

RENDERED: OCTOBER 17, 2014; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2012-CA-002053-DG

NATHAN D. RADER

APPELLANT

ON DISCRETIONARY REVIEW FROM TRIGG CIRCUIT COURT  
v. HONORABLE CLARENCE A. WOODALL, III, JUDGE  
ACTION NO. 12-XX-00004

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, MAZE, AND NICKELL, JUDGES.

NICKELL, JUDGE: On discretionary review, Nathan D. Rader seeks reversal of an appellate opinion of the Trigg Circuit Court, affirming the Trigg District Court's denial of Rader's motion to suppress the results of breath alcohol testing conducted at the Trigg County Justice Center following his arrest for driving under the influence (DUI). We affirm.

On March 3, 2012, Trooper Corey Hamby of the Kentucky State Police was dispatched following receipt of an anonymous call regarding a reckless driver on Interstate 24 in Trigg County. Tpr. Hamby observed an erratically operated vehicle matching the caller's description and initiated a traffic stop on the vehicle. Rader was the driver. Tpr. Hamby noticed Rader's eyes were bloodshot and glassy, he had a strong odor of alcohol emanating from his person, and his speech was slurred. Rader failed the officer's field sobriety tests and was placed under arrest. The officer then transported Rader to the Trigg County Justice Center where Rader consented to breath alcohol testing. Trigg County has no jail; all arrestees are transported to a secure portion of the Justice Center basement to await transport to the Christian County Jail by the Trigg County Jailer. Tpr. Hamby utilized the Intoxilyzer 5000EN located in the secured portion of the basement of the Justice Center to determine Rader's breath alcohol content was .172 grams per 210 ml, more than twice the legal limit of .08. Rader was charged with first-

offense DUI<sup>1</sup> with an aggravating circumstance,<sup>2</sup> reckless driving,<sup>3</sup> failure to wear a seat belt,<sup>4</sup> and failure to produce insurance card.<sup>5</sup>

Rader moved to suppress the results of the breath alcohol testing. In support of the motion, Rader contended KRS 189A.103 requires breath analysis machines be located only in a police station or detention facility and that the Trigg County Justice Center qualified as neither. Thus, he argued the results of his testing should be suppressed. The Commonwealth disagreed, arguing the basement of the Justice Center was a detention facility because it is a secured area accessible only to law enforcement and court personnel where all arrestees are detained until transferred to the custody of the Trigg County Jailer for transport to other jail facilities.

Following a suppression hearing, the parties agreed to permit the district court to observe the area in question to assist in making the determination of whether the basement constituted a “detention facility.” Post-hearing briefs were filed setting forth the parties’ factual and legal arguments and the matter was taken under submission. The district court entered an order denying Rader’s motion on July 25, 2012, setting forth its findings with regard to the physical

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<sup>1</sup> Kentucky Revised Statutes (KRS) 189A.010(1), enhanced pursuant to KRS 189A.010(5)(b).

<sup>2</sup> Operating a motor vehicle with a blood or breath alcohol concentration in excess of .15 is a defined aggravating factor pursuant to KRS 189A.010(11)(d).

<sup>3</sup> KRS 189.290.

<sup>4</sup> KRS 189.125 (6).

<sup>5</sup> KRS 304.39-117.

location of the Intoxilyzer within the secured area of the Justice Center. It noted there was no dispute this area did not qualify as a police station and that the sole question presented was whether it qualified as a “detention facility” which is defined in KRS 521.010(4)<sup>6</sup> as

any building and its premises used for the confinement of a person:

- (a) Charged with or convicted of an offense;
- (b) Alleged or found to be delinquent;
- (c) Held for extradition or as a material witness; or
- (d) Otherwise confined pursuant to an order of court for law enforcement purposes.

Based on this definition, its observations and the arguments of the parties, the district court determined the area housing the Intoxilyzer did, in fact, qualify as a “detention facility,” and that the results of Rader’s breath alcohol testing were admissible.

Rader subsequently entered a conditional guilty plea pursuant to RCr<sup>7</sup> 8.09 reserving the right to appeal from the adverse decision on his suppression motion. Sitting as an appellate court, the Trigg Circuit Court affirmed the district court’s determination and rejected Rader’s contention that such finding would inherently convert the entire Justice Center into a detention facility and thereby subject all

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<sup>6</sup> This definition is codified in the statutory section concerning escape offenses. Although not referenced in the DUI statutes, the district court found the statutory definition persuasive.

<sup>7</sup> Kentucky Rules of Criminal Procedure.

patrons of the building to the stringent security precautions and accompanying criminal sanctions for violations of those rules. The circuit court noted the district court's decision applied only to the basement area of the Justice Center and, noting a section of KRS 511.010 concerning burglary offenses, determined each separately secured and occupied unit of a multiple unit facility constituted separate "buildings" for purposes of criminal statutes. Thus, finding the secure holding area is "used for the confinement of a person," the circuit court concurred that this area qualified as a "detention facility" suitable under KRS 189A.104 to house the Intoxilyzer, thereby rendering the results of any testing performed by such machine admissible in criminal prosecutions. We granted discretionary review and now affirm.

