

# Commonwealth of Kentucky

## Court of Appeals

NO. 2007-CA-000288-MR

FRANK D. HAMPTON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE PAMELA R. GOODWINE, JUDGE  
ACTION NO. 06-CR-01241

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON AND LAMBERT, JUDGES; ROSENBLUM,<sup>1</sup> SENIOR JUDGE.

DIXON, JUDGE: Frank D. Hampton appeals from a judgment of the Fayette Circuit Court that sentenced him to ten years' imprisonment pursuant to a conditional guilty plea. Hampton contends the trial court erred by denying his motion to suppress evidence found in his vehicle during an investigatory stop. We affirm.

On June 9, 2006, at approximately 2:00 a.m., Officer Steven Cobb of the Lexington Police Department was on routine patrol in an area of Lexington, Kentucky,

<sup>1</sup> Senior Judge Paul W. Rosenblum, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

known for narcotics trafficking and prostitution. Officer Cobb was traveling on Buena Vista Drive, an access road surrounding a cluster of motels, gas stations, and restaurants. Officer Cobb noticed a brown automobile parked on the side of the road in front of a tractor-trailer rig. The officer pulled his cruiser beside the car and rolled down his window. Officer Cobb observed Hampton, in the driver's seat, looking down into his lap. Officer Cobb motioned for Hampton to roll down his window; however, Hampton opened his car door and stepped partially out of the vehicle. Hampton yelled to Officer Cobb that everything was okay and then sat down in the car and closed the door. At this point, Officer Donald Williams arrived at the scene. Officer Cobb advised Officer Williams that he was going to further investigate the situation. Officer Cobb backed up his cruiser so he could shine his spotlight toward Hampton's vehicle. As Officer Cobb stepped out of the cruiser, Hampton started his vehicle and drove away.

Officer Williams followed Hampton and illuminated his emergency lights so Hampton would pull over. Hampton turned into the parking lot of the Best Western motel and sped to the rear of the lot. Hampton jumped from his vehicle and ran toward a wooded area and a drainage culvert bordering the parking lot. Both officers entered the dense brush after Hampton and eventually apprehended him. Upon returning to Hampton's vehicle, Officer Cobb noticed a white powder on the ground below the open driver's side door. A search of the vehicle revealed three small baggies of crack cocaine and a digital scale.

In August 2006, Hampton was indicted by a Fayette County Grand Jury on charges of 1) trafficking in a controlled substance, first degree; 2) tampering with physical evidence; 3) fleeing/evading police, second degree; 4) possession of drug paraphernalia; 5) operating on a suspended operator's license; 6) and being a persistent felony offender, first degree.

Hampton filed a motion to suppress evidence obtained in the search of his vehicle, and the court held a hearing on October 3, 2006. Hampton alleged that Officer Williams impermissibly followed him at the conclusion of Officer Cobb's investigatory stop. Hampton alternatively argued that his vehicle was illegally searched. Both police officers testified at the hearing, and Hampton testified on his own behalf.

At the conclusion of the testimony, the trial judge made oral findings of fact and denied Hampton's motion to suppress. The court determined that the officers had reasonable suspicion to stop Hampton and that the warrantless search of Hampton's vehicle was permissible.

Following the unfavorable outcome of the suppression hearing, Hampton accepted a plea agreement offered by the Commonwealth. On January 4, 2007, the court sentenced Hampton to an aggregate sentence of ten years' imprisonment pursuant to his conditional guilty plea. This appeal followed.

#### Standard of Review

The trial court's findings of fact following a suppression hearing are conclusive if supported by substantial evidence. Kentucky Rules of Criminal Procedure

(RCr) 9.78; *Commonwealth v. Neal*, 84 S.W.3d 920, 923 (Ky.App. 2002). 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). After reviewing the record, we conclude that the trial court's findings are supported by substantial evidence. Accordingly, we must determine whether the court correctly applied the law to the facts of this case.

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. However, in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), the United States Supreme Court held that a brief investigatory stop of a person by police does not automatically give rise to a Fourth Amendment violation. In determining the reasonableness of a *Terry* 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.

### Investigatory Stop

Hampton does not vigorously dispute the trial court's conclusion that Officer Cobb had a reasonable articulable suspicion to initially approach his parked vehicle. Hampton argues, though, that the officer's suspicions were extinguished at the conclusion of their brief encounter. We disagree.

