

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000366-MR

JONATHAN BERRY

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT
HONORABLE JULIA HYLTON ADAMS, JUDGE
ACTION NO. 05-CR-00148

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: STUMBO AND VANMETER, JUDGES; PAISLEY,¹ SENIOR JUDGE.

PAISLEY, SENIOR JUDGE: This is an appeal from an order of the Madison Circuit Court denying Jonathan Berry's motion to suppress certain evidence seized from his vehicle after it was stopped by Richmond police officers. Berry subsequently entered a conditional guilty plea, reserving his right to appeal the trial court's ruling.

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On July 7, 2005, Officer Mott of the Richmond police department received information from a confidential informant known to him that a black male named Jonathan Berry, driving a silver Infiniti SUV with Ohio license plates, was in Richmond to sell narcotics. Mott notified other officers about Berry and also advised them that Berry had previously been arrested on federal drug charges. Mott spotted Berry's vehicle on Main Street and the officers began following the vehicle. Berry first stopped at what the officers testified was a known drug house on Parrish Avenue and went inside for approximately thirty minutes. Berry then went to an apartment complex on South Keeneland Street where he stayed for about ten minutes. When he departed in his vehicle Detective Morris followed and testified that he observed Berry make a turn without using a turn signal. Because Morris was in an unmarked car, he called a marked unit operated by Officer Eaves which made a stop of Berry's vehicle.

Eaves got Berry's license and insurance information and began writing him a citation for failing to use a turn signal. While Eaves was doing so, Officer Stidham arrived at the scene and asked Berry for permission to search his person. Berry consented but that search turned up nothing untoward. Stidham then asked Berry for permission to search his vehicle and Berry refused. Stidham advised Berry that he would have a drug dog brought to the scene and Eaves then gave Berry the traffic citation. After a period of fifteen or twenty minutes Berry gave consent for the search of his vehicle but Stidham declined, indicating that he would wait for the drug dog. When the dog arrived a short time later it alerted to the driver's side of the vehicle and a subsequent search turned up

six plastic baggies containing white residue with one containing a small amount of cocaine. According to appellant's brief, a total of twenty-two minutes had elapsed between the time of the initial stop and the dog alerting to the vehicle.

Berry argues that he was illegally detained after the initial traffic stop had concluded and that the fruit of the search under these circumstances must be suppressed. We disagree and affirm the judgment of the Madison Circuit Court.

In support of his theory of the case, Berry relies on *Illinois v. Caballes*, 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005), and its progeny. In *Caballes*, the Supreme Court held that “[a] seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” *Caballes*, 543 U.S. at 407, 125 S.Ct. at 837. *Caballes* was stopped for speeding on an interstate highway. While the officer was in the process of writing him a ticket another officer arrived with a drug dog which alerted to his vehicle. The officers searched the vehicle and found illegal drugs, with the entire incident lasting less than ten minutes. The court stated that it was proceeding “on the assumption that the officer conducting the dog sniff had no information about respondent except that he had been stopped for speeding. . .” and further held that “the duration of the stop in this case was entirely justified by the traffic offense and the ordinary inquiries incident to such a stop.” *Id.* If Berry had been stopped only for a simple traffic violation with the police having no other reasonable, articulable suspicion that he may have been engaged in other illegal activity, his continued detention may have

been unreasonable and the search may have been illegal. That, however, is not the case. The police had information from a confidential informant known to them that the appellant was in town to traffic in narcotics. The informant was able to identify Berry's vehicle and provide them the license number. The police quickly located the vehicle which matched the description given by the informant and was being driven by Berry. The police had information that the first residence Berry stopped at was a "drug house." He then stopped at an apartment complex for a short time. This is certainly activity which would tend to corroborate the information given by the confidential informant. The officers had reasonable, articulable suspicion that Berry might be in possession of narcotics or some other evidence of trafficking. The stop of Berry was not a simple traffic stop, as in *Caballes*.

In *United States v. Davis*, 439 F.3d 345 (6th Cir. 2005), the court faced circumstances similar to those in this case. The authorities were following Davis' vehicle because they suspected him of being involved in drug trafficking. He was stopped for speeding and was detained for thirty to forty-five minutes while the police brought a drug dog to the scene. Although the court held Davis' further detention to get a second dog was not justified, it held that

the police had reasonable suspicion to detain Davis for the additional approximately thirty to forty-five minutes it took for the police to bring the first drug-sniffing dog to the scene and have the dog check the vehicle for the presence of narcotics. At the time Davis was stopped for speeding, it was reasonable for the police to suspect, based on articulable facts, that Davis's vehicle contained narcotics.

Davis, 439 F.3d at 354.

As we previously stated, the police had reasonable, articulable suspicion to believe Berry's vehicle might contain evidence of drug trafficking. “[T]he legality of a continued detention following a stop for a traffic violation is a question of reasonableness.” *Garcia v. Commonwealth*, 185 S.W.3d 658, 667 (Ky.App. 2006). Under the facts in this case, the relatively brief delay necessitated to allow the police to get the drug dog was not unreasonable. There is no basis to suppress the evidence seized from Berry's vehicle.

The order of the Madison Circuit Court denying Berry's motion is affirmed.

ALL CONCUR.

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