

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JERMAINE HOWARD,)
) No. 114, 2007
 Defendant Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for New Castle County
)
 STATE OF DELAWARE,) Cr. ID. #0604009582
)
 Plaintiff Below,)
 Appellee.)

Submitted: July 25, 2007
Decided: August 14, 2007

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 14th day of August 2007, it appears to the Court that:

(1) Appellant-defendant Jermaine Howard appeals his possession of cocaine, endangering the welfare of a child, failure to signal¹ and disregarding a stop sign convictions in the Superior Court. Howard contends that the trial judge erred when he denied his motion to suppress drugs that police found in his automobile. He also contends that police unreasonably detained him for 40 minutes. The record shows that police had reasonable suspicion to stop Howard's automobile for traffic violations. Police also had probable cause to believe that

¹ The jury convicted Howard on three counts of failure to signal.

Howard was engaged in drug activity before they stopped Howard for traffic violations based on information from a reliable informant and their own independent investigation. Therefore, the trial judge acted within his discretion when he denied Howard's motion to suppress. Furthermore, the 40 minute detention was reasonable because it was reasonably related to the scope of the stop and did not exceed the two hours authorized by 11 *Del. C.* § 1902(c). Accordingly, we affirm.

(2) In March 2006, New Castle County Police Officer Ernest Melvin received information from a reliable informant² that a male suspect named "J" was "allegedly selling Crack Cocaine from his Maroon Dodge Durango." Based on other ongoing investigations as well as his independent investigation, Melvin determined that "J" was likely Jermaine Howard.³ Melvin also discovered that Jermaine Howard owned a maroon Dodge Durango.

(3) Meanwhile, New Castle Police received several complaints of drug dealing at 5 Osage Road in Claymont. On April 12, 2006, while surveilling the address, officers witnessed a maroon Dodge Durango pull up and stop in the

² Melvin testified that the "past-proven reliable source" who "has done numerous investigations with us and has had numerous convictions among those investigations[.]"

³ In an unrelated investigation, Melvin discovered that Jermaine Howard went by the name of "J."

middle of the street. A female walked out of the residence and approached the passenger side of the automobile. The driver and the female engaged in “some type of transaction” with the driver and the Durango drove away. As the Durango drove away, the officers determined that the automobile was registered to Jermaine Howard. Based on these observations, the drug dealing complaints, and the informant’s tip, Melvin suspected that Howard drove the automobile and that his visit to 5 Osage Road was drug related.

(3) While following the Durango, the officers witnessed a similar exchange between the driver and an unknown individual on Wistar Avenue.⁴ After the completion of the Wistar Avenue transaction, the officers continued their surveillance of the automobile and observed the driver commit several traffic violations.⁵ Melvin then stopped the automobile.⁶ Melvin asked Howard several questions and told him to get out of the automobile. Melvin asked him “what he had been doing in the last hour.” Howard’s answer indicated that he had not been

⁴ (A30). Melvin testified that “it was dark [and that he] couldn’t see exactly what kinda took place, but it was the same type of action as took place in front of 5 Osage Drive.”

⁵ According to Melvin, “[the automobile] failed to come to a complete stop at the stop sign and failed to utilize his turn signal appropriately as it turned onto Darley Road.”

⁶ There were two juveniles in the back seat of Howard’s car approximately ages three and six.

to 5 Osage Road. Howard admitted to being at Wistar Avenue but told the officers that he “never made contact with anyone over there.”

(4) Melvin dispatched a K-9 unit to perform an open air sniff of the automobile. Approximately 40 minutes later, the K-9 arrived and signaled that drugs were hidden near the steering wheel of the automobile.⁷ Melvin searched the cab of the automobile and found several bags containing cocaine “just above the steering wheel, in the lining . . . [of] the ceiling.”⁸ Police arrested Howard and a New Castle County grand jury indicted him on one count of possession with intent to deliver cocaine and other related offenses.

(5) On July 7, 2006, Howard filed a motion to suppress the evidence that Melvin seized during the traffic stop. The trial judge denied Howard’s motion, finding that “the police were justified in making the stop, detaining [Howard], and searching [his] car.” A jury trial began on September 14, 2006 and resulted in a mistrial. Before his second trial, Howard attempted to renew his motion to suppress, and the trial judge denied his motion. At the second trial, the jury found Howard guilty of possession of cocaine, use of a vehicle for keeping controlled

⁷ Melvin testified that this information was significant “because of the initial information [from the informant] that [he] received in reference to the subject, “J”, selling crack out of his Dodge Durango and hiding it in the fuse box located underneath the steering wheel.”

⁸ Melvin testified that during his search of the interior of Howard’s automobile he noticed multiple air fresheners “[likely designed] to mask any type of odor that the drugs may emanate.”

substances, endangering the welfare of a child, three counts of failure to signal and one count of disregarding a stop sign. The trial judge sentenced Howard to three years at Level V, suspended after six months, followed by 18 months at Level III.

(6) First, Howard contends that the traffic stop violates the Delaware Constitution because it was mere pretext for the officers to engage in a drug investigation. This Court reviews a Superior Court judge’s denial of a motion to suppress for an abuse of discretion.⁹

(7) Traffic stops must be supported by reasonable suspicion of criminal activity.¹⁰ Violation of traffic laws constitutes reasonable suspicion.¹¹ Once lawfully stopped, “[t]he police may conduct a warrantless search of an automobile if they have probable cause to believe that the vehicle contains evidence of criminal activity.”¹² Probable cause is measured by the “totality of the circumstances.”¹³ In *Caldwell*, this Court acknowledged that the United States Supreme Court rejected the argument that a pretextual traffic stop violated the

⁹ *McAllister v. State*, 807 A.2d 1119, 1122 (Del. 2002).

¹⁰ *Caldwell v. State*, 780 A.2d 1037, 1046 (Del. 2001).

¹¹ *Id.* See also *State v. Godwin*, 2007 WL 2122142, *5 (Super. Ct.).

¹² *Id.* at 1045 n.11.

¹³ *Id.* (citing *Hovington v. State*, 616 A.2d 829, 833 (Del. 1992)).

Federal Constitution, but we did not address whether such a stop violated the Delaware Constitution.¹⁴

(8) We need not address here whether a pretextual stop offends Article I, Section 6 of the Delaware Constitution because the police in this case had probable cause to believe Howard had engaged in illegal drug activity before they stopped the automobile.¹⁵ Based on the totality of the circumstances, Melvin had a reasonable basis to believe that Howard had engaged in illegal drug activity before he stopped Howard for the traffic violations. Melvin received an earlier tip from a reliable source that a man named “J” was selling drugs out of a maroon Dodge Durango.¹⁶ Independently, Melvin discovered that Howard drove a maroon Dodge

¹⁴ *Id.* at 1045 n. 9:
Caldwell's claim on the pretextual stop is necessarily confined to the Delaware Constitution because any federal constitutional claim on this issue has been foreclosed by the United States Supreme Court. Addressing the permissible justification for a traffic stop under the Fourth Amendment to the federal constitution, the Supreme Court in *Whren v. United States*, held that a traffic stop is reasonable so long as the officer has probable cause to believe that the driver has violated a traffic law—even if the officer decided to stop the car because the officer subjectively intended to use the stop as a means to investigate unrelated criminal activity. We do not address the Delaware constitutional claim because of our decision on the fourth amendment claim.” (citation omitted).

See also Whren v. United States, 517 U.S. 806, 813-14(1996).

¹⁵ At least one Superior Court case has found that a pretextual stop violates the Delaware Constitution. *See State v. Heath*, 2006 WL 3842144 (Del. Super.).

¹⁶ Howard contends that the police improperly relied upon the informant’s tip because the tip was “not specific, was stale and was uncorroborated.” This argument is misplaced because the attendant facts and circumstances in this case fully support Melvin’s reliance. Moreover,

Durango. Melvin then saw a maroon Dodge Durango make a quick stop outside a residence where neighbors had reported drug dealing. While outside that address, a woman left the residence, approached the passenger side of the automobile, and engaged in “some type of transaction [with] the operator . . . [and went] back into the residence.” Officers then witnessed a similar transaction at another location. Consistent with the previous tip, the automobile was registered to a man who goes by the name of “J.” Based on these facts, Melvin had a reasonable suspicion to stop and search the automobile. Therefore, the trial judge acted within his discretion when he denied Howard’s motion to suppress.

(9) Howard also contends that the police detention of Howard for 40 minutes was unreasonable. This argument is without merit. The duration and investigation following a stop “must be ‘reasonably related in scope to the justification for their initiation.’”¹⁷ In Delaware, an investigative detention “shall not exceed 2 hours.”¹⁸ The stop in the present case lasted only 40 minutes. The 40 minute delay was for the purpose of obtaining the assistance of a drug sniffing dog – a technique less intrusive than a manually conducted full search of the vehicle.

Melvin performed an independent investigation, both before and on the night in question, to corroborate his suspicion.

¹⁷ *Caldwell*, 780 A.2d at 1046 (citing *United States v. Brignoni-Ponce*, 422 U.S. 873, 880-81 (1975)).

¹⁸ 11 *Del. C.* § 1902 (c).

Arguably, the process police used to conduct the less intrusive search would have benefited a law abiding member of the public simply subject to a reasonable suspicion of criminal activity. Under the circumstances, the police acted circumspectly and reasonably. Accordingly, we affirm.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice