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State v. Davis

Court of Criminal Appeals of Tennessee, At Knoxville

June 19, 2002, Assigned on Briefs ; August 26, 2002, Filed

No. E2001-01656-CCA-R3-CD

Reporter

2002 Tenn. Crim. App. LEXIS 729 *; 2002 WL 1971847

STATE OF TENNESSEE v. JAMES MICHAEL DAVIS

Prior History: [*1] Tenn. R. App. P. 3; Judgment of the Trial Court Affirmed. Appeal from the Criminal Court for Hamilton County No. 229673 Rebecca J. Stern, Judge.

Disposition: Affirmed.

Core Terms

reasonable suspicion, female, investigatory stop, seizure, probable cause, prostitute, drove, trial court

Case Summary

Procedural Posture

Defendant was convicted in the Criminal Court for Hamilton County, Tennessee, for driving under the influence and sentenced to 11 months and 29 days in jail, with all but 48 hours suspended. Defendant appealed.

Overview

Police officers observed defendant's vehicle parked late at night in an area known for prostitution and illegal drug activity, and a prostitute leaning in the passenger's side window arguing with defendant. When the officers activated the cruiser's blue lights, defendant drove away and parked across the street. The woman motioned to the officers to pursue defendant. When defendant was approached, the officers noted the odor of intoxicants. Defendant failed several field sobriety tests and was arrested. On appeal, defendant argued the officers did not have reasonable suspicion to warrant an investigatory stop and that the trial court erred by denying his motion to suppress. The appellate court held while probable cause was not necessary for an investigative stop, it was a requirement that the officer's reasonable suspicion be supported by specific and

articulable facts which, taken together with rational inferences from those facts, reasonably warranted the intrusion. The appellate court concluded the foregoing facts provided the officers with specific, articulable grounds to suspect that defendant was involved in solicitation of prostitution and warranted an investigation.

Outcome

The judgment of the trial court was affirmed.

LexisNexis® Headnotes

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > General Overview

Constitutional Law > ... > Fundamental Rights > Search & Seizure > General Overview

Criminal Law & Procedure > Search & Seizure > General Overview

Criminal Law & Procedure > ... > Warrantless Searches > Vehicle Searches > General Overview

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Suppression of Evidence

HN1[] Search & Seizure, Scope of Protection

Both the state and federal constitutions protect individuals from unreasonable searches and seizures; the general rule is that a warrantless search or seizure

is presumed unreasonable and any evidence discovered subject to suppression. U.S. Const. amend. IV, Tenn. Const. art. I, § 7. An automobile stop constitutes a "seizure" within the meaning of both the Fourth Amendment of the United States Constitution and Tenn. Const. art. I, § 7. The fact that the detention may be brief and limited in scope does not alter that fact. The basic question is whether the seizure was reasonable. The State always carries the burden of establishing the reasonableness of any detention.

which, taken together with rational inferences from those facts, reasonably warrant that intrusion. In determining whether reasonable suspicion exists, an important factor in the analysis is that 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.

Criminal Law & Procedure > Search &
Seizure > Warrantless Searches > Investigative
Stops

Criminal Law & Procedure > Appeals > Standards of
Review > General Overview

Criminal Law & Procedure > Search &
Seizure > Warrantless Searches > General
Overview

Criminal Law & Procedure > Search &
Seizure > Warrantless Searches > Investigative
Stops

HN2 **Warrantless Searches, Investigative Stops**

Among the narrowly defined exceptions to the warrant requirement is an investigatory stop. An investigatory stop is deemed less intrusive than an arrest. The reasonableness of seizures less intrusive than a full-scale arrest 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.

Criminal Law & Procedure > ... > Search
Warrants > Probable Cause > General Overview

Criminal Law & Procedure > Search &
Seizure > Warrantless Searches > Investigative
Stops

HN3 **Search Warrants, Probable Cause**

An appellate court's determination of the reasonableness of a stop of a vehicle depends on whether police officers had either probable cause or an articulable and reasonable suspicion that the vehicle or its occupants were subject to seizure for violation of the law. Probable cause has been generally defined as a reasonable ground for suspicion, supported by circumstances indicative of an illegal act. While probable cause is not necessary for an investigatory stop, it is a requirement that the officer's reasonable suspicion be supported by specific and articulable facts

HN4 **Appeals, Standards of Review**

Courts considering the issue of reasonable suspicion to justify an investigatory stop must look to the totality of the circumstances. Those circumstances include the personal observations of the police officer, information obtained from other officers or agencies, information obtained from citizens, and the pattern of operation of certain offenders. Objective standards apply rather than the subjective beliefs of the officer making the stop.