The sole question presented for our review is whether the Trigg Circuit Court erred in affirming the district court's finding that the secured basement of the Justice Center qualified as a "detention facility" as that term is used in KRS 189A.104. In support of his contention the decision was infirm, Rader contends the Justice Center and its premises are not "used for the confinement of a person" because the building is a mixed-use facility housing the offices of the Circuit Court Clerk, judges, court designated workers, pretrial release services personnel, contains courtrooms, and has holding cells in various locations. Further, citing *Fulton v. Commonwealth*, 849 S.W.2d 553, 556 (Ky. App. 1992), Rader contends a "detention facility" necessarily includes the entire premises, not just selected areas. He posits that if the trial court's ruling is upheld, unsuspecting patrons of the

Justice Center entering with a pocket knife on their person could be subject to being charged with the felony offense of promoting contraband. We believe Rader's contentions are misplaced and are unpersuaded by his predictions of dire consequences stemming from the rulings of the lower courts.

The issue presented in this appeal appears to be a matter of first impression in this Commonwealth. No published or unpublished appellate decisions exist on the subject and precious little direct guidance is contained in the DUI statutes. However, we must not blindly chart an entirely new course. As noted by the lower courts, other statutory provisions may be utilized to discern the intention of the Legislature in enacting KRS 189A.104 and its requirements regarding appropriate locations of breath alcohol testing equipment.

The only codified definition of a "detention facility" is contained in KRS Chapter 520 which primarily contains statutes concerning escape and other offenses related to custody. The definition broadly encompasses "*any building used for the confinement of a person . . . [c]harged with an offense.*" KRS 520.010(4) (emphasis added). It refers to the actual physical structure within which the person is confined and which he is unable to leave without permission. The definition has been applied to a variety of locations including the booking area of a county jail<sup>8</sup> and the home of a defendant's mother.<sup>9</sup> Here, the secured

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<sup>8</sup> *Fulton*, 849 S.W.2d 553.

<sup>9</sup> *Lawton v. Commonwealth*, 354 S.W.3d 565 (Ky. 2011) (home of defendant's mother constituted "detention facility" under Home Incarceration Program agreement; home, in context of home incarceration, was a building used for confinement, and it was therefore a detention facility under statute governing offense of escape.)

basement of the Trigg County Justice Center is controlled by law enforcement personnel and is inaccessible to the general public. As a matter of course, any and all arrestees are taken to this location for confinement pending transfer to a neighboring county's jail by the Trigg County Jailer, and are not free to leave without first obtaining permission or court order. It is therefore a detention facility under the statutory definition.

Contrary to Rader's assertion, the mere fact that portions of the Justice Center are open to the public and house various offices and public use areas does not alter our determination. As the circuit court noted, the district court held the only portion of the Justice Center considered a detention facility is the secured area of the basement which includes the location of the Intoxilyzer. It matters not, under the facts presented, what activities occur on other floors of this building as they do not impact the nature and use of the secured basement as a detention facility. Nor does the fact that a detention facility exists in the basement of the structure alter the use or character of the remaining portions of the building. It is not unheard of in this Commonwealth for a county jail to be physically attached to a county courthouse, yet it would be absurd to assert such proximity somehow alters the character of either to convert the jail to a courthouse or *vice versa*. We discern no distinction from this scenario to the facts at bar. As noted by the circuit court, KRS 511.010(1)(b) specifies—albeit in the context of burglary offenses—that “[e]ach unit of a building consisting of two (2) or more units separately

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secured or occupied is a separate building.” There is no dispute the secured basement is separately secured from the remainder of the building and there can be no reasonable dispute under these circumstances—as the lower courts correctly determined—that this area constitutes a “detention facility.”

Finally, we are unpersuaded by Rader’s reliance on *Fulton* and his accompanying passionate assertion that dire consequences will befall the good citizens of Trigg County—or indeed citizens of any county who find it necessary or appropriate to enter the Justice Center—if the lower courts’ decisions are permitted to stand based on his belief that the entirety of the Justice Center will be deemed a “detention facility.” His predictions and fears of a dramatic rise in the number of felony charges of promoting contraband can be allayed by a simple reading of our decision today. The only portion of the Trigg County Justice Center held to be a detention facility is the secured basement area utilized for that purpose. No proof has been put on as to the nature of the remainder of the facility, nor have we been tasked with determining the proper categorization of its use. Therefore, it cannot be said that our decision alters the *status quo* of the upper floors of the Justice Center. If, in fact, these floors were previously a “detention facility”—which we highly doubt—then they shall remain so. If they were not, nothing in this Opinion can be deemed to have somehow converted them into such. Thus, we believe the law-abiding citizens of Trigg County can reasonably disregard Rader’s doomsday prophecies and may continue to transact whatever business necessary in



the Justice Center without fear of unwarranted prosecution and potential confinement in its secured basement.

For the foregoing reasons, the judgment of the Trigg Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

H. B. Quinn  
Cadiz, Kentucky

BRIEF FOR APPELLEE:

Randall Braboy  
Trigg County Attorney  
Cadiz, Kentucky