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DISTRICT II

June 2, 2021

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You are hereby notified that the Court has entered the following opinion and order:

2020AP399-CR

State of Wisconsin v. Nicholas R. Nash (L.C. #2017CF210)

Before Reilly, P.J., Gundrum and Davis, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Nicholas R. Nash appeals from a judgment convicting him of possession with intent to deliver cocaine. He contends that the circuit court erred in denying his motion to suppress.

Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We affirm.

In the evening hours of February 3, 2017, City of Waukesha police received an anonymous call concerning a man named Mona. According to the caller, Mona had approached him in a parking lot and said that he was waiting for his drug dealer to arrive. Mona indicated that he expected the dealer to be there in fifteen minutes.

On the basis of this call, Officer Casey Kenealy drove to the described location and parked across the street. He waited for an hour, during which no cars or people approached. Then, he saw a vehicle with tinted windows pull into the parking lot. Three to five minutes later, the vehicle exited and drove away.

Kenealy described the vehicle's windows as "extremely tinted." Despite the fact that the area was "well lit," he could not see the driver of the vehicle through the driver's side window. Nor could he see whether there were any passengers inside. He later explained that window tint violates the law if it prevents "50 percent or more light [from getting] into ... the front windows, and 35 percent for the back windows."

Kenealy initiated a traffic stop of the vehicle. He identified the driver as Nash and informed him that he was being stopped for illegal window tint. While speaking with Nash, Kenealy observed "approximately two air fresheners in every vent," which he associated with drug activity because they may be used "to mask an odor or a specific smell." He asked Nash

¹ All references to the Wisconsin Statutes are to the 2019-20 version.

what he had been doing at the parking lot location, and Nash replied that he was visiting his friend Mona.

After this initial conversation, Kenealy called for assistance, requesting a tint meter. He had previously requested a K-9 unit before stopping the vehicle. One officer arrived with a tint meter approximately five minutes after the stop, while another officer arrived with a drug-sniffing dog approximately fifteen minutes after the stop.

The tint meter confirmed that Nash was driving with illegal window tint. The drug-sniffing dog, meanwhile, alerted on the passenger side of the vehicle, which led to a search of the vehicle. That search yielded multiple cell phones and more air fresheners but no drugs. Police subsequently searched Nash's person and found cocaine.

Nash filed a motion to suppress evidence obtained during the traffic stop, arguing that (1) he was stopped without reasonable suspicion, (2) he was unlawfully detained while Kenealy waited for a tint meter and K-9 unit, and (3) police unlawfully searched his person. Following a hearing on the matter, the circuit court denied the motion.

Nash eventually pled guilty to possession with intent to deliver cocaine. The circuit court imposed and stayed a sentence of imprisonment, placing Nash on probation for three years. This appeal follows.

On appeal, Nash contends that the circuit court erred in denying his motion to suppress. When reviewing a circuit court's decision on a motion to suppress, we apply the clearly erroneous standard to the court's findings of fact. *State v. Guard*, 2012 WI App 8, ¶14, 338

Wis. 2d 385, 808 N.W.2d 718. However, we review the court’s application of constitutional principles to those facts de novo. *Id.*

Investigative traffic stops are subject to the constitutional requirement of reasonableness. *State v. Post*, 2007 WI 60, ¶12, 301 Wis. 2d 1, 733 N.W.2d 634. A police officer’s reasonable suspicion that a motorist is violating or has violated a traffic law is sufficient to initiate a stop of the offending vehicle. *State v. Houghton*, 2015 WI 79, ¶5, 364 Wis. 2d 234, 868 N.W.2d 143.

A traffic stop may last only for the amount of time that is reasonably necessary to complete its purpose. *State v. Rose*, 2018 WI App 5, ¶16, 379 Wis. 2d 664, 907 N.W.2d 463. However, a police officer is permitted to extend a stop when he or she discovers additional reasonable suspicion during the ordinary inquiries attributed to the stop’s original purpose. *State v. Smith*, 2018 WI 2, ¶28, 379 Wis. 2d 86, 905 N.W.2d 353.

If a trained canine alerts on a vehicle, a police officer may constitutionally search that vehicle for drugs. *State v. Arias*, 2008 WI 84, ¶24, 311 Wis. 2d 358, 752 N.W.2d 748, *abrogated on other grounds by Rodriguez v. United States*, 575 U.S. 348 (2015). An alert by a properly trained canine is generally considered reliable. *Illinois v. Caballes*, 543 U.S. 409 (2005); *State v. Miller*, 2002 WI App 150, ¶12, 256 Wis. 2d 80, 647 N.W.2d 348.

Here, we are satisfied that Kenealy had reasonable suspicion to stop Nash’s vehicle on the basis of illegal window tint. This was not a situation where Nash’s windows simply “appeared to [have] dark window tint.” *See State v. Conaway*, 2010 WI App 7, ¶2, 323 Wis. 2d 250, 779 N.W.2d 182. Rather, Kenealy testified that he could not see through them at all. The complete opacity of Nash’s windows provided Kenealy with reasonable suspicion that they violated the law.

We are also satisfied that Kenealy did not unreasonably extend the stop. In his initial conversation with Nash, Kenealy discovered reasonable suspicion of drug activity. This was based upon his observation of multiple air fresheners and Nash's admitted connection to Mona. To the extent that Kenealy prolonged the stop to investigate the matter, the duration was not unreasonable. Indeed, an officer arrived with a drug-sniffing dog in approximately fifteen minutes.

Finally, we conclude that police lawfully searched Nash's person for drugs. Again, at the time of the search, police were aware of Nash's connection to Mona. Likewise, they were aware of the presence of many air fresheners and multiple cell phones in the vehicle, which were indicative of drug dealing. Additionally, they were aware that the drug-sniffing dog alerted on the passenger side of the vehicle. When no drugs were found there, police had probable cause to believe that Nash possessed the drugs, as he was the only person in the vehicle when it was stopped. On these facts, we agree with the circuit court that suppression was not required.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals