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Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000771-MR

EVERETT L. LETTERLOUGH — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE
ACTION NO. 03-CR-000809

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BUCKINGHAM, JOHNSON, AND SCHRODER, JUDGES.

JOHNSON, JUDGE: Everett L. Letterlough has appealed from the judgment of conviction and sentence entered by the Jefferson Circuit Court on March 16, 2004, following his conditional plea of guilty to the charges of trafficking in a controlled

substance in the first degree (cocaine),[1] possession of a firearm by a convicted felon,[2] illegal possession of drug paraphernalia while in possession of a firearm,[3] illegal possession of a controlled substance (marijuana) while in possession of a firearm,[4] and being a persistent felony offender in the first degree (PFO I).[5] Having concluded that the trial court's findings of fact in support of its order denying Letterlough's motion to suppress evidence are supported by substantial evidence and that its application of the law to those facts is correct as a matter of law, we affirm.

On January 7, 2003, Detective Mike Brackett of the Jefferson County Sheriff's Office was told by a confidential informant, who he deemed to be reliable, that Letterlough was dealing drugs from Room 129 at the InTown Suites on Wattbourne Lane in Louisville, Kentucky. The confidential informant told Det. Brackett that Letterlough was driving a small, tan, foreign car, but he did not know the make or model of the vehicle. Det. Brackett knew from previous experience that this particular motel was a common location for drug transactions. After

[1] Kentucky Revised Statutes (KRS) 218A.1412.

[2] KRS 527.040.

[3] KRS 218A.500, enhanced by KRS 218A.992.

[4] KRS 218A.1422, enhanced by KRS 218A.992.

[5] KRS 532.080(3).

receiving this information, Det. Brackett performed a criminal background check on Letterlough, which showed several past drug arrests, drug convictions, and "gun involvement."[6] Letterlough had been recently paroled on July 24, 2002, and was residing at an address in Louisville.

Det. Brackett and four other police officers proceeded to InTown Suites to investigate the confidential informant's tip. Upon arriving at the motel at approximately 7:00 p.m., Det. Brackett verified from records at the front desk that Room 129 was registered to Letterlough. Although Det. Brackett did not see a car that matched the description given by the confidential informant, he continued his investigation by setting up surveillance of Room 129.

Approximately 20 minutes later, a car matching the description given by the confidential informant entered the parking lot and parked across from Room 129. Det. Brackett had obtained a physical description of Letterlough through a criminal history report, and the driver of the car matched that description. Once Letterlough was out of his car, Det. Brackett and Detective Troy Pitcock approached him. As the detectives walked toward Letterlough with their police badges displayed, Det. Brackett yelled "Everett," and upon hearing his name, Letterlough looked in the direction of the detectives. Det.

[6] The record is not clear as to the nature of this "gun involvement."

Brackett asked to see Letterlough's driver's license to confirm his identity, but Letterlough claimed his identification was in his motel room.

Det. Brackett testified that Letterlough then consented to a pat down search of his outer garments, but the trial court did not make a factual finding as to this issue. As a result of this pat down, Det. Brackett located a fully loaded .380 caliber automatic pistol in a black holster under Letterlough's jacket. Letterlough was then placed under arrest for being a convicted felon in possession of a firearm. In the search incident to arrest, Det. Brackett discovered 11 pieces of crack cocaine in Letterlough's right jacket pocket, digital scales in his left jacket pocket, and six pieces of individually wrapped crack cocaine along with a small amount of marijuana in his left front pocket. Additionally, Det. Brackett found $1,500.00 in cash in Letterlough's right rear pants pocket and $375.00 in cash in his right front pants pocket.

After Letterlough was placed under arrest, he stated to Det. Brackett that the $1,500.00 was for rent and that he had intended to give the money to his girlfriend, Ivy Allen, who was in Room 129. The detectives escorted Letterlough to Room 129 and Det. Brackett opened the door to the room using the key he had taken from Letterlough's person. Upon entering the motel

room, Det. Brackett saw two crack pipes on the bed next to Allen.[7]

Det. Brackett then asked Letterlough for consent to search the motel room and his vehicle. Letterlough agreed to the search and both he and Allen signed a written consent form. During the search of the motel room, the detectives found some bullets and a motel receipt showing Letterlough had already paid $155.00 for the room for that day. The detectives also found in the motel room's trash can several plastic baggies with their corners removed.[8] The search of Letterlough's vehicle revealed a loaded .38 caliber revolver in the rear floorboard, and numerous live rounds of ammunition in the console, along with an additional $80.00 in cash.

