

**IMPORTANT NOTICE**  
**NOT TO BE PUBLISHED OPINION**

***THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.***

Supreme Court of Kentucky **FINAL**

2004-SC-1070-MR

DATE 11-10-05 ELLIOTT, P.C.

COREY DESHAWN THOMPSON

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE GEOFFREY P. MORRIS, JUDGE  
04-CR-1484

V.

COMMONWEALTH OF KENTUCKY

APPELLEE

**MEMORANDUM OPINION OF THE COURT**

Affirming

A jury of the Jefferson Circuit Court convicted Appellant of Trafficking in a Controlled Substance, Subsequent Offense (Cocaine); Failure to be in Possession of Operator's License on Demand; and being a Persistent Felony Offender, First Degree. For these crimes, Appellant was sentenced to a total of twenty years imprisonment. Appellant now appeals to this Court as a matter of right. Ky. Const. § 110(2)(b). For the reasons set forth herein, we affirm Appellant's convictions.

The crimes for which Appellant was convicted stemmed from a midday traffic stop. Detective Sean Hayes of the Louisville Metro Police Department was on patrol in an unmarked car when he stopped behind Appellant's vehicle and another vehicle at a traffic light. He was working a special type of duty that day called the "Flex Unit." "Flex

Unit" officers are tasked to focus on the enforcement of street level to mid-level narcotics offenders. As part of the "Flex Unit," Detective Hayes was equipped with a Mobile Data Terminal in his vehicle which allows the driver to enter license plate numbers for the purpose of checking whether a vehicle has been reported stolen.

When Detective Hayes stopped at the traffic light, he randomly entered the license plate numbers of the two vehicles stopped in front of him. Soon after the light turned green and Appellant drove away in another direction, Detective Hayes received a warning on his mobile unit alerting him that Appellant's vehicle may be stolen. Upon receiving this information, Detective Hayes turned around and proceeded to drive in the direction where he last saw Appellant's vehicle.

When Detective Hayes approached the 1800 block of West Madison Street, he observed Appellant's vehicle parked beside the curb. He then observed Appellant and a juvenile get out of the vehicle and walk towards the sidewalk. Detective Hayes pulled his car behind Appellant's parked vehicle and got out of the car. When he got out of the car, he was not in uniform, but was wearing a badge displayed prominently around his neck and had a weapon which was visibly stored in a holster attached to his waist.

Detective Hayes approached the place where Appellant and the youth were standing and asked Appellant whether the vehicle belonged to him. When Appellant answered affirmatively, Detective Hayes replied "that's funny because it's coming back stolen or possible stolen." Appellant then stated that the vehicle actually belonged to his uncle. Upon receiving such a suspicious answer, Detective Hayes decided to place Appellant in handcuffs while he waited for back up and for verification that the vehicle was actually stolen. Approximately fifteen minutes later, Detective Hayes received verification that the vehicle driven by Appellant was reported stolen. At this point,

Appellant was placed under arrest for being in possession of a stolen vehicle. During the search incident to that arrest, cocaine was found on Appellant's person.

Appellant was charged with Trafficking in a Controlled Substance (Cocaine), Possessing a Stolen Vehicle, Failure to Produce an Operator's License on Demand, and being a First Degree Persistent Felony Offender. He was convicted of being a First Degree Persistent Felony Offender, for Trafficking in a Controlled Substance, and failure to be in possession of an operator's license. Appellant now appeals these convictions to this Court.

On appeal, Appellant's sole argument is that it was unreasonable for Detective Hayes to place him in handcuffs while waiting for back up and for verification that the vehicle driven by Appellant was stolen. We disagree, and therefore, we affirm the trial court's decision not to suppress evidence obtained as a result of this temporary seizure.

Both the Fourth Amendment of the United States Constitution and Section Ten of the Kentucky Constitution guarantee that persons shall not be subject to unreasonable searches and seizures by police. U.S. Const. amend. IV & XIV.; Ky. Const. §10. Both parties agree that Detective Hayes' actions were reasonable when he effectuated an investigatory stop of Appellant once information from his computer indicated that Appellant may be driving a stolen vehicle. See Williams v. Commonwealth, 147 S.W.3d 1, 5 (Ky. 2004) (police are permitted to make brief investigatory stops "in circumstances where [there is] reasonable articulable suspicion that criminal activity may be afoot.") (quoting and citing Terry v. Ohio, 392 U.S. 1, 30, 88 S.Ct. 1868, 1884, 20 L.Ed.2d 889 (1968)).

Appellant argues that his brief seizure became unreasonable at the moment he was placed in handcuffs by Detective Hayes. He acknowledges that handcuffs are

permissible in the appropriate situation. See Muehler v. Mena, \_\_\_ U.S. \_\_\_, 125 S.Ct. 1465, 1470, 161 L.Ed.2d 299 (2005) (it was reasonable to place resident of home in handcuffs while search of that home was carried out pursuant to warrant where warrant authorized search for weapons and gang members known to reside at the premises). However, Appellant contends that the situation confronted by Detective Hayes did not warrant such a restricted detention and could lead to the “casual” handcuffing of citizens every time they are stopped and questioned by police. He points to the fact that Appellant was stopped in broad daylight and that Detective Hayes did not indicate that (1) the stop took place in a dangerous area of town; or (2) that he suspected Appellant or his companion of being dangerous persons. When the evidence is viewed in its totality, we are not persuaded by Appellant’s argument. We find that the minimal intrusion on Appellant by being placed in handcuffs for approximately fifteen minutes was outweighed by the governmental interests of safety and security in this case. See Id.

In Williams, supra, we stated that “the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to affect it.” Id. at 6 (quoting Graham v. Connor, 490 U.S. 386, 396, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989)). We explained that coercive action can be necessary because there are substantial law enforcement interests in (1) preventing flight and/or the destruction of evidence; and (2) protecting the officers’ safety. Id.

Detective Hayes explained the situation in this case as follows:

You know, I was like it’s a possible stolen car. I said it’s not verified yet. At that time I’m by myself waiting on back up. I had one pair of handcuffs and I told [Appellant], hey, I’m going to put these handcuffs on you for my safety and your safety. I said if the car comes back not stolen, the handcuffs come off and you go on your way and have a nice day. I said if

it comes back stolen, you're going to be placed under arrest for a stolen vehicle.

During the fifteen minutes while the parties waited for (1) backup; and (2) for verified information as to whether the vehicle was stolen or not, Detective Hayes was faced with the possibility that Appellant and his companion, who were faced with the probability of imminent arrest, may take the opportunity to (1) flee; and/or (2) attack the officer. In this situation, where the time of detention was nominal and the risks confronting the officer were significant, it was not only reasonable, but appropriate for Detective Hayes to take such a sensible precautionary measure. See Graham, supra, at 396, 109 S.Ct. at 1872 ("The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.") Accordingly, we hold that the governmental interests in this case outweighed Appellant's interest in not being handcuffed for approximately fifteen minutes while waiting for backup and for additional information. Once there was verification that the vehicle was stolen, Appellant was validly arrested and searched incidental thereto. As such, the trial court was correct in admitting evidence resulting from Appellant's temporary seizure prior to his arrest.

The judgment and sentence of the Jefferson Circuit Court are affirmed.

All concur.

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