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NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2003-CA-002727-MR

ERIC SPRINGER

APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT  
HONORABLE JOHN T. DAUGHADAY, JUDGE  
ACTION NO. 02-CR-00206

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
VACATING AND REMANDING

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BEFORE: SCHRODER, TAYLOR, AND VANMETER, JUDGES.

SCHRODER, JUDGE: This appeal questions whether a pat down search of a passenger in a car was lawful when the car was stopped for traffic violations only and there was no evidence that the passenger was armed or dangerous. We adjudge that the pat down search was not justified under the facts of this case. Accordingly, we vacate the judgment entered pursuant to the

conditional guilty plea and remand the matter for further proceedings.

On the evening of March 4, 2002, Officer Shannon Keller of the Mayfield Police Department was on patrol and observed a vehicle that appeared to have no license plate and had a broken taillight. Officer Keller stopped the vehicle and informed the driver, Tessa Burns, of the improper equipment. Burns explained that the license plate was displayed on the back dashboard, which was thereupon confirmed by Officer Keller. Keller then asked Burns to exit the car so he could show her the broken taillight. At that point Keller noticed some empty beer cans on the floorboard of the back seat and asked Burns if he could search the car. Burns consented to the search.

Prior to searching the car, Keller asked the front seat passenger, Eric Springer, to exit the vehicle. Upon exiting the car, Keller conducted a pat down search of Springer. Officer Keller testified that in conducting the search, he felt several unidentifiable objects in Springer's right front pants pocket, and asked Springer what they were. Springer refused to answer. At that point, Keller testified that he noticed the corner of a blue felt bag sticking out of the same pants pocket. Keller then grabbed the bag and pulled it out of Springer's pocket. When asked why he pulled the bag out of Springer's pocket, Keller stated, "I reached in there, because I thought

. . . actually I didn't reach in there, I grabbed it from the outside because I thought it might have been some weapon, some stabbing device. It could have been anything. I didn't know." It is undisputed that the bag in question contained a metal pipe, some marijuana, a screw driver, some empty baggies, and a wire screen.

Burns was not cited for the traffic violations for which she was stopped and, according to Officer Keller, the search of her car yielded "nothing of interest". However, as a result of the pat down search of Springer, Springer was charged with possession of drug paraphernalia, second or subsequent offense, misdemeanor possession of marijuana, and persistent felony offender in the second degree. Springer moved to suppress the evidence obtained in the pat down search, and the court held a full hearing on the motion. After the court denied the suppression motion, Springer entered a conditional guilty plea to possession of drug paraphernalia and possession of marijuana. Springer was sentenced to one year on each offense, to be served concurrently. Springer now appeals, contending that the trial court erred in denying his suppression motion.

The 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 supported by substantial evidence; and second, the reviewing court conducts a

*de novo* review to determine whether the trial court's decision is correct as a matter of law. Adcock v. Commonwealth, 967 S.W.2d 6, 8 (Ky. 1998). The facts in this case are largely not in dispute.

The first issue before us is whether, under the facts, Officer Keller was justified in conducting a pat down search of Springer. The trial court found that Keller had probable cause to stop the vehicle and thereafter conduct the pat down search of Springer.

In Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), the United States Supreme Court recognized an exception to the warrant requirement for investigatory stops and limited pat down searches of suspects. When there is a reasonable suspicion that criminal activity is afoot, a police officer may briefly detain an individual on the street, even though there is no probable cause to arrest him. Id. at 30-31, 20 L. Ed. 2d at 911. Also, "[w]hen an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or others," the officer may conduct a pat down search "to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm." Id. at 24, 20 L. Ed. 2d at 908. The permissible scope of such a pat down search is limited to that which is necessary to discover

weapons which might be used to harm the officer or others nearby. The narrow scope of the Terry exception does not permit a frisk for weapons based on less than a reasonable belief or suspicion directed at the person to be frisked. Ybarra v. Illinois, 444 U.S. 85, 100 S. Ct. 338, 62 L. Ed. 2d 238 (1979).

In the final analysis, the test is whether the facts available to the officer at the moment of the search, would warrant a person of reasonable caution to believe the suspect may have a weapon.

Dockstader v. Commonwealth, 802 S.W.2d 149, 150 (Ky. App. 1991).

When asked during the suppression hearing why he wanted to search the vehicle, Officer Keller responded, "because I found open alcoholic beverage containers, we are in a high crime rate area with a lot of assaults, shots fired, and a lot of drug activity, and as a matter of fact, we was at the corner of a house at which we arrested a man for bootlegging." When asked if Officer Keller's immediate reaction upon ordering someone out of a vehicle was to conduct a pat down search of the individual, Keller stated, "Yes. You take anybody as a threat. You don't have control of it at the time." Hence, the sole reason Springer was searched was because he was in a high crime area.

While we recognize that police need to take measures to insure their safety during traffic stops, the officers must

still "be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion" of a pat down search.

Terry, 392 U.S. at 21, 20 L. Ed. 2d at 906. And merely being in a high crime area is not, in itself, sufficient justification to conduct a pat down search of a passenger in a car. See Ybarra, 444 U.S. at 92-93, 62 L. Ed. 2d at 246-47.

In this case, there was no reason to believe that Springer was armed or dangerous. There was no evidence presented that Springer or even Burns was acting suspicious at any time prior to or during the stop. When the officer asked Springer to step out of the car, which the officer was entitled to do, see Maryland v. Wilson, 519 U.S. 408, 117 S. Ct. 882, 137 L. Ed. 2d 41 (1997), Springer complied. The corner of the blue felt bag sticking out of Springer's pocket was not observed by Keller until he had already begun the pat down search, and the corner of such a bag would not, in itself, suggest a weapon or any other type of contraband. The car in which Springer was riding was stopped for traffic offenses only, and the open beer cans observed in the back of the car did not constitute evidence of any violent criminal activity. Accordingly, Officer Keller did not have sufficient grounds to conduct the pat down search of Springer.

For the reasons stated above, the judgment of the Graves Circuit Court is vacated and the matter remanded for further proceedings consistent with this opinion.

ALL CONCUR.

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