

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

AUGUST SESSION, 1999

**FILED**  
December 28, 1999  
Cecil Crowson, Jr.  
Appellate Court Clerk

STATE OF TENNESSEE, )  
 )  
 Appellee, )  
 )  
 )  
 VS. )  
 )  
 DAVID SCOTT HUMPHRIES, )  
 )  
 Appellant. )

C.C.A. NO. W1999-01785-GA-R3-CD  
LAUDERDALE COUNTY  
HON. JOSEPH H. WALKER,  
JUDGE  
(Certified Question; Vehicle  
Stop and Search)

ON APPEAL FROM THE JUDGMENT OF THE  
CIRCUIT COURT OF LAUDERDALE COUNTY

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OPINION FILED \_\_\_\_\_

AFFIRMED

DAVID H. WELLES, JUDGE

## OPINION

The Defendant, David Scott Humphries, pleaded guilty to one count of possession of cocaine with intent to deliver, one count of possession of marijuana with intent to deliver, and one count of possession of drug paraphernalia. Pursuant to Rule 37(b)(2) of the Tennessee Rules of Criminal Procedure, he reserved a certified question of law that is dispositive of the case. The certified question originates from the trial court's denial of a motion to suppress evidence obtained from a search of the Defendant's pickup truck. We affirm the ruling of the trial court.

The following facts were developed at the hearing on the motion to suppress. Ernie Roberts testified that in January of 1997, he was working as a narcotics officer for the Dyersburg Police Department. He had known Donna Kay Anderson for two or three years. During this time she had provided him information as a confidential informant regarding drug activities in Dyer County. On numerous occasions she had given him information that had been confirmed by additional investigation. Several arrests and convictions had resulted from information provided to Officer Roberts solely by Ms. Anderson.

In January of 1997, Ms. Anderson told Mr. Roberts that the Defendant, who lived in Shelby County, would sell her whatever drugs she wanted and deliver them to Dyer County. Mr. Roberts set up a meeting between Ms. Anderson and T.B.I. agent Danny Wilson. Agent Wilson testified that he met with Ms. Anderson and discussed drug activity in Dyer County and also discussed the Defendant, whom Ms. Anderson said was a drug dealer from Shelby County. Subsequent to that meeting, Ms. Anderson advised Mr. Roberts that the Defendant, on that very day, was going to be coming from Memphis to Dyersburg to deliver cocaine to Ms. Anderson. Mr. Roberts immediately called Agent Wilson, who telephoned

Ms. Anderson. Ms. Anderson told agent Wilson that the Defendant would be leaving Memphis on Highway 51, traveling north toward Dyersburg. She gave Agent Wilson a description of the Defendant and told him that the Defendant would be traveling in a dark-colored Ford Ranger pickup truck with Shelby County plates.

Agent Wilson coordinated with other law enforcement officers from Tipton and Lauderdale counties to set up surveillance on Highway 51. He arranged for an officer with a drug-detection dog to be available. While agent Wilson was watching for the Defendant's vehicle on Highway 51, he received another call from Ms. Anderson, who told him that the Defendant was at that time leaving Millington, Tennessee and proceeding north on Highway 51. Not long thereafter, a truck meeting the description given by Ms. Anderson passed agent Wilson's observation point. Another officer pulled in behind the truck, observed the Shelby County license tag, and determined that the license plate was registered to the Defendant. That officer activated his blue lights and pulled the Defendant's vehicle over. Agent Wilson arrived very shortly. After the Defendant declined to consent to a search of his vehicle, Agent Wilson summoned the officer who was on standby with the drug-detecting dog. The officer and dog arrived within ten minutes. While performing a sweep of the Defendant's vehicle, the dog "indicated" on the passenger side of the vehicle. The vehicle was then searched and approximately two pounds of marijuana were found behind the passenger seat. The Defendant was arrested and transported to the Lauderdale County jail. He was searched as he was being processed into the jail, and the cocaine was found on his person.

In denying the Defendant's motion to suppress the seized evidence, the trial judge entered an order which included the following findings and conclusions:

The court finds that under the Jacumin factors of credibility and basis of knowledge that the informant, Ms. Anderson, had proven to be sufficiently reliable to support a finding of reasonable suspicion based on the information she gave to law enforcement officers. Officer Roberts had a history of working with Ms. Anderson, and receiving information that had proved to be correct and reliable. The preexisting relationship between Officer Roberts and the confidential informant, Ms. Anderson, as well as the independent corroboration by the officers of facts predicting the defendant's future behavior as given by the informant, sufficiently satisfied the credibility prong for determining whether Ms. Anderson's tip was sufficiently reliable to give the officers reasonable suspicion to initiate the investigatory stop of defendant's vehicle. Based on her information, the officers were able to observe a vehicle as she described, with an occupant as she described, with Shelby County tags. After running a check on the tag number, it was determined to be registered to the name of the defendant, the same person as Ms. Anderson had informed the officers would be driving, and carrying illegal drugs in the vehicle. They had received this information again while he was in progress on the highway from Millington to Covington, and passed by the observation place in Tipton County in about the same time as a vehicle would have taken to drive that distance.