Counsel: Ardena J. Garth, District Public Defender (on appeal and at trial); Donna Robinson Miller, Assistant District Public Defender (on appeal); and Karla Gothard, Assistant District Public Defender (at trial), for the appellant, James M. Davis.

Paul G. Summers, Attorney General & Reporter; David H. Findley, Assistant Attorney General; and **Mary Sullivan Moore** and Dean C. Ferraro, Assistant District Attorneys General, for the appellee, State of Tennessee.

Judges: GARY R. WADE, P.J., delivered the opinion of the court, in which DAVID H. WELLES and NORMA MCGEE OGLE, JJ., joined.

Opinion by: GARY R. WADE

Opinion

The defendant, James Michael Davis, was convicted of

driving under the influence. The trial court imposed a sentence of 11 months, 29 days, with all but 48 hours suspended. In this appeal of right, the defendant asserts that because the police officers did not have "reasonable suspicion" to warrant an investigatory stop, the trial court erred by denying his motion to suppress. The judgment of the trial [*2] court is affirmed.

Officer Charles Brown of the Chattanooga Police Department testified that at approximately 3:00 a.m. on April 28, 1999, he and Cadet Charles Martin, Jr., were on routine patrol when they observed the defendant's vehicle parked along Westside Drive. A female was leaning in the passenger's side window. As the officers' vehicle approached, the defendant drove his vehicle away and "the female started pointing at him in a manner to go after him." The defendant drove across the street into the parking lot of King's Lodge. Because prostitution and narcotics activities were common in the area, the officers activated their blue lights and conducted an investigatory stop. The defendant had an open beer in the vehicle and, according to the officers, "smelled of an intoxicant." When the defendant performed poorly on field sobriety tests, he was arrested.

Officer Brown testified that the defendant saw the cruiser before driving away. While acknowledging that the defendant did not speed or drive erratically, the officer explained that the female, a prostitute with whom the defendant had been talking, pointed "vigorously" at the departing vehicle. After the defendant was stopped, [*3] the female talked to the officers.

Officer Martin corroborated the testimony of Officer Brown. He testified that the defendant "fled the scene" and confirmed that the female signaled the officers to stop the car. Officer Martin stated that he suspected that the female was a prostitute and that the defendant had been attempting to solicit her services. He recalled that the defendant performed poorly on three field sobriety tests. During cross-examination, Officer Martin acknowledged that the cruiser's blue lights were not on at the time the defendant drove away and that the defendant drove into the parking lot immediately after they were activated.

The trial court denied the defense motion to suppress, ruling as follows:

It was 3:00 a.m., the defendant was parked in a business parking lot with someone outside the car talking and one officer, Officer Martin, testified that [it] appeared to be a ["disorder"] by the body language.

When they pulled up behind the car, the officer testified the car drove off, and a woman continued gesturing, indicating that some type of disorder was in progress. I think at that point, the officers had articulable suspicion to stop and detain and [*4] further investigate the case.

HN1 [↑] Both the state and federal constitutions protect individuals from unreasonable searches and seizures; the general rule is that a warrantless search or seizure is presumed unreasonable and any evidence discovered subject to suppression. U.S. Const. amend. IV; Tenn. Const. art. I, § 7; *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971); *State v. Bridges*, 963 S.W.2d 487, 490 (Tenn. 1997). An automobile stop constitutes a "seizure" within the meaning of both the Fourth Amendment of the United States Constitution and Article I, section 7 of the Tennessee Constitution. *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 450, 110 L. Ed. 2d 412, 110 S. Ct. 2481 (1990); *Delaware v. Prouse*, 440 U.S. 648, 653, 59 L. Ed. 2d 660, 99 S. Ct. 1391 (1979); *State v. Binion*, 900 S.W.2d 702, 705 (Tenn. Crim. App. 1994); *State v. Westbrooks*, 594 S.W.2d 741, 743 (Tenn. Crim. App. 1979). The fact that the detention may be brief and limited in scope does not alter that fact. *Prouse*, 440 U.S. at 653; *State v. Pulley*, 863 S.W.2d 29, 30 (Tenn. 1993); [*5] *Binion*, 900 S.W.2d at 705; *Westbrooks*, 594 S.W.2d at 743. The basic question, as indicated, is whether the seizure was "reasonable." *Binion*, 900 S.W.2d at 705 (citing *Sitz*, 496 U.S. at 444). The state always carries the burden of establishing the reasonableness of any detention. See *State v. Matthew Manuel*, 1988 Tenn. Crim. App. LEXIS 725, No. 87-96-III (Tenn. Crim. App., at Nashville, Nov. 23, 1988).

