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RENDERED: MAY 22, 2008
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2006-SC-000305-DG

COMMONWEALTH OF KENTUCKY — APPELLANT

V.

ON REVIEW FROM COURT OF APPEALS
CASE NUMBER 2005-CA-001638
FAYETTE CIRCUIT COURT NO. 05-CR-00440

BRANDY SUE STEPHENS — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

On February 1, 2005, Darin Larrabee, a Lexington police officer, was monitoring two breezeways of a building in the Coolavin Park area of Lexington known for drug trafficking. After observing Brandy Stephens leave the second breezeway of this building, Larrabee approached Stephens and asked if he could speak with her. Eventually, after Larrabee had asked her several questions and had run two record checks using the computer in his squad car, Stephens consented to a pat-down search of her person. The search revealed a crack pipe located in Stephens's inner coat pocket. Larrabee arrested Stephens and, after she was taken to jail, a subsequent strip search of her person uncovered rocks of cocaine. Stephens was indicted for first-degree possession of a controlled substance, giving an officer a false name, and other drug-related charges.

Prior to trial, Stephens moved to suppress the crack pipe and the rocks of cocaine on the ground that the investigatory stop was improper. The Fayette Circuit Court, however, denied Stephens's suppression motion, concluding that Officer Larrabee possessed the required reasonable suspicion necessary to justify the stop. Stephens then entered a conditional guilty plea and was sentenced to a total of one and one-half years imprisonment, which was probated for three years. On appeal, the Court of Appeals reversed, finding that at the time Officer Larrabee approached Stephens, he lacked an articulable, reasonable suspicion that she was engaging in criminal activity and thus, his stop was improper. On discretionary review to this Court, the Commonwealth argues first that the Court of Appeals erred with respect to when Stephens was actually stopped, and second, that he possessed the requisite reasonable suspicion when he detained Stephens. Although we agree with the Commonwealth that the stop did not occur upon Officer Larrabee's initial approach of Stephens, we nonetheless conclude that Stephens was subjected to an investigatory stop, which was not justified by an articulable, reasonable suspicion. We therefore affirm the Court of Appeals on different grounds.

RELEVANT FACTS

During the early evening of February 1, 2005, Officer Darin Larrabee of the Lexington Police was in his squad car patrolling the Coolavin Park area of Lexington, Kentucky. In particular, Larrabee was monitoring two breezeways of the first building in this area, where people commonly gathered to buy and sell drugs. At one point, Larrabee observed Brandy Stephens walk into the second breezeway and stay there for approximately three minutes. While Stephens was in the breezeway, a woman and her daughter pulled up next to Officer Larrabee in their vehicle and asked him for directions.

Larrabee was still talking with this woman when Stephens emerged from the breezeway. Larrabee testified that Stephens glanced at him while she was walking and appeared to be "real nervous." Stephens then walked up to the woman's car, which was still parked alongside Officer Larrabee, and spoke with the woman's daughter, who was in the passenger seat. After speaking briefly with the daughter, Stephens began walking away. Larrabee asked the woman in the car what Stephens had said, and the woman stated that Stephens was looking for her sister and had inquired if they had seen her. The woman and her daughter then drove away.

Officer Larrabee then parked his squad car, exited the vehicle, and began approaching Stephens. Larrabee called out to Stephens, who was approximately thirty yards away from him at the time, and asked if he could talk with her for a second. Stephens stopped, turned around, and began approaching the officer. Larrabee asked Stephens what she was doing, and she responded that she was looking for her sister. Larrabee requested identification from Stephens, but she stated that she did not have any. When Larrabee pulled out his notebook and asked Stephens for her name, social security number, and date of birth, Stephens told the officer that her name was Sheena Tolsca. She also stated her age and date of birth, however, Officer Larrabee pointed out that the age she had given was three years off from the birth date. Stephens then corrected her age to match her birth date. Officer Larrabee went to his squad car to run a records check using the information Stephens had given, and the search uncovered no criminal record. Larrabee returned to Stephens and informed her that it was a crime to give a false name to a police officer. Again, Stephens stated that she was Sheena Tolsca and provided the officer with the same information. Next, Larrabee asked Stephens if she had a driver's license, to which she responded that she had a Florida

driver's license. Larrabee went back to his car to run a second check using Florida's database, but he found no record of Sheena Tolsca having a driver's license in Florida.

