

RENDERED: MAY 26, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000815-MR

MARCUS ANTWAN CHAMBERS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES D. ISHMAEL, JR., JUDGE
ACTION NO. 04-CR-00937

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Marcus Chambers has appealed from a judgment entered by the Fayette Circuit Court on March 22, 2005, as a result of a conditional guilty plea to possession of a controlled substance in the first degree (cocaine),¹ fleeing and evading the police in the second degree,² and giving a police officer a false name.³ Having concluded that the trial court did not err in denying the motion to suppress evidence, we affirm.

¹ Kentucky Revised Statutes (KRS) 218A.1415.

² KRS 520.100.

³ KRS 523.110.

At the suppression hearing, Officer Jarrod Curtsinger of the Lexington Metro Police Department testified that on July 8, 2004, he was patrolling the "Arbor Grove" area of Lexington and that this area is HUD property that is marked with "No Trespassing" signs. Officer Curtsinger testified that around 2:00 a.m. he observed a vehicle parked in an Arbor Grove parking lot with two occupants. Officer Curtsinger stated that neither occupant was in the process of exiting the vehicle. Officer Curtsinger testified that he believed the occupants of the vehicle were trespassing and stated that the area was "one of the hottest spots in Lexington for drug activity."

Officer Curtsinger testified that he drove past the parking lot and made a loop. When he returned to the parking lot, the vehicle was in the same place and with two occupants. Officer Curtsinger then decided to approach the vehicle, to investigate the occupants' purpose for being on the premises, and to determine whether they lived in the area. Officer Curtsinger testified that he pulled into the parking lot and exited his patrol car. As he was approaching the vehicle, Officer Curtsinger was joined at the scene by Officer Morris also with the Lexington Police Department. Officer Curtsinger testified that he approached the driver's side of the vehicle and Officer Morris approached the passenger's side.

Officer Curtsinger testified that he asked the occupants of the vehicle if they lived in the area and both men indicated that they did not. Officer Curtsinger then asked the occupants their names and if they had identification. According to Officer Curtsinger, the driver, Larry Walker, produced a driver's license; however, Chambers, who was sitting in the passenger's seat, said he did not have any identification. Officer Curtsinger stated that he told Chambers it was a crime to give a police officer a false name and that Chambers told him his name was "Jeffery Collins." Officer Curtsinger also stated that Chambers gave him a Social Security number that contained an incorrect amount of numerals.

Officer Curtsinger testified that he checked the information Chambers gave him over the police information system and found no match for the name or information Chambers had provided. Officer Curtsinger testified that he then motioned for Officer Morris to remove Chambers from the vehicle to arrest him for providing a police officer a false name. Officer Curtsinger testified that as Chambers exited the vehicle and Officer Morris began to attempt to place him under arrest, Chambers broke and ran. Officer Curtsinger testified that he ordered Chambers to stop, and after pursuing him on foot found him hiding in the doorway of an apartment. Officer Curtsinger ordered Chambers to come out and he was arrested for giving a

police officer a false name and fleeing and evading. Officer Curtsinger testified that once Chambers was placed under arrest he conducted a search of Chambers's person and discovered a small bag of crack cocaine in his pocket. An iris scan was performed on Chambers at the Fayette County Detention Center which disclosed Chambers's true identity, and it was determined that he had an outstanding warrant for a probation violation.

Chambers was indicted by a Fayette County grand jury on August 3, 2004, for possession of a controlled substance in the first degree, fleeing and evading police in the second degree, giving a peace officer a false name and address, and criminal trespass in the third degree.⁴ Following his indictment, Chambers moved the trial court to suppress the evidence seized following his arrest on the grounds that Officer Curtsinger did not have a legitimate basis for stopping Walker and Chambers in the parking lot. The trial court conducted a hearing on Chambers's motion on November 24, 2004, and denied the motion on December 17, 2004.⁵

The trial court found that under the circumstances of this case and pursuant to United States v. Sharpe,⁶ that Officer

⁴ KRS 511.060.

⁵ The trial court's oral findings at the hearing on December 17, 2004, were adopted in a written order entered on December 28, 2004.

⁶ 470 U.S. 675, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985).

Curtsinger had sufficient reasonable, articulable suspicion that criminal activity was afoot to justify approaching the vehicle in order to investigate whether Chambers and Walker were trespassing. Further, the trial court found that when Chambers gave Officer Curtsinger a name which Curtsinger was unable to verify through the police information system as well as a Social Security number with an incorrect amount of numerals, Officer Curtsinger had a legitimate basis to investigate further to determine Chambers's identity. The trial court found that once Chambers broke and ran Officer Curtsinger had a reasonable suspicion to pursue and to arrest Chambers for fleeing and evading and the cocaine was then properly discovered during a search incident to arrest.

Following the denial of his motion to suppress, Chambers entered a conditional guilty plea⁷ to possession of a controlled substance in the first degree, fleeing and evading a police officer in the second degree, and giving a peace officer a false name. The criminal trespass charge was dismissed, and Chambers was sentenced to prison for one year. This appeal followed.

⁷ Kentucky Rules of Criminal Procedure (RCr) 8.09

Our standard of review of a trial court's decision regarding a motion to suppress evidence was summarized in Baltimore v. Commonwealth,⁸ as follows:

[T]he decision of the circuit court on a motion to suppress based on an alleged illegal search following a hearing is subject to a two-part analysis. 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 [footnotes omitted].

