

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000220-MR

FINIS GEON EDGERSON

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 00-CR-01045

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, DYCHE AND TACKETT, JUDGES.

BARBER, JUDGE: Appellant Finis Geon Edgerson entered a conditional Guilty plea to a charge of Possession of a Handgun by a Convicted Felon and was sentenced to five years. Edgerson claims that a traffic stop resulting in discovery of the handgun was unlawful. Edgerson appeals the denial of his motion to suppress evidence and statements.

At the suppression hearing, the investigating officer stated that a confidential informant informed him that a suspect

named "Paul" was dealing drugs. The informant pointed out Edgerson to the officer as being "Paul." Although the investigating officer claimed at the suppression hearing that Edgerson was operating the vehicle erratically, both officers involved in the stop admitted that the traffic stop was not related to a traffic offense. The officers testified that Edgerson was under surveillance, and that they wanted to question him about being a drug dealer. When the vehicle was stopped, the officers arrested the passenger for possession of marijuana. The officers told Edgerson that they wanted to question him about the alleged drug dealing, and stated that they had probable cause to search his vehicle. When Edgerson was asked whether there was a gun in the car, he informed the officer that there was a gun in the car, and admitted to being a convicted felon. The officers found the gun in the car and arrested Edgerson.

The trial court overruled the motion to suppress, finding that the traffic stop was constitutionally permissible, and stating that Edgerson's admissions were made in a non-custodial situation and therefore no Miranda warnings were required.

Edgerson asserts that the traffic stop was pretextual, and violative of law. The officers admitted at the suppression hearing that they did not stop Edgerson due to any error in

driving, but rather because they wanted to question him about his alleged drug dealing. The officers also ensured that a police dog was present to perform a search of Edgerson's vehicle prior to the traffic stop. The stop did not occur during the alleged erratic driving, but rather after the officers believed Edgerson had ascertained the presence of four unmarked cars and a patrol car behind him.

In order to legally stop a vehicle, a police officer must have an articulable and reasonable suspicion of criminal activity. Creech v. Commonwealth, Ky. App., 812 S.W.2d 162, 163 (1991). The police may briefly detain and question an individual, even if there is no probable cause to arrest him at that point, "if there is a reasonable suspicion that criminal activity is afoot." Terry v. Ohio, 392 U.S. 1, 20-23, 20 L. Ed. 2d 889, 88 S Ct. 1868 (1968). Reasonable suspicion requires specific facts upon which an officer, based on his experience and training, could conclude that criminal activity might be in progress. Spear v. Sowders, 71 F.3d 626, 631 (6th Cir. 1995). "In order to justify an investigatory stop of a vehicle, the police must have a reasonable articulable suspicion that the persons in the vehicle are, or are about to become involved in criminal activity." Taylor v. Commonwealth, Ky., 987 S.W.2d 305 (1998). Whether a reasonable, articulable suspicion exists is a question of fact to be determined from the totality of the

circumstances. Simpson v. Commonwealth, Ky. App., 834 S.W.2d 686, 687 (1992).

The investigating officer had been told by a reliable informant that Edgerson was a drug dealer; that he didn't carry drugs on his person, and that he was going to a site to engage in drug dealing that night. A traffic stop following erratic driving for the purpose of a drug dealing investigation has been found permissible. See: United States v. Akram, 165 F.3d 452, 455 (6th Cir. 1999). We find that the officer had a reasonable and articulable suspicion that Edgerson was, or was about to become, involved in criminal activity. Under such circumstances, the vehicle stop and questioning of the occupants of the vehicle was permissible. See: Stewart v. Commonwealth, Ky. App., 44 S.W.3d 376, 379 (2000), permitting a stop or brief detention of a suspect where there is a reasonable articulable suspicion.

The law requires that a suspect be given a *Miranda* warning only "when the defendant is the subject of custodial interrogation by authorities." Farler v. Commonwealth, Ky. App., 880 S.W.2d 882, 884 (1994). At the time that Edgerson was questioned about possession of a gun, he was seated next to his vehicle on the side of the road. Although he was the focus of the investigation, he had not been arrested. Questioning of a suspect beside his vehicle during a traffic stop is permitted

and non-custodial. Hourigan v. Commonwealth, Ky., 962 S.W.2d 860, 864 (1998). Kentucky law does not require a *Miranda* warning until the suspect has been arrested. Little v. Commonwealth, Ky. App., 991 S.W.2d 141, 143 (1999). Edgerson argues that he was in custody because the investigating officers told him that he was not free to leave the scene. Custody does not occur until the police, by physical force or a show of authority, have restrained an individual's liberty. Baker v. Commonwealth, Ky., 5 S.W.3d 142, 145 (1999). We find that the evidence shows that Edgerson was not in custody at the time the statement was made. For that reason, no *Miranda* warning was required prior to questioning.

For the foregoing reasons, we affirm the ruling of the Fayette Circuit Court.

TACKETT, JUDGE, CONCURS.

DYCHE, JUDGE, DISSENTS.

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