After completing this second record check, Larrabee returned to Stephens and asked her if she had any drugs or paraphernalia. Stephens stated that she did not. Larrabee then asked Stephens if he could do a pat-down search of her, and she responded, "okay." During the search, Officer Larrabee found a crack pipe in Stephens's inner coat pocket. Larrabee then arrested Stephens for possession of drug paraphernalia. Upon arriving at the jail, a further strip search of Stephens revealed that she was carrying rocks of crack cocaine.

On April 5, 2005, Stephens was indicted for possession of a controlled substance, promoting contraband, possession of drug paraphernalia, and giving an officer a false name. Prior to trial, Stephens moved to suppress the crack pipe and cocaine, arguing that her initial stop was not justified. The trial court held a suppression hearing on May 10, 2005, during which the defendant, in her testimony, finally admitted that her real name was Brandy Sue Stephens and that Sheena Tolsca was the name of one of her sisters. Stephens stated that she had given a false name to the officer because she thought she had an outstanding warrant in Scott County. After hearing testimony from Stephens and Officer Larrabee, the trial court concluded that Officer Larrabee had reasonable, articulable suspicion to conduct the investigative stop of Stephens. Stephens then entered a conditional guilty plea to both possession of a controlled substance and giving an officer a false name; the Commonwealth dismissed the charge of promoting contraband as a condition of Stephens's guilty plea.

On July 1, 2005, Stephens was sentenced to a total of one and one-half years in prison, which was probated for three years. Stephens appealed her conviction, and on

March 24, 2006, the Court of Appeals rendered its opinion reversing the trial court's suppression ruling. The Court of Appeals held that the investigatory stop of Stephens occurred when Officer Larrabee initially asked to speak with her; that Larrabee did not possess reasonable suspicion that Stephens was engaging in criminal activity prior to this initial encounter, and thus, the stop was improper. On the Commonwealth's motion, this Court granted discretionary review. After reviewing the applicable law, we conclude that the Court of Appeals erred in finding that the stop occurred when Officer Larrabee initially approached Stephens. That permissible initial encounter, however, was elevated to an investigatory stop when, after Larrabee found no criminal record of Stephens on file, and after Stephens maintained that the information she had given him was accurate, Larrabee continued to question her. We conclude that at this point of detention, Officer Larrabee did not have an articulable reasonable suspicion that Stephens was engaged in criminal activity and therefore, the stop was unlawful. Accordingly, we affirm the Court of Appeals' holding that the evidence seized pursuant to Stephens's illegal stop should have been suppressed.

ANALYSIS

An appellate court reviews a trial court's suppression ruling using two different standards: the factual findings of the trial court are reviewed pursuant to the "clearly erroneous" standard, while the trial court's application of the law to the facts is subject to a de novo review. Ornelas v. United States, 517 U.S. 690, 691, 116 S. Ct. 1657, 1659, 134 L. Ed. 2d 911 (1996); Adcock v. Commonwealth, 967 S.W.2d 6, 8 (Ky. 1998). The material facts of Officer Larrabee's interaction with Stephens as set forth during the trial court's suppression hearing are not in dispute. However, there are two legal issues which this Court must resolve: at what point did the stop occur and did reasonable

suspicion exist to support that stop. These legal questions will be reviewed *de novo*. Id.

I. Officer Larrabee's Initial Approach of Stephens Did Not Constitute An Investigatory Stop Within the Meaning of the Fourth Amendment.

The United States Supreme Court has held that a seizure or an investigatory stop does not occur unless "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." U.S. v. Mendenhall, 446 U.S. 544, 554, 100 S. Ct. 1870, 1877, 64 L. Ed. 2d 497 (1980); Baker v. Commonwealth, 5 S.W.3d 142, 145 (Ky. 1999). During its suppression hearing, the trial court never specified at what point Officer Larrabee conducted an investigatory stop of Stephens. The Court of Appeals, however, found that "the initial investigative stop occurred when the officer called to Stephens and asked what she was doing." In addition to the factual circumstances surrounding that initial encounter, the Court of Appeals based its finding on Officer Larrabee's testimony that if Stephens had refused to stop or answer his question he would have detained her, and on Stephens's testimony that she did not feel free to leave when the officer initially asked to speak with her. Although the Court of Appeals found that this testimony supported its conclusion that a reasonable person in this circumstance would not have felt free to leave, in actuality, neither the subjective belief of the suspect nor the subjective intent of the investigating officer is determinative in this analysis.

