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(2007-SC-0198)

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-001088-MR

JATHNIEL CHENAULT

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE SHEILA R. ISAAC, JUDGE  
ACTION NO. 05-CR-01501

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, DIXON, AND KELLER, JUDGES.

KELLER, JUDGE: Jathniel Chenault has appealed from the Fayette Circuit Court's judgment entered pursuant to a conditional guilty plea convicting him of possession of a controlled substance and for being a persistent felony offender. Specifically, Chenault challenges the circuit court's denial of his motion to suppress evidence that he alleges police obtained in an improper search of his automobile. We affirm.

In the early morning hours of October 5, 2005, Lexington Police Department Officer Scott Gibbons<sup>1</sup> performed a routine traffic stop of an automobile owned and operated by Chenault due to its loud muffler and unilluminated rear license plate. Officer Gibbons obtained Chenault's driver's license and proof of insurance and checked his license for active warrants. Although no active warrants appeared, the initial database search revealed prior charges for trafficking in a controlled substance and promoting contraband. At that point, two minutes into the traffic stop, Officer Gibbons called for a K-9 unit. Officer Gibbons then continued to get information from the various databases available to him, and began writing the citation for the traffic violations. Fourteen minutes later, while Officer Gibbons was still working on the citation, Officer Henry Hicks arrived with a trained drug dog. After allowing the dog to relieve itself and after having Chenault exit the automobile, Officer Hicks walked the dog around it. The dog quickly alerted to the presence of narcotics at the driver's door. The officers then began their own search of the interior. On the driver's side floor, they found a black plastic wallet containing a baggy holding 16.5 grams of what later proved to be crack cocaine. Chenault denied ownership of the cocaine. Upon seizing the drugs, Officer Gibbons arrested Chenault and advised him of his rights.

The Fayette County grand jury indicted Chenault on charges of Trafficking in a Controlled Substance, First Degree, pursuant to KRS 218A.1412, and for being a Persistent Felony Offender in the Second Degree, pursuant to KRS 532.080. Chenault entered a plea of not guilty, and later moved to suppress the evidence seized during the

<sup>1</sup> In the briefs, the parties have incorrectly referred to Officer Gibbons as Officer Givens.

search of his automobile. At the conclusion of the suppression hearing, Chenault argued that Officer Gibbons detained him longer than necessary by unreasonably prolonging the time to complete his computer check and prepare the citation while waiting for the K-9 unit to arrive. Chenault also pointed out that Officer Gibbons had no reason to suspect him of any present criminal activity as there were no active warrants against him. Furthermore, Officer Gibbons admitted that he saw nothing in the automobile or any suspicious activity when he initiated the traffic stop. The Commonwealth, in turn, argued that the length of the detention was reasonable, as Officer Gibbons was still working on the citation when the K-9 unit arrived. In denying the motion to suppress, the circuit court concluded that the fourteen minutes it took for the K-9 unit to arrive was not an unreasonable delay, as Officer Gibbons was completing his record check and paperwork during that time period. However, the circuit court noted that had the detention lasted ten minutes longer, it would have deemed the delay unreasonable.

Following the circuit court's ruling, Chenault opted to enter into a conditional guilty plea to an amended charge of Possession of a Controlled Substance First Degree, Second Offense, with a recommended sentence of five years enhanced to ten years by the PFO II count. The recommendation also called for the forfeiture of the drugs and cash seized. The circuit court accepted the conditional plea and sentenced Chenault in accordance with the Commonwealth's recommendation. Chenault filed this appeal solely on the propriety of the suppression ruling.

On appeal, Chenault continues to argue that Officer Gibbons impermissibly detained him for an unreasonable length of time while he waited for the K-9 unit to arrive. He also disputes that any probable cause existed to justify the search, as the dog was trained only to alert to the odor of narcotics, not to a current presence of narcotics. The Commonwealth asserts that the fourteen-minute detention from the time the K-9 unit was requested was reasonable in that Officer Gibbons was still working on his routine records check and completing his paperwork when Officer Hicks arrived. As to the corollary argument, the Commonwealth points out that such alerts by drug dogs have been upheld across the country as providing probable cause that contraband will be found in a particular location.

