

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001772-MR

JONATHAN MANDEL RANKIN

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 05-CR-00681

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: ABRAMSON AND VANMETER, JUDGES; KNOPF,¹ SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Appellant Jonathan Rankin entered a conditional guilty plea to possession of cocaine and second degree persistent felony offender. He received a sentence of five years' imprisonment. Rankin argues that the trial court improperly denied his motion to suppress evidence obtained by police from his person during a stop and frisk search. Finding that the stop was reasonable, we affirm.

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Late one night, a Lexington police officer observed Rankin standing on the street corner in an area that is known to law enforcement for numerous drug trafficking complaints and arrests. The officer approached Rankin, who proceeded to walk away in the opposite direction. Rankin then stopped and called out to the officer. The officer asked Rankin what he was doing and where he was headed. Rankin replied that he was going to his house on Hawkins Avenue, but pointed in the opposite direction from his stated destination. Then Rankin said he was going to change a light bulb and pulled a light bulb out of his pocket. While they were talking, the officer noticed a bulge in the left front pocket of Rankin's trousers. The object appeared to be 3 to 4 inches in length and 1 to 2 inches in diameter.

Thinking that the object might be a weapon, the officer advised Rankin that he would conduct a pat down search. Rankin informed the officer that he had a can of mace in his left pocket. When the officer patted down Rankin's right side he noticed two lumps in the front pocket. The officer then patted down the left side and removed the can of mace as well as an individually wrapped lump of crack cocaine. The officer then placed Rankin under arrest and removed two more lumps of crack cocaine from the right pocket.

Rankin was indicted on charges of first degree trafficking in a controlled substance and second degree

persistent felony offender. Rankin filed a motion to suppress the evidence alleging that the stop was an unreasonable search and seizure. The only witness called at the suppression hearing was the arresting officer. Following the hearing, the trial court denied the motion, finding that the search was reasonable given the time of night and the fact that the bulge in Rankin's pants could have been a weapon. Rankin then entered a conditional guilty plea to the reduced charge of possession of cocaine and second degree persistent felony offender. This appeal follows.

Rankin argues that the officer had no reasonable basis to stop him and that the stop constituted an unlawful search and seizure. We disagree.

A trial court's findings of fact with regard to an order denying a motion to suppress will not be disturbed on appeal unless they are clearly erroneous. Commonwealth v. Banks, 68 S.W.3d 347, 349 (Ky. 2001). The ultimate legal question of whether the stop and search was reasonable is reviewed de novo. Id. As noted above, the officer was the only witness at the suppression hearing, so the facts are not at issue.

In Banks, *supra*, the Kentucky Supreme Court set forth the standard for reviewing a stop and frisk search. The test is whether an officer can articulate reasonable facts that criminal

activity may be afoot and that the suspect may be armed and dangerous. Id. at 350, 351 (citing Terry v. Ohio, 392 U.S. 1 (1968)). The probability of criminal conduct is determined by the totality of the circumstances. Id. at 351.

Rankin argues that the officer approached him only because he was in a high crime area. However, the police may freely approach anyone in public areas for any reason. Id. at 350. The seizure did not occur until the officer frisked Rankin. The validity of the search must be based on facts known to the officer at that time. Id.

While mere presence in a high crime area is insufficient to create a reasonable suspicion alone, it may be considered along with other factors. Id. (citing Illinois v. Wardlow, 528 U.S. 119, 124 (2000)). Rankin was in an area known to be a high crime area. Rankin walked away from the officer when he was approached and was behaving oddly; he then turned back on his own to speak to the officer. Rankin gave conflicting statements as to the reason for his presence and his intended destination. The bulge in Rankin's pants further justified the officer's concern that he might be armed. Rankin himself informed the officer that the bulge was a can of mace, a potential weapon. We find that under the totality of circumstances the officer had a reasonable suspicion that criminal activity was afoot and that Rankin may have been armed

and dangerous. The trial court properly denied the motion to suppress.

Accordingly, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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