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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002563-MR

DEMARCUS HOLLINGSWORTH

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT
HONORABLE WILLIAM T. JENNINGS, JUDGE
ACTION NO. 03-CR-00007

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: DYCHE, KNOPF, AND TACKETT, JUDGES.

TACKETT, JUDGE: Demarcus Hollingsworth appeals from an order of the Madison Circuit Court overruling his motion to suppress evidence and statements taken from him after his arrest.

Hollingsworth contends that officers lacked probable cause to arrest him without a warrant. Probable cause to arrest Hollingsworth existed after officers were able to corroborate

tips predicting his future behavior. Thus, the judgment of the Madison Circuit Court is affirmed.

In November 2002, the Richmond Police Department received a report from Towana Kavanaugh reporting that Hollingsworth was involved in drug-related activities. Kavanaugh was the girlfriend of Hollingsworth and they had a child in common. Two days after her initial contact with police, Kavanaugh called Detective Danny McGuire to inform him that she and Hollingsworth were en route from Lexington to Richmond and that Hollingsworth had cocaine on his person. She described the car they were driving and gave McGuire her address where they would be arriving shortly. According to Kavanaugh, the cocaine was in the pocket of Hollingsworth's coat.

When Kavanaugh and Hollingsworth arrived, McGuire was waiting for them with another officer. They approached and asked Hollingsworth his name, noting that he seemed nervous. Hollingsworth refused to give officers permission to search him, but Kavanaugh allowed a search of her car which turned up nothing. McGuire decided to place Hollingsworth in custody and a transport unit was requested at 4:42 p.m. Hollingsworth was handcuffed and patted down for weapons. Neither weapons nor drugs were found. At the police station, Hollingsworth was kept in an interrogation room with an officer supervising him while McGuire sought a search warrant for his arrest. McGuire

testified at the suppression hearing that Hollingsworth was not free to leave.

A search warrant was obtained around 6:30 p.m. Officers found 4.25 grams of cocaine in Hollingsworth's underwear. Hollingsworth disputed the amount of cocaine found. He was indicted for first-degree possession and being a persistent felony offender in the second degree. After the trial court denied his motion to suppress the evidence from the search, Hollingsworth entered a conditional guilty plea. He was sentenced to five years' imprisonment, and this appeal followed.

On appeal, Hollingsworth argues that the trial court erred in denying his suppression motion because he was arrested without probable cause. He agrees with the Commonwealth's assertion that the police had a reasonable suspicion sufficient to justify a brief, investigative detention under Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). However, Hollingsworth contends that Kavanaugh's tip did not provide probable cause that he was involved in criminal activity which would be required to effect a warrantless arrest. The facts in this situation closely resemble the fact pattern in a recent Kentucky Supreme Court decision, Williams v. Commonwealth, 147 S.W.3d 1 (Ky. 2004).

In Williams, a confidential informant called police and told them a black male named Jermaine (Williams) would be

driving a blue El Camino with grey primer spots to pick up another black man, Jason Burdette, at Burdette's apartment. Williams would be carrying a large quantity of crack cocaine concealed in his buttocks. Officers set up surveillance of Burdette's apartment, stopped Williams and searched his car with his permission. They found nothing incriminating; nevertheless, they handcuffed Williams and took him into Burdette's apartment. Williams denied having any drugs or weapons on his person. Officers performed a body search and found the hidden crack cocaine. Williams challenged the warrantless search which was upheld by the trial court, Court of Appeals, and Kentucky Supreme Court.

The Court found that officers had reasonable suspicion to stop Williams based on the tip from the informant. Even though no contraband was discovered after the consensual search of his car, the officers had probable cause to believe Williams was carrying out a crime. The Court defined "probable cause" as follows:

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. Furthermore, this Court has recently stated

that when probable cause is based in part on a tip from an informant, the "totality of the circumstances test requires a balancing of the relative indicia of reliability accompanying an informant's tip.

Williams at 7-8. (Citations omitted.) Not only did officers have probable cause to believe that Williams was carrying drugs, they had even more reason to suppose he would destroy them if he were not restrained while they sought a warrant. There is no doubt that Hollingsworth would have disposed of the cocaine on his person if he were left unsupervised while police sought a search warrant.

The Court placed additional weight on the fact that the informant in Williams gave information predicting his future acts. Although Kavanaugh may not have been a known informant, she had contacted the police regarding Hollingsworth's drug activities multiple times. On the day Hollingsworth was arrested, Kavanaugh was able to predict his future activities (traveling from Lexington to her home in Richmond) and give other information which McGuire could independently corroborate, such as the description of her car. Moreover, unlike in Williams, officers knew exactly what the basis of Kavanaugh's information was because she stated that she was traveling with him. Thus, her information possessed an additional indication of reliability. The Court's previous holding in Williams compels us to find that the officers who arrested Hollingsworth

had probable cause to suspect that he was committing a felony. Consequently, the evidence they obtained after executing the search warrant would have been admissible at trial.

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

KNOPF, JUDGE, CONCURS.

DYCHE, JUDGE, DISSENTS WITHOUT SEPARATE OPINION.

BRIEF FOR APPELLANT:

Randall L. Wheeler
Assistant Public Advocate
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Wm. Robert Long, Jr.
Assistant Attorney General
Frankfort, Kentucky