

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-KA-01239 COA**

**WILLIE MAE HODGES A/K/A WILLIE MAE
WALLACE**

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	10/20/95
TRIAL JUDGE:	HON. LARRY EUGENE ROBERTS
COURT FROM WHICH APPEALED:	LAUDERDALE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	H.W. "SONNY" JONES, JR.
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: CHARLES W. MARIS, JR.
DISTRICT ATTORNEY:	BILBO MITCHELL
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	POSSESSION OF COCAINE W/INTENT TO SELL: SENTENCED TO SERVE A TERM OF 30 YRS IN THE CUSTODY OF THE MDOC WITH 10 YRS SUSPENDED & 5 YRS PROBATION; AFTER COMPLETION OF 20 YR SENTENCE; ORDERED TO PAY FINE OF \$2,000 AND RESTITUTION
DISPOSITION:	AFFIRMED - 10/7/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	10/28/97

BEFORE McMILLIN, P.J., COLEMAN, AND PAYNE, JJ.

McMILLIN, P.J., FOR THE COURT:

Willie Mae Hodges was convicted by a Lauderdale County Circuit Court jury of possession of cocaine with intent to sell. She has appealed her conviction to this Court, urging that the trial court

erred when it failed to suppress incriminating evidence obtained in violation of her rights under the Fourth Amendment of the United States Constitution, the protection of which was extended to State action under the Fourteenth Amendment. This Court affirms the conviction.

I.

Facts

On the evening of her arrest, Hodges was approaching her residence in her vehicle when she was stopped by a Meridian police detective. The detective, with a flashing blue light on his car, inquired concerning the registration of her vehicle, since the automobile displayed expired license plates issued by the State of Texas. Hodges produced documents indicating that she had recently purchased the vehicle and was within the grace period allowed under the law to obtain license plates for a newly-purchased vehicle. The officer testified that he was satisfied with her explanation of the expired tag and did not intend to issue a citation. The officer said, however, he was aware of reports that a woman driving a car that fit the description of Hodges's vehicle was involved in drug trafficking, and that he observed Hodges grow quite nervous as he talked to her. As a result, he asked her if she would consent to a search of her vehicle through the use of the police force's dog trained to detect contraband narcotics. Hodges agreed, and the officer made a radio call requesting the dog to be dispatched to the scene.

The detaining officer claimed that as they waited for the dog to arrive, he became concerned that Hodges might spontaneously make an incriminating statement, and out of concern that the admissibility of any such statement might be challenged for lack of voluntariness, he recited to her the standard warning offered to an arrested individual commonly known as her "*Miranda* rights." The officer denied, however, that he was detaining Hodges against her will at that point and testified that she would have been free to go at any time but for her voluntary election to remain pending arrival of the drug detection dog. He admitted, however, that he never affirmatively told Hodges that she was no longer being officially detained.

The officer claimed that while the two waited, he noticed a strange lump protruding from Hodges's chest that led him to believe that she had some object concealed in her undergarments. He asked her if she would pull out the bottom of her brassiere and permit the object to fall to the ground, and Hodges acquiesced in his request. When a medicine bottle fell out, the officer inquired of Hodges if the bottle contained cocaine, and she replied that it did. As a result, the officer seized the bottle and placed Hodges under arrest. Hodges later signed a confession and a voluntary consent form for the search of her residence, where additional incriminating evidence was found.

Hodges filed a pre-trial motion to suppress the cocaine concealed on her person and all subsequently obtained evidence as being the fruit of an unconstitutional search and seizure. The trial court denied the motion, and all of the evidence was admitted at trial.

II.

Discussion

Hodges initially argues on appeal that the officer's real reason to detain and question her was because he suspected her of drug activity and not because of the unexpired tag. Thus, she claims the stop was pretextual, rendering any evidence developed as a result of the stop inadmissible. It is well settled that so long as there is an objective basis to make an initial stop of an individual, the subjective intention of the detaining officer is immaterial. *Whren v. United States*, 116 S. Ct. 1769, 1774 (1996); *United States v. Robinson*, 414 U.S. 218, 221 (1973). The expired tag constituted sufficient reason to detain Hodges for as long as it reasonably took to resolve this apparent violation of the law. *See Berkemer v. McCarty*, 468 U.S. 420, 439-40 (1984).

Once Hodges was so detained, there was no constitutional safeguard that would prevent the officer from asking her to consent to a voluntary search of her automobile. Her constitutional protection was her right to decline to consent to the search. Neither was there a constitutional restraint that would prohibit the officer from inquiring as to the unusual lump appearing on Hodges's person and asking to see what it was. Again, Hodges had the right to decline to respond to the inquiry, but that was a right that could be waived. *See Jones v. State ex rel Miss. Dept. of Public Safety*, 607 So. 2d 23, 26-28 (Miss. 1991). The testimony is uncontradicted that this is what occurred.

