

RENDERED: August 13, 1999; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court Of Appeals

NO. 1997-CA-003237-MR

DAVID LYONS; DAVID LYONS JR.; and
PAUL COOPER

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN RYAN, JUDGE
ACTION NO. 94-CI-02465

CITY OF LOUISVILLE; ROBERT O'NEIL;
CITY OF ST. MATTHEWS; DAN MAHAFFEY;
STEVE MOBLEY; and BRAD JEFFREY

APPELLEES

OPINION

AFFIRMING

*** **

BEFORE: HUDDLESTON, JOHNSON and KNOPF, Judges.

HUDDLESTON, Judge. David Lyons, David Lyons Jr. and Paul Cooper appeal from the summary dismissal of their complaint seeking damages against the City of Louisville, the City of St. Matthews, Robert O'Neil, a Louisville police officer, Brad Jeffrey, a St. Matthews police officer, and Dan Mahaffey and Steve Mobley, both Jefferson County police officers, based on false imprisonment and assault claims.

I. BACKGROUND FACTS AND PROCEEDINGS IN THE CASE

Officers O'Neil, Mahaffey, Mobley and Jeffrey perform undercover investigations in a joint police agency known as the

Metro Narcotic Unit.¹ On March 17, 1994, Officer O'Neil went to Cotter Home Public Housing Project (Cotter Homes) to investigate a tip regarding the trafficking of cocaine. He was approached by Clarence Ware who attempted to sell him narcotics. Officer O'Neil contacted Officer Mobley in order to make a controlled buy from Ware.² Officers Mobley, Mahaffey and Jeffrey were given a description of Ware and monitored Officer O'Neil's purchase of cocaine from Ware.

As soon as Officer O'Neil purchased the cocaine from Ware, he left the area and secured the evidence in his vehicle. Officers Mahaffey and Jeffrey spotted Ware going into Cotter Homes. Approximately 15 minutes later, Officers Mahaffey and Jeffrey spotted Cooper, who they believed to be Ware, coming out of Cotter Homes. They radioed Officer O'Neil and requested that he identify the suspect.

Officers Mahaffey and Jeffrey observed Cooper on the street acting suspiciously. Cooper noticed that he was being watched by the officers and entered his apartment. Soon after, Lyons arrived at Cooper's apartment in a maroon Ford which he parked two parking spaces away from the officers. Cooper quickly ran out of his apartment and entered Lyons' vehicle. Lyons and

¹ The Metro Narcotics Unit is made up of officers from the Louisville Division of Police, the Jefferson County Police Department and several small-city police departments in Jefferson County.

² A "controlled buy" is a method of making a drug purchase which prevents a suspect from destroying evidence. An undercover detective purchases narcotics from a suspect and withdraws from the area to secure the evidence. Once the evidence is secured, the suspect is arrested by other officers.

Cooper drove to Lyons' house located at 2359 Alston Avenue with Officers Mahaffey and Jeffrey in pursuit.

The officers could not see into Lyons' vehicle because of dark tint on the windows. Based on the belief that an illegal narcotics transaction was occurring and concerned that evidence would be destroyed, the officers surrounded Lyons' vehicle with their weapons drawn. It is undisputed that the officers' weapons were pointed at Lyons and Coopers but a few seconds. Lyons Jr., who was in the house, heard the vehicle hit a garage wall. He went outside and saw his father and Cooper being detained by the officers. Officers briefly pointed their weapons at Lyons Jr. in order to safeguard the area of the investigation. The officers holstered their weapons when Officer O'Neil recognized Lyons and told them that Cooper was not the suspect (Ware).

On May 12, 1994, the appellants brought false imprisonment, outrageous conduct and assault claims against City of Louisville, the City of Shively, the City of St. Matthews and Officers O'Neil, Mahaffey, Jeffrey, Mobley and Cook. On December 12, 1995, the circuit court dismissed the outrageous conduct claim. On August 1, 1996, the court dismissed claims against Officer Cook and the City of Shively. On May 30, 1997, the court dismissed claims against Officer O'Neil and the City of Louisville. On November 5, 1997, the court dismissed the claims against the City of St. Matthews and Officers Mahaffey and Mobley. This appeal is from the May 30, 1997, and November 5, 1997, orders.

