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NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court Of Appeals

NO. 2004-CA-000637-MR

GEORGE BROOKS

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE DOUGLAS M. STEPHENS, JUDGE
ACTION NO. 03-CR-00326

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: DYCHE, KNOPF, AND TACKETT, JUDGES.

KNOPF, JUDGE: During a late afternoon in March 2003, a Covington police officer stopped George Brooks as he was walking outside a residence in the Jacob Price housing complex. The officer's pat-down of Brooks revealed a handgun and led to the discovery that Brooks was also in possession of crack cocaine. Brooks was indicted for possession of a controlled substance

while in possession of a firearm.¹ When his motion to suppress the gun and drug evidence was denied, Brooks conditionally pled guilty, and by judgment entered March 1, 2004, the Kenton Circuit Court sentenced him to five years' imprisonment. Brooks appeals the denial of his suppression motion. We affirm.

The officer who stopped Brooks was responding to a radio report of an armed robbery between the first and second lanes at the housing complex. The robber was described as a black male wearing all black and carrying a silver handgun. The officer arrived at the location in less than five minutes and noticed Brooks, who was wearing a dark grey sweat suit with matching pants and jacket. The officer testified at the suppression hearing that the jacket was zipped so that he could not see what Brooks was wearing under it. Brooks testified that the jacket was unzipped and left plainly visible a blue and white football jersey. Believing that Brooks fit the description of the robber, the officer stopped him to investigate and because the robber was said to be armed patted him down for weapons. In the course of the pat-down, a handgun fell from Brooks's waistband.

Noting that police officers are authorized to make investigatory stops only when they have a reasonable suspicion, grounded in specific and articulable facts, that the person to

¹ KRS 218A.1415 and KRS 218A.992.

be stopped has been or is about to be involved in a crime,² Brooks contends that the officer stopped him illegally because there was no reasonable basis to suspect that he was the robber. First, he insists that he did not match the radioed description because his sweat suit was grey rather than black and he was wearing other clothes not black at all.³ The trial court, however, was entitled to credit the officer's testimony that Brooks's outer garments were dark enough to be considered "all black."

Brooks next insists that the radioed description was too general and insufficiently detailed to give rise to the particularized suspicion necessary to justify an investigatory stop. He correctly notes that by themselves proximity to a crime scene or a general clothing description will likely not give rise to a reasonable suspicion. The United States Supreme

² United States v. Hensley, 469 U.S. 221, 105 S. Ct. 675, 83 L. Ed. 2d 604 (1985); Adkins v. Commonwealth, 96 S.W.3d 779 (Ky. 2003).

³ Apparently the officer who interviewed the robbery victim included in her report other details of the robber's description, including an estimate that he was five-foot six-inches tall. Brooks, who is six-foot-one, claims that this discrepancy should have made it apparent that he was not the robber. There was no evidence, however, that the radio report to the officer who stopped Brooks included these additional details. Even if it did, moreover, eyewitness descriptions are seldom perfect. In these circumstances, it would not have been unreasonable for the officer's suspicions to have been aroused even though Brooks did not match the description in every particular. Collier v. Commonwealth, 713 S.W.2d 827 (Ky.App. 1986).

Court has made clear, however, that it is not individual circumstances considered in isolation but rather the totality of circumstances that must be considered when assessing the reasonableness of an investigatory stop.⁴ Here, Brooks's presence in the immediate vicinity of the robbery very soon after it occurred combined with the fact that his outfit matched the description of the robber's gave rise to a reasonable suspicion that justified the officer's decision to investigate.⁵ Because the robber was said to be armed, the officer was justified in prefacing his investigation with a precautionary pat-down.⁶

In sum, the officer's stop-and-frisk of Brooks was reasonable, and thus the trial court did not err by denying Brooks's suppression motion. Accordingly, we affirm the March 1, 2004, judgment of the Kenton Circuit Court.

ALL CONCUR.

⁴ United States v. Cortez, 449 U.S. 411, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981).

⁵ *Cf.* United States v. Crittendon, 883 F.2d 326 (4th Cir. 1989) (holding that mere presence in the vicinity of an apparent burglary justified a stop).

⁶ Adkins v. Commonwealth, *supra*.

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