

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-000823-MR

RAYMOND ALDEN HARRIS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE GARY D. PAYNE, JUDGE  
INDICTMENT NO. 03-CR-01469

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

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BEFORE: BUCKINGHAM, DYCHE, AND GUIDUGLI, JUDGES.

DYCHE, JUDGE: Raymond A. Harris entered a conditional plea of guilty (RCr 8.09) to the charge of possession of a controlled substance, first degree; he was sentenced to one year, enhanced to five years upon the finding that he was a persistent felon, second degree. He appeals from that conviction, arguing that his motion to suppress should have been granted. We disagree, and affirm.

Harris, a Caucasian, "nonchalantly" walked into the green space within a low-income housing project in the predominately African-American section of Lexington near Fourth and Race Streets, at about ten minutes until midnight on October 16, 2003. Although he made no physical contact or other transaction with another person, he was greeted by several African-American males. This aroused the suspicions of the police, who were on routine patrol in this high-crime, prostitution- and drug-infested area.

He proceeded through that area and the officers pursued him. He "jumped on" a pay telephone, and, despite the officers' stated impatience, continued a conversation for a period of time while the officers waited within arm's reach to talk with him about why he was in the area. All this time he had his left hand in his pants pocket, only removing it periodically at the officers' order.

The police finally ordered him to discontinue his phone call, and one officer patted him down to determine if he was armed. He was not, but in the pat-down one officer felt what he described as crack cocaine, he was "99.9% sure." In order to facilitate the further investigation, the officers started to handcuff Harris, at which time he attempted to break and run. He was subdued by the officers, searched, and the

substance proved to be crack cocaine, prompting the present charge.

Upon Harris's motion, the trial court conducted a suppression hearing. Only one person, the arresting officer, testified at the hearing. He said that Harris's presence in that high-crime area, at that time, acting like "he wanted to be noticed" (presumably not by the officers) first attracted his attention. The gathering of the crowd of young men aroused even more suspicion, as did the quick entry into telephonic communication at the approach of the officers. The conversation itself, apparently without substance, provided more fuel to the officers' concerns, as did his constant hiding of his left hand.

It was the finding of the trial court, pursuant to RCr 9.78 and Terry v. U.S., 392 U.S. 1 (1968), that the officers had reasonable suspicion to believe that criminal activity was afoot and that they were dealing with an armed and possibly dangerous individual. In these circumstances, the officers are entitled to draw reasonable inferences from the facts in light of their experience. 392 U.S. 21-22.

Having reviewed the suppression hearing, and considered the applicable law, we must agree with the learned trial judge. The officers were well within their rights to make a limited stop of Harris, and to pat him down to determine if he was armed. The pat-down revealed the presence of what an

experience officer deemed to be contraband, and further investigation and Harris's conduct permitted a more extensive search. We find no constitutional infirmity in the search. The circumstances, Harris's behavior, and the officers' experience and observations were sufficient to merit the limited intrusion into Harris's life. The judgment of the Fayette Circuit Court is affirmed.

BUCKINGHAM, JUDGE, CONCURS.

GUIDUGLI, JUDGE, CONCURS IN RESULT.

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