

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-000938-MR

CEDRIC LAMONT WALKER

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE THOMAS L. CLARK, JUDGE  
ACTION NO. 02-CR-00199

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \*

BEFORE: JOHNSON, TAYLOR AND VANMETER, JUDGES.

JOHNSON, JUDGE: Cedric Lamont Walker has appealed from a final judgment and sentence of the Fayette Circuit Court entered on April 3, 2003, which, following Walker's conditional pleas of guilty to trafficking in a controlled substance in the first degree,<sup>1</sup> and as being a persistent felony offender in the first degree (PFO I),<sup>2</sup> sentenced Walker to ten years' imprisonment in

---

<sup>1</sup> Kentucky Revised Statutes (KRS) 218A.1412.

<sup>2</sup> KRS 532.080(3).

accordance with the Commonwealth's recommendations. Having concluded that the trial court did not err by denying Walker's motion to suppress evidence against him, we affirm.

On February 19, 2002, a Fayette County grand jury indicted Walker on one count of trafficking in a controlled substance in the first degree, one count of endangering the welfare of a minor,<sup>3</sup> one count of possession of marijuana,<sup>4</sup> and for being a PFO I. On February 27, 2002, Walker appeared in Fayette Circuit Court and entered pleas of not guilty to all of the charges in his indictment.

Approximately one month later, Walker filed a motion to suppress all of the evidence that had been obtained against him. Walker argued that the traffic stop which led to his arrest had been initiated "in violation of the search and seizure provisions of the Kentucky and United States Constitutions." On April 30, 2002, after a suppression hearing had been held, the trial court entered an order denying Walker's motion to suppress, finding that the initial traffic stop was not unconstitutional. On June 7, 2002, counsel for Walker made an oral motion to suppress the evidence against him. A second suppression hearing was held on August 27, 2002. Our review of the record of that hearing reveals the following.

---

<sup>3</sup> KRS 530.060.

<sup>4</sup> KRS 218A.1422.

In late November 2001, officers from the Lexington Police Department were attempting to execute a search warrant on a house and a vehicle. When the officers approached the vehicle, which was parked near the house, and asked two men to step out of the vehicle, the driver started the car and quickly sped out of the driveway. The officers took down the license plate number of the vehicle and its general description, but were unable to locate the vehicle on that particular evening.

On December 21, 2001, Detective Edward Hart and Sergeant Shane Ensminger of the Lexington Police Department stopped a vehicle matching the description of the car that had been involved in the prior fleeing incident. Demetric Thomas was the driver of this vehicle, Walker was riding in the passenger seat, and Walker's son, who was eight-years-old at the time, occupied the back seat of the car. The officers soon determined that Thomas was driving on a suspended license and that he had two outstanding arrest warrants. As a result, Thomas was placed under arrest and was eventually transported from the scene.

After asking Walker and his son to exit the vehicle, Det. Hart and Sgt. Ensminger began a search of the automobile's passenger compartment incident to Thomas's arrest. Both Det. Hart and Sgt. Ensminger testified that they discovered a marijuana roach in the ashtray, near the front seat of the car.

Both officers also testified that as they were searching the passenger compartment of the vehicle, they observed Walker positioning his son in front of Walker's person, in what appeared to be an attempt to shield a portion of Walker's body from the officers' line of sight.

Det. Hart and Sgt. Ensminger further stated that they observed Walker placing a piece of wadded up tissue paper into his son's coat pocket. The officers testified that Walker's son tried to prevent Walker from placing the tissue paper into his coat pocket, and that both Walker and his son were acting nervously. Upon searching the coat pocket of Walker's son, the officers seized the tissue paper, which contained approximately 1.4 grams of crack cocaine. Walker was then placed under arrest. A further search of Walker's person revealed a small amount of marijuana and \$253.00 in cash.

After hearing the evidence and considering the memoranda submitted by both parties, the trial court, on November 5, 2002, entered an order denying Walker's motion to suppress. Following the denial of his motion to suppress, Walker elected to accept the Commonwealth's plea offer, and entered conditional pleas of guilty to one count of trafficking in a controlled substance in the first degree and to being a PFO I, while preserving his right to appeal the denial of his motion to suppress.

In exchange for Walker's conditional guilty pleas, the Commonwealth agreed to recommend that the endangering the welfare of a minor charge, and the possession of marijuana charge be dismissed. In addition, the Commonwealth agreed to recommend that Walker be sentenced to five years' imprisonment on the trafficking in a controlled substance in the first degree conviction, which would then be enhanced to ten years' imprisonment pursuant to his PFO I conviction. On April 3, 2003, the trial court followed the Commonwealth's recommendation and sentenced Walker to ten years' imprisonment. This appeal followed.

