

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000768-MR

GREGORY BRENT

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE SHEILA R. ISAAC, JUDGE
ACTION NO. 02-CR-00068

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: SCHRODER, TAYLOR, AND VANMETER, JUDGES.

TAYLOR, JUDGE: Gregory Brent appeals from a March 8, 2004, order of the Fayette Circuit Court that "overruled" appellant's motion to suppress contraband seized prior to his arrest. The issue raised by appellant's motion to suppress was previously remanded to the circuit court from another panel of this Court on direct appeal. We affirm.

Appellant was indicted by the Fayette County Grand Jury for trafficking in a controlled substance in the first degree (Kentucky Revised Statutes (KRS) 218A.1412) and with

being a persistent felony offender in the second degree (KRS 532.080). Appellant pled not guilty to the charges.

Prior to trial, appellant filed a motion to suppress the introduction of cocaine that was found tucked in his pants at the time of his arrest. Appellant argued that the controlled substance "was seized as the result of an illegal stop, search, and seizure in violation of the Fourth Amendment to the United States Constitution and Section 10 of the Kentucky Constitution." Following an evidentiary hearing, the circuit court denied appellant's motion to suppress. The case was subsequently tried before a jury, and a verdict of guilty was returned on both charges. Appellant was sentenced in accordance with the jury's recommendation to a total of six years' imprisonment.

A direct appeal was then taken to this Court, and by Opinion rendered February 13, 2004, Appeal No. 2002-CA-001057-MR, this Court affirmed in part, vacated and remanded in part the judgment of the Fayette Circuit Court. This Court specifically vacated the circuit court's denial of appellant's motion to suppress and remanded with directions for the circuit court to make specific factual findings in support of its ruling. Upon remand, the circuit court made findings of fact to support the denial of appellant's motion. This appeal follows.

Appellant again contends the circuit court erred by denying his motion to suppress evidence. Specifically, appellant contends that to justify an investigatory stop the police must possess reasonable suspicion that criminal activity is afoot. Appellant asserts that the police lacked reasonable suspicion to justify the stop.

In Gray v. Commonwealth, 150 S.W.3d 71 (Ky.App. 2004), this Court held:

Police officers may briefly detain an individual on the street, even though there is no probable cause to arrest him, if there is a **reasonable suspicion that criminal activity is afoot**.

Id. at 74 citing Terry v. State of Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 889 (1968)(emphasis added). The reasonable suspicion necessary to justify such an investigatory stop must be grounded in specific and articulable facts. Baltimore v. Commonwealth, 119 S.W.3d 532 (Ky.App. 2003).

Our review of a circuit court's decision upon a motion to suppress has been elucidated as follows:

First, factual findings of the court involving historical facts are conclusive if they are not clearly erroneous and are supported by substantial evidence. Second, the ultimate issue of the existence of reasonable suspicion or probable cause is a mixed question of law and fact subject to de novo review. In conducting this analysis, the reviewing court must give due weight to inferences drawn from the facts by the trial court and law enforcement officers and the

circuit court's findings on the officer's credibility.

Id. at 539 (citations omitted). The facts of this case are materially undisputed so resolution of the suppression issue centers upon whether reasonable suspicion existed to justify the investigatory stop. This question is subject to de novo review.

In the case sub judice, Officer Matthew Evans was responding to a call that a pit bull was loose on Douglas Avenue in Lexington. While in route, Officer Evans was waiting at a stoplight at the corner of Bright Street and Georgetown Road. Officer Evans observed a vehicle pull into a nearby residential driveway. The passenger exited the vehicle and motioned for appellant to approach. Appellant, who was walking down the sidewalk, approached the driver's side of the vehicle. The driver's side door was open, and appellant leaned inside the open door and displayed something to the driver that he was holding in the palm of his hand.

Officer Evans testified that this area was known to have a high incidence of drug trafficking, and thus he suspected a drug transaction was taking place. Thereupon, Officer Evans pulled his vehicle into the driveway. Upon noticing the officer approach, appellant quickly rolled his hands under his shirt. Officer Evans testified that appellant was attempting to conceal a cellophane bag he had been holding in his hand. Officer Evans

told appellant he needed to see his hands. When appellant lifted his shirt, Officer Evans was able to see a baggy containing a white substance stuffed into the front of appellant's pants. Appellant was then placed under arrest. The substance was later determined to be cocaine.

At the evidentiary hearing, Officer Evans testified that based upon his training and experience, the behavior he observed was consistent with that of a drug transaction. Coupled with the area being known by police to have a high incidence of drug trafficking, these facts create a reasonable suspicion that criminal activity is afoot, thus justifying Officer Evans' investigatory stop of appellant. Accordingly, we hold the circuit court properly denied appellant's motion to suppress.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Gene Lewter
Lexington, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Wm. Robert Long, Jr.
Assistant Attorney General
Frankfort, Kentucky