In Mendenhall, the United States Supreme Court held that a stop occurs, thus triggering the Fourth Amendment protections, not when the suspect subjectively thinks he is unable to leave, but rather, when "a reasonable person would have believed that he was not free to leave." Id. Therefore, Stephens's subjective belief regarding her freedom of movement is not dispositive of the issue of when the stop actually occurred.

Similarly, the Supreme Court also stated in Mendenhall that "the subjective intention of the DEA agent . . . to detain the respondent, had she attempted to leave, is irrelevant except insofar as that may have been conveyed to the respondent." Mendenhall, 446 U.S. at 555 n. 6, 100 S. Ct. at 1877 n. 6. In Stephens's case, there was no testimony presented during the suppression hearing that Officer Larrabee's initial request to speak with Stephens conveyed an intent to detain. Larrabee did not order Stephens to stop or demand that she talk with him; rather, both Stephens and Larrabee testified that he simply asked if he could speak with her for a second. Thus, Larrabee's subjective intent to detain Stephens should not have been a determining factor in deciding when the initial stop occurred.[1]

Having concluded that these subjective components are not determinative, this Court agrees with the Commonwealth that based on the facts and circumstances surrounding Stephens's interaction with Officer Larrabee, Stephens was not subject to an investigatory stop within the meaning of the Fourth Amendment when Officer Larrabee initially asked to speak with her. It is well-established that police officers are free to approach citizens on the street without the encounter constituting a "seizure" or violating the Fourth Amendment. Terry v. Ohio, 392 U.S.1, 19 n. 16, 88 S. Ct. 1868, 1879 n. 16, 20 L. Ed. 2d 889 (1968) (stating that "not all personal intercourse between policemen and citizens involves 'seizures' of persons"); Florida v. Royer, 460 U.S. 491, 497, 103 S. Ct. 1319, 1324, 75 L. Ed. 2d 229 (1983) (holding that officers "do not violate the Fourth Amendment by merely approaching an individual on the street . . .);

[1] To clarify that an officer's subjective intent is never determinative, we note that if the reverse had happened in this case—if Officer Larrabee had testified that Stephens was actually free to leave during their initial encounter—this Court would not then be required to find that no stop occurred.

Commonwealth v. Banks, 68 S.W.3d 347, 350 (noting that "[p]olice officers are free to approach anyone in public areas for any reason").

In Stephens's case, Larrabee simply walked up to Stephens and asked to speak with her for a moment. Although Stephens suggests in her brief that being approached by the police at nighttime in a high crime area would cause a reasonable person to feel as if they were not free to leave, this Court has recognized previously that nighttime encounters in high crime areas do not necessarily constitute stops or seizures. In Commonwealth v. Baker, supra, an officer approached two individuals late at night in an area known for drugs and prostitution. Baker, 5 S.W.3d at 144. As a safety precaution, the officer asked one of the individuals to remove his hands from his pockets. Id. Although the officer ultimately ordered the individual to remove his hands, which we found did trigger the Fourth Amendment protections; this Court held that the officer's initial request did not amount to a seizure. Id. at 145. Other than emphasizing that she encountered the "uniformed and apparently armed" officer at approximately 6:30 p.m. in a high crime area and that she reasonably believed she was not free to leave, Stephens points to nothing about her initial interaction with Officer Larrabee that would lead this Court to conclude she was stopped within the meaning of the Fourth Amendment. Thus, Officer Larrabee's initial approach of Stephens did not rise to the level of an investigatory stop, but rather, constituted an encounter.

II. The Investigatory Stop of Stephens Occurred When Officer Larrabee Continued to Detain Stephens After No Criminal Record Was Found on File and She Maintained that Her Information Was Accurate.

After Officer Larrabee approached Stephens and inquired as to what she was doing, he asked her if she had any identification, which she did not. Next, Larrabee pulled out his notebook and requested that Stephens give him her name, social security

number, and date of birth. Stephens stated her age and date of birth, but then corrected her age after Larrabee noted that it did not match her date of birth. At this point, Larrabee walked to his squad car in order to check Stephens's information in his computer database.

After approaching a citizen, an officer may ask questions or request identification, and as long as the officer does not restrain the liberty of the person or indicate that compliance with his request is mandatory, the interaction does not amount to an investigatory stop. *See* I.N.S. v. Delgado, 466 U.S. 210, 216, 104 S. Ct. 1758, 1762, 80 L. Ed. 2d 247 (1984) (stating that an "interrogation relating to one's identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure"). Circumstances that may indicate when an encounter has evolved into a stop or seizure include

> the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person. Mendenhall, 446 U.S. at 554-555, 100 S. Ct. at 1877.

