

RENDERED: NOVEMBER 21, 2008; 2:00 P.M.  
 NOT TO BE PUBLISHED

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

NO. 2007-CA-001999-MR

MORDECAI BLACK

APPELLANT

APPEAL FROM CAMPBELL CIRCUIT COURT  
v. HONORABLE JULIE REINHARDT WARD, JUDGE  
ACTION NO. 07-CR-00213

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; STUMBO, JUDGE; GUIDUGLI,<sup>1</sup> SENIOR JUDGE.

COMBS, CHIEF JUDGE: Following entry of a conditional guilty plea, Mordecai Black (Black) was convicted of complicity to commit second-degree robbery. He reserved the right to challenge the denial of his motion to suppress evidence by the Campbell Circuit Court. He now appeals from that order. We affirm.

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<sup>1</sup> Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Just before 2:00 a.m. on April 6, 2007, Officer Travis Nunn of the Bellevue Police Department was dispatched to the corner of 417 Center Street and Washington Street in Bellevue. Police dispatch reported an armed robbery that had been perpetrated by two black men several minutes earlier. The victim claimed that one of the men had held a gun to his head.

Officer Nunn happened to be parked in an alley behind Bellevue High School on Center Street a few blocks away from the crime scene. As he pulled out of the alley, Officer Nunn saw two black men running toward him from Center Street. He saw no one else in the area. As he pulled along side them, they slowed to a walk. Nunn parked his car and began to approach them on foot. Black did not initially respond to Nunn's command to stop and to display his hands. Instead, Black maneuvered between two parked vehicles and then stopped. Because the men had been described as "armed," Nunn drew his service weapon and ordered Black to place his hands on the parked vehicle in front of him. Black was handcuffed and immediately frisked for weapons; the second man was detained at gunpoint by another officer who had also arrived at the scene. After the officers secured the two men, they searched the nearby area and recovered a small caliber semi-automatic handgun. The victim's property was eventually recovered from Black's person.

Black was charged with complicity to commit first-degree robbery. On August 1, 2007, he filed a motion to suppress the evidence. Black argued that

Officer Nunn lacked adequate cause to detain him on the street and that his arrest violated various provisions of the Kentucky Constitution as well as the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution.

Following an evidentiary hearing, the trial court rejected Black's contentions. The court concluded that based upon the totality of the circumstances, Officer Nunn had developed a reasonable and articulable suspicion that Black was engaged in criminal activity. That suspicion was sufficient to justify the stop, and the arrest that followed was supported by probable cause. On August 13, 2007, Black entered a conditional guilty plea preserving his right to challenge the trial court's ruling on his motion to suppress. He was sentenced to serve a seven-year term of imprisonment. This appeal followed.

Black argues that the trial court erred by failing to grant his motion to suppress the evidence because the seizure was illegal. He contends that Officer Nunn's initial stop amounted to an arrest that was not supported by probable cause. In the alternative, he argues that the officer's suspicion was based upon his race coupled with an allegation made by an unreliable, anonymous tipster. He argues that his race alone could not trigger reasonable suspicion under the standard set forth in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). He also argues that the tip lacked the requisite predictive information that would justify the existence of suspicion sufficient to justify an investigative stop. We disagree with Black's underlying premise and conclude that Officer Nunn conducted a proper

*Terry* stop after having developed a reasonable suspicion that Black was involved with the crime that he was investigating.

Upon our review of the trial court's decision on a motion to suppress, the factual findings of the trial court are regarded as conclusive if they are supported by substantial evidence. Kentucky Rules of Criminal Procedure (RCr) 9.78. We review *de novo* its application of the law to decide whether the trial court correctly applied the law to the facts as it found them. *Commonwealth v. Neal*, 84 S.W.3d 920 (Ky. 2002).

We agree with the trial court that Officer Nunn's initial suspicion of criminal activity was reasonable. Nunn was in the process of investigating an armed robbery. Dispatch had advised officers that the suspects were two black males and provided the location where the suspects had last been observed. Nunn testified that he saw two black males running from the area where the robbery had occurred and the suspects were last seen. It was 2:00 a.m., and the streets were empty of pedestrian traffic. Black initially refused to comply with the command to show his hands. Under the totality of the circumstances, Nunn reasonably concluded that the situation warranted further investigation, and he properly undertook to detain Black. As circumstances unequivocally gave rise to an objectively reasonable and articulable suspicion, the investigatory stop was fully justified.

In addition to the information from dispatch indicating that the suspects had engaged in an armed robbery, Black's demeanor and his refusal to

comply with Nunn's order to show his hands provided a reasonable basis for Nunn to believe that Black might be concealing a weapon. Consequently, Officer Nunn was justified in conducting a pat-down search for his safety and the safety of others. *Id.* Under the circumstances, Officer Nunn's use of handcuffs to restrain Black during the pat-down did not exceed the bounds of a *Terry* stop-and-frisk. During the course of the detention, the officers recovered a handgun that they suspected had been used in the robbery. Thus, the ensuing arrest was supported by probable cause.

Since the investigatory stop and the subsequent arrest were constitutionally valid, the order of the Campbell Circuit Court denying the motion to suppress evidence was not erroneous. Consequently, we affirm that order.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT  
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