

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000616-MR

DARRELL LAMONT DAMONS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
INDICTMENT NO. 03-CR-01009

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE, GUIDUGLI, AND McANULTY, JUDGES.

DYCHE, JUDGE: On December 5, 2002, Darrell Lamont Damons entered a conditional plea of guilty (RCr 8.09) to three amended drug offenses, operating a motor vehicle while under the influence (DUI), and being a persistent felony offender (PFO) in the second degree. His sole issue on appeal is whether the Fayette Circuit Court erred in denying his motion to suppress evidence. Finding no error, we affirm.

The facts leading up to this case are these: When Lexington Police Officer Scott Gibbons pulled into the parking lot of the SuperAmerica on Richmond Road at 1:30 a.m. on June 12, 2003, he noticed Damons coming from around the side of the building. Gibbons also observed a female sitting in the passenger seat of the vehicle which Damons entered. Gibbons then went into the store, where the clerk on duty volunteered that Damons was "f---ed up" and selling drugs.

Gibbons decided to investigate further, especially when, upon exiting the store, he noticed that the female was no longer in Damons' passenger seat. Gibbons followed Damons, who drove on Richmond Road approximately thirty to fifty feet before pulling into another parking lot. As Gibbons entered the parking lot, Damons pulled back out; after Gibbons pulled out of the parking lot, Damons entered it again. Gibbons decided at this point to make a stop. When he reentered the parking lot, Damons jumped out of his vehicle, stating that he could not be charged with DUI because he wasn't driving.

Gibbons immediately smelled alcohol on appellant's breath; he administered several field sobriety tests which Damons failed to pass. After arresting Damons for DUI, Gibbons conducted a search of appellant's person; Damons had six grams of cocaine and three and a half grams of crack cocaine in his pockets. A subsequent search of appellant's vehicle revealed

twenty-seven grams of marijuana. There was a total of \$422 in cash on appellant's person and in his car.

Damons was indicted for possessing the cocaine, crack cocaine, marijuana, and drug paraphernalia, and for DUI and PFO. He moved to suppress the fruits of the search, arguing that the clerk's information was equivalent to that of an anonymous informant and that none of the information was confirmed by the officer's independent observations. See Taylor v. Commonwealth, 987 S.W.2d 302 (Ky. 1998). Without the officer's corroboration, Damon continues, the record does not "establish a reasonable suspicion." See Alabama v. White, 496 U.S. 325 (1990); and Terry v. Ohio, 392 U.S. 1 (1968). The trial court denied the motion to suppress, and Damons entered the conditional plea. He was sentenced to a total of ten years' imprisonment, \$575 in fines and costs, and the evidence seized was ordered forfeited.

On appeal Damons maintains that the trial court erred in denying the motion to suppress, and he reiterates his arguments made before that court. We have examined the record in its entirety and disagree.

An investigatory stop is proper where "specific and articulable facts which, taken together with routine inferences from those facts, reasonably warrant the intrusion." Terry, 392 U.S. at 21. At the suppression hearing Officer Gibbons articulated his suspicions of criminal activity, and the trial

court concluded that those suspicions were reasonable. Id.
Those facts include the hour of the night, appellant's
appearance from the side of the building, the disappearance of
the female passenger, the store clerk's comments, and
appellant's dubious driving behavior. Given the totality of the
circumstances, we hold that the trial court was correct in
finding that the officer's actions were appropriate. RCr 9.78;
Commonwealth v. Whitmore, 92 S.W.3d 76 (Ky. 2003).

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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