

RENDERED: APRIL 13, 2007; 2:00 P.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-000741-MR

BRIAN STRANGE

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE GARY D. PAYNE, JUDGE  
ACTION NO. 05-CR-00815

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, DIXON, AND KELLER, JUDGES.

DIXON, JUDGE: Brian Strange appeals from a final judgment and sentence of Fayette Circuit Court. Strange entered a conditional guilty plea to one count of possession of a controlled substance and one count of prescription controlled substance in an improper container. Strange contends the trial court erred by denying his motion to suppress evidence seized during an investigatory stop. After reviewing the record on appeal, we affirm.

At 11:00 p.m. on April 11, 2005, Officer James Hall of the Lexington Police Department was patrolling a neighborhood known for drug activity. Officer Hall drove past a parking lot where Strange was walking toward a pay telephone. Upon seeing the police cruiser, Strange abruptly changed direction and began walking toward a mini-van parked near the telephone. Officer Hall drove past the parking lot but quickly turned around and pulled in the lot to talk to Strange. Officer Hall was joined by a second policeman, Officer Mark Olivares, who was also on routine patrol in the area. Officer Hall asked to speak to Strange and directed him to move away from the van and stand beside the police cruiser. Officer Olivares spoke with the driver of the van. Officer Hall asked Strange what he was doing in the neighborhood, to which Strange stated he was visiting the family of a friend who was in the hospital. Officer Hall noticed Strange had a bulge in his pants pocket and, concerned it was a weapon, performed a protective pat down of Strange's clothing. Officer Hall ascertained the bulge in Strange's pocket was not a weapon, and he asked Strange to identify the object. Strange claimed he did not know what was in his pocket and gave the officer permission to remove the item. Officer Hall found an unmarked prescription drug bottle with twelve Oxycontin and five Xanax pills inside. The officer questioned Strange about the pills and then placed him under arrest.

On June 28, 2005, Strange was indicted and charged with I) possession of a controlled substance first degree (Kentucky Revised Statutes (KRS) 218A.1415); II) prescription controlled substance in an improper container (KRS 218A.210); III) giving an officer false name/address (KRS 523.110); and IV) being a persistent felony offender

(PFO) in the second degree (KRS 532.080). Strange moved the court to suppress the evidence, alleging he was improperly seized in violation of his constitutional rights pursuant to the Fourth and Fourteenth Amendments of the United States Constitution and Section 10 of the Kentucky Constitution. Following an evidentiary hearing, the court denied Strange's motion to suppress evidence. Strange subsequently pleaded guilty, pursuant to an agreement with the Commonwealth, to possession of a controlled substance and controlled substance in an improper container. The court sentenced Strange to five years' imprisonment, with the sentence suspended and probated for five years.

Strange now argues the trial court erred by denying his motion to suppress and asks this Court to set aside his guilty plea because the evidence should have been found inadmissible as the fruit of an unconstitutional seizure.

Kentucky Rules of Criminal Procedure (RCr) 9.78 instructs that the trial court's findings of fact after a suppression hearing are conclusive if supported by substantial evidence. We then review *de novo* the court's application of the law to the facts of the case. *Adcock v. Commonwealth*, 967 S.W.2d 6, 8 (Ky. 1998) quoting *Ornelas v. United States*, 517 U.S. 690, 697, 116 S. Ct. 1657, 1662, 134 L. Ed. 2d 911 (1996). In this case the trial court made oral findings of fact at the conclusion of the evidentiary hearing. As the court's findings are not contested by Strange and after reviewing the record, we find the court's recitation supported by the evidence. We now determine whether the court properly applied the law relating to Fourth Amendment search and seizure.

Strange challenges the constitutionality of the investigatory stop and contends the stop exceeded the type of intrusion permitted by *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

The Fourth Amendment guarantees the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]” U.S. Const. amend. IV. In determining the reasonableness of an investigatory stop, this Court has stated, “[w]here probable cause is lacking, the forceable encounter or stop of a citizen by a police officer must arise from a reasonable articulable suspicion that criminal activity is afoot.” *Dockstader v. Commonwealth*, 802 S.W.2d 149, 150 (Ky. App. 1991) citing *Terry*, 392 U.S. at 22, 88 S. Ct. at 1880. “An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.” *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 695, 66 L. Ed. 2d 621 (1981); *Taylor v. Commonwealth*, 987 S.W.2d 302, 305 (Ky. 1998). A reviewing court must bear in mind the totality of the circumstances when determining whether the officer had a reasonable suspicion. *Terry*, 392 U.S. at 19, 88 S. Ct. at 1878.

Strange argues the officers did not have a reasonable articulable suspicion that criminal activity had occurred or was about to occur prior to approaching Strange in the parking lot. We disagree.

The officers testified regarding the reputation of the neighborhood as “notorious” for narcotics trafficking and prostitution. Officer Hall specifically testified the pay phone where Strange was standing was frequently used to arrange drug and

prostitution transactions. Strange vehemently contends that his presence in a known “high crime area” was not a sufficient justification for an investigatory stop.

The United States Supreme Court has advised: “An individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime. But officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation.” *Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S. Ct. 673, 676, 145 L. Ed. 2d 570 (2000) (internal citation omitted). Furthermore, when a subject is confronted in a “high crime area” it is “among the relevant contextual considerations in a *Terry* analysis.” *Id.* citing *Adams v. Williams*, 407 U.S. 143, 147-148, 92 S. Ct. 1921, 1924 32 L. Ed. 2d 612 (1972).

In this case, we find the totality of the circumstances afforded the officers reasonable suspicion to stop Strange. The officers testified Strange evasively turned around upon seeing the police cruisers pass the parking lot. Furthermore, Strange acted nervous during his conversation with the police, and he and the driver of the van gave conflicting reasons for being in the parking lot. We conclude these factors, coupled with the time of night and location known for rampant drug trafficking provided the officers with reasonable suspicion that Strange had been or was about to be involved in criminal activity.

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

ALL CONCUR.

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