

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000758-MR

ANTHONY AARON LAKE

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LAURANCE B. VANMETER, JUDGE
ACTION NO. 00-CR-01156

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: McANULTY, MILLER, AND TACKETT, JUDGES.

MILLER, JUDGE: Anthony Aaron Lake appeals from a March 21, 2001 judgment of the Fayette Circuit Court. We affirm.

On August 22, 2000, Sergeant Craig Sorrell and Officer Smith of the Lexington Police Department responded to a dispatch call specifically regarding two black male subjects, possibly dealing drugs, and possibly armed, at a particular apartment complex in Lexington. The dispatch was the result of an anonymous tip. Upon arriving at the scene, the officers observed two black males leaving the fenced-in apartment complex. The officers did not stop the subjects, instead looking for others

within the complex possibly fitting the description. They found no one else.

As the officers were leaving the complex, they observed Lake and a companion, one Brian Thomas, walking back into the fenced-in area. The complex is posted for tenants and visitors only, and against loitering. Upon seeing the officers, Lake and Thomas went around to a very dark area at the back of the first apartment building. Sergeant Sorrell went around one side of the building, while Officer Smith went around to the front, anticipating a foot chase. Sergeant Sorrell then approached Thomas to initiate a conversation. Thomas was approximately fifteen feet from Lake. Thomas was unable to give Sergeant Sorrell specifics as to where in the complex he lived. Further, Thomas seemed "jittery." As a result, Sergeant Sorrell advised Thomas that he was going to pat him down for weapons. As Sergeant Sorrell approached Thomas to conduct the pat-down, Thomas fled. While the chase with Thomas ensued, Sergeant Sorrell observed Lake walking toward a second apartment building. Lake stood in a hallway by an apartment door and watched the chase. Thomas eventually returned to the same doorway, and he and Lake entered the apartment.

When Sergeant Sorrell arrived at the apartment, the door was locked. Both Sergeant Sorrell and Officer Smith immediately began beating on the door and calling for the subjects to come out. The officers called for backup, who arrived shortly thereafter. Various officers observed people looking out the windows of the apartment, and heard sounds of

movement within the apartment. The apartment manager advised that the apartment had been leased that day to a young black female. Finally, a black female opened the door, whereupon the officers asked if she had let the two subjects into the apartment. The female answered in the negative, and gave the officers permission to conduct a search while she stepped out into the hallway.

The officers approached two bedrooms down a hall. Thomas emerged from the first bedroom, having changed his clothes. Sergeant Sorrell secured Thomas and passed him off to another officer. Sergeant Sorrell went to the next bedroom, and upon entering, found Lake, apparently pretending to be asleep on a mattress on the floor. Lake had also changed clothes, leaving his original shirt in the bedroom where Thomas was found.

Sergeant Sorrell handcuffed Lake, and performed a pat-down, at which time an officer informed Sergeant Sorrell that crack cocaine was found in the bedroom occupied earlier by Thomas. Lake responded the cocaine was his. Sorrell then Mirandized¹ Lake. Lake continued to insist the crack cocaine was his.

While another officer stayed with Lake, Sergeant Sorrell went outside to the car where Thomas was being held. He advised Thomas of his rights, and asked him if the crack cocaine was his. Thomas responded it was not. Sergeant Sorrell went back upstairs to Lake, who again assured Sergeant Sorrell that

¹Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

the crack cocaine was his. Lake was transported to juvenile authorities, where he was charged, as an adult, with trafficking in cocaine. Lake was indicted November 6, 2000 by the Fayette County Grand Jury for the felony offense of trafficking in a controlled substance, first degree. (Kentucky Revised Statutes (KRS) 218A.1412).

On January 9, 2001, the circuit court overruled a motion by Lake to suppress his statement to police. On the same day, Lake entered a conditional guilty plea, Ky. R. Crim. P. 8.09, to the amended charge of possession of cocaine pursuant to a plea agreement with the Commonwealth. On March 21, 2001, Lake was sentenced to three years in prison. This appeal followed.

Lake maintains the circuit court erred by overruling his motion to suppress his statement to police that the cocaine was his. Specifically, Lake complains he was placed under arrest without probable cause, and thus any incriminating statement he made would have been unlawfully obtained. We observe that in the suppression hearing, Lake's challenge of the admissibility of his confession was based upon the unlawfulness of his arrest. Lake alleged that an "arrest" took place while officers were *outside* the apartment. Lake did not question the legality of his arrest within the apartment, which is the issue presented here. We shall nonetheless address the merits of his contention.

Probable cause "exists when the facts and circumstances within the arresting officer's knowledge . . . are sufficient in themselves to warrant a man of reasonable caution to believe that an offense has been committed or is being committed." (Citation

omitted). Davidson v. Commonwealth, Ky. App., 613 S.W.2d 431, 434 (1981). In the case at hand, the officers responded to a dispatch giving the exact location of a suspected crime, and descriptions of the suspects. Lake and Thomas were detained only after a thorough search of the area indicated they were the only persons meeting the dispatcher's description. Additionally, they were seen leaving the area, then re-entering as the officers were leaving. They walked away from the officers to a darkened area behind one of the apartment buildings. Both suspects left the scene before the officers could complete questioning. Lake and Thomas secured themselves in an apartment. For a significant period of time, the officers were refused entry into the apartment. Upon finally gaining entry to the apartment, the officers found Lake and Thomas had changed clothes. Both Lake and Thomas claimed ignorance about what was taking place. As such, we believe the officers had probable cause to arrest Lake.

Lake also complains that his arrest was unlawful because Sergeant Sorrell did not inform him of the charges against him. "The person making an arrest shall inform the person about to be arrested of . . . the offense for which he is being arrested." KRS 431.025. Failure to do so, however, is not a basis for excluding evidence concerning the arrest. Little v. Commonwealth, Ky., 438 S.W.2d 527 (1968). We observe also that an arrest may be appropriately made simply for the purpose of investigation, and not for the purpose of charging a person with a crime. Deberry v. Commonwealth, Ky., 500 S.W.2d 64 (1973). Thus, we do not believe Lake's arrest was unlawful.

Upon the whole, we find no clear abuse of discretion by the Fayette Circuit Court.

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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