

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-000365-MR

ROBERTO IBARRA MIRANDA

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE MARY C. NOBLE, JUDGE  
ACTION NO. 99-CR-01080

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BARBER, HENRY, AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Roberto Ibarra Miranda (aka Roberto Chavel Padillo) has appealed from a final judgment and sentence of five years' imprisonment entered by the Fayette Circuit Court on February 3, 2004, upon his entry of a conditional plea of guilty to one amended count of possession of a controlled substance in the first degree.<sup>1</sup> After the trial court denied Miranda's motion to suppress, he entered a conditional guilty plea, reserving the

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<sup>1</sup> Kentucky Revised Statutes (KRS) 218A.1412.

right to appeal the suppression ruling. Having concluded that the trial court's factual findings were supported by substantial evidence and its ruling was correct as a matter of law, we affirm.

On September 10, 1999, at approximately 1:30 p.m., Miranda was driving a gold Honda automobile on Newtown Pike in Lexington. At this time, Detective David Straub of the Lexington Police Department<sup>2</sup> observed Miranda traveling at a faster rate of speed than normal,<sup>3</sup> and described Miranda's vehicle as "leapfrogging" between lanes of traffic and "cutting off" other drivers without signaling.<sup>4</sup> Det. Straub caught up with Miranda's vehicle, pulled Miranda over, and identified himself as a police officer as he approached Miranda in the vehicle. Det. Straub testified that Miranda was the only person in the car at the time of the stop and that Miranda's hands were trembling and he appeared "visibly nervous." When asked, Miranda informed Det. Straub that he did not have a driver's license or liability insurance. Miranda could not identify for

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<sup>2</sup> Det. Straub testified that in September of 1999, he was assigned to the police department's patrol unit. His duties involved general patrol work, including traffic stops and answering calls. He was also a trained narcotics-detection dog handler for the unit.

<sup>3</sup> Det. Straub testified that he had no radar, and could not verify that Miranda was speeding at the time he observed him.

<sup>4</sup> Det. Straub testified that he had stopped others for this offense before, but not often. He also acknowledged that people violate this law in Lexington quite often.

Det. Straub the last name of the person<sup>5</sup> who owned the vehicle he was driving, nor could he produce the vehicle's registration.

Det. Straub arrested Miranda for operating a motor vehicle without a license and cited him for driving without insurance and failing to signal before changing lanes.<sup>6</sup> At this time, Det. Straub read Miranda his rights.

Det. Straub testified that Miranda's demeanor, driving behavior, failure to produce any of the required documents, and failure to know the full name of the owner of the vehicle created an articulable suspicion that he might be engaged in criminal activity.<sup>7</sup> Ringo, the detective's narcotic-detection canine, was uncaged at the time of the arrest and in the back seat of Det. Straub's cruiser, so a backup officer was called to transport Miranda to jail. When the backup officer arrived, Miranda was handcuffed and placed in the back seat of the backup officer's vehicle. Det. Straub then took Ringo out of his police cruiser and walked the canine around the exterior of

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<sup>5</sup> Miranda could only identify the owner of the vehicle as a friend named "Juan". When Det. Straub checked the registration, the owner's first name was in fact "Juan".

<sup>6</sup> Det. Straub testified that although Miranda was operating the vehicle in a reckless manner, he did not charge Miranda with reckless driving.

<sup>7</sup> Det. Straub also testified that that he knew prior to the stop that the driver had dark hair, but was not sure he was Hispanic until he approached Miranda after the stop.

Miranda's vehicle.<sup>8</sup> Ringo positively alerted Det. Straub to the presence of narcotics in two places in Miranda's vehicle. During a search of the vehicle, Det. Straub discovered approximately 30.3 grams of suspected cocaine<sup>9</sup> in the vehicle, and upon searching Miranda, he discovered \$257.00 in cash.<sup>10</sup> In addition to the other charges, Det. Straub charged Miranda with trafficking in a controlled substance. At the time the cocaine was found, Miranda denied having any knowledge of the drugs, but he agreed to cooperate and to talk with narcotics detectives concerning the incident.

