

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000083-MR

TAIWAN LAMAR WHITE

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE EDWIN M. WHITE, JUDGE
ACTION NO. 02-CR-00137

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: BARBER, SCHRODER, AND TAYLOR JUDGES.

SCHRODER, JUDGE. The sole issue in this case is whether the police had sufficient articulable suspicion to conduct an investigatory stop of appellant who had pulled into three different residential driveways immediately after different police units got behind him. Given the evidence of appellant's evasive behavior in a high crime area late at night, we believe the police lawfully stopped appellant and, thus, affirm.

At around 2:00 a.m. on March 15, 2002, Officer Robert Schneider of the Hopkinsville Police Department got behind a vehicle and observed that the driver, later identified as appellant, Taiwan White, immediately pulled into a driveway and went up to the house. Officer Schneider testified the area in question was a high crime area, but that he did not pay much attention to White because he simply assumed he lived at or was visiting the house. Nevertheless he reported over CB radio what he had observed. Immediately thereafter, Trooper Manzaneres of the Kentucky State Police, who had heard Officer Schneider's report, observed what appeared to be the same car pull into a residential driveway as soon as Manzaneres got behind the car. This second driveway was only two blocks away from the house where White had stopped when he was seen by Officer Schneider. Trooper Manzaneres likewise testified that he observed White get out of his car and walk up to the house, although he did not see whether White knocked on the door or ever went in the house. Trooper Manzaneres then radioed over his CB radio what he had observed. At about this time, Officers Stevens and Pacheco of the Hopkinsville Police Department, who were in the same vicinity and heard the transmissions of Officer Schneider and Trooper Manzaneres, got behind the car in question and observed it immediately turn into a residential driveway, whereupon they activated their police lights and pulled in behind it. At that

point, Officer Stevens got out of his cruiser and smelled the odor of marijuana emanating from White's vehicle. When Officer Schneider, who was part of a K-9 unit, got to the scene, Officer Stevens told him about the marijuana smell. Officer Schneider thereupon ran his canine partner around White's car. The dog alerted, indicating the presence of an illegal substance. A rock of crack cocaine was found in the search of the car, and later another rock of crack cocaine was found on the floor of White's holding cell at the jail.

White was charged with one count of first-degree possession of a controlled substance and one count of tampering with physical evidence. White subsequently filed a motion to suppress the evidence found in the search, arguing that the initial stop of his car was unlawful. After a full hearing on the matter, the court denied the suppression motion. White thereafter entered a conditional guilty plea to the two charged offenses and was sentenced to seven years' imprisonment, reserving the right to appeal the denial of his suppression motion. This appeal followed.

It is undisputed that the police did not observe White commit any crime prior to the stop at issue. Hence, the stop was an investigative stop conducted pursuant to Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). According to Terry, the police may conduct a brief investigatory stop of

an individual when the officer has a reasonable articulable suspicion that criminal activity is afoot. In evaluating the validity of an investigative stop, the reviewing court must consider the totality of the circumstances. United States v. Cortez, 449 U.S. 411, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981). Factual issues surrounding a suppression motion will be reviewed under a clearly erroneous standard, while "the ultimate legal question of whether there was reasonable suspicion to stop . . . is reviewed de novo." Commonwealth v. Banks, Ky., 68 S.W.3d at 347, 349 (2001) (citing Ornelas v. United States, 517 U.S. 690, 116 S. Ct. 1657, 134 L. Ed. 2d 911 (1996)).

An individual's presence in a high crime area, although not by itself sufficient to support a suspicion of criminal activity, is a factor to be considered in assessing the presence of criminal activity. Illinois v. Wardlow, 528 U.S. 119, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000); Banks, 68 S.W.3d 347. Evasive behavior is another factor to be considered in making this assessment. Id.

All four police officers involved in this case testified at the suppression hearing and all four indicated that White's conduct aroused their suspicion because they felt he was pretending to stop at the houses in question in order to evade police. In fact, Officer Stevens testified that he had often observed this type of behavior when a subject was trying to

avoid the police. Police officers are permitted to draw on their own experience and specialized training to make inferences from and deductions about the information available to them.

Cortez, 449 U.S. at 418.

Considering the totality of the circumstances, we believe that the investigative stop was justified. The fact that it was late at night in a high crime area and that White was pulling into different residential driveways immediately after the police appeared behind him suggests that he was, indeed, attempting to evade police. As the Court stated in Wardlow, 528 U.S. at 124, 120 S. Ct. at 676:

Headlong flight— wherever it occurs— is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such.

In his brief, White makes much of the fact that he was not observed violating any laws at the time of his stop. However, the test for a Terry stop is not whether the police can conclude that the individual is engaging in criminal activity, but whether there are reasonable facts to suspect that the individual may be involved in criminal activity. Banks, 68 S.W.3d at 350.

For the reasons stated above, the judgment of the Christian Circuit Court is affirmed.

ALL CONCUR.

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