Letterlough was indicted by a Jefferson County grand jury on March 20, 2003, for trafficking in a controlled substance in the first degree (cocaine) while in possession of a firearm,[9] possession of a firearm by a convicted felon, illegal use or possession of drug paraphernalia while in possession of a firearm, illegal possession of a controlled substance (marijuana) while in possession of a firearm, and being a PFO I.

[7] Allen was cited for possession of drug paraphernalia, but failed to appear in court.

[8] Det. Brackett stated this is a common method used by drug dealers to package crack cocaine intended for sale.

[9] KRS 218.1412 and KRS 218A.992.

Prior to the trial date of March 15, 2004, Letterlough filed a motion to suppress from evidence the drugs, money, scales and firearms found on Letterlough's person, in the motel room, and in his car. The motion was based on the alleged warrantless unconstitutional seizure of Letterlough by the detectives.

Following a hearing on January 30, 2004, the trial court denied Letterlough's motion to suppress the evidence in an order entered on February 26, 2004.[10] Thereafter, Letterlough entered into a conditional guilty plea agreement with the Commonwealth, and by judgment entered on March 16, 2004, the trial court convicted Letterlough of trafficking in a controlled substance in the first degree (cocaine), possession of a firearm by a convicted felon, illegal possession of drug paraphernalia while in possession of a firearm, illegal possession of a controlled substance (marijuana) while in possession of a firearm, and being a PFO I. He was sentenced to prison for a total of 17 years to serve. This appeal followed.

Letterlough contends the trial court erred in denying his motion to suppress the evidence because the tip from the confidential informant along with the other information gathered by the detectives was insufficient to support the reasonable and

[10] Honorable Judge Thomas B. Wine presiding.

articulable suspicion of criminal activity required to justify an investigatory stop under Terry v. Ohio.[11] We disagree.

Our standard of review in reviewing a trial court's decision on a motion to suppress evidence is well-established in that we must "first determine whether the trial court's findings of fact are supported by substantial evidence. If they are, then they are conclusive.[12] Based on those findings of fact, we must then conduct a de novo review of the trial court's application of the law to those facts to determine whether its decision is correct as a matter of law."[13] In Ornelas v. United States,[14] the Supreme Court of the United States "recognized that police may draw inferences of illegal activity from facts that may appear innocent to a lay person and that a reviewing court should give due weight to the assessment by the trial court of the credibility of the officer and the reasonableness of the inferences."[15] The presence or absence of reasonable suspicion

[11] 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

[12] Kentucky Rules of Criminal Procedure (RCr) 9.78.

[13] Commonwealth v. Neal, 84 S.W.3d 920, 923 (Ky.App. 2002) (citing Adcock v. Commonwealth, 967 S.W.2d 6, 8 (Ky. 1998); and Commonwealth v. Opell, 3 S.W.3d 747, 751 (Ky.App. 1999)).

[14] 517 U.S. 690, 699, 116 S.Ct. 1657, 1663, 134 L.Ed.2d 911, 920 (1996).

[15] Commonwealth v. Whitmore, 92 S.W.3d 76, 79 (Ky. 2002).

is a question of law to be determined on appeal under a de novo standard of review.[16]

A police officer does not violate either the United States Constitution or the Kentucky Constitution by merely approaching an individual in a public place, by asking him to identify himself, and "by putting questions to him if the person is willing to listen[.]"[17] A police officer may briefly detain an individual in a public place, even though there is no probable cause to arrest him, if there is a reasonable suspicion that criminal activity is afoot.[18] "[A] police officer can subject anyone to an investigatory stop if he is able to point to some specific and articulable fact which, together with rational inferences from those facts, support 'a reasonable and articulable suspicion' that the person in question is engaged in illegal activity" [emphasis original].[19]

Letterlough cites Lovett v. Commonwealth,[20] Alabama v. White,[21] and United States v. Smith,[22] for the proposition that

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[16] Kotila v. Commonwealth, 114 S.W.3d 226, 232 (Ky. 2003) (citing Ornelas, 517 U.S. at 698-99; and Commonwealth v. Banks, 68 S.W.3d 347, 349 (Ky. 2001)).

[17] Florida v. Royer, 460 U.S. 491, 497, 103 S.Ct 1319, 75 L.Ed.2d 229 (1983); Baker v. Commonwealth, 5 S.W.3d 142, 145 (Ky. 1999).

[18] Terry, 391 U.S. at 21.