On October 19, 1999, a Fayette County grand jury indicted Miranda for one count of trafficking in a controlled substance in the first degree;<sup>11</sup> one count of no operator's license by operating a motor vehicle without a driver's license; one count of no insurance by operating a motor vehicle without motor vehicle liability insurance; and one count of failure to signal by unlawfully changing lanes in a motor vehicle without

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<sup>8</sup> Det. Straub stated that he did not use the canine during most stops, unless he had some other indication of suspicious activity; however, when he did, those stopped were of people of different races, sexes, and social classes.

<sup>9</sup> The drugs were not in the exact parts of the vehicle where Ringo alerted. However, 30 grams were found in the trunk and .3 of a gram was found inside a one dollar bill in the trunk.

<sup>10</sup> Miranda asserts in his brief that no drugs, weapon, or contraband were found on his person. However, there is evidence of record that Det. Straub found \$257.00 upon his search of Miranda's person.

<sup>11</sup> The indictment stated that Miranda possessed with the intent to sell, transfer, or distribute a quantity of cocaine, a Schedule II controlled substance.

signaling.<sup>12</sup> Miranda waived formal arraignment on July 18, 2003, and pled not guilty to the indictment. At this time, he admitted that he was the person indicted as Roberto Chavez-Padillo, but that his correct name was Roberto Ibarra Miranda.

Miranda filed a motion to suppress any evidence found during the search of his vehicle and person. In his motion, Miranda argued that all physical evidence leading to his arrest was obtained as the direct result of the warrantless police traffic stop. Miranda further argued that Det. Straub had neither probable cause, nor legal justification to make a random police stop of his vehicle; that in the performance of his discretion as a police officer, Det. Straub did not have as his primary object or duty, the enforcement of traffic laws, but was purposefully seeking evidence of violations of the criminal laws; and that the stop and arrest was an instance of racial or ethnic profiling. After the trial court conducted the suppression hearing on September 8, 2003, it found that the

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<sup>12</sup> Miranda was initially released on bond on September 24, 1999, but his bond was revoked by order entered on November 17, 1999, because he failed to appear as required by the conditions of his bond. Miranda was arrested under the last name of Chavez-Padillo. A hearing was set on October 22, 1999, but Miranda did not appear. It was determined at the hearing that Miranda had been indicted on federal charges since his arrest and was believed to have fled the state. After he failed to appear in court, Miranda's bond was revoked and a bench warrant was issued for his arrest, but law enforcement was unable to locate him. Miranda was also at that time found to be in contempt of court. A tip from the FBI on January 25, 2003, informed law enforcement that Miranda was also known as Roberto Ibarra Miranda and also informed them of his whereabouts. The bench warrant for his arrest issued on October 22, 1999, was then served on Miranda on July 8, 2003. By order entered July 22, 2003, the indictment was amended to reflect Miranda's correct name as Roberto Ibarra Miranda.

traffic stop, use of the canine sniff, and the subsequent search of Miranda's vehicle and person were lawful. The trial court entered an order on September 10, 2003, denying Miranda's motion to suppress.

Miranda's case was set for trial on December 17, 2003. However, on December 12, 2003, Miranda filed a waiver of further proceedings with petition to enter plea of guilty. Miranda pled guilty to the amended charge of possession of a controlled substance in the first degree and to operating a motor vehicle without a license. The Commonwealth moved the trial court to dismiss the counts of the indictment charging operation of a motor vehicle without liability insurance and unlawfully changing lanes without signaling. Miranda's guilty plea was conditioned upon his right to appeal the trial court's ruling on his motion to suppress. The trial court accepted Miranda's guilty plea and entered a judgment on guilty plea on December 16, 2003, and a final judgment and sentence of imprisonment on February 3, 2004, sentencing Miranda to five years in prison.<sup>13</sup> This appeal followed.

Miranda argues that the trial court erred in failing to suppress the evidence of drugs found by Det. Straub as the result of a warrantless search, as it was obtained in a manner

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<sup>13</sup> The trial court also, upon motion of the Commonwealth, dismissed all counts in the original indictment, except for the amended charge of possession of a controlled substance in the first degree and also dismissed the contempt of court charge.

which violated his federal and state constitutional rights. Miranda makes two basic arguments regarding the initial traffic stop and the subsequent search of his vehicle. First, he argues that the stop and search of the vehicle was unconstitutional because he was illegally profiled. Second, he argues that the search of the vehicle was not supported by reasonable and articulable suspicion or probable cause that Miranda may have been involved in criminal activity.