HN2 [↑] Among the narrowly defined exceptions to the warrant requirement is an investigatory stop. See *Terry v. Ohio*, 392 U.S. 1, 27-28, 20 L. Ed. 2d 889, 88 S. Ct. 1868, 44 Ohio Op. 2d 383 (1968). An investigatory stop is deemed less intrusive than an arrest. See *id.* In *Pulley*, our supreme court ruled that "the reasonableness of seizures less intrusive than a full-scale arrest 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." 863 S.W.2d at 30.

HN3 [↑] Our determination of the reasonableness of the stop of the vehicle depends on whether the officers had either probable cause or an "articulable and reasonable suspicion" that [*6] the vehicle or its occupants were subject to seizure for violation of the law. See *Prouse*, 440 U.S. at 663; *State v. Coleman*, 791 S.W.2d 504,

505 (Tenn. Crim. App. 1989). Probable cause has been generally defined as a reasonable ground for suspicion, supported by circumstances indicative of an illegal act. See *Lea v. State*, 181 Tenn. 378, 380-81, 181 S.W.2d 351, 352 (1944). While probable cause is not necessary for an investigative stop, it is a requirement that the officer's reasonable suspicion be supported by "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21; *Pulley*, 863 S.W.2d at 30; *Coleman*, 791 S.W.2d at 505; see also *State v. Watkins*, 827 S.W.2d 293, 294 (Tenn. 1992) (applying *Terry* doctrine in context of vehicular stop). In determining whether reasonable suspicion exists, an important factor in the analysis is that reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established [*7] 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. *Pulley*, 863 S.W.2d at 32 (quoting *Alabama v. White*, 496 U.S. 325, 330, 110 L. Ed. 2d 301, 110 S. Ct. 2412 (1990)).

HN4 [↑] Courts considering the issue of reasonable suspicion must look to the totality of the circumstances. Those circumstances include the personal observations of the police officer, information obtained from other officers or agencies, information obtained from citizens, and the pattern of operation of certain offenders. *Watkins*, 827 S.W.2d at 294 (citing *United States v. Cortez*, 449 U.S. 411, 417-18, 66 L. Ed. 2d 621, 101 S. Ct. 690 (1981)). Objective standards apply rather than the subjective beliefs of the officer making the stop. *State v. Norword*, 938 S.W.2d 23, 25 (Tenn. Crim. App. 1996).

It was approximately 3:00 a.m. when Officers Brown and Martin first observed the defendant's vehicle on the side of the roadway. The area was known for prostitution [*8] and illegal drug activity. A female that Officer Brown recognized as a prostitute was leaning into the vehicle's passenger's side window and, according to Officer Martin, appeared to be in a dispute with the defendant. As the defendant drove away, apparently in response to seeing the police cruiser, the female sought the officers' intervention and signaled for them to stop the car. In our view, these facts provided the officers with specific, articulable grounds to suspect that the defendant was involved in solicitation of prostitution which merited an investigation. See *State v. Kenneth Carl Scarlett*, 880 S.W.2d 707 (Tenn. Crim.

App. 1993) (upholding investigatory stop of vehicle at 3:30 a.m. near school from which several recent complaints about prowlers and vandalism had originated); *State v. Larry D. Johnson*, 1999 Tenn. Crim. App. LEXIS 604, No. 02C01-9807-CC-00218 (Tenn. Crim. App., at Jackson, June 18, 1999) (upholding investigatory stop where officer on routine patrol had reasonable suspicion that defendant, whom he had observed arguing with two women on their porch, had created a domestic disturbance).

Accordingly, the judgment of the trial court is affirmed.

GARY R. WADE, PRESIDING [*9] JUDGE

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