

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-001060-MR

RONNIE LEE ROBINSON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE SHEILA R. ISAAC, JUDGE  
ACTION NO. 02-CR-00145

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: JOHNSON, TAYLOR AND VANMETER, JUDGES.

JOHNSON, JUDGE: Ronnie Lee Robinson has appealed from a final judgment and sentence of the Fayette Circuit Court entered on April 22, 2003, following his conditional guilty pleas to one count of trafficking in a controlled substance in the first degree,<sup>1</sup> to one count of tampering with physical evidence,<sup>2</sup> and to being a persistent felony offender in the second degree (PFO

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

<sup>2</sup> KRS 524.100.

II).<sup>3</sup> Having concluded that the Fayette Circuit Court did not err by denying his motion to suppress evidence, we affirm.

Detective Keith Ford and Sergeant Mark Simmons, two of the officers who arrested Robinson, testified at the suppression hearing held on February 27, 2002. Both officers stated that at approximately 10:00 p.m. on December 20, 2001, they were among the officers of the narcotics unit of the Lexington Police Department who were conducting a "roving patrol" of "hot spots" for drug activity. As Det. Ford and Sgt. Simmons drove past a vacant lot on the corner of Georgetown Street and Roosevelt Boulevard, they observed two men, approximately 30-40 yards away, engaged in what appeared to be some type of hand-to-hand transaction. According to the officers' testimony, they quickly circled around the block and returned to investigate. The officers observed the two men leave the scene and part company. Robinson went north on Georgetown Street and the other man went south.

After the officers exited their car, Det. Ford called out to Robinson and requested that he come and speak with the officers. According to Det. Ford, Robinson continued to walk away. Det. Ford testified that he noticed something cupped in Robinson's hand that appeared to be one half of a sheet of paper or a paper towel that had been wadded up into a ball. Det. Ford

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

then broke into a jog to catch up with Robinson. At this point, Det. Ford was approximately ten to 20 feet away from Robinson, and Sgt. Simmons was about ten yards away from Robinson. Both officers saw Robinson place the item that he was carrying in his hand into his mouth. Det. Ford ran in front of Robinson, stopped him, and ordered him to open his mouth. Det. Ford observed that Robinson was chewing the item in an exaggerated manner and he noticed what appeared to be cocaine residue on Robinson's face between his chin and lips. According to Sgt. Simmons, the officers repeatedly ordered Robinson to spit out the item, but Robinson refused.

Det. Ford and the other officers forced Robinson to the ground and applied what Det. Ford and Sgt. Simmons referred to as "pressure point techniques" in an effort to prevent Robinson from chewing and swallowing the item. Eventually, Robinson opened his mouth and Det. Ford attempted to scoop out the item, which was in a plastic bag. The bag broke and Robinson coughed out a small quantity of granular cocaine. Det. Ford testified that at this point he arrested Robinson based on probable cause that Robinson had committed a drug offense.<sup>4</sup>

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<sup>4</sup> The officers summoned an ambulance and Robinson was transported to a hospital. Det. Ford accompanied Robinson in the ambulance. Once the emergency medical technicians had stabilized Robinson, Det. Ford read Robinson his rights pursuant to Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Det. Ford asked Robinson how much of the cocaine he had managed to swallow and Robinson estimated that he had swallowed about \$200.00 worth of crack. Det. Ford testified that based on

Both Det. Ford and Sgt. Simmons testified that based on Robinson's chewing and his refusal to spit out the suspected contraband, they believed he was trying to destroy evidence by ingesting the cocaine. Both officers testified that on several prior occasions they had witnessed suspects who had attempted to swallow drugs in order to destroy evidence. Sgt. Simmons testified that in the recent past, he had witnessed an individual die as a result of ingesting cocaine in an attempt to destroy the drugs. The officers further testified that not only were they concerned that Robinson was trying to destroy evidence, but they were also very concerned for Robinson's safety since ingesting cocaine could cause cardiac arrest.

A Fayette County grand jury indicted Robinson for trafficking in a controlled substance in the first degree, for tampering with physical evidence, and for being a PFO II. Robinson filed a motion to suppress the cocaine seized by the officers contending that it was the fruit of an illegal, warrantless search. At the suppression hearing, Robinson argued that the police had violated his Fourth Amendment right to be free from unreasonable searches and seizures. While Robinson conceded that the officers had reasonable, articulable suspicion

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his experience, \$200.00 worth of crack would be about 3.5 grams, which is sometimes referred to as an "eight-ball."

pursuant to Terry v. Ohio,<sup>5</sup> to conduct an investigatory stop, he argued that the officers lacked probable cause to conduct a warrantless search. Robinson further argued that the doctrine of exigent circumstances did not apply since the officers created the danger and the risk that he would swallow the cocaine.

The Fayette Circuit Court denied Robinson's motion to suppress evidence without making any written or oral factual findings.<sup>6</sup> Robinson then accepted the Commonwealth's plea offer and entered a conditional guilty plea. Pursuant to the plea agreement, Robinson pled guilty to one count of trafficking in a controlled substance in the first degree, to one count of tampering with physical evidence, and to being a PFO II. Consistent with the plea agreement, the trial court sentenced Robinson to five years' imprisonment for his trafficking conviction, which was enhanced to ten years' imprisonment pursuant to the PFO II conviction. The one-year sentence for tampering with physical evidence was ordered to run concurrently with the ten-year sentence. This appeal followed.