The content of the information possessed by the officers, its quality and quantity are determined to be sufficiently reliable to support a finding of reasonable suspicion for the stop. Officer Thompson confirmed the defendant's identity. Agent Wilson requested consent to search, which was denied with a statement by defendant that he had been through all this before and the officers were going to have to work for it. The officers were justified in the investigatory detention for a short time for the drug dog to be driven to the scene from the observation point in Tipton County, only a few minutes drive. The drug dog striking on the vehicle gave probable cause for the search under exigent circumstances. The marijuana was found in the vehicle. The defendant was then placed under arrest, and taken to jail. At jail, the officers had a right to search his person at the time he was booked, when the cocaine was found on the person of the defendant.

The court believes that the officers could have searched the vehicle under the facts in this case even without the drug dog having struck on the vehicle. If the officer has probable cause to believe an automobile contains contraband, they may either seize the car and then obtain a search warrant or they may search it immediately. Chambers v. Maroney, 399 U.S. 42 (1970). In Chambers, the Supreme Court saw no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. State v. Murphy, 1995 Tenn. Crim. App. LEXIS 400. This court believes the officers had probable cause for the search before the dog signaled drugs in the vehicle; but certainly probable cause existed afterwards.

The Defendant argues that the warrantless stop of his vehicle was illegal, that his arrest was without probable cause, and thus the search with the drug dog

was the result of an illegal arrest and violated the Defendant's constitutional rights. The State argues that the stop of the Defendant's vehicle was legal because it was based upon reasonable suspicion. The State also argues that the detention of the Defendant was reasonable in length and the use of the drug dog did not constitute an unreasonable search. The State further argues that the indication by the drug dog provided the officers with probable cause to search the vehicle.

The Defendant first argues that the initial stop of his pickup truck was illegal. Police may constitutionally initiate an investigative stop of an automobile if they have reasonable suspicion, supported by specific and articulable facts, that the occupant or occupants of the vehicle have either committed a criminal offense or are about to commit a criminal offense. State v. Simpson, 968 S.W.2d 776, 780 (Tenn. 1998). "The facts forming the basis for an officer's reasonable suspicion need not rest upon the personal knowledge or observation of the officer." Id. When evaluating whether a police officer's reasonable suspicion is supported by specific and articulable facts, a court must consider the totality of the circumstances. State v. Watkins, 827 S.W.2d 293, 294 (Tenn. 1992).

In State v. Pulley, 863 S.W.2d 29 (Tenn. 1993), our supreme court upheld the constitutionality of an investigatory stop of a vehicle based upon an informant's tip and concluded that traditional Jacumin criteria should be used to determine whether the tip is "sufficiently reliable" to support a finding of reasonable suspicion. Id. at 32 (referencing State v. Jacumin, 778 S.W.2d 430, 436 (Tenn. 1989) (holding that the Tennessee Constitution requires facts indicating an informant's basis of knowledge and veracity or credibility)).

As the United States Supreme Court expressed,

Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content

than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.

Alabama v. White, 496 U.S. 325, 330 (1990). Recently, our supreme court observed that when applying this analysis to the area of informant's tips, "the two-pronged test of reliability [in Jacumin] need not be as strictly applied if the informant's tip is being used to establish reasonable suspicion rather than probable cause." State v. Simpson, 968 S.W.2d 776, 782 (Tenn. 1998).

In the case at bar, the trial court found that the police had reasonable suspicion, supported by specific and articulable facts, that the Defendant was transporting drugs. "Questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). Findings of fact by the trial court upon a motion to suppress will be upheld unless the evidence preponderates against them. Id. However, the application of law to these facts is a question of law, which an appellate court reviews de novo. State v. Yeargan, 958 S.W.2d 626, 629 (Tenn. 1997) (citing Beare Co. v. Tennessee Dep't of Revenue, 858 S.W.2d 906, 907 (Tenn. 1993)).

The trial judge found that the informant had previously given reliable information to the police on numerous occasions. The trial judge credited Mr. Roberts' testimony that the informant had a lengthy history of providing information that had proved to be correct and reliable. The police officers corroborated the information given by the informant concerning the type and general color of the Defendant's vehicle, the county of the vehicle's registration, and the route and approximate time frame within which the vehicle would be traveling. The officers also had the Defendant's full name and his description. Prior to initiating the stop, the officers confirmed that the vehicle was registered to the Defendant. The informant had advised the officers that the Defendant had told her that he was in route to her home to deliver cocaine.

We conclude that the record supports the factual findings of the trial court. Based on the totality of the circumstances, we also agree that the police possessed sufficient reasonable suspicion, based upon specific and articulable facts, to make an investigatory stop of the Defendant.

The Defendant also argues that when the officers detained him, they were making an illegal arrest. He apparently argues that the search of his vehicle is invalid because it was a search incident to an illegal arrest. The State argues that the search was not incident to arrest, but rather was based upon probable cause and exigent circumstances.