The Commonwealth argues that the trial court did not err because there was substantial evidence in the record to support its factual findings and it was correct as a matter of law. The Commonwealth argues: (1) that the traffic stop was supported by probable cause; (2) that the detective was unaware of Miranda's ethnicity prior to initiating the stop; (3) that the use of the canine sniff of the exterior of Miranda's vehicle was proper; and (4) that the canine's positive alert for the presence of narcotics in the vehicle supported probable cause for a warrantless search of Miranda's vehicle.

RCr<sup>14</sup> 9.78 requires that a hearing be held to resolve the essential issues of fact raised by a defendant's motion to suppress the fruits of a search. This Court's "standard of review of a [trial] court's decision on a suppression motion

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<sup>14</sup> Kentucky Rules of Criminal Procedure.

following a hearing is twofold.”<sup>15</sup> First, if the factual findings are supported by substantial evidence, they are deemed conclusive.<sup>16</sup> Second, this Court will conduct de novo review to determine whether the trial court’s decision was correct as a matter of law.<sup>17</sup> “[A] reviewing court should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers.”<sup>18</sup> Thus, a factual finding by the trial court on Miranda’s suppression motion cannot be overturned unless it is clearly erroneous and the burden is on Miranda to show that the trial court so erred.<sup>19</sup>

We begin our review by addressing Miranda’s argument alleging a violation of his constitution rights through racial profiling.<sup>20</sup> The Fourth Amendment to the United States

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<sup>15</sup> Stewart v. Commonwealth, 44 S.W.3d 376, 380 (Ky.App. 2000). See also RCr 9.78.

<sup>16</sup> Id.

<sup>17</sup> Id. This standard was adopted from Ornelas v. United States, 517 U.S. 690, 699, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996), in which the United States Supreme Court held that “as a general matter determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal.”

<sup>18</sup> Ornelas, 517 U.S. at 699.

<sup>19</sup> See Clark v. Commonwealth, 868 S.W.2d 101, 103 (Ky.App. 1993) (citing Harper v. Commonwealth, 694 S.W.2d 665, 668 (Ky. 1985); and RCr 9.78).

<sup>20</sup> Racial profiling generally involves associating members of particular racial groups with particular crimes often based on statistical differences in crime rates or patterns of criminal involvement among groups. In the criminal arena, racial profiling often involves the allegations of selective enforcement of laws by police against minority races. See, e.g., Samuel R. Gross and Debra Livingston, Racial Profiling Under Attack, 102 Colum.L.Rev. 1413, 1415 (2002)(stating that “‘racial profiling’ occurs whenever a law

Constitution and Section 10 of the Kentucky Constitution prohibit unreasonable searches and seizures. Only when the police have in some way restrained the liberty of an individual, either by force or a show of authority, is there a "seizure" within the meaning of the Fourth Amendment.<sup>21</sup> The test to determine whether a seizure has occurred is whether under "all of the circumstances surrounding the incident," the police action would lead a reasonable person to conclude he was not free to go.<sup>22</sup> We conclude that Miranda's Fourth Amendment challenge lacks merit because the subjective motives of the police officer are irrelevant to the existence of reasonable articulable suspicion under the Fourth Amendment.<sup>23</sup>

However, the Fourteenth Amendment to the United States Constitution and Sections One, Two, Three, and 26 of the Kentucky Constitution create a guarantee of equal protection under the law. While the subjective motivations of the police are irrelevant for Fourth Amendment purposes, discriminatory motivation is an essential aspect of an equal protection

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enforcement officer questions, stops, arrests, searches, or otherwise investigates a person because the officer believes that members of that person's racial or ethnic group are more likely than the population at large to commit the sort of crime the officer is investigating").

<sup>21</sup> Terry v. Ohio, 392 U.S. 1, 19 n.16, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

<sup>22</sup> United States v. Mendenhall, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980).