Although Officer Larrabee asked Stephens for information relating to her identity, there are no facts in the record to indicate that this request amounted to a seizure. Larrabee did not demand the information from Stephens or suggest that her compliance was mandatory. No evidence was presented during the suppression hearing that Officer Larrabee touched Stephens, used an intimidating tone of voice, or told her that she was not free to leave. Thus, Larrabee's encounter with Stephens was still consensual when he asked for information relevant to her identity and checked her

information through his computer.[2] If Officer Larrabee had ceased questioning Stephens after discovering that the information she provided produced no criminal record, then his interaction with her would have remained a consensual encounter. However, such was not the case. After the check revealed no record on file, Officer Larrabee informed Stephens that it was a crime to give an officer a false name and asked for her information again. Stephens maintained her position regarding her personal identification and repeated the same name, age, and date of birth. If at this point, Officer Larrabee had ended his inquiry with Stephens, perhaps it would not have risen to the level of an investigatory stop. But once Larrabee continued questioning Stephens regarding her identity even after she repeated for a second time the same information, a reasonable person would not have felt free to leave. At that point, Officer Larrabee clearly subjected Stephens to an investigatory stop.

III. Based on the Totality of the Circumstances, Officer Larrabee Did Not Have Reasonable Suspicion to Detain Stephens.

When Officer Larrabee decided to detain Stephens even after a negative record check and her insistence that her information was accurate, he needed a reasonable suspicion, based on objective and articulable facts, that Stephens was engaged in criminal activity in order to justify that stop. *See* Brown v. Texas, 443 U.S. 47, 51, 99 S.

[2] Several jurisdictions hold that retaining a pedestrian's driver's license or identification card in order to perform a records check constitutes a seizure within the meaning of the Fourth Amendment. State v. Daniel, 12 S.W.3d 420, 427 (Tenn. 2000) (holding that "a seizure . . . occurred when Officer Wright retained Daniel's identification to run a computer warrants check"); United States v. Lambert, 46 F.3d 1064, 1068 (10th Cir. 1995); State v. Page, 140 Idaho 841, 844-845, 103 P.3d 454 (2004); People v. Rockey, 322 Ill. App. 3d 832, 838, 752 N.E.2d 576 (2001); Richmond v. Commonwealth, 22 Va. App. 257, 261, 468 S.E.2d 708 (1996); Salt Lake City v. Ray, 998 P.2d 274 (Utah App. 2000). The facts in this case are distinguishable, however, because Officer Larrabee did not retain Stephens's license or ID card; rather, he simply wrote her information onto his notebook in order to perform the check.

Ct. 2637, 2641, 61 L. Ed. 2d 357 (1979); U.S. v. Cortez, 449 U.S. 411, 417, 101 S. Ct. 690, 695, 66 L. Ed. 2d 621 (1981); Terry v. Ohio, 392 U.S. at 30-31, 88 S. Ct. at 1885. To determine whether Officer Larrabee had such reasonable suspicion, this Court must look at the totality of the circumstances surrounding Stephens's detention. U.S. v. Cortez, 449 U.S. at 417, 101 S. Ct. at 695. At the time of Stephens's stop, the objective facts upon which Officer Larrabee could base his reasonable suspicion were that Stephens had spent approximately three minutes in an area known to be high in drug trafficking, she appeared nervous, and she initially gave an age that did not match her date of birth.[3] While perhaps a close call, we must conclude that these circumstances alone failed to supply Officer Larrabee with the requisite reasonable suspicion of criminal activity to stop Stephens.