Walker's sole argument on appeal is that the search of his son's person was unconstitutional, and that the trial court therefore erred by denying his motion to suppress.<sup>5</sup> Walker claims to have standing to challenge the constitutionality of the search of his son's person, and he further claims that the arresting officers did not have probable cause to search his son's person. We find Walker's argument to be unpersuasive.

Assuming, arguendo, that Walker has standing to challenge the constitutionality of the search in question, we hold that Det. Hart and Sgt. Ensminger had probable cause to conduct a full search of Walker's son's person. A full, warrantless search of an individual's person must be supported

---

<sup>5</sup> Walker has not challenged the trial court's determination that the initial traffic stop was not unconstitutional.

by probable cause.<sup>6</sup> The test for probable cause is based on a "totality of the circumstances" approach,<sup>7</sup> which simply asks whether "there is a fair probability that contraband or evidence of a crime will be found in a particular place."<sup>8</sup> In Texas v. Brown,<sup>9</sup> the United States Supreme Court discussed the basic principles and "flexible" nature of the probable cause standard:

As the Court frequently has remarked, probable cause is a flexible, common-sense standard. It merely requires that the facts available to the officer would "warrant a man of reasonable caution in the belief," that certain items may be contraband or stolen property or useful as evidence of a crime; it does not demand any showing that such a belief be correct or more likely true than false. A "practical, nontechnical" probability that incriminating evidence is involved is all that is required. Moreover, our observation in United States v. Cortez, 449 U.S. 411, 418, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981), regarding "particularized suspicion," is equally

---

<sup>6</sup> See Ybarra v. Illinois, 444 U.S. 85, 91, 100 S.Ct. 338, 342, 62 L.Ed.2d 238 (1979)(noting that even though the police had a valid warrant to search the bar, since the warrant did not authorize a search of Ybarra's person, the police needed probable cause "particularized with respect to Ybarra" in order to conduct a full search of his person).

<sup>7</sup> Illinois v. Gates, 462 U.S. 213, 230, 103 S.Ct. 2317, 2328, 76 L.Ed.2d 527 (1983). Although the Gates decision discusses probable cause in the context of search warrants issued by judges and/or magistrates, this Court has recognized that the "totality of the circumstances" test also applies when police officers conduct warrantless searches in the field. See Whisman v. Commonwealth, Ky.App., 667 S.W.2d 394, 397 (1984)(holding that "[s]urely if a judge may use the totality of circumstances approach to find probable cause in a search warrant, the police should be able to use the same approach in warrantless searches").

<sup>8</sup> Gates, supra at 238.

<sup>9</sup> 460 U.S. 730, 742, 103 S.Ct. 1535, 1543, 75 L.Ed.2d 502 (1983). See also Dunn v. Commonwealth, Ky.App., 689 S.W.2d 23, 28 (1985)(quoting the above discussion from Brown).

applicable to the probable cause requirement  
[citations omitted]:

"The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same--and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement."

Under the facts of the case sub judice, Det. Hart and Sgt. Ensminger clearly had probable cause to conduct a search of Walker's son's person.

The relevant facts are not in dispute. After Thomas was arrested, Det. Hart and Sgt. Ensminger searched the passenger compartment of the vehicle and discovered marijuana in the ashtray near the front seat. Both officers observed Walker and his son acting nervously while standing outside of the vehicle. Both Det. Hart and Sgt. Ensminger also observed Walker positioning his son in front of him, in what the officers described as an attempt to shield Walker's person from the officers' line of sight. Both officers observed Walker placing the tissue paper in his son's coat pocket, which was apparently against his son's wishes. Finally, Det. Hart testified that

based on his experience as a narcotics detective, suspects will often times place drugs on a child's person in an attempt to avoid detection.

Hence, based on the "totality of the circumstances," Det. Hart and Sgt. Ensminger were justified in their belief that there was "a fair probability that contraband or evidence of a crime [would] be found in" the coat pocket of Walker's son. Therefore, the officers had probable cause to conduct a full search of Walker's son's person. Accordingly, the trial court did not err by denying Walker's motion to suppress.

Based on the foregoing, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Alicia A. Sneed  
Lexington, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III  
Attorney General

John R. Tarter  
Assistant Attorney General  
Frankfort, Kentucky