<sup>23</sup> See Whren v. United States, 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

violation. When addressing claims of violations of equal protection through racial profiling, the courts have used the standards set out in United States v. Armstrong,<sup>24</sup> for selective prosecution to determine if there has been selective enforcement<sup>25</sup> by a police officer.<sup>26</sup>

Miranda has failed to present sufficient evidence to create even a prima facie case to support his equal protection claim based on racial profiling. He presents no statistical or circumstantial evidence to support his claim, other than the fact that he is Hispanic. This fact alone does not constitute sufficient evidence of discriminatory effect or discriminatory purpose to support a claim of selective enforcement. Det. Straub testified, and the trial court found,

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<sup>24</sup> 517 U.S. 456, 116 S.Ct. 1480, 134 L.Ed.2d 687 (1996).

<sup>25</sup> In order to state a claim of selective enforcement, a claimant must show that the government official singled out a person of an identifiable group, that the official was primarily or partially motivated by a discriminatory purpose or intent, and that the action had a discriminatory effect. See Armstrong, 517 U.S. at 465. "'[D]iscriminatory purpose' . . . implies more than . . . intent as awareness of consequences . . . [and] implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of' its adverse effects upon an identifiable group" [citation omitted]. See McCleskey v. Kemp, 481 U.S. 279, 298, 107 S.Ct. 1756, 95 L.Ed.2d 262 (1987). To establish discriminatory effect, a claimant must show that the law was enforced against him, but not similarly situated individuals of other races. Armstrong, 517 U.S. at 465. Once a claimant makes a prima facie showing of both discretionary effect and discriminatory purpose, through statistics or other evidence, the burden of producing evidence shifts to the government to rebut the inferences, but the claimant retains the ultimate burden of proving discrimination. See United States v. Avery, 137 F.3d 343, 356 (6th Cir. 1997).

<sup>26</sup> See United States v. Bell, 86 F.3d 820, 823 (8th Cir. 1996); see also Chavez v. Illinois State Police, 251 F.3d 612, 636 (7th Cir. 2001); and United States v. Hare, 308 F.Supp.2d 955, 991 (D.Neb. 2004).

that he was uncertain of Miranda's ethnicity until after he pulled over Miranda's vehicle and approached him. Det. Straub further testified that he would have stopped anybody for the driving behavior that Miranda displayed. Therefore, we conclude that the validity of Det. Straub's stop and search is not predicated on whether Miranda was racially profiled, as Miranda has not met his burden of proving that racial profiling occurred, nor that racial profiling invalidated the stop and later search of his vehicle and person.

As to the legality of the stop, Det. Straub testified that the initial stop of Miranda was not an investigatory stop, but was for a traffic violation. If a police officer has probable cause to believe a motorist violated a traffic law, however minor, that police officer may properly initiate a traffic stop.<sup>27</sup> Probable cause exists "where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found" [citations omitted].<sup>28</sup>

Miranda argues that, at the time of the stop, Det. Straub was patrolling Newton Pike, with Ringo in the cruiser, looking for drug traffickers. Miranda argues that he

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<sup>27</sup> See Whren, 517 U.S. at 819. See also Atwater v. City of Lago Vista, 532 U.S. 318, 354, 121 S.Ct. 1536, 149 L.Ed.2d 549 (2001).

<sup>28</sup> Ornelas, 517 U.S. at 696.

was not speeding or driving reckless, but merely moving faster than the flow of traffic. Miranda claims that when Det. Straub noticed that he was Hispanic, Det. Straub seized the opportunity to use the violation of changing lanes without a signal to stop his vehicle and to search for drugs. However, pursuant to KRS 189.380,<sup>29</sup> changing lanes without signaling is a traffic offense; and it is undisputed that Det. Straub observed Miranda cutting in and out of traffic and cutting other drivers off without signaling his upcoming move. Further, Miranda does not dispute that he violated KRS 189.380. In this case, the trial court found Det. Straub's testimony credible and concluded that he had probable cause to believe that Miranda had violated the traffic law. The trial court's findings are supported by substantial evidence and we conclude as a matter of law that Det. Straub had probable cause to conduct the traffic stop.

"Once the purposes of the initial traffic stop were completed, . . . the officer could not further detain the vehicle or its occupants unless something that occurred during the traffic stop generated the necessary reasonable suspicion<sup>30</sup>

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<sup>29</sup> KRS 189.380 provides in part as follows:

- (1) A person shall not turn a vehicle or move right or left upon a roadway until the movement can be made with reasonable safety nor without giving an appropriate signal in the manner hereinafter provided.

