

RENDERED: DECEMBER 6, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2018-CA-000620-MR

DONALE SULLIVAN

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE THOMAS L. TRAVIS, JUDGE  
ACTION NO. 17-CR-01062

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON, SPALDING, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Donale Sullivan brings this appeal from an April 17, 2018, Final Judgment and Sentence of Imprisonment rendered by the Fayette Circuit Court upon a conditional plea of guilty following the denial of his motion to suppress. We affirm.

The relevant events surrounding Sullivan's arrest occurred on July 27, 2017, and were summarized by the circuit court as follows:

On July 27, Officer Ryan Raker and Sergeant Jeffrey Hyer were engaged in a "felony roundup" around Lexington, along with a deputy sheriff and an ATF agent. The roundup involves officers being provided with information packets that contain identifying information and small pictures of individuals with active felony warrants so that officers can "round up" some of these individuals. One such individual was Byron White, who had an active warrant for Flagrant Nonsupport. The packet provided that White's last known address was 720 Maple Avenue and included a mugshot of White's from 2008 that showed a black male with a goatee and dreadlocks.

As part of the roundup, Ofr. Raker and Sgt. Hyer went to 720 Maple Avenue. While they did not locate White, Sgt. Hyer noticed Sullivan drive a moped the wrong way on Eddy Street and park at 729 Maple Avenue. The officers believed that Sullivan bore a resemblance to White's mugshot photo, so they approached Sullivan and asked for identification, which Sullivan did not have. Ofr. Raker and Sgt. Hyer both believed that they had reasonable suspicion to suspect that Sullivan was actually Byron White. They therefore detained Sullivan while checking Sullivan's name and Social Security number to ensure that the given identity was valid.

Sullivan initiated conversation while his information was being checked and informed the officers that he "might have a warrant" and that he had missed a previous court date. Officers confirmed that Sullivan did in fact have an active warrant and placed him under arrest. When Ofr. Raker asked Sullivan to stand up, Sullivan told the officers that he was in possession of a weapon and a crack pipe. He also informed the officers that he

was a convicted felon. He was ultimately charged with Convicted Felon in Possession of a Handgun, Carrying a Concealed Deadly Weapon, and Possession of Drug Paraphernalia.

Order at 3-4 (footnote omitted).

Sullivan was subsequently indicted by a Fayette County Grand Jury upon one count of possession of a handgun by a convicted felon, one count of carrying a concealed deadly weapon, two counts of possession of drug paraphernalia,<sup>1</sup> and with being a persistent felony offender in the first degree. Sullivan filed a motion to suppress evidence seized during his July 27, 2017, encounter with Officer Ryan Raker and Sergeant Jeffrey Hyer. Following denial of Sullivan's motion to suppress on March 2, 2018, Sullivan entered a conditional guilty plea to the first four counts of the indictment; the PFO count was dismissed. Pursuant to the conditional guilty plea, Sullivan preserved his right to appeal the denial of his motion to suppress. Sullivan was sentenced to a total of five-years' imprisonment. This appeal follows.

To begin, our review of a circuit court's denial of a motion to suppress is limited. We must initially determine whether the court's finding of facts are supported by substantial evidence of a probative value. *Commonwealth v. Neal*, 84 S.W.3d 920, 923 (Ky. App. 2002). Substantial evidence is defined as "evidence of

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<sup>1</sup> One of the two counts of possession of drug paraphernalia resulted from a separate incident that occurred on June 17, 2017. The June 17, 2017, incident is not at issue in this appeal.

substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men.” *Commonwealth v. Jennings*, 490 S.W.3d 339, 346 (Ky. 2016) (citation omitted). If the findings of fact are supported by substantial evidence, we must then undertake a *de novo* review of the circuit court’s application of law to the facts. *Neal*, 84 S.W.3d at 923; *Greer v. Commonwealth*, 514 S.W.3d 566, 568 (Ky. App. 2017).

Sullivan contends the circuit court erred by denying his motion to suppress evidence seized from his illegal detention. Specifically, Sullivan argues on appeal that the circuit court erred by “finding the officers had reasonable suspicion to stop Mr. Sullivan based on a photo that bore no resemblance to him.” Sullivan’s Brief at 8. Thus, Sullivan believes his detention was illegal and the evidence seized should be suppressed.

A warrantless stop of a person without probable cause is permissible if law enforcement possesses a reasonable articulable suspicion that the person has been involved in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 20 (1968); *see Commonwealth v. Blake*, 540 S.W.3d 369, 373 (Ky. 2018). When determining whether reasonable articulable suspicion exists, “the totality of the circumstances” must be considered. *Blake*, 540 S.W.3d at 373. And, a *Terry* stop is permissible if: (1) it is based upon an “objective reliance” on a police department’s wanted flyer or bulletin, and (2) the “police who *issued* the flyer or bulletin possessed a

reasonable suspicion justifying a stop[.]” *Blake*, 540 S.W.3d at 373 (citation omitted).

In the case *sub judice*, the officers observed that Sullivan shared the same physical attributes as Byron White. Officers were relying upon a photo of White contained in the information packet provided by law enforcement to aid in the arrest of individuals with outstanding felony warrants. Sullivan had the same hairstyle, skin tone, and facial hair pattern as White in the photo. And, Sullivan was in the Maple Avenue area very near the address White was thought to reside. Sgt. Hyer observed an African-American male driving a moped down the street on the wrong side of the road, drive onto the sidewalk, and park at a nearby Maple Avenue residence. Believing the individual was White, the officers approached Sullivan to ask for identification. Considering the totality of the circumstances, we believe the officers had reasonable articulable suspicion that the individual they encountered was White. The circuit court found the testimony of the officers to be credible and concluded that reasonable articulable suspicion did exist as the basis for conducting a *Terry* stop. *See Baltimore v. Commonwealth*, 119 S.W.3d 532, 537-38 (Ky. App. 2003). Therefore, we believe that Sullivan’s contention that the evidence seized from the stop should be suppressed is without merit.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

Robert C. Yang  
Assistant Public Advocate  
Department of Public Advocacy  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear  
Attorney General of Kentucky  
Frankfort, Kentucky

Lauren R. Massie  
Assistant Attorney General  
Frankfort, Kentucky