthouse. Sword
approached the vehicle, intending to inform its occupant that

¹ Senior Status Judge John Woods Potter sitting as Special Judge
by Assignment of the Chief Justice pursuant to Section 110
(5)(b) of the Kentucky Constitution.

there was a violation of the local noise ordinance. Lorenzo Bautista occupied the driver's seat, and the motor was still running. Sword detected a strong odor of alcohol emanating from the vehicle.

Although Bautista, a Spanish speaking individual, and Sword were limited in their ability to communicate, Sword was able to ascertain that Bautista was on his way to a friend's house and admitted to recently ingesting two beers. Bautista failed several field sobriety tests, including the horizontal gaze nystagmus test and the preliminary breath test. Sword had difficulty administering other field tests because of the language barrier. He placed Bautista under arrest for driving under the influence (DUI) and took him to the local hospital for a blood or urine test. Sword read, in English, the implied consent form to Bautista, who signed it.

Bautista filed a motion to suppress the results of the blood test, arguing that he was not properly informed of his right to an independent test. See Kentucky Revised Statute 189A.105(2) and (4). A hearing was conducted in the Bourbon District Court, after which Bautista's suppression motion was denied. Bautista then entered a conditional plea of guilty to DUI, Second Offense. Kentucky Rule of Criminal Procedure (RCr) 8.09. The Bourbon Circuit Court affirmed his conviction on direct appeal. This court granted discretionary review.

Bautista urges this court to consider the issue of whether his motion to suppress the blood alcohol test results was improperly denied because he was not advised in Spanish of his right to an independent test. However, we agree with the trial court and the circuit court that this issue need not be reached as Bautista failed to produce any evidence that he did not understand his rights as read to him in English. At the suppression hearing Officer Sword testified that he informed Bautista of his rights and appellant appeared to understand them before signing the implied consent form. Bautista offered nothing to counter this evidence, and the trial court's finding that Bautista understood his rights is substantially supported and thus conclusive. RCr 9.78.

The order of the Bourbon Circuit Court is affirmed.

POTTER, SPECIAL JUDGE, CONCURS.

McANULTY, JUDGE, DISSENTS AND FILES A SEPARATE
OPINION.

McANULTY, JUDGE, DISSENTING: The majority concludes that Bautista "failed to produce any evidence that he did not understand his rights as read to him in English."

The circuit court noted in its order that the Paris Police Department had an implied consent form written entirely in Spanish to be used for Hispanic defendants and that he would have used that form had he had it with him.

The trial court pursuant to KRS 30A.410 appointed an interpreter because the defendant was a "person who cannot communicate in English."

While I am impressed by the trial court's analysis of "informed" as used in KRS 189A.103(2), I believe a less vigorous demand of the cognitive should control this matter. A simple question should have been asked by the trial court - did the defendant master Spanish and forget his English between the arrest and the suppression hearing?

Having answered that question in the negative, I respectfully dissent.

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