[19] Simpson v. Commonwealth, 834 S.W.2d 686, 687 (Ky.App. 1992) (citing Terry, 392 U.S. at 21).

[20] 103 S.W.3d 72, 77-78 (Ky. 2003).

[21] 496 U.S. 325, 328, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990).

"[a] confidential informant's tip alone is ordinarily insufficient to establish probable cause if it has not been corroborated by police investigation or supplemented with additional information" [emphasis added]. The case before us is easily distinguishable from Lovett and Smith, since our case concerns reasonable and articulable suspicion to support a Terry stop and not probable cause to support a search warrant. Our case is also easily distinguishable from White since the informant in this case, unlike the one in White, was known to the police officer and was not anonymous.

Letterlough also relies on Adams v. Williams,[23] for the statement that "an informant's tip that has a low degree of reliability requires additional information to establish reasonable suspicion for an investigatory stop." However, in Adams the Supreme Court held that a Terry "stop and frisk" was proper when the police officer acted upon an unverified tip from an informant who was known to the officer personally and who had provided information in the past. Thus, Adams actually supports the Commonwealth's position.

In fact, all of the cases relied upon by Letterlough are easily distinguishable from our case because they either involve a search warrant, a warrantless arrest, or an anonymous

[22] 783 F.2d 648, 650-51 (6th Cir. 1986).

[23] 407 U.S. 143, 146-47, 92 S.Ct. 1921, 1923-24, 32 L.Ed.2d 612 (1972).

tipster. It appears that in arguing these various cases Letterlough is "mixing apples and oranges." While it is correct that information from an anonymous tipster that is not predictive of a person's conduct and is not corroborated is not sufficient to support a Terry stop[24] and that information obtained from a confidential informant may be insufficient to establish probable cause to support a search warrant or a warrantless arrest,[25] it is not correct that information obtained from a reliable, confidential informant when coupled with some independent verification from a police investigation cannot be sufficient to support a Terry stop.[26]

In the case before us, Det. Brackett testified the confidential informant had supplied him with reliable information in one prior criminal case. The detectives also knew from their experience as narcotic investigators that the InTown Suites, where the informant said Letterlough was dealing drugs from Room 129, was known for having high incidents of drug trafficking.[27] The detectives then did a criminal background

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[24] Florida v. J.L., 529 U.S. 266, 271, 120 S.Ct. 1375, 146 L.Ed.2d 254 (2000) (stating that "[t]he anonymous call concerning J.L. provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility").

[25] State v. Rose, 503 So.2d 499, 500 (La. 1986).

[26] Adams, 407 U.S. at 146.

[27] Banks, 68 S.W.3d at 350 (noting that "[i]n Illinois v. Wardlow, 528 U.S. 119, 124, 120 S.Ct. 673, 676, 145 L.Ed.2d 570 (2000), the United States Supreme Court stated that an individual's presence in a high crime area may

check on Letterlough and learned that he had several prior drug convictions and previous gun involvement. The detectives also determined that Letterlough was on parole and he lived at a Louisville address. The detectives then went to the motel where they determined that Letterlough was indeed registered in Room 129. Their surveillance of the motel parking lot allowed them to identify the car the informant said Letterlough would be driving and then to question Letterlough himself.

While certain actions by Letterlough may be as consistent with legal activities as illegal ones, that is not the test.[28] Rather, all that is required is that the "investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity."[29] There is no requirement that the person actually be engaged in criminal activity at the time of the investigatory stop or before that time. The analysis of whether a particular investigatory stop is constitutionally permissible "proceeds with various objective observations,

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be considered as a factor in deciding whether an officer can conduct a Terry stop. However, the mere instance of being in a high crime area, without any more articulable facts is insufficient to justify such a stop").

[28] Baker v. Commonwealth, 5 S.W.3d 142, 146 (Ky. 1999) (stating that "[a]lthough Appellant's conduct prior to the seizure may have been as consistent with innocent activity as with criminal activity, that fact in and of itself did not preclude Officer Richmond from entertaining a reasonable suspicion that criminal activity could have been occurring once Appellant failed to comply with the request to remove his hands from his pockets").

[29] United States v. Cortez, 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981).

information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of lawbreakers. From these data, a trained officer draws inferences and makes deductions – inferences and deductions that might well elude an untrained person."[30] Thus, based on the information the detectives gathered about Letterlough and their inferences and deductions, there was sufficient evidence to support the trial court's factual findings; and the trial court's application of the law concerning an investigatory stop to those facts is correct.

Based on the foregoing, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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[30] Cortez, 449 U.S. at 418.