Our standard of review of a ruling on a motion to suppress is two-fold. First, a reviewing court must determine whether the findings of fact of the lower court are supported by substantial evidence. If so, such findings are conclusive. RCr 9.78; *Adcock v. Commonwealth*, 967 S.W.2d 6, 8 (Ky. 1998). Second, the court must perform a *de novo* review of those factual findings to determine whether the decision is correct as a matter of law. *Ornelas v. United States*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996); *Commonwealth v. Banks*, 68 S.W.3d 347, 349 (Ky. 2001); *Stewart v. Commonwealth*, 44 S.W.3d 376, 380 (2000); *Garcia v. Commonwealth*, 185 S.W.3d 658, 661 (Ky.App. 2006).

Regarding the first prong, there does not appear to be any dispute between the parties that the circuit court's limited factual findings are correct and are supported by

substantial evidence of record. Our review of the suppression hearing confirms this. Therefore, we shall proceed to our *de novo* review to determine whether the circuit court's ruling was correct as a matter of law. We hold that it was.

In *Johnson v. Commonwealth*, 179 S.W.3d 882, 884 (Ky.App. 2005), this Court recently addressed the investigative stop of an automobile, setting forth the applicable law as follows:

It is well settled that an investigative stop of an automobile is constitutional as long as law enforcement officials have a reasonable suspicion -- supported by specific and articulable facts -- that the occupant of the vehicle has committed, is committing, or is about to commit an offense. *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct.1391, 59 L.Ed.2d 660 (1979); *Collins v. Commonwealth*, 142 S.W.3d 113 (Ky. 2004). In addition to the requirement that the stop be justified at its inception, the police officer's subsequent actions must be reasonably related in scope to the circumstances that gave credence to the initial stop. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). “[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 1325, 75 L.Ed.2d 229, 238 (1983).

Reasonableness, we are instructed, “is measured in objective terms by examining the totality of the circumstances.” *Ohio v. Robinette*, 519 U.S. 33, 39, 117 S.Ct. 417, 421, 136 L.Ed.2d 347, 354 (1996). In this case, there is no dispute that the initial stop was justified due to the traffic violations Chenault committed. The issue in this case is whether Chenault was then unreasonably detained after Officer Gibbons requested a K-9 unit.

In *Illinois v. Caballes*, 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842

(2005), the United States Supreme Court addressed a similar factual situation involving a traffic stop and the subsequent arrival of a narcotics-detection dog. The Supreme Court discussed the length of the detention, stating 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[.]” *Id.* at 407, and holding 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.* at 408. Kentucky embraced this rule in *Johnson*, when the Court of Appeals held that Johnson's continued detention until the drug dog arrived was reasonable in that the officer “pursued his investigation in a diligent and reasonable manner” and “[t]he purpose of the initial stop had not been completed before the canine unit arrived at the scene[.]” 179 S.W.3d at 885-86.

In the present case, Officer Gibbons requested a K-9 unit immediately upon learning of Chenault's prior drug-related charges. He diligently continued his investigation through accessing various databases, which included using variations of the spelling of Chenault's first name (Jathniel), and began drafting the citation associated with his driving violations. Officer Gibbons was still completing his paperwork when Officer Hicks arrived with the drug dog fourteen minutes later. Because the purpose of the initial stop had not been completed before the K-9 unit arrived, we perceive no unreasonable or unjustified detention, or any other constitutional implications.

As a corollary argument, Chenault disputes that probable cause existed to justify the warrantless search of his car after the drug dog made a positive alert. He bases this argument on the proposition that drug dogs are trained to alert to the presence of narcotics at some point, but not necessarily present at that particular time. We find no merit in this argument, as it is well settled that “[a] positive indication by a properly-trained dog is sufficient to establish probable cause for the presence of a controlled substance.” *U.S. v. Diaz*, 25 F.3d 392, 393-94 (6<sup>th</sup> Cir. 1994). Likewise, this Court has held that a positive alert by a drug dog “undoubtedly” provided officers with probable cause to search a vehicle. *Johnson*, 179 S.W.3d at 886.

For the foregoing reasons, we hold that the circuit court properly denied Chenault's motion to suppress and affirm the judgment on appeal.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gene Lewter  
Lexington, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

George G. Seelig  
Assistant Attorney General  
Frankfort, Kentucky