<sup>30</sup> The standard of evidence required for a lawful investigatory stop is "reasonable suspicion," which requires balancing the government's need to

to justify a further detention.”<sup>31</sup> In this case, Miranda had been arrested after the stop, so there is no question that he was reasonably detained after the initial stop.<sup>32</sup> Regardless, we conclude that the extension of the stop was proper. The trial court found that Miranda’s failure to identify the full name of the owner of the vehicle created reasonable suspicion in the mind of Det. Straub that Miranda was transporting drugs or had possibly stolen the vehicle, and that this, along with the fact that Miranda did not have a driver’s license, imposed on Det. Straub an “absolute duty at that point to impound the car.” The trial court further found that if Det. Straub had the right to

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perform the stop against the degree of intrusion on the freedom of the suspect. Terry, 392 U.S. 20-21. However, the Court declined to treat such seizures as arrests requiring probable cause. Id. 392 U.S. at 24. Reasonable suspicion is a less stringent standard than probable cause. United States v. Sokolow, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989). The Court concluded that investigatory stops could be conducted where “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion[.]” Terry 392 U.S. at 21, and “where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot . . . .” Id. 392 U.S. at 30. This is distinguishable from stops based on “nothing more substantive than inarticulable hunches,” Id. 392 U.S. at 22, or upon “inchoate and unparticularized suspicion.” Id. 392 U.S. at 27. “Based upon [the] whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity” [citations omitted]. United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981). Courts must consider all of the officer’s observations, and give “due weight” to their inferences and deductions. United States v. Arvizu, 534 U.S. 266, 273-74, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002). The fact that certain conduct may be construed as consistent with innocent behavior does not mean that this conduct may not form the basis for reasonable suspicion. Simpson v. Commonwealth, 834 S.W.2d 686, 688 (Ky.App. 1992).

<sup>31</sup> United States v. Mesa, 62 F.3d 159, 162 (6th Cir. 1995).

<sup>32</sup> The Commonwealth argues that Miranda was not detained to allow for the canine sniff, because Ringo was on site at the time of the stop.

take possession of the vehicle, he had a right to have the canine sniff the vehicle.<sup>33</sup> According due weight to the inferences drawn by Det. Straub, we agree with the trial court's findings that he had reasonable suspicion that Miranda might be engaged in illegal activity. We hold that under the totality of the circumstances,<sup>34</sup> Det. Straub had reasonable suspicion to delay the stop and was justified in performing the canine sniff.<sup>35</sup>

Miranda also argues that the search of his vehicle was invalid because there was no probable cause to believe his vehicle contained contraband. A vehicle that has been legally stopped may be searched pursuant to the probable cause exception to the search warrant requirement.<sup>36</sup> Generally, the police may

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<sup>33</sup> The Commonwealth argues that regardless of the probable cause or reasonable suspicion present in this case, the use of the canine sniff was valid because it was not a search. In support thereof, it cites the following: City of Indianapolis v. Edmond, 531 U.S. 32, 41, 121 S.Ct. 447, 148 L.Ed.2d 333 (2000) (canine sniffs of vehicles stopped at drug checkpoints are not searches); United States v. Place, 462 U.S. 696, 707, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983) (a canine sniff of luggage in a public place is not a search); United States v. Reed, 141 F.3d 644, 649 (6th Cir. 1998)(a canine sniff is not a search when a canine team is lawfully present at the location); United States v. Diaz, 25 F.3d 392, 396 (6th Cir. 1994)(canine sniff of vehicle in motel parking lot is not a search); and United States v. Lewis, 708 F.2d 1078, 1080 (6th Cir. 1983)(stating that "[t]he odor emanating from even a closed object is accessible to the public foreclosing an expectation of privacy even though the owner has taken steps to shield his property . . ."). Because we have concluded that Det. Straub did have reasonable suspicion to justify the dog sniff, we need not elaborate upon these cases.

<sup>34</sup> Taylor v. Commonwealth, 987 S.W.2d 302, 305 (Ky. 1998).

<sup>35</sup> Mesa, 62 F.3d at 162.

