RENDERED: June 4, 2004; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001581-MR
AND
NO. 2002-CA-001582-MR

ANTONIO DEWAYNE WINKFIELD — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NOS. 02-CR-00546 AND 02-CR-00124

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: JOHNSON, MINTON, AND TACKETT, JUDGES.

TACKETT, JUDGE: Antonio Winkfield appeals from the judgment of the Fayette Circuit Court that he is guilty of possession of a simulated substance, a Class A misdemeanor, and felony charges of possession of a controlled substance and being a second-degree persistent felony offender. The charges against Winkfield were contained in two separate indictments to which he pled guilty conditioned on his right to appeal the trial court's denial of his suppression motion. We agree with the trial court

that Winkfield was properly detained and searched by police officers and, therefore, the judgment of the trial court is affirmed.

Winkfield was arrested on December 12, 2001, in the Woodhill area of Lexington. Officers John Huddleston and Bryan Jared were patrolling in separate cruisers after a rash of automobile thefts had taken place in the area two nights beforehand. One theft victim had described the suspect as a black man, wearing a hooded sweatshirt and riding a bicycle. At 4:00 a.m., Huddleston observed Winkfield riding his bike into the parking lot of the Thornton's Gas Station on Woodhill. Huddleston noted that Winkfield matched the description of the theft suspect including his hooded sweatshirt and his mode of transportation. Huddleston stopped his car in the parking lot so that Winkfield was headed towards him, exited from the cruiser and asked Winkfield if he could speak with him. Winkfield responded by standing up on his bike, pedaling away as fast as possible, and stating that he had done nothing wrong.

At this point, Jared gave chase in his cruiser commanding Winkfield to stop. Winkfield ignored him and rode from the sidewalk into the road where he lost control of his bicycle and crashed in the middle of the street. He began running away on foot and, while running, dislodged a bag containing a white substance from his pocket. Winkfield stopped

to pick up the bag then continued to run while Jared chased him on foot. Winkfield finally tripped over some shrubbery and Jared wrestled him and handcuffed him. When Winkfield stood up, the officers noticed a white bag, containing a substance that appeared to be crack cocaine, beside him. At this point, the officers arrested Winkfield and searched him.

The Fayette County Grand Jury returned two indictments against Winkfield, one charging him with possession of a simulated substance, the other charging him with trafficking in a controlled substance and being a second-degree persistent felony offender. Winkfield asked the trial court to suppress the evidence against him as being the fruits of an illegal search. After a suppression hearing, the trial court denied the motion and Winkfield entered a conditional guilty plea to the amended charge of possession of a controlled substance and the charges of being a second-degree persistent felony offender and possession of a simulated substance. Winkfield appealed from both convictions and the Court of Appeals assigned his cases the numbers 2002-CA-1581, and 2002-CA-1582. Although the procedural history of 2002-CA-1582 differs slightly from the first case and the appeals were never consolidated, the only issue in either case is the trial court’s denial of Winkfield’s suppression motion. Therefore, this opinion is dispositive of both appeals.

Winkfield argues that his stop violated the rule, enunciated in Terry V. Ohio, 392 U.S.1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), that police must have a reasonable and articulable suspicion that criminal activity is taking place before they detain an individual for a brief investigatory stop. On the night of his arrest, Winkfield was present in a locale that had been the scene of several thefts and he matched the description of the suspect in those criminal acts. These facts alone might not have supported the trial court's ruling; however, his actions, when asked to speak to a police officer must also be considered. Winkfield points out that Terry and its progeny recognize an individual's right to refuse to cooperate and to proceed with his business. Florida v. Bostick, 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991). Nevertheless, that is not a proper characterization of Winkfield's actions when confronted by Huddleston. Rather than declining to speak to the officer or ignoring him, Winkfield fled from the scene on his bike, stated that he was innocent, and ran away on foot after crashing his bicycle while Jared gave chase and commanded him to stop.

> [U]nprovoked flight is simply not a mere refusal to cooperate. Flight, by its very nature, is not "going about one's business"; in fact, it is just the opposite. Allowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual's right

> to go about his business or stay put and remain silent in the face of police questioning.

Illinois v. Wardlow, 528 U.S. 119, 125, 120 S.Ct. 673, 676, 145 L.Ed.2d 570 (2000). Consequently, the trial court correctly determined that Jared and Huddleston conducted a legal stop and search of Winkfield; therefore, he was not entitled to the suppression of any evidence against him.

For the foregoing reason, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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