

RENDERED: OCTOBER 31, 2008; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2007-CA-001878-MR

TERRENCE RICHARDS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE JAMES D. ISHMAEL, JR., JUDGE  
ACTION NO. 06-CR-01160

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: NICKELL AND THOMPSON, JUDGES; ROSENBLUM,<sup>1</sup> SPECIAL JUDGE.

THOMPSON, JUDGE: Terrence Richards appeals from a judgment of the Fayette Circuit Court following a conditional guilty plea. Pursuant to his plea, Richards

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<sup>1</sup> Retired Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

reserved the right to appeal the denial of his suppression motion. For the reasons stated herein, we affirm.

On the afternoon of July 12, 2006, Lexington Police Officer Anthony Miranda observed two people kissing inside a parked car on a public street. Aware of neighborhood complaints about drugs and prostitution, Officer Miranda approached the car and asked the driver and passenger what they were doing. After they responded that they were waiting for someone, Officer Miranda asked them to produce identification.

Although the passenger produced a license, the driver was unable to produce identification but stated his address, date of birth, and that his name was "Lance Smith." After dispatch found no record of this name, Officer Miranda returned to the parked car and informed the driver that providing false information to police was a crime. The driver then identified himself as Terrence Richards and stated that he had two outstanding warrants against him.

Dispatch confirmed that Richards had two outstanding warrants and revealed he was wanted for a parole violation. Richards was asked to exit his vehicle and was taken into custody. The passenger was then asked to exit the vehicle. Without being read his Miranda rights, Richards was asked if there was anything in the vehicle that police should know about before it was searched. After Richards was non-responsive, Officer Miranda searched the vehicle and

discovered 1.7 grams of crack cocaine in the driver's seat. As Officer Miranda began handcuffing the passenger, Richards informed him that the crack cocaine belonged to him rather than his passenger.

Subsequently, Richards was indicted for possession of a controlled substance, first-degree; fleeing and evading, first-degree; giving a false name or address to police; and being a persistent felony offender, first-degree. On November 16, 2006, the trial court held a suppression hearing where Officer Miranda was the lone witness. Following the hearing, the trial court issued its findings of fact and conclusions of law from the bench.

The trial court ruled that Richards was not in custody until his arrest and that the search was validly conducted incident to Richards' arrest. After his suppression motion was denied, Richards entered a conditional guilty plea to first-degree possession of a controlled substance and for being a first-degree persistent felony offender (PFO I). He was sentenced to ten-years' imprisonment pursuant to the PFO I enhancement. This appeal followed.

Richards contends that Officer Miranda could not approach his vehicle and ask questions without reasonable suspicion that Richards was engaging in criminal activity. Contending that Officer Miranda had no reasonable suspicion, Richards argues that all evidence obtained after his vehicle was approached should have been suppressed as the fruits of an unlawful search. We disagree.

Our standard of review of a trial court's denial of a motion to suppress is two-fold as set out in *Ornelas v. U.S.*, 517 U.S. 690, 116 S.Ct. 1657, 134

L.Ed.2d 911 (1996), and adopted by Kentucky in *Adcock v. Commonwealth*, 967 S.W.2d 6 (Ky. 1998). We first determine whether the findings of fact are supported by substantial evidence. *Id.* at 8. If a trial court's findings are supported by substantial evidence, they are conclusive and will not be disturbed. *Drake v. Commonwealth*, 222 S.W.3d 254, 256 (Ky.App. 2007).

An appellate court then conducts a *de novo* review of the trial court's application of the law to the facts to determine whether its ruling was correct as a matter of law. *Adcock*, 967 S.W.2d at 8. Under *de novo* review, we afford no deference to the trial court's application of the law to the established facts. *Cinelli v. Ward*, 997 S.W.2d 474, 476 (Ky.App. 1998).

Citizens and police may engage in three types of interactions: (1) consensual encounters; (2) temporary detentions, often called *Terry* stops; and (3) arrests. *Fletcher v. Commonwealth*, 182 S.W.3d 556, 559 (Ky.App. 2005).

Although *Terry* stops and arrests trigger constitutional protections, consensual encounters between police and citizens do not implicate the Fourth Amendment. *Id.* To exceed the level of a consensual encounter, police must restrain an individual's liberty by means of physical force or show of authority to an extent that a reasonable person would believe that he was not free to leave. *Baker v. Commonwealth*, 5 S.W.3d 142, 145 (Ky. 1999).

In this case, the Fourth Amendment was not implicated when Officer Miranda approached Richards' vehicle, asked him general questions, and requested identification. Generally, even without reasonable suspicion, police may approach

citizens in a public place and ask them questions and request identification. *U.S. v. Drayton*, 536 U.S. 194, 201, 122 S.Ct. 2105, 153 L.Ed.2d 242 (2002).

Furthermore, Officer Miranda testified that he did not activate his cruiser's lights, did not brandish his weapon, and did not assume an intimidating posture when he approached Richards. Thus, Officer Miranda's conduct would not have caused a reasonable person to believe that he was not free to terminate the encounter.

Richards next contends that the trial court erred by not ruling that Officer Miranda's prolonged detention of him was unreasonable. According to Richards, after Officer Miranda cleared him through a call to dispatch, Officer Miranda was not permitted to further inquire into any criminal activities absent reasonable suspicion. Thus, Richards contends that Officer Miranda's continued detention of him, without reasonable suspicion, violated his constitutional rights. We disagree.

All searches without a warrant are unreasonable unless they are within one of the exceptions to the rule that a search must be made pursuant to a valid warrant. *Cook v. Commonwealth*, 826 S.W.2d 329, 331 (Ky. 1992). A warrantless search incident to an arrest is an exception to the warrant requirement whereby police may search the area within the arrestee's immediate control. *Davis v. Commonwealth*, 120 S.W.3d 185, 191 (Ky.App. 2003).

Applying these principles to this case, Officer Miranda properly asked Richards and his passenger for identification and was justified in his follow-up questioning after the name "Lance Smith" was not found by dispatch. Kentucky

law requires that drivers present identification to police upon request. Kentucky Revised Statutes (KRS) 186.510. When Officer Miranda began his second attempt to ascertain the driver's identification, Richards notified Officer Miranda that he had outstanding warrants against him. At this time, Officer Miranda had probable cause to arrest Richards.

Notwithstanding the existence of probable cause, instead of immediately retraining Richards, Officer Miranda exercised discretion and chose to confirm the existence of the warrants before proceeding any further. After the warrants were confirmed, Richards was placed under arrest. Accordingly, based on the facts of this case, Officer Miranda properly arrested Richards and conducted a valid search incident to the arrest. *Williams v. Commonwealth*, 147 S.W.3d 1, 8 (Ky. 2004).

Richards next contends that Officer Miranda's failure to Mirandize him immediately following his arrest violated his constitutional right against compelled self-incrimination. Under *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), police are required to inform defendants of various constitutional rights, including the right to remain silent. Richards contends that the police improperly obtained an incriminating statement from him before he was informed of his right to remain silent. We disagree.

Officer Miranda did not violate Richard's constitutional rights when Richards claimed ownership of the crack cocaine. While Richards made the incriminating statement while in custody, he was not being interrogated at the time

so a *Miranda* warning was not necessary. “A *Miranda* warning is not required when a suspect is merely taken into custody, but rather when a suspect in custody is subject to interrogation.” *Watkins v. Commonwealth*, 105 S.W.3d 449, 451 (Ky. 2003). Accordingly, under these circumstances, the failure to Mirandize Richards did not violate his constitutional rights.

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

ALL CONCUR.

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