<sup>36</sup> See United States v. Ross, 456 U.S. 798, 800, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982); Clark, 868 S.W.2d at 106-07 (noting that a motorist lawfully

not search an individual without a warrant unless it can be shown that the search falls within one of the recognized exceptions to the rule.<sup>37</sup> "The automobile exception allows officers to search a legitimately stopped automobile where probable cause exists that contraband or evidence of a crime is in the vehicle" [citations omitted].<sup>38</sup> The "key" to the automobile exception is whether there was probable cause which existed and was "known to the investigating officer at the time he commence[d] the search".<sup>39</sup> "Probable cause exists when the totality of the circumstances then known to the investigating officer creates a fair probability that contraband or evidence of crime is contained in the automobile."<sup>40</sup> "The Commonwealth bears the burden to demonstrate that exigent circumstances were present justifying the warrantless [search]."<sup>41</sup>

Miranda argues that Det. Straub did not provide any testimony to substantiate a reasonable and articulable suspicion or probable cause that he may have been in possession of cocaine

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stopped becomes subject to probable cause exception to search warrant requirement for vehicles); and Estep v. Commonwealth, 663 S.W.2d 213, 215 (Ky. 1983)(noting there is only a limited expectation of privacy in automobiles).

<sup>37</sup> Cook v. Commonwealth, 826 S.W.2d 329, 331 (Ky. 1992)(citing Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971)).

<sup>38</sup> Clark, 868 S.W.2d at 106.

<sup>39</sup> Id.

<sup>40</sup> Clark, 868 S.W.2d at 106-07.

<sup>41</sup> Commonwealth v. McManus, 107 S.W.3d 175, 177 (Ky. 2003).

or trafficking in cocaine, or that he was potentially dangerous.<sup>42</sup> We disagree. Det. Straub testified that Miranda's nervous behavior and his failure to know the full name of the owner of the vehicle gave him articulable and reasonable suspicion to allow the use of Ringo to sniff the vehicle. Further, Det. Straub had the right to take possession of the vehicle as Miranda had been arrested, and based on reasonable suspicion, Det. Straub had a right to conduct the canine sniff. A positive alert from a trained and reliable canine constitutes probable cause for a police officer to believe narcotics are present in the vehicle.<sup>43</sup> Thus, we conclude that there was probable cause for the search of the vehicle.<sup>44</sup> We further conclude that the search of Miranda's person, which yielded \$257.00 in cash, was proper as a warrantless search incident to his arrest.<sup>45</sup>

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<sup>42</sup> The scope of a Terry search may extend beyond the person of the suspect, including the area within his immediate control, meaning the area from within which he might gain possession of a weapon. Miranda argues that Det. Straub did not testify to any personal safety concerns during the incident involving him. However, we find that Det. Straub's search was not a Terry type search, but rather a search under the automobile exception to the warrantless search rule, and thus Det. Straub's fear for his personal safety is irrelevant to the validity of the search.

<sup>43</sup> See United States v. Buchanon, 72 F.3d 1217, 1219 n.1 (6th Cir. 1995) (noting that drug dog's positive alert indicates presence of or former presence of narcotics in the item presented). See also United States v. Knox, 839 F.2d 285, 294 (6th Cir. 1988).

<sup>44</sup> While the trial court found that ethnicity was probably one factor among many in Det. Straub's decision to conduct a canine sniff, it nevertheless found that the canine sniff and subsequent search were lawful.

<sup>45</sup> See Chimel v. California, 395 U.S. 752, 762-63, 89 S.Ct. 2034, 23 L.Ed. 685 (1969). (stating that "[w]hen an arrest is made, it is reasonable for the

Having concluded that the traffic stop was supported by probable cause, due to the traffic violation; the extended stop and use of the canine sniff was valid because Det. Straub rightfully had possession of the vehicle at the time and had reasonable suspicion of criminal activity; that the subsequent search of the vehicle was supported by probable cause, based on the canine alert; and the search of Miranda's person was a proper search incident to arrest, we hold that Miranda's rights under the Fourth and Fourteenth Amendments were not violated. Thus, the evidence discovered as a result of the search, was lawfully seized, and the trial court did not err in denying Miranda's motion to suppress.

For the foregoing reasons, the final judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

John Rampulla  
Lexington, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General  
  
Natalie Lewellen  
Assistant Attorney General  
Frankfort, Kentucky

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arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. . . . In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.")