Chambers does not dispute the facts surrounding the search at issue in this case. Rather, he contends that Officer Curtsinger lacked a reasonable suspicion to approach the vehicle for purposes of an investigation. The trial court found, and we agree, that Officer Curtsinger did have reasonable, articulable suspicion to investigate whether Chambers and Walker were trespassing.

Officer Curtsinger testified that he observed the occupied vehicle in the parking lot in the early morning and observed that neither occupant was exiting the vehicle. Based upon his experience and the fact the housing complex contained no trespassing signs and was in an area known to him as a high crime area, Officer Curtsinger had a reasonable, articulable

⁸ 119 S.W.3d 532, 539 (Ky.App. 2003) (citing Ornelas v. United States, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996)).

suspicion that criminal activity was afoot. In Terry v. Ohio,⁹ the Supreme Court recognized "that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest."¹⁰ It is proper for a police officer to "stop and briefly detain a person for investigative purposes[.]"¹¹ Thus, Officer Curtsinger was justified in approaching the occupants of the vehicle to inquire as to whether they were trespassing.

The facts of this case are similar to those considered by this Court in Creech v. Commonwealth,¹² where Creech and another person were observed by a police officer sitting in a truck in the parking lot of a club in the early morning hours. The officer testified that he saw the occupants hunched over in the vehicle facing each other. Citing Adams v. Williams,¹³ this Court held that it was "reasonable to suspect, considering the totality of the circumstances, that Creech and his companion could have been involved with a stolen vehicle or certainly

⁹ 392 U.S. 1, 30, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

¹⁰ Id. at 22.

¹¹ United States v. Sokolow, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989) (citing Terry, 392 U.S. at 30).

¹² 812 S.W.2d 162 (Ky.App. 1991).

¹³ 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972).

could have been engaging in some criminal activity at the time and place [the officer] observed them.”¹⁴

As in Creech, the actions of Chambers and Walker aroused the suspicions of Officer Curtsinger, and his investigation “was in furtherance of either dispelling or confirming the suspicions and of maintaining the status quo while obtaining more information.”¹⁵ Upon being asked his identity, Chambers told Officer Curtsinger that he did not have any identification on him and said that his name was “Jeffery Collins” in addition to providing a Social Security number with an incorrect amount of numerals. This information further aroused a reasonable suspicion on the part of Officer Curtsinger that Chambers was providing false information. Officer Curtsinger then ran the information provided by Chambers through the police information system and discovered that there was no match in the system for the information Chambers had provided.¹⁶ Officer Curtsinger then requested that Officer Morris remove Chambers from the vehicle to arrest him for providing a false name to a peace officer.

¹⁴ Creech, 812 S.W.2d at 164.

¹⁵ Id.

¹⁶ Officer Curtsinger also testified that upon further questioning, Chambers gave him a different date of his birth and could not spell his name, but the trial court made no factual finding as to this testimony.

Since Officer Curtsinger testified that Chambers and Walker were not free to leave after he approached the vehicle to investigate, a seizure occurred at that time, and we disagree with the trial court's finding to the contrary.¹⁷ "[A] person has been seized when, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave."¹⁸ Clearly, based upon Officer Curtsinger's testimony that Chambers was not free to leave, a seizure had occurred. The seizure was lawful under the totality of the circumstances and was reasonably related to the scope of the initial intrusion. Chambers had provided inaccurate and inconsistent information in response to Officer Curtsinger's request for identification. When Officer Curtsinger was unable to verify the information provided, he became further suspicious that Chambers was not being truthful with him about his identity. Thus, based upon the totality of the circumstances Officer Curtsinger was justified in detaining Chambers further to investigate whether Chambers had committed a crime by providing a false name.

¹⁷ Hodge v. Commonwealth, 116 S.W.3d 463, 470 (Ky. 2003) (noting that an appellate court will uphold a conviction where the trial court may have reached the correct result although for the wrong reason).

¹⁸ Baker v. Commonwealth, 5 S.W.3d 142, 145 (Ky. 1999)(citing United States v. Mendenhall, 446 U.S. 544, 554, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980)).

As Officer Morris was getting Chambers out of the vehicle, Chambers broke away and ran. This obviously gave Officer Curtsinger greater suspicion to believe Chambers had provided false information regarding his identity, and when Chambers fled he committed the criminal offence of fleeing and evading a police officer.¹⁹ This criminal act justified Officer Curtsinger's foot pursuit of Chambers and his arrest. The warrantless search of Chambers's person which followed was proper under the search incident to arrest exception to the Fourth Amendment.²⁰

Based upon the foregoing, the judgment of the Fayette Circuit Court is affirmed.

COMBS, CHIEF JUDGE, CONCURS.

DYCHE, JUDGE, CONCURS IN RESULT ONLY.

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¹⁹ We reject Chambers's argument that his fleeing did not create a substantial risk of physical injury to a person. See Robertson v. Commonwealth, 82 S.W.3d 832, 837-38 (Ky. 2002) (holding that there was sufficient evidence to present to the jury the question of fact of whether the defendant who saw an officer pursuing him knew or should have known that the officer's death was rendered substantially more probable).

²⁰ Baltimore, 119 S.W.3d at 538.