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**ORDERED NOT PUBLISHED BY KENTUCKY SUPREME COURT:
APRIL 16, 2008
(2007-SC-0918-D)**

**Commonwealth of Kentucky
Court of Appeals**

NO. 2006-CA-001613-MR

JERMAINE GRIGSBY

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE JULIE REINHARDT WARD, JUDGE
ACTION NO. 06-CR-00013

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: THOMPSON AND WINE, JUDGES; HENRY,¹ SENIOR JUDGE.

THOMPSON, JUDGE: Jermaine Grigsby entered a conditional guilty plea to one count of first degree possession of a forged instrument and one count of being a convicted felon in possession of a handgun. He was sentenced to five years and one month on each charge to be served concurrently. He appeals the trial court's denial of his motion to

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

suppress evidence which he alleged was seized pursuant to an illegal stop. We agree with the trial court that the officer had a reasonable articulable suspicion to stop Grigsby and that the subsequent search of the vehicle in Grigsby's possession was constitutional. We, therefore, affirm.

After the Campbell County Police Department dispatch received a call concerning a domestic dispute at Eighth and Monmouth Streets in Newport, Officer Paul Kunkel was dispatched to the scene. Officer Kunkel testified that he was traveling on Eighth Street and was approximately a block and a half from the intersection with Monmouth when he saw Grigsby and his girlfriend, Syneisha Mason, on the sidewalk in front of Mason's family home engaged in what he believed to be an argument. He then called to the couple and approached. Officer Kunkel testified that he was familiar with both Grigsby and Mason and had previously received information from Mason's father that Grigsby was using Mason as a drug carrier.

As Officer Kunkel approached, he observed Grigsby duck his head, turn away from him and begin to walk toward the steps of the house. Mason likewise began to walk away. Officer Kunkel then exited his cruiser and told Grigsby to sit down and, in accordance with department policy in handling a possible domestic dispute, separated the couple. Both denied that they were having a domestic dispute; both, however, appeared nervous.

Within two minutes of the stop, Grigsby began to choke on something he had placed in his mouth. Officer Kunkel requested that an EMS be sent to the scene;

Grigsby however, cleared his throat and indicated that he did not want the assistance of the EMS squad. Officer Kunkel testified that he believed that Grigsby had possibly swallowed drugs.

After canceling the EMS squad, Officer Kunkel was informed that Mason and Grigsby were not the subjects of the original domestic call and that there was no warrant for Grigsby's arrest. He then requested that dispatch run a license plate check on a vehicle located in a nearby driveway.

Although the precise sequence of events is unclear, at some point after the EMS squad was canceled, Officer Kunkel requested that Mason give him any drugs in her possession. Mason then pulled three bags of marijuana from her pants and gave them to Officer Kunkel. Mason was placed in the police cruiser and read her *Miranda* rights. Grigsby was patted down. Officer Kunkel testified that at this point, Mr. Grigsby was not free to leave. Officer Charlie Bell, Grigsby's parole officer, was contacted and advised that Grigsby was possibly involved in an incident in Covington involving a firearm and he requested that Grigsby be detained.

Officer Kunkel then requested that a K-9 unit come to the scene. After the dog alerted on the vehicle, Officer Kunkel contacted the vehicle's owner and she came to the scene where she signed a written consent form permitting the officers to search the vehicle. During the search of the vehicle, the officers discovered a handgun in the glove box and counterfeit five dollar bills.

Grigsby was indicted by the Campbell County Grand Jury on one count of first degree criminal possession of a forged instrument, possession of a handgun by a convicted felon, and first degree persistent felony offender. After his motion to suppress was denied, he entered a conditional plea of guilty.