Officer Cobb testified that the area where Hampton was parked was unlit and was not near the entrance to any of the motels on the street. Officer Cobb also noted that, based on his experience patrolling that particular area of Lexington, it was unusual to see an automobile parked on the street among the tractor trailers. Officer Cobb explained that commercial vehicles typically parked along the access road because the motels did not have sufficient parking areas for tractor trailers; however, there was ample parking for passenger vehicles at any of the motels. Additionally, the area was known for narcotics and prostitution, and the police had received several complaints from the Knights Inn motel, which was across the street from Hampton's parked vehicle.

Hampton complains that his presence in a known high crime area, “standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime.” *Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S. Ct. 673, 676, 145 L. Ed. 2d 570 (2000). However, the Court in *Wardlow* also stated, “officers are not required to ignore the relevant characteristics of a location in determining whether the

circumstances are sufficiently suspicious to warrant further investigation.” *Id.* We conclude, under the totality of the circumstances, Officer Cobb had a reasonable articulable suspicion that Hampton was engaging in criminal activity at the time of the investigatory stop.

The essence of Hampton's argument, however, is that the officers improperly followed him to the Best Western parking lot. Hampton points out that Officer Cobb did not order him to stay at the scene for further questioning. Thus, according to Hampton, he was free to leave after he told the officer everything was okay. We note, however, that Hampton unilaterally ended the encounter with Officer Cobb. Hampton abruptly slammed the car door without giving the officer an opportunity to ask questions. Contrary to Hampton's assertion, we do not believe that Officer Cobb's reasonable suspicions were extinguished by Hampton's unilateral actions. In fact, Hampton's evasive behavior obviously increased the officers' suspicions that criminal activity was afoot. Accordingly, we find the officers properly followed Hampton and attempted to stop his vehicle to continue their investigation. The trial court properly denied Hampton's motion to suppress on this issue.

#### Warrantless Search and Seizure

A warrantless search and seizure is “per se unreasonable under the Fourth Amendment - subject only to a few specifically established and well-delineated exceptions.” *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514, 19 L. Ed. 2d 576 (1967) (citations omitted). In this case, the trial court upheld the search of Hampton's

vehicle under the automobile exception and the plain view exception to the warrant requirement.

Pursuant to the automobile exception, “an officer may search a legitimately stopped automobile where probable cause exists that contraband or evidence of a crime is in the vehicle.” *Gray v. Commonwealth*, 28 S.W.3d 316, 319 (Ky.App. 2000). Probable cause is an objective standard and must be considered in light of the totality of the circumstances presented. *Baltimore v. Commonwealth*, 119 S.W.3d 532, 539 (Ky.App. 2003).

Hampton asserts that the discovery of crack cocaine outside of the car was insufficient to give the officer probable cause to search inside the vehicle. We disagree.

We first note that Hampton's vehicle was lawfully stopped since he evaded the officers and fled into the woods. Officer Cobb found what appeared to be crushed crack cocaine on the ground outside the open driver's side door of Hampton's vehicle. We find it was objectively reasonable for Officer Cobb to suspect that additional contraband was located inside the car. Consequently, we conclude Officer Cobb had probable cause to search the interior of the vehicle, and the subsequent seizure of three baggies of crack cocaine was proper.

Finally, we agree with the trial court's determination that the digital scale was properly seized pursuant to the plain view exception to the warrant requirement. For the plain view exception to justify an officer's intrusion, “the officer [must] be lawfully located in a place from which the object can be plainly seen, [and] he or she must have a

lawful right of access to the object itself.” *Hazel v. Commonwealth*, 833 S.W.2d 831, 833 (Ky. 1992) (citations and internal quotation marks omitted). Additionally, the officer must immediately recognize the incriminating nature of the object. *Id.*

Hampton specifically contends the incriminating nature of the scale was not immediately ascertainable to Officer Cobb because it was “covered.” We disagree.

As Officer Cobb was investigating the cocaine on the ground, he saw what he recognized as a digital scale on the front bench seat inside the car. On cross-examination Officer Cobb also stated the scale had an opaque plastic cover that attached to the top of the scale. However, Officer Cobb reiterated that he was familiar with the type of scale and the small cover attached to it.

The trial court accepted Officer Cobb's testimony regarding his immediate recognition of the scale. After reviewing the hearing, we find that the court's conclusion is supported by substantial evidence. *Neal*, 84 S.W.3d at 923. We conclude that Officer Cobb was in a position to lawfully observe what he knew to be drug paraphernalia; accordingly, the scale was properly seized pursuant to the plain view exception to the warrant requirement.

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

ALL CONCUR.

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