

RENDERED: October 8, 2004; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002062-MR

DON DURRELL CARTER

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LAURANCE B. VANMETER, JUDGE
ACTION NO. 03-CR-00472-002

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM, DYCHE, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Don Durrell Carter (Carter) appeals his conviction for possession of cocaine based on a conditional guilty plea reserving the right to appeal the trial court's denial of a motion to suppress evidence (cocaine) obtained from a search incident to an arrest. Carter contends the stop was

unlawful. Based on the totality of the circumstances, we opine the trial court did not err and we affirm.

Close to 3:00 a.m. on March 18, 2003, a radio call for additional officer assistance was issued from the Withrow Way - Grinstead Road area in Lexington, Kentucky. Officer Curtsinger had attempted to stop two persons concerning a stolen car. The two ran away and were briefly chased on foot by Curtsinger on Breckinridge Street, toward Withrow Way, but they got away. Officer Curtsinger requested assistance for finding two men in a dark gray car traveling away at a high rate of speed. Officer Hilton Hastings heard the call. He was a short distance from Withrow Way and proceeded to the area. Shortly after hearing the call for assistance, Officer Hastings observed a 1985 gray Buick traveling at what he considered a high speed, on Withrow Way. There was no other traffic or persons in the Withrow Way area and Officer Hastings activated his lights and stopped the vehicle. There were four men in the car including Carter. After stopping Carter, Officer Hastings checked Carter's identification and learned of an outstanding warrant. Carter was arrested on the warrant and a search incident to the arrest revealed crack cocaine in Carter's pocket.

Carter's motion to suppress contended that the stop was unlawful because Officer Hastings did not have a reasonable, articulable basis for believing that the two men in the car, and

the car itself, were the ones Officer Curtsinger was looking for. The trial court disagreed, indicating that in light of the fact that Officer Hastings was responding to a request for assistance in a pursuit, seconds later the Officer observes a gray car coming from the area, the lack of other traffic, the speed of the car, the hour, and the fact that Withrow Way only had one way out, all contributed to the Officer having a reasonable and articulable suspicion for the stop.

On appeal, Carter contends the trial court erred by denying his motion to suppress because the officer made an unlawful stop of his vehicle. We disagree. "The existence of a reasonable articulable suspicion or probable cause is based on an analysis of all the facts and the totality of the circumstances." (citations omitted.) Stewart v. Commonwealth, Ky. App., 44 S.W.3d 376, 379-380 (2000). A trial court must consider all relevant factors, even factors that might appear to be entirely innocuous. United States v. Arvizu, 534 U.S. 266, 122 S. Ct. 744, 151 L. Ed. 2d 740 (2002).

Our standard of review of a circuit court's decision on a suppression motion following a hearing is twofold. First, the factual findings of the court are conclusive if they are supported by substantial evidence. The second prong involves a *de novo* review to determine whether the court's decision is correct as a matter of law. Kentucky has adopted the standard of review approach articulated by the Supreme Court in *Ornelas v. United States*, [517 U.S. 690, 116 S. Ct.

1657, 134 L. Ed. 2d 911 (1996)] where the Court said that:

[A]s a general matter determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal. Having said this, we hasten to point out that a reviewing court should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers. (citations omitted.)

Stewart, 44 S.W.3d at 380.

We agree with the trial court that Officer Hastings had a reasonable articulable basis for the stop. The call for assistance was by another officer that simply described two men in a gray car fleeing on Withrow Way. That information, combined with the totality of the circumstances, including the fact that to exit Withrow Way, one had to pass Officer Hastings, that there was no other traffic in the area, that the gray car observed was believed to be going at a high speed, and the fact that Officer Hastings made these observations within seconds of receiving the call for assistance, gave Officer Hastings a legal basis for stopping the car.

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

ALL CONCUR.

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