In reviewing suppression orders, we review the trial court's findings of fact for clear error and then review the court's application of the law to the facts *de novo*. *Welch v. Commonwealth*, 149 S.W.3d 407, 409 (Ky. 2004), citing *Ornelas v. United States*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996). “When a pre-trial hearing on the issue of suppression is conducted to determine the admissibility of the evidence obtained during a search, a trial court's findings of fact are conclusive if they are supported by substantial evidence.” *Simpson v. Commonwealth*, 834 S.W.2d 686, 687 (Ky.App. 1992). Grigsby's contention is that the trial court erroneously applied the law to the facts. Specifically, he alleges that the initial investigatory stop and subsequent search of the vehicle were not constitutionally valid.

Since the Supreme Court's landmark decision in *Terry v. Ohio*, 392 U.S.1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), it has been well recognized that a police officer can subject anyone to an investigatory stop if “he is able to point to some specific and articulable fact which, together with rational inferences from those facts, support a reasonable and articulable suspicion that the person in question is engaged in illegal activity.” *Simpson*, 834 S.W.2d at 687 (internal quotation omitted).

The initial stop of Grigsby was based upon Officer Kunkel's reasonable and articulable suspicion that Grigsby and Mason were involved in a domestic dispute. Officer Kunkel had been dispatched to respond to a domestic dispute in the same proximity where he observed Grigsby and Mason engaged in what appeared to be an argument. As he approached, both Grigsby and Mason engaged in evasive behavior. Although Grigsby's behavior may have been as consistent with innocent activity as with illegal activity, his presence in the area of a reported domestic dispute involved in what appeared to an argument with his girlfriend combined with his evasive behavior, justified the investigatory stop. *Id.* at 688.

Grigsby contends that even if the initial stop was based on a reasonable suspicion that he was involved in a domestic dispute, after Officer Kunkel learned that he and Mason were not involved, the purpose for the stop no longer existed and, as a result, his continued detention was unlawful.

A *Terry* stop is limited in duration to a time no longer than is necessary to effectuate the purpose of the stop. *Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319, 75 L. Ed.2d 229 (1983). However, if during the stop, the officer has a reasonable suspicion that other criminal activity is afoot, a longer detention is justified. *Commonwealth v. Erickson*, 132 S.W.3d 884 (Ky.App. 2004). The circuit court held that Officer Kunkel reasonably believed that Grigsby was involved in drug-related activities and, thus, he was properly detained. The court further noted that consent was given to search the vehicle.

We hold that the owner's consent to the search renders any inquiry into the reasonableness of the duration of the stop unnecessary.

Voluntary consent is an exception to the warrant requirement. *Farmer v. Commonwealth*, 6 S.W.3d 144, 146 (Ky.App. 1999). There is no contention that the consent given in this case was involuntary. The pivotal issue is whether the vehicle's owner retains the right to consent to its search over the objection of a person given temporary possession of the vehicle. We conclude that the owner retains such authority and that the evidence seized is, therefore, admissible.

It is established precedent that when a person properly stopped voluntarily consented to a search, the search cannot be challenged on the basis of whether the continued detention was justified by a reasonable suspicion. *Erickson*, 132 S.W.3d at 889. It is equally settled law that the owner's property right is superior to that of one in mere temporary possession of the vehicle and, therefore, the owner's consent negates the warrant requirement. *Anderson v. United States*, 399 F.2d 753, 756 (10th Cir. 1968). The prevailing logic for allowing such searches as constitutional was expressed in *Hardy v. Commonwealth*, 17 Va. App. 677, 681, 440 S.E.2d 434, 437 (1994):

An owner who allows another person to use his automobile retains ownership and the right to reclaim possession of the vehicle at will. While a bailee may have an expectation of privacy in the borrowed vehicle, that privacy interest is subordinate to the owner's right to his vehicle and right to reclaim possession of the vehicle at any time.

The evidence Grigsby seeks to suppress was seized as a result of a consensual search of the vehicle. Under the circumstances, the reasonableness of the length of his detention pursuant to *Terry* is not an issue. No evidence was taken from his person and no admissions were elicited from him as a result of the detention.

The circuit court properly denied Grigsby's motion to suppress. The judgment of conviction is affirmed.

ALL CONCUR.

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