II. FALSE IMPRISONMENT AND ASSAULT

Appellants argue that there are genuine issues of material facts as to whether reasonable suspicion existed that justified the stopping of Lyons' vehicle and whether the Officers acted in good faith. Appellants contend that because Cooper did not wear stone washed jeans, had a disabled arm and walked with a limp, it was unreasonable for the officers to stop Lyons' vehicle.³

In an action for false imprisonment, the plaintiff must establish that his imprisonment occurred without legal authority or basis.⁴ Lexington-Fayette Urban County Government v. Middleton, Ky. App., 555 S.W.2d 613, 617 (1977). See also City of Lexington v. Gray, Ky., 499 S.W.2d 72 (1973). Where an officer has a reasonable, articulable suspicion that a particular person encountered was involved in or is wanted in connection with a completed felony, an investigatory stop is permissible. Collier v. Commonwealth, Ky. App., 713 S.W.2d 827 (1986). See Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). An investigatory stop is permissible on less than full probable cause. Collier, 713 S.W.2d at 828. On the other hand, officers may arrest any person whom they believe, upon reasonable grounds, to have committed a felony, although no felony was actually committed. Tucker v. Vornbrock, 270 Ky. 712, 110 S.W.2d 659, 661 (1937). The trial

³ Clarence Ware wore stonewashed jeans and a stonewashed jacket and Cooper wore blue jeans and a blue jacket. Cooper testified in his deposition that there is no restriction in the movement of his arm or in its range of motion. Cooper also testified that he walked perfectly.

⁴ Appellants brought both false imprisonment and false arrest claims against the Appellees. However, in cases involving police officers, there is no distinction between false arrest and false imprisonment because the latter is always the result of the former. Middleton, text supra, 555 S.W.2d at 619.

court determined that the Appellees were engaged in an investigatory stop rather than an arrest. The Appellants do not dispute this determination, but rather contend that the reasonableness of the stop of Lyon's vehicle, under these circumstances, is an issue for the jury.

The trial court must determine what facts constitute reasonable suspicion to stop and probable or reasonable cause for an arrest. Ornelas v. United States, 517 U.S. 690, 134 L.Ed.2d 922, 116 S.Ct. 1657 (1996); and see Jeffers v. Heavrin, 10 F.3d 380 (6th Cir. 1993); Tucker v. Vornbrock, supra. Reasonable suspicion and probable cause involve questions of both law and fact and are reviewed de novo. Ornelas, 134 L.Ed.2d at 920. "[A] reviewing court should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers." ⁵ Id.

In the present case, the circuit court concluded that:

The undisputed facts show that Officer O'Neil had purchased suspected cocaine from a black male at Cotter Homes; Mr. Cooper was spotted in the housing project approximately one block away from where the suspect was last seen; Mr. Cooper fit the detailed description of the suspect; and he left in the maroon vehicle. Based

⁵ The trial court determined that Cooper's attire and physical appearance matched that of Ware to such a degree that the mistake in his identity for that of Ware was not unreasonable or in bad faith. Ware is a black male, 25 years old, 5 feet 10 inches tall, 162 pounds, black hair and brown eyes, and Cooper is a black male, 29 years old, 5 feet 9 inches tall, 160 pounds, black hair and brown eyes.

thereon, the Officers had a reasonable; articulable suspicion that the suspected drug dealer from Officer O'Neil's earlier felony drug buy was in Capt. Lyons' vehicle.

We agree that based on the similarities in the appearance and clothing of Ware and Cooper, and the proximity of the action each took, the officers had reasonable suspicion to investigate the Appellants.⁶

Appellants' assault claims must also be dismissed. An assault is defined as "an unlawful offer of corporeal injury to another by force, or force unlawfully directed toward the person of another, under such circumstances as a well-founded fear of immediate peril." Brown v. Crawford, 296 Ky. 249, 177 S.W.2d. 1, 2-3 (1943) (Emphasis supplied). As noted, reasonable grounds existed for the Appellees' actions; hence, they did not act unlawfully. See Middleton, supra.

III. QUALIFIED IMMUNITY

In Ashby v. City of Louisville, Ky. App., 841 S.W.2d 184, 188 (1992), this Court said that "[i]n Kentucky, personal liability for a public officer's or public employee's negligent performance of duties depends on whether the powers or duties in question were ministerial or discretionary in nature." The key distinction between a ministerial and a discretionary duty is whether the duty

⁶ Although the proper review is de novo, Ornelas, text supra, even when viewed in a light most favorable to the Appellants, the facts require judgment for the Appellees.

is mandatory or whether the act complained of involved policymaking or judgment.

A discretionary duty involves judgment, planning or policy decisions. 63C Am. Jur. 2d. Public Officers and Employees § 234 (1997). The obvious basis for the distinction is that to fail to afford immunity for discretionary acts would have a chilling and detrimental effect on the free operation of government, while, on the other hand, to grant immunity for ministerial duties would deny recompense to private citizens who are bound to rely upon public servants and suffer loss when they fail to dutifully perform their office. Id.; Restatement (Second) of Torts § 895D (1979).

The trial court determined that the officers were engaged in a discretionary activity during the investigative stop and, therefore, had qualified immunity. Because the officers had a reasonable basis for investigating the Appellants, we are unable to conclude that they acted in bad faith and unreasonably in the circumstances. Ashby v. City of Louisville, supra.

The judgment is affirmed.

ALL CONCUR.

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