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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000212-MR

MAURICE LARON DOUGLAS — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES D. ISHMAEL, JUDGE
ACTION NO. 13-CR-01271

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, KRAMER AND STUMBO, JUDGES.

STUMBO, JUDGE: Appellant appeals from two orders denying his motions to suppress. Appellant argues that the trial court should have suppressed the evidence against him because it was obtained after an unlawful investigative stop pursuant to *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968). We find the trial court was correct in denying the motions to suppress because the *Terry* stop was lawful.

On October 9, 2013, at around 10:13 p.m., Sergeant Jack Dawson and Officer Chris Cooper of the narcotics division of the Lexington Police Department were responding to a complaint on Smith Street in Lexington. The officers were driving an unmarked, white SUV. This area was known to have a problem with drug trafficking. The officers were in the area looking for a specific individual for whom they had received numerous drug related complaints. They saw their target inside a house; so they pulled past the house, parked their SUV, and watched to see if anything occurred.

Because this case revolves around specific findings of fact, we will now set forth the relevant findings of fact made by the trial court after the suppression hearings. The court found that the officers saw Appellant and another man standing in front of another house. Sergeant Dawson pulled the "unmarked, but fairly well known vehicle" in front of Appellant, rolled down the window, and asked if he had any drugs. At the time, the officers were wearing bulletproof vests with the word "POLICE" on the front and back. Appellant began walking away from the officers. Sergeant Dawson then heard Appellant say "police, police, police" which the court took as an alert to others nearby. The officers then exited the SUV and yelled "stop…police" to Appellant and ordered him to come back and speak to them. Appellant then started walking away more "briskly" or at a "half-sprint". The officers then saw Appellant "blade his body away from them".[1] Both

[1] This means Appellant moved his body in such a way as to conceal from the officers behind him what he was doing.

officers then saw Appellant begin digging in the waistband of his pants. Officer Cooper believed Appellant might be reaching for a weapon so he ordered Appellant to "show me your hands". Appellant did not comply so Officer Cooper tased him.[2]

When Officer Cooper tased Appellant, he saw Appellant make a throwing motion and heard a loud "clang" sound. The officers then called for backup and medical personnel. Appellant was then handcuffed, checked by medical personnel, and placed in the back of a police cruiser. A storm drain was located near where Appellant was tased. Inside the drain was a handgun. Appellant was then removed from the police cruiser. The officers then observed white powder on Appellant's hands and found he had attempted to shove cocaine underneath the seat of the cruiser.

Appellant was then arrested. He was indicted on charges of convicted felon in possession of a handgun, two counts of tampering with physical evidence, possession of a controlled substance, resisting arrest, fleeing or evading police, and persistent felony offender in the first degree. Appellant made two motions to suppress the evidence obtained on the night in question. Hearings were had for both motions. Appellant, Sergeant Dawson, and Officer Cooper all testified. Both motions were denied. Appellant then entered a conditional guilty plea to the charges allowing him to appeal the suppression issue. This appeal followed.

[2] This ends the relevant findings of fact for the purposes of the suppression issue. From this point on, the facts discussed will be in narrative form and taken from the evidence presented at the suppression hearings.

> Our standard of review of a circuit court's decision on a suppression motion following a hearing is twofold. First, the factual findings of the court are conclusive if they are supported by substantial evidence. The second prong involves a *de novo* review to determine whether the court's decision is correct as a matter of law.

Stewart v. Commonwealth, 44 S.W.3d 376, 380 (Ky. App. 2000) (footnotes and citations omitted).

The central question in this case is: did the trial court err in finding that the *Terry* stop was proper? If the stop was lawful, then the court properly denied the motion to suppress. We find that the trial court did not err.

> Under *Terry v. Ohio*, a police officer may briefly detain a person for investigative purposes if the officer has a reasonable suspicion, supported by articulable facts, that the person has engaged or is about to engage in criminal activity. And if the officer believes the detained person is armed and dangerous, the officer may also frisk for weapons.

Williams v. Commonwealth, 364 S.W.3d 65, 66-67 (Ky. 2011) (footnote and citation omitted). "[T]he level of articulable suspicion necessary to justify a stop is considerably less than proof of wrongdoing by preponderance of the evidence." *Id*. at 69 (footnote and citation omitted).

In the case at hand, case law supports the trial court's conclusion that the *Terry* stop was justified and appropriate. "It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." *Terry*, 392 U.S. at 16. For *Terry* purposes, a person is not detained, or seized, until there has been some application of physical force or a

show of authority to which a person yields. *California v. Hodari D.*, 499 U.S. 621, 111 S.Ct. 1547, 113 L.Ed. 2d 690 (1991). Appellant was not seized until he was tased; therefore, every event which transpired between the time the officers parked in front of Appellant until he was tased is relevant for our purposes. The trial court found the testimony of the two officers more credible than that of Appellant. All findings of fact discussed above, except for one, are supported by substantial evidence in the record. The only fact not supported by the record is that the officers verbally identified themselves as police. No one testified that this occurred. We believe that the remaining facts justify the *Terry* stop.

A person's presence in an area known for narcotics trafficking and his flight upon noticing the police have been deemed sufficient justification for a *Terry* stop. *Illinois v. Wardlow*, 528 U.S. 119, 124-25, 120 S.Ct. 673, 676, 145 L.Ed. 2d 570 (2000). Here, Appellant was in a known narcotics trafficking area and fled when the police officers approached him. Appellant argues that he did not know the people in the unmarked SUV were police officers; however, the officers' bulletproof vests had the word "POLICE" on the front and back and Appellant was heard stating "police, police, police" as he walked away. Appellant's flight from the police, along with his disobeying orders to stop, the blading of his body, and his movements in his waistband all support the *Terry* stop. These are all articulable facts, supported by substantial evidence, that the officers had reasonable suspicion that Appellant was engaged in criminal activity.

The trial court properly denied Appellant's motions to suppress because the officers in this case had sufficient justification to perform a *Terry* stop. All evidence recovered from this investigatory stop would have been admissible had the case gone to trial; therefore, we affirm.

ALL CONCUR.

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