Although a suspect's presence in a high crime area alone is not sufficient to justify a stop, it can certainly be a factor adding to an officer's reasonable suspicion. Illinois v. Wardlow, 528 U.S. 119, 124, 120 S. Ct. 673, 676 (2000). In Baker v. Commonwealth, supra, this Court confirmed the relevance of this factor when we found that the investigating officer had a particular, reasonable suspicion to stop Baker who was in a high crime area, standing next a known prostitute. Baker was wearing clothes that could possibly conceal a weapon, and he initially refused the officer's request to remove his hands from his pockets. Baker, 5 S.W.3d at 146. Similarly, in Commonwealth v. Banks, supra, this Court held that due to Banks's presence at an apartment complex with a "No Trespassing" sign in a high crime area, his attempt to

[3] Officer Larrabee testified at the suppression hearing that Stephens also aroused suspicion because instead of asking him, a police officer, about the whereabouts of her sister, she asked the woman's daughter in the car. Larrabee stated that he thought this behavior was odd because most people would speak with a police officer if they were looking for someone. The trial court made no finding on this issue and, in any event, it is not indicative of criminal activity.

evade the police by turning around and walking in the opposite direction after seeing them, and an officer's knowledge that Banks was not a resident of the apartment complex, the officers were justified in believing that Banks may have been engaged in criminal activity. Banks, 68 S.W.3d at 350. Furthermore, the Kentucky Court of Appeals upheld the investigatory stop in Simpson v. Commonwealth, 834 S.W.2d 686, 687-688 (Ky. App. 1992), noting that Simpson's presence on a corner known for drug activity and his meandering back and forth for over fifteen minutes in a "no trespassing" area provided the investigating officers with reasonable suspicion that criminal activity was afoot.

In Stephens's case, although she was present in a high crime area, the other facts Officer Larrabee relied on to justify his stop are not necessarily indicative of criminal activity in the same manner as the additional facts from Baker, supra, Banks, supra, and Simpson, supra. Officer Larrabee stated that as Stephens walked out of the second breezeway, she glanced at his car and looked nervous. However, upon seeing the officer, Stephens made no evasive movements, did not change her direction, and did not attempt to avoid him; as a matter of fact, she walked right up to the car sitting alongside his squad car. Although the United States Supreme Court recognized in Wardlow, 528 U.S. at 124, 120 S. Ct. at 676, that "nervous, evasive behavior is a pertinent factor in determining reasonable suspicion," the cases cited for that proposition clearly focused on the evasive nature of a suspect's behavior and not just their nervous demeanor. *See* U.S. v. Brignoni-Ponce, 422 U.S. 873, 885, 95 S. Ct. 2574, 2582, 45 L. Ed. 2d 607 (1975) (stating that "obvious attempts to evade officers can support a reasonable suspicion"); Florida v. Rodriguez, 469 U.S. 1, 6, 105 S. Ct. 308, 311, 83 L. Ed. 2d 165 (1984) (noting that the suspect's "strange movements in his

attempt to evade the officers aroused further justifiable suspicion"); U.S. v. Sokolow, 490 U.S. 1, 8, 109 S. Ct. 1581, 1586, 104 L. Ed. 2d 1 (1989) (stating that "taking an evasive path through an airport" may be "highly probative" of criminal activity). Thus, in the case at hand, Stephens's nervous glance, absent some actual evasive behavior, is not an objective fact indicating that she was engaged in any criminal activity.

Lastly, the Commonwealth notes that Stephens's inconsistent answer regarding her age and date of birth added to Officer Larrabee's reasonable suspicion. After Officer Larrabee pointed out the three year discrepancy in her given age and birth date, Stephens immediately corrected it. Although Stephens's inconsistent response may have justified Larrabee's decision to extend his encounter and make the initial record check, when combined only with the additional fact that Stephens was in a high crime area, this did not constitute an articulable reasonable suspicion to justify conducting a full-fledged investigatory stop. Stephens's age discrepancy was not so egregious to indicate she was giving an officer a false name or to justify her detention, particularly after she maintained that she was providing accurate information. Furthermore, the result of the record check did not add anything to Larrabee's suspicion because it revealed that the suspect did not have a criminal record. Since the only other objective fact on which Larrabee could rely was Stephens's mere presence in a high crime area (allegedly to locate her sister), the additional fact of her inconsistent response is not substantial enough to create an articulable, reasonable suspicion that she was engaging in criminal activity. Therefore, Larrabee's investigatory stop of Stephens violated the Fourth Amendment.

