

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000424-MR

BRIAN DEYRONNEIL BROWN

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 01-CR-00604

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * **

BEFORE: BUCKINGHAM, McANULTY, AND SCHRODER, JUDGES.

McANULTY, JUDGE. Appellant Brian Deyronneil Brown (hereinafter appellant) appeals his conviction pursuant to a conditional guilty plea to trafficking in a controlled substance in the first degree and resisting arrest. Appellant contends on appeal that the trial court should have granted his motion to suppress evidence because the arresting officer did not have reasonable suspicion to stop him. We affirm.

Officer Robert Terry of the Lexington Police Department testified at the suppression hearing that on April 19, 2001, Levi Robinson came to the police station to make a stolen vehicle report. Officer Terry took the report at around 6:30 or 7:00 p.m. Robinson identified himself and gave his address. He told Officer Terry that two days earlier he had loaned his car in exchange for crack cocaine. He said the car was supposed to be returned to him the next day but was not. Robinson provided a description of the vehicle and the license plate number. He stated that the vehicle had Perry County tags.

Robinson could not provide the name of the person who had the car. However, he had seen the man within an hour of making the police report, so he gave a description of the man and his clothing. Robinson told Officer Terry that he had confronted the man at that time in the Aspendale area to ask that his car be returned to him. The man reportedly told Robinson that he would not return the car. Robinson said the man struck him, and said that he would return the car when he was done with it. Thereafter, Robinson came in to file the stolen vehicle report.

Officer Terry stated that based on the report he decided to go to the Aspendale area to search for the vehicle. He observed a vehicle of the same make and color pass him on Withrow Way, traveling in the opposite direction. He stated

that when he turned and observed the vehicle as it passed, it had Perry County tags and the same license number given to him by Robinson. He watched as the car pulled over and parked on Grinstead Street. The driver of the vehicle and a passenger stepped out of the vehicle. Officer Terry pulled behind the car, turned on his lights and ordered them to get back in the vehicle. Officer Terry stated that his intent was to approach them and find out their side of the story. However, both ran, and Officer Terry followed the driver of the car. Officer Terry eventually caught up to the driver, who turned out to be appellant. Appellant further resisted arrest. When he was eventually stopped, cocaine was found near him and on his person. Appellant was charged with trafficking in a controlled substance in the first degree, promoting contraband in the first degree, resisting arrest, unauthorized use of a motor vehicle and operating a motor vehicle without an operator's license.

Appellant argues that in this case that the police officer did not have probable cause to stop him because he did not verify that Robinson actually owned the car in question. Therefore, the police did not know that the car was stolen. He complains that the officer did not do further investigation after taking the report, but instead merely drove to the area and pulled over the first vehicle which resembled that of the

description. He argues that this "fishing expedition" was not sufficiently supported by probable cause to make the stop.

Police officers may briefly detain an individual on the street, even though there is no probable cause to arrest him, if there is a reasonable suspicion that criminal activity is afoot. United States v. Cortez, 449 U.S. 411, 101 S.Ct. 690, 66 L. Ed. 2d 621 (1981); Eldred v. Commonwealth, Ky., 906 S.W.2d 694 (1994). The standard for a reasonable suspicion is less demanding than that for finding probable cause. United States v. Sokolow, 490 U.S. 1, 7, 109 S. Ct. 1581, 1585, 104 L. Ed. 2d 1 (1989). The court must examine the totality of the circumstances to determine the probability, rather than the certainty, of criminal conduct. Commonwealth v. Banks, Ky., 68 S.W.3d 347, 350-351 (2001), citing United States v. Cortez, 449 U.S. 411, 417-418, 101 S. Ct. 690, 695, 66 L. Ed. 2d 621 (1981).

Our standard of review of a decision of the circuit court on a suppression motion following a hearing is twofold. First, the factual findings of the circuit court are conclusive if they are supported by substantial evidence. RCr 9.78; Commonwealth v. Whitmore, Ky., 92 S.W.3d 76, 79 (2002). Second, when the findings of fact are supported by substantial evidence, the question then becomes whether the trial court correctly applied the rule of law to the established facts. Whitmore, 92 S.W.3d at 79. The ultimate legal question of whether there was

reasonable suspicion to stop or probable cause to search is reviewed de novo. Banks, 68 S.W.2d at 349.

Under the circumstances presented at the suppression hearing, we believe that the trial court determined correctly that the investigatory stop was valid. The stop was made as a result of a stolen vehicle report. Although the officer did not verify the ownership of the vehicle prior to looking for it, he had a reasonable suspicion of criminal activity to justify the stop based on the report alone. The complainant met with the officer and provided his name and address. He provided detailed information about the car and the person he said had failed to return it. The officer checked to see if Robinson had any outstanding warrants before proceeding, but otherwise determined to go forward with the investigation despite Robinson's admission of involvement in drug activity. We agree with the Commonwealth that running a computer check on the ownership of the vehicle was not the only reasonable means of investigating Robinson's claim. Stopping the vehicle and attempting to question its occupants was a reasonable means to confirm or dispel the report that the car had been stolen.

The standard for assessing a proper investigatory stop under Terry is not whether an officer knows that an individual is engaging in criminal activity, but rather whether the officer can articulate reasonable facts to suspect that criminal

activity may be afoot. Banks v. Commonwealth, Ky., 68 S.W.3d 347, 350-351 (2001). The officer in this case had just such a reasonable and articulable suspicion and was proceeding to investigate the facts by making a stop. If the officer were first required to verify all the circumstances of the crime, the opportunity to catch the criminal might be lost. Moore v. United States, 817 F.2d 1105, 1107 (4th Cir. 1987), cert denied 484 U.S. 965, 108 S. Ct. 456, 98 L. Ed. 2d 396 (1987).

Furthermore, as the trial court found, if the vehicle had not been stolen and appellant was properly in possession of it, the investigation could have been brief and appellant and his passenger would soon have been able to leave. This would not undercut the reasonableness of the basis for the stop, however. United States v. Davis, 200 F.3d 1053, 1054 (7th Cir. 2000).

Therefore, for the reasons set forth above, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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