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RENDERED: APRIL 24, 2008
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2006-SC-000877-DG

MARCUS JEROME LAWRENCE — APPELLEE

V.

ON REVIEW FROM COURT OF APPEALS
CASE NUMBER 2005-CA-002075
WARREN CIRCUIT COURT NO. 04-CR-00745

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION OF THE COURT BY JUSTICE MINTON

AFFIRMING

Marcus Jerome Lawrence entered a conditional guilty plea in circuit court to one count of first-offense trafficking in a controlled substance in the first degree and possession of marijuana, reserving his right to appeal the trial court's denial of his motion to suppress. The Court of Appeals affirmed the trial court's decision to deny Lawrence's suppression motion. We granted discretionary review; and after carefully considering the facts and applicable law, we affirm.

The relevant facts of this case as testified to at the suppression hearing are straightforward and uncontested. City police detectives investigating a series of burglaries in area churches learned from one of the burglars whom they arrested that some of the stolen property had been traded to a drug dealer, who (1) was an African-American male, (2) drove a brown and cream-colored

Chevrolet Suburban, and (3) had the same cell phone number that the accused burglar provided to the detectives.

Eventually, the detectives called the cell phone number given them by the burglar and arranged to meet the person who answered the phone at a designated location. When the detectives did not see the alleged drug dealer at the agreed location, they again called the cell phone number and were told to come to a certain shopping center parking lot. When police arrived at the shopping center parking lot, they noticed only one Suburban, which was parked in the fire lane near a grocery store. But that Suburban was "pinkish," not brown. The officers watched as two African-American males emerged from the grocery store, got into the Suburban, moved it to a nearby parking space, and began to eat food they had carried out of the grocery store.

The detectives then arranged for a uniformed police officer in a marked police vehicle to make contact with the occupants of the Suburban. Soon, a uniformed officer pulled behind the Suburban and activated his cruiser's blue lights. While the uniformed officer was making contact with the Suburban's occupants, the detectives walked toward the Suburban and dialed the cell phone number for the alleged drug dealer. The detectives were near enough to hear the cell phone ring inside the Suburban and to see Lawrence, the driver of the Suburban, answer the cell phone.

On their approach to the Suburban, the detectives could see in the rear of the Suburban electronic equipment that matched the description of items stolen from the churches. The detectives received Lawrence's permission to inspect

the serial numbers on the items. And as Lawrence was opening the back deck or door of the Suburban, a bag of marijuana fell at his feet. Lawrence was then arrested, and a search of the Suburban incident to arrest revealed crack cocaine hidden in a seat.

Lawrence was indicted for first-offense trafficking in a controlled substance in the first degree, trafficking in a controlled substance within 1000 yards of a school, and being a persistent felony offender in the first degree (PFO 1). Lawrence filed a motion to suppress the evidence of illegal narcotics, contending that the authorities did not have sufficient grounds to support the stop of the Suburban. The trial court denied Lawrence's motion, and Lawrence eventually entered a conditional guilty plea to one count of first-offense trafficking in a controlled substance and a reduced charge of possession of marijuana. The PFO 1 charge was dropped in the plea agreement. The trial court sentenced Lawrence to seven years' imprisonment on the trafficking conviction and thirty days in jail for the possession of marijuana conviction. The Court of Appeals affirmed the trial court's denial of Lawrence's motion to suppress, as do we.

As the Court of Appeals noted, the Fourth Amendment to the United States Constitution and Section Ten of the Kentucky Constitution prohibit unreasonable searches and seizures meaning that generally, warrantless searches or seizures are improper.[1] But an exception to the warrant requirement exists allowing officers to make brief investigatory stops if the officers "have a

[1] Williams v. Commonwealth, 147 S.W.3d 1, 4 (Ky. 2004).

reasonable articulable suspicion that 'criminal activity may be afoot.'"[2] This reasonable, articulable suspicion requirement "is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence. . . ."[3]

Lawrence does not dispute that the stop led properly to the discovery of the marijuana, which then led properly to his arrest, which then led properly to the discovery of the cocaine. Rather, Lawrence contends only that the stop/detention itself was improper. The question before us, therefore, is only whether the officers had a sufficient reasonable, articulable suspicion that criminal activity was afoot when they engaged in a Terry-style detention of Lawrence.

