

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-002134-MR

KEVIN SOLOMON

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE JULIE REINHARDT WARD, JUDGE
ACTION NO. 07-CR-00227

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: LAMBERT AND TAYLOR, JUDGES; GRAVES,¹ SENIOR JUDGE.

GRAVES, SENIOR JUDGE: This is an appeal from judgment entered pursuant to a conditional guilty plea entered in the Campbell Circuit Court. The issue presented is whether the interaction between Kevin Solomon and a police officer, who believed that he had reasonable suspicion to stop Solomon based upon a

¹ Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

mistake of law, constituted a restraint of Kevin Solomon's liberty. Although we answer Solomon's appeal by holding that the interaction did not constitute a stop, we further note that regardless of whether Solomon was stopped the active bench warrant for Solomon's arrest acted as an intervening event that validated his arrest.

On March 21, 2007, Sgt. Robert Williams was seated in his police cruiser near Route 9 using a radar gun to check for speeding automobiles. Sgt. Williams observed Solomon walking in the grass along Route 9 with his thumb pointed upward, a gesture commonly used by hitchhikers. As Solomon approached the cruiser, Sgt. Williams exited the vehicle, inquired about Solomon's name and where he was headed, and informed Solomon that hitchhiking was illegal. Then Sgt. Williams offered to give Solomon a ride. Solomon followed Sgt. Williams to the passenger side of the cruiser where Sgt. Williams asked to see Solomon's identification. Sgt. Williams explained during a suppression hearing that he wanted to run a background check on Solomon for safety purposes before voluntarily giving him a ride. When Sgt. Williams ran Solomon's license number, he discovered that there was an active warrant for Solomon's arrest. Upon receiving the information, Sergeant Williams arrested Solomon and transported him to the Campbell County Detention Center. During the process of booking him in the jail, Solomon was searched and a contact lens case containing cocaine was found on his person. Solomon was charged with first-degree possession of a

controlled substance and subsequently indicted on the charge by the Campbell County grand jury. Solomon was neither charged nor indicted for hitchhiking.

Solomon filed a motion to suppress the cocaine, and the motion was heard on June 26, 2007. Solomon argued that the cocaine was discovered as a result of an unlawful stop and arrest by Sgt. Williams. The trial court disagreed and on August 1, 2007, denied Solomon's motion. Solomon entered a guilty plea to the charge of first-degree possession of a controlled substance, and he was placed on probation. Solomon's guilty plea and subsequent sentence is conditioned upon the outcome of this appeal.

Solomon claims that the trial court erred by denying his motion to suppress and claims that his initial interaction with Sgt. Williams was a restraint of his liberty. Solomon argues that Sgt. Williams did not have a reasonable suspicion of criminal activity, as required under *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), to stop him because Sgt. Williams mistakenly believed that all hitchhiking is illegal.² Therefore, any evidence gathered as a result of the stop must be excluded. Solomon predicates his argument on Sgt. Williams' testimony that he believed it was reasonable to suspect that a person walking alongside any roadway was illegally hitchhiking. Sgt. Williams further testified if that person ran away upon questioning, such action would constitute probable cause that a crime had been committed.

² KRS 189.570(19) provides that "[n]o person shall stand in a roadway for the purpose of soliciting a ride." The statute does not prohibit soliciting a ride while standing in grass along a roadway.

In *Terry*, the United States Supreme Court defined a stop to include the restraint of an individual's freedom to walk away from police authority. *Id.* at 16. In order to justify a stop, a police officer must have a reasonable suspicion that criminal activity is afoot. *Id.* at 30. However, our question in this case is not whether Sgt. Williams' suspicion of criminal activity was justified, but whether a reasonable person in Solomon's position would feel free to walk away. *Florida v. Royer*, 460 U.S. 491, 502, 103 S.Ct. 1319, 1326, 75 L.Ed. 229 (1983), quoting *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S.Ct. 1870, 1877, 64 L.Ed.2d 497 (Opinion of Stewart, J.).

The Fourth Amendment protects individuals against illegal searches and seizures, but the Fourth Amendment is not violated by police merely approaching individuals in public places and asking questions. *Id.* at 497. Police officers are free to approach anyone at any time, identify themselves as police, and even ask incriminating questions. *Id.* In this case, there is no indication that a reasonable person in Solomon's position would not have felt free to walk away from Sgt. Williams. Although Sgt. Williams informed Solomon that hitchhiking was illegal, there was no indication that Sgt. Williams intended to arrest or detain Solomon for the violation. Instead, Sgt. Williams offered to give Solomon a ride, a gesture that a reasonable person would likely construe as friendly and helpful rather than a restraint of freedom.

We are not persuaded that a stop occurred even though Sgt. Williams testified that had Solomon run away or refused to answer his questions, his

suspicion would have increased and probable cause that a crime had occurred would have been established. Under *Royer*, our analysis must focus upon the mindset of a reasonable person in Solomon's position rather than the viewpoint of Sgt. Williams. *Id.*

Further, we hold that regardless of whether a stop occurred, the knowledge that Solomon had an active bench warrant acted as an intervening event that would validate Solomon's arrest. In *Baltimore v. Commonwealth*, 119 S.W.3d 532, 541 n 37 (Ky. App. 2003), this Court noted that "a valid arrest may constitute an intervening event that cures the taint of an illegal detention sufficient to rebut the application of the exclusionary rule to evidence recovered in a search incident to an arrest." In *Hardy v. Commonwealth*, 149 S.W.3d 433, 436 (Ky. App. 2004), this Court held that "the discovery of an outstanding warrant for [the defendant's] arrest was sufficient to dissipate any taint caused by the alleged unlawful detainment." We reasoned that, "[i]t would be startling to suggest that because the police illegally stopped an automobile, they cannot arrest an occupant who is found to be wanted on a warrant – in a sense requiring an official to call of 'Olly, Olly, Oxen Free'." *Id.* Since Sgt. Williams' discovery of the warrant for Solomon's arrest constituted an intervening act that dispelled any prior wrongdoing or misjudgment of Sgt. Williams, we hold that the trial court properly denied Solomon's motion to suppress.

Accordingly, we affirm the judgment of the Campbell Circuit Court.

ALL CONCUR.

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