Because Officer Larrabee's stop of Stephens was not supported by a particular, reasonable suspicion, the seizure of the crack pipe was improper and the evidence

should have been suppressed under the fruit of the poisonous tree doctrine. Wong Sun v. United States, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963). Even though Stephens consented to the pat down search by Officer Larrabee, a suspect's consent to being searched can be "tainted" by an illegal stop or detention. Florida v. Royer, 460 U.S. at 507-08, 103 S. Ct. at 1329. Since Stephens's consent flowed directly from her unlawful stop, it cannot constitute a valid basis for admitting the evidence seized. *See* Parks v. Commonwealth, 192 S.W.3d 318, 330 (Ky. 2006). Furthermore, since Stephens's arrest flowed directly from the illegal seizure of evidence, and since there were no intervening circumstances to dissipate the taint caused by the unlawful stop, the rocks of cocaine found during her search incident to arrest should also be suppressed. *See* Wong Sun, 371 U.S. at 484-485, 83 S. Ct. at 416; *See also* Baltimore v. Commonwealth, 119 S.W.3d 532, 541 n. 37 (Ky. App. 2003) (noting that "a *valid* arrest may constitute an intervening event that cures the taint of an illegal detention") (emphasis added).

CONCLUSION

Officer Larrabee's initial approach of Stephens, which included asking her questions about her identification and performing a brief records check, amounted to a consensual police encounter. However, once Officer Larrabee continued questioning her after discovering that her information produced no criminal record and after Stephens maintained that her information was accurate, his encounter evolved into an investigatory stop. The objective facts upon which Officer Larrabee could rely to justify his stop—that Stephens was in a high crime area and that she gave an inconsistent response to questions regarding her age and date of birth—did not support an articulable, reasonable suspicion that Stephens was engaged in criminal activity.

Because Officer Larrabee's stop of Stephens was unlawful, all evidence flowing from the stop should have been suppressed. The trial court erred in denying her suppression motion. Accordingly, we affirm the Court of Appeals decision on other grounds and remand this case for further proceedings not inconsistent with this opinion.

Lambert, C.J., Abramson, Cunningham, and Noble, J.J., concur. Scott, J., dissents by separate opinion in which Minton, J., joins. Schroder, J., not sitting.

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Supreme Court of Kentucky

2006-SC-000305-DG

COMMONWEALTH OF KENTUCKY — APPELLANT

V.

ON REVIEW FROM COURT OF APPEALS
CASE NUMBER 2005-CA-001638
FAYETTE CIRCUIT COURT NO. 05-CR-000440

BRANDY SUE STEPHENS — APPELLEE

DISSENTING OPINION BY JUSTICE SCOTT

I respectfully dissent on the issue of whether Brandy Sue Stephens was subjected to a lawful investigatory stop. In my opinion, there was reasonable suspicion to continue questioning Stephens, given that she was loitering in a high crime area, appeared nervous upon seeing a police car nearby, did not have identification, and gave false information to the arresting officer. Thus, the trial court properly denied Stephens's motion to suppress the crack pipe and crack cocaine rocks. I would, therefore, reverse the Court of Appeals and affirm the conviction and sentence.

The stop occurred at Coolavin Park, Lexington, a high crime area known for drug trafficking. See Illinois v. Wardlow, 528 U.S. 119, 124, 120 S.Ct. 673, 676, 145 L.Ed.2d 570 (2000) (a suspect's presence in a high crime area is a relevant factor in determining reasonable suspicion). Officer Larrabee was

conducting surveillance and monitoring for drug trafficking activity when he observed Stephens loitering for several minutes.

When Stephens saw Officer Larrabee, she became nervous. See id. ("nervous, evasive behavior is a pertinent factor in determining reasonable suspicion"). Instead of asking Officer Larrabee for help, Stephens approached a car parked alongside his squad car, asked the passenger about the whereabouts of her sister, and then began to walk away.

His suspicions aroused, Officer Larrabee approached Stephens and began questioning her. When Officer Larrabee asked for identification, Stephens stated she did not have any. See, e.g., United States v. Hawthorne, 982 F.2d 1186, 1190 n.4 (8th Cir. 1992) (lack of identification is a factor to be considered for determining reasonable suspicion). When Officer Larrabee asked her name, age, and date of birth, she gave the wrong age, indicating an age that was three years off from the date of birth given.

Finding no record of the name she gave, Officer Larrabee informed Stephens that it was a crime to give a false name to a police officer. KRS 523.110. Officer Larrabee again asked her name and she gave the same name. At this point, there was reasonable suspicion that Stephens had given a false name, a Class B misdemeanor. See Wardlow, 528 U.S. at 123, 120 S.Ct. at 675 (reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence).

Therefore, the subsequent searches which uncovered the crack pipe and crack cocaine rocks were valid. For these reasons, I must dissent.

Minton, J., joins this dissent.