



Martin v. Commonwealth

2009 | Cited 0 times | Court of Appeals of Kentucky | June 26, 2009

NOT TO BE PUBLISHED

OPINION

AFFIRMING

BEFORE: COMBS, CHIEF JUDGE; ACREE, JUDGE; BUCKINGHAM,¹ SENIOR JUDGE.

Donald Wayne Martin directly appeals from the Fayette Circuit Court's final judgment sentencing him to a total of fifteen years for his conviction following a jury trial on charges of fleeing and evading in the second degree, first-degree trafficking in a controlled substance, and tampering with physical evidence. The only issue raised on appeal is the trial court's denial of Martin's motion to suppress, which addressed whether his Fourth Amendment rights were violated. We affirm.

On May 18, 2007, Lieutenant Lawrence Weathers was on plain-clothes patrol in Lexington when he noticed men in front of 406 East Seventh Street trying to flag him down. Weathers called Detective Byron Smoot and other members of the narcotics enforcement unit who were in the area to investigate. He suspected the men flagging him down might have been trying to sell him narcotics.

Upon arriving, Smoot observed approximately seven people in the yard. Smoot focused on Martin when he noticed Martin shove something into his pocket. Martin then got up from where he was sitting and began to walk toward the house. Smoot asked Martin to stop, but Martin ran into the house and out the back door. Smoot caught Martin by the hood of his jacket and saw Martin throw objects from his pocket into the brush. Martin was handcuffed and arrested for fleeing and evading and given his Miranda rights.

Martin was searched pursuant to his arrest. Smoot found a slip of paper he believed to be a drug-debt list and \$5321.00 in cash in Martin's pants pocket. In the area where Martin had thrown objects, Smoot retrieved three grams of crack cocaine, 9.6 grams of powder cocaine, and a set of digital scales. Martin gave Smoot his consent to search his vehicle. The search resulted in the discovery of a black shaving kit containing \$18,000.00 in cash.

Martin admitted to Smoot that the money was drug money and that he had been trafficking for some time. He named his supplier and offered to testify against him in exchange for leniency. Martin further admitted that the discarded items recovered from the area were from a recent drug sale.



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Martin moved to suppress any fruits of what he claimed to be an illegal search and seizure, including any statements made to Smoot. Following a hearing, the trial court denied Martin's motion concluding that Smoot had a reasonable, articulable suspicion to effect an investigatory stop of Martin.

Martin was convicted of fleeing and evading in the second degree as well as first-degree trafficking in a controlled substance, tampering with physical evidence and being a first-degree persistent felony offender. This appeal followed.

The proper standard of appellate review on a suppression issue is found in *Commonwealth v. Neal*, 84 S.W.3d 920 (Ky.App. 2002):

An appellate court's standard of review of the trial court's decision on a motion to suppress requires that we first determine whether the trial court's findings of fact are supported by substantial evidence. If they are, then they are conclusive. Kentucky Rules of Criminal Procedure (RCr) 9.78. Based on those findings, we must then conduct a de novo review of the trial court's application of the law to those facts to determine whether its decision is correct as a matter of law.

Neal at 925 (citations omitted).

The findings of fact with respect to the chase are well supported by Smoot's testimony and substantiated by physical evidence collected at the scene. Additionally, Martin does not dispute that he ran from the scene after hearing Smoot instruct him to stop. Pursuant to RCr 9.78, the factual findings are conclusive in this matter.

We next consider whether the trial court correctly applied the law to the facts of this case; i.e., whether the court correctly determined that Smoot had a reasonable, articulable suspicion to justify an investigative stop of Martin. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). *Terry* holds that under appropriate circumstances and in an appropriate manner, a police officer may approach a person to investigate the possible occurrence of criminal activity -- even though there is no probable cause to make an arrest. *Id.* The lesser standard of reasonable suspicion is a sufficient basis for such an inquiry. Kentucky law holds that a police officer may approach a person, identify himself as a police officer, and ask a few questions without even implicating the Fourth Amendment. *Fletcher v. Commonwealth*, 182 S.W.3d 556, 559 (Ky.App. 2005); *Terry v. Ohio*, 392 U.S. 1, 11 fn.5, 88 S.Ct. 1868, 20 L.Ed. 889 (1968).

There are three types of interactions between citizens and police officers: consensual encounters, temporary detentions, and arrests. *Baltimore v. Commonwealth*, 119 S.W.3d 532, 537 (Ky.App. 2003). Consensual encounters do not implicate the Fourth Amendment -- unlike and as distinguished from temporary detentions and arrests. *Id.* *Terry* stops generally fall into the category of temporary detentions. Initially, Smoot sought to engage in a consensual encounter with Martin. When Martin



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took flight and attempted to elude Smoot, Martin wholly changed the dynamics of the encounter and triggered the justification for a Terry stop.

Weathers personally witnessed what he believed to be an attempt to solicit a drug deal when individuals at 406 East Seventh Street tried to flag him down. When Smoot arrived to investigate, he noticed Martin shove something into his pocket and start to walk into the residence. Martin was the only individual who made any overt movements. Smoot asked Martin to stop and Martin failed to comply. Instead, Martin ran into the residence and out the backdoor, only to be physically apprehended by Smoot.

United States v. Cortez held that the totality of the circumstances must be assessed in determining whether an officer has a reason to initiate an investigative stop. United States v. Cortez, 449 U.S. 411, 418, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981). Common sense and experience come into play when evaluating whether the "totality of the circumstances" permits questioning and subsequent seizure of a suspicious person. Cortez recites as follows:

The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common sense conclusions about human behavior; jurors as fact finders are permitted to do the same -- and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.

Cortez, 449 U.S. at 418, 101 S.Ct. at 695, 66 L.Ed.2d 621 (1981). In the case before us, Smoot properly drew reasonable inferences with respect to Martin's unprovoked flight. Smoot pulled up to the residence and was walking into the yard when Martin ran away before any hint of a stop or seizure could occur. Relevant to this case, the United States Supreme Court discusses the nuances of seizure as follows:

The word "seizure" readily bears the meaning of a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful.... It does not remotely apply, however, to the prospect of a policeman yelling "Stop, in the name of the law!" at a fleeing form that continues to flee. That is no seizure.

California v. Hodari D., 499 U.S. 621, 626, 111 S.Ct. 1547 (1991).

Martin instantly created reasonable suspicion justifying a Terry stop upon taking flight. In Illinois v. Wardlow, 528 U.S. 199, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000), the Court addressed a similar situation and found: Headlong flight -- wherever it occurs -- is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such.

Wardlow, 528 U.S. at 124. Wardlow continues:



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Unprovoked flight is simply not a mere refusal to cooperate. Flight, by its very nature, is not 'going about one's business'; in fact, it is just the opposite. Allowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual's right to go about his business or to stay put and remain silent in the face of police questioning.

Id. at 125.

Smoot had a reasonable, articulable suspicion that criminal activity was afoot sufficient to justify his pursuit, seizure, and eventually to arrest Martin following Martin's unprovoked flight. The evidence seized in the course of his arrest was, therefore, admissible.

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

ALL CONCUR.

1. Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute 21.580.