Clearly, the temporary detention of individuals during the stop of a vehicle by police, even if only for a brief period and for a very limited purpose, constitutes a “seizure” which implicates the protection of both the state and federal constitutional provisions. Whren v. United States, 517 U.S. 806, 809-10 (1996); Delaware v. Prouse, 440 U.S. 648, 653-54 (1979); State v. Pully, 863 S.W.2d 29, 30 (Tenn. 1993).

Although less intrusive than a full-blown arrest, an investigatory detention is subject to the constitutional protection of the Fourth Amendment against “unreasonable searches and seizures.” Terry v. Ohio, 392 U.S. 1, 20 (1968). Interactions between the police and the public that constitute seizures but not arrests are judged by their reasonableness rather than by a showing of probable cause. Id. The reasonableness of the intrusion is “judged by weighing the gravity of the public concern, the degree to which the seizure advances that concern, and the severity of the intrusion into individual privacy.” Pully, 863 S.W.2d at 30 (citing Brown v. Texas, 443 U.S. 47, 50 (1979)).

The trial court found that the length of the detention, for the purpose of giving the drug detection dog time to arrive on the scene, was reasonable. We

believe the record supports this finding. After the drug-detection dog arrived, the officer immediately had the dog conduct a “sniff” or “sweep” around the outside of the Defendant’s vehicle. A sweep of the outside of a vehicle by a trained drug-detection dog does not constitute a search for Fourth Amendment purposes, but is a legitimate investigative technique. See United States v. Place, 462 U.S. 696, 707 (1983); Merrett v. Moore, 58 F.3d 1547, 1553 (11th Cir. 1995); Romo v. Champion, 46 F.3d 1013, 1018 (10th Cir. 1995); United States v. Jeffus, 22 F.3d 554, 557 (4th Cir. 1994); United States v. Morales-Zamora, 914 F.2d 200, 203 (10th Cir. 1990). See also State v. James Smith, Jr., C.C.A. No. 38, 1988 WL 132723, at \*2 (Tenn. Crim. App., Jackson, Dec. 14, 1988).

The Defendant next argues that the warrantless search of his vehicle was illegal. Any warrantless search is presumptively unreasonable under the Fourth Amendment. Minnesota v. Dickerson, 508 U.S. 366, 372 (1993). However, there are a few exceptions to the warrant requirement. Katz v. United States, 389 U.S. 347, 357 (1967); Fuqua v. Armour, 543 S.W.2d 64, 66 (Tenn. 1976). Those who seek to except a search from the requirement must show that the officers had compelling reasons to justify the search. Coolidge v. New Hampshire, 403 U.S. 443, 455 (1971); Fuqua, 543 S.W.2d at 67. Before the fruits of a warrantless search are admissible as evidence, the State must establish by a preponderance of the evidence that the search falls into one of the narrowly drawn exceptions to the warrant requirement. State v. Shaw, 603 S.W.2d 741, 743 (Tenn. Crim. App. 1980).

Warrantless searches of automobiles under certain circumstances are allowed. Carroll v. United States, 267 U.S. 132, 156 (1925); State v. Shrum, 643 S.W.2d 891, 893 (Tenn. 1982). An automobile may be searched without a warrant if the officer has probable cause to believe that the vehicle contains contraband and if exigent circumstances require an immediate search. Carroll, 267 U.S. at 149. In Chambers v. Maroney, 399 U.S. 42 (1970), the Court held



that where probable cause to search exists, the immediate search of a vehicle is no more intrusive than a seizure and subsequent search. Therefore, the Fourth Amendment authorizes the police either to seize and hold the vehicle until a search warrant has issued or to search the vehicle immediately. Id. at 52.

The remaining issue is whether the positive indication by the drug-detection dog, combined with the other information possessed by the officers, furnished probable cause for the search of the vehicle which led to discovery of the evidence. We believe the weight of authority supports the finding of probable cause based on the action of a trained narcotics-detection dog. See Romo, 46 F.3d at 1020; Jeffus, 22 F.3d at 557; State v. James Smith, Jr., 1998 WL 132723, at \*2. A panel of this Court so held in State v. Dennis R. England, No. 01C01-9702-CR-00064, 1998 WL 155584 (Tenn. Crim. App., Nashville, Mar. 30, 1998), perm. to app. granted (Tenn. Jan. 19, 1999). The trial court determined that the police had probable cause to search the Defendant's automobile prior to the time the drug dog indicated the presence of narcotics in the vehicle. We see no reason to analyze the search in this manner. Clearly the information possessed by the officers, combined with the indication of the trained drug-detection dog, gave the officers probable cause to search the vehicle.

Although it is clear that the Defendant's person had been "seized" and that he was being temporarily detained, from our review of the record we conclude that the Defendant was not formally arrested by the officers until the marijuana was found in his vehicle. We conclude that his arrest was not illegal, and therefore his subsequent search while being processed into the Lauderdale County jail was constitutionally permissible. The trial judge properly denied the motion to suppress the cocaine found during this search.

Based on the foregoing, we are unable to conclude that the trial court erred by overruling the motion to suppress. The judgment of the trial court is accordingly affirmed.

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DAVID H. WELLES, JUDGE

CONCUR:

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JERRY L. SMITH, JUDGE

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JAMES CURWOOD WITT, JR., JUDGE