Robinson claims that the trial court erred by denying his motion to suppress evidence. As noted by Robinson, a warrantless search is presumed to be unreasonable and a

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<sup>5</sup> 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

<sup>6</sup> Robinson has not argued that the trial court erred by not rendering specific findings of fact on the record.

violation of the Fourth Amendment. Robinson cites Terry, supra, United States v. Place,<sup>7</sup> and Minnesota v. Dickerson,<sup>8</sup> and acknowledges that an officer may conduct a warrantless, investigatory stop of a person if the officer has reasonable, articulable suspicion that the individual is engaged in criminal activity. However, he argues that since neither Det. Ford nor Sgt. Simmons articulated any specific reason as to why they believed Robinson was engaged in criminal activity, they lacked the requisite reasonable, articulable suspicion to justify an investigatory stop. Furthermore, Robinson contends that Det. Ford testified that he did not have probable cause for a warrantless search until Robinson coughed out the cocaine that was in his mouth.

When an appellate court reviews a trial court's ruling on a motion to suppress, it must first determine whether the trial court's factual findings were supported by substantial evidence. If supported by substantial evidence, the factual findings are conclusive.<sup>9</sup> The appellate court must next conduct a de novo review of the trial court's application of the law to

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<sup>7</sup> 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983).

<sup>8</sup> 508 U.S. 366, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993).

<sup>9</sup> Kentucky Rules of Criminal Procedure (RCr) 9.78.

the facts to determine whether the trial court's legal conclusions are correct.<sup>10</sup>

As we previously noted, when the trial court denied Robinson's suppression motion it did not enter into the record any findings of facts as required by RCr 9.78. The Supreme Court addressed a similar issue in Coleman v. Commonwealth:<sup>11</sup>

Although we agree that written findings greatly facilitate appellate review, and we recognize that it is sometimes difficult to discern the basis for a trial court's ruling from on-the-record free-form analysis, we do not believe this is a case where we are "left in the dark" as to the basis for the trial court's ruling. Appellant offered no evidence to contradict the Commonwealth's evidence at the hearing, and, in his brief to this Court, Appellant does not contest the factual testimony at the hearing [footnote omitted].

Despite the lack of written or even oral factual findings, the videotape record of the suppression hearing is sufficient for this Court to review the trial court's denial of Robinson's suppression motion.

The officers' undisputed testimony at the suppression hearing was as follows. Robinson and another man were engaged in what appeared to be a hand-to-hand transaction in an area known for high incidents of drug activity, at 10:00 p.m. When the officers went to investigate, Robinson and the other man

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<sup>10</sup> Commonwealth v. Neal, Ky.App., 84 S.W.3d 920, 923 (2002).

<sup>11</sup> Ky., 100 S.W.3d 745, 749 (2002).

left the scene and parted company, thus making it more difficult to approach either of the two. The officers then observed Robinson take what appeared to be a wad of paper and place it in his mouth. Robinson continued to walk away from the officers and ignored repeated requests by the officers to stop. Based on these facts, we conclude that the officers had reasonable, articulable suspicion to believe that Robinson engaged in criminal activity. Thus, the investigatory Terry stop was proper.

After stopping Robinson, Det. Ford observed Robinson chewing in an exaggerated manner and he also noticed what appeared to be cocaine residue on Robinson's face.<sup>12</sup> These additional facts clearly gave the officers probable cause to believe not only that Robinson had been engaged in drug trafficking, but that he was also attempting to destroy evidence. Thus, this information allowed the officers to conduct a search pursuant to the exigent circumstances exception to the warrant requirement.<sup>13</sup>

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<sup>12</sup> While Det. Ford may have stated during cross-examination that he did not believe he had probable cause to arrest Robinson at this time, his testimony clearly shows that he had probable cause to conduct a warrantless search based on exigent circumstances.

<sup>13</sup> Commonwealth v. McManus, Ky., 107 S.W.3d 175, 177 (2003) (citing Cormney v. Commonwealth, Ky.App., 943 S.W.2d 629, 633 (1996)) (stating that the "[d]estruction of evidence is a recognized exigent circumstance creating an exception to the warrant requirement").

Considering the evidence introduced at the suppression hearing, it would have been reasonable for the trial court to have found that Det. Ford and Sgt. Simmons had probable cause to suspect that Robinson was engaged in drug trafficking and was attempting to destroy drug evidence. Under these exigent circumstances, the officers' warrantless search of Robinson did not violate his Fourth Amendment right to be free from unreasonable searches and seizures.

Finally, both state and federal courts have recognized that the Fourth Amendment does not prevent an officer from making a warrantless search when he or she reasonably believes that an individual is in need of immediate aid.<sup>14</sup> Det. Ford testified that his main concern was for Robinson's safety and welfare, since ingesting cocaine creates a risk of cardiac arrest. Likewise, Sgt. Simmons testified that he was concerned that Robinson might die from ingesting the cocaine. Thus, it would have also been reasonable for the trial court to have found that the officers reasonably believed that Robinson's life was in danger if he were allowed to swallow the drugs. Accordingly, the trial court did not err by denying Robinson's motion to suppress.

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<sup>14</sup> Hughes v. Commonwealth, Ky., 87 S.W.3d 850, 852 (2002) (citing Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978)). See also Gillum v. Commonwealth, Ky.App., 925 S.W.2d 189 (1995).

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

ALL CONCUR.

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