

RENDERED: AUGUST 15, 2008; 2:00 P.M.
NOT TO BE PUBLISHED

SUPREME COURT ORDERED OPINION NOT PUBLISHED:
FEBRUARY 11, 2009
(FILE NO. 2008-SC-0668-D)

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001571-MR

JEFFEREY CHARLES MORRIS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE PAMELA R. GOODWINE, JUDGE
ACTION NO. 06-CR-01183

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: COMBS, CHIEF JUDGE; DIXON AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Jefferey Morris appeals from a conditional guilty plea to trafficking in a controlled substance, first degree, arguing that the trial court erred in denying his motion to suppress evidence obtained through an alleged illegal

search and seizure of his person. After carefully reviewing the record, we affirm the judgment of the Fayette Circuit Court.

On July 15, 2006, at approximately 5:30 a.m., Lexington Police Officers Franz Wolfe and Daniel Burnett observed a silver pick-up truck stopped in the middle of the road in a “high crime area.” They watched as Theatrice Wortham, a well-known drug offender and participant in the trafficking of narcotics, approached the truck. As the officers approached the truck in their marked car, they observed a group of approximately ten individuals concealed behind a nearby maroon conversion van. Officer Wolfe testified that this type of activity that early in the morning was highly suspicious, especially when coupled with the presence of a known drug trafficker.

After observing the large group of individuals and Wortham standing at the pick-up truck, the officers exited their vehicle for further investigation. As the officers approached, the individuals behind the van began to disperse, walking away in different directions from the officers. Officer Wolfe opined that this led him to believe that illegal activity was taking place.

The individuals were requested to stop and return to the scene to speak with the officers. Jefferey Morris, however, ignored the request and walked briskly away from the scene. Morris eventually acknowledged the officers’ request after about one block and returned to the scene. When Morris identified himself to the officers, the officers ran a warrant check and found that he had a valid warrant out for his arrest. Morris was subsequently arrested and placed in a

patrol car. Officers then noticed Morris making furtive movements in the patrol car, and he was searched again. As a result of the search, officers found what was later confirmed to be cocaine.

On August 29, 2006, Morris was indicted by a Fayette County Grand Jury for trafficking in a controlled substance, first degree. Morris then moved to suppress the evidence collected during the stop by Officers Wolfe and Burnett, arguing that they violated his Fourth Amendment rights because they had no articulable reasonable suspicion to believe he was engaged in illegal activity.

The Fayette Circuit Court held a suppression hearing on November 7, 2006, where Officers Wolfe and Burnett testified as the only witnesses. After a thorough hearing, the trial court found that the officers did possess reasonable, articulable suspicion to conduct an investigatory stop of Morris, and that the search was a valid incident to a lawful arrest in light of the valid arrest warrant.

Additionally, the trial court referenced *Hardy v. Commonwealth*, 149 S.W.3d 433 (Ky.App. 2004), where this Court held that a lawful arrest pursuant to an outstanding warrant constitutes an intervening circumstance sufficient to dissipate any taint caused by an illegal stop. The court suggested that, in light of *Hardy*, even if Officers Wolfe and Burnett did not possess reasonable suspicion to stop Morris, his valid arrest warrant could have provided an intervening circumstance sufficient to dissipate any taint caused by the alleged illegal stop.

On May 29, 2007, Morris entered a conditional guilty plea to trafficking in a controlled substance, first degree. The Fayette Circuit Court

sentenced him to five years' imprisonment, probated for five years. Morris now appeals the denial of his motion to suppress, which was properly preserved in his conditional guilty plea.

It is well-settled in this Commonwealth that after a hearing on a defendant's suppression motion, the trial court's findings are deemed to be conclusive if supported by substantial evidence. *See, e.g., Talbott v. Commonwealth*, 968 S.W.2d 76 (Ky. 1998); *Canler v. Commonwealth*, 870 S.W.2d 219 (Ky. 1994), *citing Harper v. Commonwealth*, 694 S.W.2d 665 (Ky. 1985) and *Crawford v. Commonwealth*, 824 S.W.2d 847 (Ky. 1992). Substantial evidence means "[e]vidence that a reasonable mind would accept as adequate to support a conclusion" and evidence that, when "taken alone or in the light of all the evidence, . . . has sufficient probative value to induce conviction in the minds of reasonable men." *See Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). Finally, we must 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. *See Commonwealth v. Neal*, 84 S.W.3d 920, 923 (Ky.App. 2002). There is no dispute as to the findings of fact in this case; thus they are conclusive. We turn now to the application of law to the facts.