The only question of any consequence that arises in this case is the effect of the officer's somewhat unusual decision to recite to Hodges her *Miranda* rights at a time when she had not been placed under formal arrest and when the original reason for stopping her had been resolved. From a legal standpoint, Hodges was, at the time, free to discontinue her dialog with the officer and depart the scene. Nevertheless, a person in such a situation may be deemed, under the law, to be subject to an involuntary seizure if "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that [she] was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). We must, therefore, decide whether the gratuitous recitation of Hodges's *Miranda* rights, portions of which certainly have ominous undertones, so altered the situation that a reasonable person in Hodges's position would be of the opinion that she continued to be the subject of an involuntary seizure.

In *Ohio v. Robinette*, 117 S. Ct. 417, 420-21 (1996), the United States Supreme Court dealt with the situation where a person had been stopped by a law enforcement official for a possible traffic violation. The reason for the stop had been resolved when the officer inquired whether the person would consent to a voluntary search of his automobile. *Id.* at 419. As in this case, the officer had not affirmatively informed the person that he was no longer being officially detained. *Id.* On those facts, the Ohio Supreme Court had established a bright-line rule that once a detainee is free to leave, he must be so informed; otherwise, he remains 'seized' for purposes of constitutional analysis. The Ohio court had further reasoned that the detention was transformed from a constitutionally valid one to an "unreasonable seizure" at the moment the initial basis for the stop was resolved, and the officer failed to so inform the detained motorist. The United States Supreme Court declined to adopt the proposition that the officer's subjective decision not to issue a citation in that case immediately rendered any further interaction between the officer and the motorist an impermissible intrusion and

held that the overall circumstances must be assessed to determine the voluntariness of the consent to search. *Id.* at 421.

In the case we now consider, there is no evidence to suggest that Hodges remained at the scene for any reason other than her voluntary decision to await the arrival of the drug-detection dog, except the fact that she was given her *Miranda* rights. She did not testify at the suppression hearing, and her subjective impressions of her situation are, therefore, not available for our consideration.

The terms of the standard *Miranda* warning relate to rights protected under the Fifth and Sixth Amendments. They include notice that the individual is entitled to the services of an attorney and to the appointment of an attorney at no cost if that person cannot afford the fee necessary to retain an attorney. Certainly, it must be disquieting to an individual, involuntarily detained for even the briefest of moments, to be warned of the right to counsel and the corresponding duty of the State to provide an attorney if that person is indigent. The average person in such a situation could, it seems to this Court, reasonably construe such a warning to carry with it the implicit message that she was in imminent peril of being subjected to criminal charges. This would make it more likely that the individual could reasonably conclude that she was being detained against her will, even though the officer no longer had a legally valid reason to continue the detention.

On the other hand, much of the *Miranda* warnings deal with the Fifth Amendment right against self-incrimination that applies to all individuals, whether in a custodial situation or not. A person's right not to converse with a police officer exists independent of whether the person is in custody pursuant to an arrest or has had a chance encounter with the officer on a public street. This Court is of the opinion that, on balance, merely giving *Miranda* warnings to a temporarily detained motorist who has not been formally arrested does not, of itself, cause such a fundamental shift in the circumstances that the person may reasonably conclude that he or she has been subjected to a seizure that outlives the reason for the initial stop. Therefore, we find the officer's request to view the source of the suspicious bulge in Hodges's clothing as being nothing more than a request which Hodges could have declined, but one to which she voluntarily assented. Such a voluntary consent to a search constituted a waiver of her rights against unreasonable searches under the Fourth Amendment, and there was, therefore, no basis to exclude the evidence that led directly to her formal arrest or to the evidence developed in the investigation that followed her arrest.

THE JUDGMENT OF THE LAUDERDALE COUNTY CIRCUIT COURT OF CONVICTION OF POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE AND SENTENCE OF THIRTY YEARS WITH TEN YEARS SUSPENDED AND FIVE YEARS PROBATION AFTER COMPLETION OF TWENTY YEAR SENTENCE AND FINE OF \$2,000.00 AND ORDER TO MAKE RESTITUTION IS AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO APPELLANT.

BRIDGES, C.J., THOMAS, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, PAYNE, AND SOUTHWICK, JJ., CONCUR. KING, J., CONCURS IN RESULT ONLY.