

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-002075-MR

MARCUS JEROME LAWRENCE

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE STEVE ALAN WILSON, JUDGE
ACTION NO. 04-CR-00745

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: ABRAMSON AND GUIDUGLI, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

ABRAMSON, JUDGE: Marcus Lawrence appeals from a September 21, 2005, judgment of the Warren Circuit Court convicting him pursuant to his guilty plea of first-degree trafficking in cocaine, in violation of KRS 218A.1412, and possession of marijuana, in violation of KRS 218A.1422. The court sentenced Lawrence to seven years in prison. Lawrence contends that the court erred when it refused to suppress the drug evidence, which, according to Lawrence, came to light only after a police

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 KRS 21.580.

officer had illegally stopped Lawrence's vehicle. Convinced that the stop and subsequent discovery of the drugs were lawful, we affirm.

According to testimony at the suppression hearing, in the late fall of 2003 Bowling Green detectives investigating a series of church burglaries learned from the arrested burglars that some of the stolen property had been sold to a drug dealer who went by the name of "Joe." They were given "Joe's" cell-phone number and were told that "Joe" was a young African-American male who drove a late-model, brown-and-cream Chevy Suburban. On December 9, 2003, one of the detectives called "Joe's" cell-phone number and, posing as a drug customer, arranged to meet the person who answered near Bowling Green's hospital hill area. When the detective and his partner did not find a Suburban near the hospital, the detective again called "Joe's" number, and this time was told to come to the parking lot of Sugarmaple Square.

At Sugarmaple Square the detectives canvassed the parking lot and soon noticed a Chevy Suburban parked in the fire lane outside Houchens grocery store. The Suburban was an older model, as "Joe's" suburban was supposed to be, but instead of brown-and-cream, was an unusual pinkish color. As the officers watched, two young African-American males came out of the grocery store, entered the Suburban, moved it to a near-by

parking space, and then remained in the car as if to eat what they had just purchased. The detectives arranged for a uniformed officer in a marked police car to affect a traffic stop of the Suburban. A few minutes later the uniformed officer arrived, pulled in behind the Suburban, activated his cruiser's blue lights, and approached the driver. While the uniformed officer was affecting the stop, the detectives made their way to the Suburban on foot. Once again, one of the detectives dialed "Joe's" number. The detectives heard a phone ring inside the Suburban, and a moment later they saw Lawrence, the driver of the Suburban, answer.

The detectives noticed electronic equipment in the back of the Suburban that matched the description of items taken from the churches, so one of the detectives asked Lawrence if they could inspect the serial numbers on the items. Lawrence consented, and as he was exiting the vehicle, the detective noticed a baggie of marijuana fall near Lawrence's feet. The detective thereupon arrested Lawrence for possession of marijuana, and in the ensuing search of the Suburban incident to the arrest the officer found crack cocaine hidden next to the driver's seat. Lawrence contends that the marijuana and cocaine evidence should be suppressed because its discovery flowed from an illegal traffic stop. We disagree.

As Lawrence correctly notes, the Fourth Amendment to the United States Constitution and Section 10 of the Kentucky Constitution prohibit unreasonable searches and seizures, and generally a search or seizure is unreasonable absent probable cause and a warrant. Williams v. Commonwealth, 147 S.W.3d 1 (Ky. 2004). It is now well established, however, that in circumstances giving rise to a reasonable suspicion that a crime has been or is about to be committed, police officers may briefly detain suspected individuals in order to investigate, and may take reasonable steps to maintain the status quo and to protect themselves while they do so. Michigan v. Summers, 452 U.S. 692, 101 S. Ct. 2587, 69 L. Ed. 2d 340 (1981); Adams v. Williams, 407 U.S. 143, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972); Terry v. Ohio, 392 U.S.1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); Baker v. Commonwealth, 5 S.W.3d 142 (Ky. 1999). To justify this lesser intrusion upon an individual's privacy interests, the officer's suspicion must be more than a mere hunch. Although it need not amount to probable cause, the suspicion must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." Terry v. Ohio, *supra*, at 21, 88 S. Ct. at 1880. Determining whether a detention or a frisk is reasonable thus requires "a review of the totality of the circumstances, taking into consideration the level of police

intrusion into the private matters of citizens and balancing it against the justification for such action." Baker v. Commonwealth, 5 S.W.3d at 145. This Court reviews the trial court's suppression rulings under a dual standard. We must uphold the court's findings of historical fact if supported by substantial evidence, deferring in particular to the trial court's credibility determinations, but we review its application of the constitutional balancing test *de novo*. Commonwealth v. Whitmore, 92 S.W.3d 76 (Ky. 2002).

Lawrence contends that the detectives, who were looking for a brown-and-cream Suburban, could not have reasonably suspected that his pinkish Suburban was involved in any wrongdoing when they initially had it stopped in the Sugarmaple Square parking lot. As noted, however, to justify a *Terry* stop the officer's suspicion need not amount to probable cause. It need only be based on articulable facts that are suggestive enough of wrongdoing to warrant a brief and relatively minor investigative intrusion upon the suspect's privacy. Here the detectives had received a tip from someone who had dealt directly with "Joe" that "Joe" was trading in illegal drugs and stolen property. They had confirmed the tip to the considerable extent of determining that "Joe's" alleged cell-phone number brought them into contact with someone apparently willing to make a drug sale. At Sugarmaple Square,

the tip was further confirmed by the presence at the designated site of the drug sale of an older model vehicle of the type "Joe" was alleged to drive. True, the Suburban did not match the color the tipster provided, but a vehicle's color may be changed. In this case in particular, enough time had elapsed--about three weeks--between the tip and the sighting of the vehicle to make a color change reasonably possible, and the Suburban's unusual pinkish color could reasonably suggest to the officers that the color had been altered. The fact that the Suburban was not the color alleged by the tipster, therefore, need not have dispelled the detectives' suspicions.² Also consistent with the tip and with a drug sale, the Suburban was driven by a young African-American male who was waiting in the vehicle as though expecting to be approached by a customer. Together 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. Their suspicions were almost immediately confirmed, moreover, justifying further investigation, when Lawrence's cell-phone rang immediately upon the detective dialing "Joe's" number.

² A change of color appears to be what happened in this case. In the back of the Suburban police found cans of red spray paint which apparently had been used to paint over a brown-and-cream paint job still apparent on the vehicle's door jambs.

Lawrence does not dispute that the stop led properly to the discovery of the marijuana, the arrest, and the discovery of the cocaine. Because the stop was lawful, therefore, the trial court did not err by denying Lawrence's motion to suppress the drug evidence. Accordingly, we affirm the September 21, 2005, judgment of the Warren Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Linda Roberts Horsman
Assistant Public Advocate
Department of Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General

David W. Barr
Assistant Attorney General
Frankfort, Kentucky