Morris contends that the trial court erred in denying his motion to suppress based on its finding that the officers had a reasonable, articulable suspicion of criminal activity. He specifically argues that the officers did not have a reasonable, articulable suspicion to stop him, and, that therefore, his detainment

constituted an illegal search and seizure, thereby making the cocaine seized fruit of the poisonous tree and inadmissible. We disagree.

In an investigative stop, such as in this case, police must have a reasonable suspicion grounded in specific and articulable facts that criminal activity is afoot. *See Terry v. Ohio*, 392 U.S. 1, 30, 88 S.Ct. 1868, 1884-85, 20 L.Ed.2d 889 (1968). Reasonable suspicion is an objective standard to be applied in a commonsense manner based on the totality of the circumstances. *Baltimore v. Commonwealth*, 119 S.W.3d 532, 539 (Ky.App. 2003).

In determining the totality of the circumstances, a reviewing court should not view the factors relied upon by the police officer(s) to create reasonable suspicion in isolation but must consider all of the officer(s') observations and give due regard to inferences and deductions drawn by them from their experience and training.

Id., citing *United States v. Arvizu*, 534 U.S. 266, 273-74, 122 S.Ct. 744, 750-51, 151 L.Ed.2d 740 (2002); *United States v. Cortez*, 449 U.S. 411, 418, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981); *McCurdy v. Montgomery County*, 240 F.3d 512, 517 (6th Cir. 2001). If we find there was reasonable suspicion, then we must determine whether the degree of intrusion was reasonably related in scope to the justification for the stop. *See United States v. Martin*, 289 F.3d 392, 397 (6th Cir. 2002)(citing *United States v. Garza*, 10 F.3d 1241, 1245 (6th Cir. 1993)); *United States v. Jones*, 269 F.3d 919, 924 (8th Cir. 2001).

The testimony of both officers reflects the grounds for their reasonable suspicion. First, they initially witnessed a known drug trafficker

approach a stopped vehicle in the middle of the road in the dark hours of morning in a high crime area. As they approached the stopped vehicle, it pulled away, but they simultaneously noticed a group of individuals huddled behind a nearby conversion van. Furthermore, the known drug trafficker approached said group of individuals as the officers got out of their vehicle. Finally, the individuals not only dispersed when the officers began to approach them, but they also intentionally dispersed in different directions from one another at a brisk pace.

Although none of these factors alone would create a reasonable suspicion, when considered in light of the totality of the circumstances and through the experience and training of the officers, we find that the trial court correctly found that the officers had reasonable suspicion to conduct an investigatory stop of Morris. Moreover, the warrant check was well within the scope of the stop, and the search in the vehicle was permissible as it was subsequent to a valid arrest. Therefore, we find no error in the court's determination that the officers had an articulable, reasonable suspicion that criminal activity was afoot nor in its subsequent denial of Morris' motion to suppress.

Alternatively, however, we find that had the officers not had a reasonable suspicion to stop Morris, the existence of the valid warrant for his arrest would have removed the taint caused by any unlawful detainment. *See Hardy v. Commonwealth*, 149 S.W.3d 433, 436 (Ky.App. 2004). In *Birch v. Commonwealth*, 203 S.W.3d 156 (Ky.App. 2006), we applied this reasoning to facts analogous to the instant case.

In *Birch*, the defendant was on foot and entered an apartment breezeway where officers were talking to two individuals to ascertain why they were at the apartment. The officers testified that the area was a high crime area known for drug trafficking. One of the individuals being questioned stated that she was there to meet Birch. Birch walked away from the officers but returned when one of them hailed him down. A check for warrants revealed that a valid arrest warrant was active for Birch. Officers placed Birch under arrest and found crack cocaine in his hand.

This Court held that “a valid arrest may constitute an intervening event that cures the taint of an illegal detention sufficient to rebut the application of the exclusionary rule to evidence recovered in a search incident to an arrest.” *See Id.* at 159, citing *Baltimore*, 119 S.W.3d at 541, n. 37. Kentucky is not alone in adopting this rule. In fact, several other courts have also adopted the rule that a valid arrest, such as one incident to a valid, outstanding warrant, is a sufficiently independent, untainted justification for the arrest and concomitant search. *See, e.g., McBath v. State*, 108 P.3d 241, 246 (Alaska Ct.App. 2005) (collecting and citing cases on point from Illinois, Kansas, Texas, Indiana, etc.). Therefore, we find that even if the stop in the instant case had been without reasonable suspicion, the trial court was correct in its theory that the existence of the valid arrest warrant would have cured any taint.

For the reasons set forth herein, we affirm the judgment of the Fayette Circuit Court.

ALL CONCUR.

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