RENDERED: SEPTEMBER 29, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001992-MR

THOMAS EDWARDS — APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE STEVEN R. JAEGER, JUDGE
ACTION NO. 05-CR-00105

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ABRAMSON AND VANMETER, JUDGES; KNOPF,[1] SENIOR JUDGE.

ABRAMSON, JUDGE: By judgment entered September 1, 2005, the Kenton Circuit Court convicted Thomas Edwards, pursuant to his conditional guilty plea, of first-degree possession of cocaine, in violation of KRS 218A.1415. The court sentenced Edwards to two years in prison, probated for two years. Edwards appeals from the denial of his motion to suppress the cocaine evidence. He contends that the discovery of the cocaine was tainted by an

[1] Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110 (5) (b) of the Kentucky Constitution and KRS 21.580.

illegal, warrantless detention. Agreeing with the trial court that Edwards's brief detention while his companion was stopped for questioning did not violate Edwards's constitutional rights, we affirm.

The facts are not in dispute. On January 4, 2005, officer Jess Hamblin of the Covington Police Department observed Edwards and a female companion walking together along a public sidewalk near Wood and Twelfth Streets in Covington. Edwards's companion matched the description of a suspect in a burglary that had been committed the day before. In order to investigate, the officer blocked the sidewalk with his cruiser and ordered both the female suspect and Edwards to stop. At the suppression hearing, the officer candidly acknowledged that he had no reason to suspect Edwards of any wrongdoing aside from his association with the burglary suspect. The officer detained Edwards, however, and demanded his identification, because Edwards "could have been involved" in the burglary. A warrant check revealed an outstanding warrant for Edwards's arrest. In the search of Edwards's person incident to that arrest the officer found the cocaine at issue. Edwards contends that his mere association with the burglary suspect was not a constitutionally sufficient reason for the officer to stop him and check his identity. We disagree.

As Edwards notes, the Fourth Amendment to the United States Constitution and Section 10 of the Kentucky Constitution prohibit unreasonable searches and seizures, and generally a search or seizure is unreasonable absent probable cause and a warrant. *Williams v. Commonwealth*, 147 S.W.3d 1 (Ky. 2004). We agree with Edwards that he was seized for constitutional purposes when the officer drove onto the sidewalk and ordered him to stop. *Baker v. Commonwealth*, 5 S.W.3d 142 (Ky. 1999). A reasonable person in Edwards's position would not have felt free to terminate the encounter. Furthermore, the officer testified that had Edwards tried to leave he, the officer, would have stopped him. Edwards is correct, moreover, that "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." *Ybarra v. Illinois*, 444 U.S. 85, 91, 100 S.Ct. 338, 342, 62 L.Ed.2d 238 (1979) (holding that customers in a bar were not subject to being detained and frisked during execution of search warrants naming the bar and bartender).

It is now well established, however, that absent probable cause but in circumstances giving rise to a reasonable suspicion that a crime has been or is about to be committed, police officers may briefly detain suspected individuals in order to investigate, and may take reasonable steps to maintain the status quo and to protect themselves while they do so.

Michigan v. Summers, 452 U.S. 692, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981); *Adams v. Williams*, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972); *Terry v. Ohio*, 392 U.S.1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *Baker v. Commonwealth*, *supra.* To justify this lesser intrusion upon an individual's privacy interests, the officer's suspicion must be more than a mere hunch. Although it need not amount to probable cause, the suspicion must be based on "specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant th[e] intrusion." *Terry v. Ohio*, *supra,* at 21, 88 S.Ct. at 1880. Determining whether a seizure is reasonable thus requires "a review of the totality of the circumstances, taking into consideration the level of police intrusion into the private matters of citizens and balancing it against the justification for such action." *Baker v. Commonwealth*, 5 S.W.3d at 145. This Court reviews the trial court's application of this balancing test *de novo. Commonwealth v. Whitmore*, 92 S.W.3d 76 (Ky. 2002).

Under the balancing test, where a person's association with a criminal suspect is stronger than mere propinquity, such as when they travel together or visit one another's residence, and thus raises the possibility of involvement in each other's affairs, the association may give rise to a degree of suspicion sufficient to justify asking the companion for identification

and detaining him briefly while the residence is searched or the suspect is questioned or apprehended. *Michigan v. Summers*, *supra* (detention of persons present at a residence during execution of a search warrant); *Trice v. United States*, 849 A.2d 1002 (D.C.App. 2002) (detention of pedestrian companion of assault suspect); *State v. Roberts*, 943 P.2d 1249 (Mont. 1997) (detention of automobile passenger while driver questioned); *People v. Hannah*, 59 Cal.Rptr.2d 806 (Cal.App. 1996) (detention of person present at residence where arrest warrant served); *United States v. Vaughan*, 718 F.2d 332 (9th Cir. 1983) (detention of automobile passenger while driver and another passenger arrested and vehicle searched). These are minimal intrusions into the companion's privacy, and the police interest in identifying and in briefly detaining companions who could be criminally involved is substantial.

Here, Edwards and the burglary suspect were not merely near each other in a public place; they were walking together familiarly a short time after the burglary. We agree with the trial court that the officer's suspicion that Edwards "could be involved" in the burglary was reasonable in these circumstances and justified both his detaining Edwards while he questioned the suspect and his obtaining Edwards's identification. The arrest pursuant to the outstanding warrant and the search incident to that arrest flowed properly from the legitimate detention. The

trial court did not err, therefore, when it denied Edwards's motion to suppress. Accordingly, we affirm the September 1, 2005, judgment of the Kenton Circuit Court.

KNOPF, SENIOR JUDGE, CONCURS.

VANMETER, JUDGE, CONCURS AND FILES SEPARATE OPINION.

VANMETER, JUDGE, CONCURRING: While I agree with the holding and reasoning of the majority opinion, I write separately to add that in *Hardy v. Commonwealth*, 149 S.W.3d 433 (Ky.App. 2004), another panel of this court held that even assuming a suspect was illegally stopped, "the discovery of the outstanding warrant for his arrest was sufficient to dissipate any taint caused by the alleged unlawful detainment." *Id.* at 436. Thus, as in *Hardy*, the fact that Edwards was arrested on an outstanding warrant, the validity of which is not contested, constitutes an "intervening circumstance" which outweighs any possible misconduct on the part of the police in detaining Edwards while investigating the unrelated burglary. *Id.*

BRIEFS FOR APPELLANT:

Donald H. Morehead
Assistant Public Advocate
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General

David W. Barr
Assistant Attorney General
Frankfort, Kentucky