

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2009-CA-000580-MR

DERRICK L. LOGAN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE A.C. MCKAY CHAUVIN, JUDGE  
ACTION NO. 07-CR-004056

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, COMBS AND WINE, JUDGES.

ACREE, JUDGE: Appellant Derrick Logan appeals the Jefferson Circuit Court's decision denying his motion to suppress evidence obtained pursuant to a traffic stop and subsequent frisk for weapons. Because there was probable cause for the traffic stop and the subsequent frisk was based on reasonable articulable suspicion that Logan might be armed, we affirm.

When determining if a motion to suppress was properly denied, this court must first review the circuit court's findings of fact. Those factual findings are reviewed under the clearly erroneous standard and are deemed conclusive if they are supported by substantial evidence. *Commonwealth v. Banks*, 68 S.W.3d 347, 349 (Ky. 2001). "However, the ultimate legal question of whether there was reasonable suspicion to stop or probable cause to search is reviewed *de novo*." *Id.*

The circuit court made the following findings:

On March 27, 2007, Captain Steve Thompson ("Capt. Thompson) and Sgt. Stan Salyards of the Louisville Metro Police Department witnessed the Defendant, Derrick L. Logan ("Mr. Logan"), driving recklessly. Mr. Logan's car swerved across various east-bound lanes of traffic on Broadway near 21<sup>st</sup> Street in downtown Louisville. From his vantage point, Capt. Thompson could see that Mr. Logan was focused on counting a large sum of money spread out in his lap rather than paying attention to where he was driving. Mr. Logan's car nearly collided with Capt. Thompson's unmarked police car/SUV as a result of his (Mr. Logan's) careless driving.

Capt. Thompson turned on his emergency lights and siren with the intent to stop Mr. Logan for the traffic violations he had witnessed. Mr. Logan did not stop immediately. Rather, he continued driving for approximately one and one half (1 ½) blocks before pulling his car over to the side of the road. Capt. Thompson saw Mr. Logan make certain furtive gestures during the course of the traffic stop to include reaching inside his right pocket with his right hand in what Capt. Thompson believed to be an attempt to either conceal or remove something therein. Mr. Logan's hand was still inside his pocket when Capt. Thompson approached the car. Mr. Logan used his other hand to brush a \$50 bill off of his pants and onto the floorboard of the car.

Mr. Logan was ordered out of the car by Capt. Thompson whereupon he saw two (2) distinct “lumps” in Mr. Logan’s right pant pocket. The top of a tied off plastic baggie was protruding from that same pocket. Capt. Thompson, a thirty-seven (37) year police veteran, instantly recognized and associated the tied-off plastic baggie with drug trafficking activity and was concerned that the lump underneath the plastic baggie could be a weapon. Capt. Thomson conducted a pat-down search which immediately confirmed his suspicions that the plastic bag (the top “lump”) contained drugs of some kind. He removed the baggie (containing forty (40) oxycontin pills) as well as the unidentified bottom “lump” (\$9,100 in cash) from Mr. Logan’s pocket. Mr. Logan was placed under arrest and subsequently charged with trafficking in a controlled substance in the first degree.

Logan argues that the circuit court’s findings of fact are not supported by substantial evidence. However, the testimony of Capt. Thompson and Logan support the circuit court’s findings. Capt. Thompson’s testimony is directly in line with the findings of the circuit court. Further, Logan testified that he was looking down into his lap as he was driving and acknowledged that he was stuffing money into his pocket as the officer’s pulled him over. Thus, the findings are supported by substantial evidence and are not clearly erroneous.

Based on these findings, the circuit court concluded Capt. Thompson had probable cause to stop Logan for the traffic violations he personally witnessed and Logan’s pre-stop conduct created a reasonable, articulable suspicion that Logan was engaged in criminal activity beyond those traffic violations. Thus, the circuit court found that it was reasonable for Capt. Thompson to conclude that Logan might be armed and to conduct a carefully limited search of Logan’s outer clothing

to ensure he was not concealing a weapon. Upon recognizing that the baggie contained contraband, Capt. Thompson had probable cause to believe that Logan was engaged in drug trafficking.

Logan argues to the contrary that the officers did not have a reasonable, articulable suspicion sufficient to justify his removal from the vehicle and the subsequent frisk. We review that determination *de novo*.

In *Terry v. Ohio*, the Court found that “[t]he officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” 392 U.S. 1, 27, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The Supreme Court of Kentucky recognized that the compelling concern for officer safety is magnified when illegal drugs are involved. *Owens v. Commonwealth*, 291 S.W.3d 704, 710 (Ky. 2009). Indeed cases involving drugs bring into play “the indisputable nexus between drugs and guns, which presumptively creates a reasonable suspicion of danger to the officer.” *Id.* (quoting *United States v. Sakyi*, 160 F.3d 164, 169 (4th Cir. 1998)) (internal citations omitted).

As discussed above, substantial evidence supports the conclusion that Logan was attempting to conceal something in his right pocket while the officers pulled him over. The attempts to conceal continued after the stop occurred and the officers approached the car. These gestures created a reasonable articulable suspicion that Logan was concealing a weapon. Thus, they were justified in removing him from the vehicle.

Once Logan was out of the vehicle, Capt. Thompson observed two distinct lumps in Logan's right pocket. Capt. Thompson believed that either lump could have been a weapon. He soon noticed the top of a tied-off plastic baggie protruding from the same pocket and, based on his experience, associated the baggie with drug trafficking. Unsure of what the second lump might be, and believing that the first lump was illegal drugs, Capt. Thompson proceeded to conduct the frisk. Under the totality of the circumstances, the frisk was warranted by the officer's reasonable articulable suspicion that Logan's pocket might contain a weapon, and this suspicion was heightened by Capt. Thompson's belief that the first lump was drugs.

Without manipulating the baggie, the officer concluded that the baggie contained illegal drugs. Under the "plain feel exception" to the requirement a warrant be secured, contraband is appropriately seized when its identity is immediately apparent by touch. *Commonwealth v. Crowder*, 884 S.W.2d 649 (Ky. 1994) (citing *Minnesota v. Dickerson*, 508 U.S. 366, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993)). The officer's conclusion was substantiated once the baggie was removed from the pocket. Probable cause to believe that Logan possessed illegal drugs was then established and the arrest and subsequent vehicle search were proper. Therefore, we see no error in the trial court's decision to deny Logan's motion to suppress.

Accordingly, we affirm the judgment of the Jefferson Circuit Court.

ALL CONCUR.

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