When an appellate court reviews a trial court's decision to deny a motion to suppress, it uses a dual standard. First, the factual findings made by the trial court are "conclusive if they are supported by substantial evidence."[4] Second, if the factual findings are supported by substantial evidence, "the question then becomes whether the rule of law as applied to the established facts is violated."[5] Our determination of whether the trial court correctly applied the law to the

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2 *Id.* at 5, *quoting* Terry v. Ohio, 392 U.S. 1, 30, 88 S.Ct. 1868, 1884, 20 L.Ed.2d 889 (1968).

3 Illinois v. Wardlow, 528 U.S. 119, 123, 120 S.Ct. 673, 675, 145 L.Ed.2d 570 (2000).

4 Commonwealth v. Whitmore, 92 S.W.3d 76, 79 (Ky. 2002).

5 *Id.*

established facts in making its reasonable suspicion determination is made de novo.[6]

In the case at hand, we agree with Lawrence that the stop or detention occurred when the uniformed officer activated his lights, maneuvered his vehicle behind Lawrence's, and then made verbal contact with Lawrence.[7] We must determine, therefore, whether the officers possessed sufficient articulable suspicion to effectuate a Terry-style detention at that time, disregarding all subsequent incriminating information gleaned by the officers.

At the time the stop occurred, the detectives had been told by the burglar that the drug dealer was an African-American male who drove a Suburban. The detectives also had been provided the cell phone number of the alleged drug dealer and had had multiple conversations concerning illegal drug transactions with someone who had answered that cell phone number. In the last conversation, the person who answered the cell phone had directed the detectives to a specific shopping center. And the officers had gone to that shopping center and had seen two African-American males sitting in a Suburban. So the officers had seen a person matching the race of this alleged drug dealer sitting in the exact make of vehicle driven by this alleged drug dealer in the very shopping center parking lot to which the drug dealer had instructed the officers to go. In considering all of the circumstances, therefore, we agree with the Court of

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6 *Id.*, *quoting* Ornelas v. United States, 517 U.S. 690, 699, 116 S.Ct. 1657, 1663, 134 L.Ed.2d 911, 920 (2001) ("determinations of reasonable suspicion and probable cause should be reviewed [de novo] on appeal.").

7 Because this uniformed officer did not testify at the suppression hearing, we do not know what verbal exchanges he had with Lawrence.

Appeals' conclusion that "[t]ogether these facts reasonably aroused the detectives' suspicion that the Suburban and its driver were involved in drug dealing and justified their decision to stop the Suburban to investigate further." Or, in other words, the officers had enough information to meet the relatively low articulable suspicion standard required to justify a Terry-style stop.

Lawrence relies heavily upon the fact that the officers had been told that the drug dealer drove a two-tone, brown and cream Suburban, whereas, the Suburban in the parking lot was pink.[8] The fact that the Suburban detained by the officers was a different color from the Suburban the officers had been told about is certainly a factor weighing against the legal propriety of the stop. But that fact alone does not mean that considering all of the circumstances mentioned above, the officers had not otherwise met the relatively low reasonable suspicion threshold necessary to effectuate a Terry stop. After all, a vehicle's color can be easily changed; and every other important factor—make of vehicle, race of vehicle's occupant, location of vehicle—tended to show that the Suburban was the one referred to by the church burglar. So we reject Lawrence's conclusion that all that the officers knew at the time of the stop was that "Mr. Lawrence was a black man exiting a grocery store and entering his vehicle. . . ."

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[8] After Lawrence's arrest, the search of the Suburban revealed that it had been spray painted pink from its original brown and cream color, as evidenced by the fact that red spray paint cans were found in the Suburban; and the Suburban's doorjambs were still brown and cream. The officers, however, did not know about the recent paint job at the time of the stop. So the Suburban's apparently recent paint job is not a factor in our analysis.

Likewise, we reject Lawrence's contention that the police were required to do more investigation, such as calling the cell phone again before the stop to corroborate that the person who answered the cell phone was an occupant in the pink Suburban. Although additional investigatory measures may well have strengthened the Commonwealth's case, the question before us is not what the police could have done, but whether the information actually gleaned by the police gave them articulable suspicion sufficient to stop Lawrence. And although an argument could be made that the police may not have had probable cause to arrest Lawrence at the time the stop occurred, we conclude that the police had gleaned enough information to effectuate a valid Terry-style stop upon Lawrence, using the articulable suspicion standard.

For the foregoing reasons, Marcus Jerome Lawrence's conviction and sentence are affirmed.

All sitting, except Abramson, J. All concur.

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