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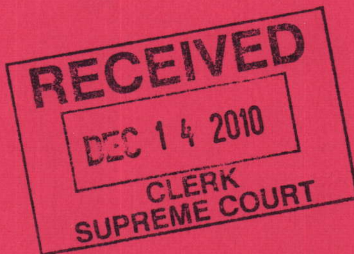
COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
2010-SC-000138-DG

KENNETH A. WILLIAMS — APPELLANT

Court of Appeals
No. 2008-CA-002057-MR
Appeal from Jefferson Circuit Court
v. — Action No. 07-CR-2378
Hon. Frederic Cowen, Judge

COMMONWEALTH OF KENTUCKY — APPELLEE

BRIEF FOR APPELLANT, KENNETH A. WILLIAMS



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Certificate of Service

This is to certify that a copy of the foregoing was mailed, first class postage prepaid, to Hon. Frederic Cowen, Judge, Jefferson Circuit Court, Division 13, Jefferson County Judicial Center, 700 West Jefferson Street, Louisville, KY 40202, and to Hon. Jack Conway, Attorney General, Office of the Attorney General, Office of Criminal Appeals, 1024 Capital Center Drive, Frankfort, KY 40601, and sent to Hon. Samuel Floyd, Jr., Assistant Commonwealth's Attorney, 514 West Liberty Street, Louisville, KY, 40202, on December 13, 2010. I further certify that the record on appeal was not removed from the office of the Clerk

BRUCE P. HACKETT

INTRODUCTION

This Court granted review of the Court of Appeals decision that affirmed the final judgment of the Jefferson Circuit Court sentencing Kenneth Williams to five years imprisonment. Mr. Williams entered a conditional plea of guilty to handgun charges that stem from a detention and search that the police say was justified under *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

STATEMENT REGARDING ORAL ARGUMENT

The facts underlying the issue presented in this appeal do not fall neatly within the analysis found in *Terry v. Ohio*, nor has this Court applied *Terry* to a similar fact situation. The question is whether the police may detain and pat down everyone who is in proximity to someone who is breaking the law by possessing marijuana and who is also found to be carrying a firearm. Although this Court has adopted the "automatic companion" rule in limited circumstances related to motor vehicles, the Sixth Circuit has rejected the "automatic companion" rule. *Owens v. Commonwealth*, 291 S.W.3d 704 (Ky. 2009); *United States v. Bell*, 762 F.2d 495 (6th Cir. 1985). The appellant thinks that oral argument may be helpful to the Court, and therefore asks that argument be scheduled.

NOTE CONCERNING CITATIONS

The Court proceedings were recorded on videotape and on a compact disc. The compact disc will be designated as VR 1 and the videotape as VR 2. The circuit court clerk's record will be designated as TR, and the appendix to this brief as App.

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STATEMENT OF THE CASE

On July 29, 2008, Kenneth Williams entered a conditional plea of guilty to possession of a handgun by a convicted felon, carrying a concealed deadly weapon and loitering, reserving his right to appeal the court's denial of his motion to suppress the fruits of an illegal detention and search. (TR 83-85; VR 1, 7/29/08, 09:50:56). At final sentencing on October 1, 2008, the court imposed the sentences recommended by the Commonwealth in the plea agreement: five years on the handgun charge concurrent with the twelve months on the deadly weapon charge[1] and a $250.00 fine on the loitering violation. (TR 83-85; App. B1-4; VR 1, 10/1/08, 09:49:28).

Mr. Williams was initially arrested on the charges on March 29, 2007. He was indicted on July 18, 2007. (TR 1-3). His attorney filed a motion to suppress the handgun as the fruits of an illegal seizure and search of his person. (TR 43). In accordance with RCr 9.78, the circuit court held an evidentiary hearing on June 5, 2008. (VR 1, 6/5/08, 09:55:34). After arguments by counsel and the submission of written memoranda by the parties, the circuit court issued an Opinion and Order denying the motion to suppress. (TR 61, 66, 71-77; App. C1-7).

The sole witness at the suppression hearing was Officer Chris Davis, a Louisville Metro Police Department officer who, at the time of Mr. Williams's arrest, worked in the "Flex Platoon," a street-level, plain-clothes unit that focuses on drug investigations and street crimes. (VR 1, 6/5/08, 09:56:30, 10:09:50). Officer Davis and his partner, Officer James Kaufling, were on duty, dressed in civilian clothes in an unmarked vehicle on March 29, 2007, when they received a report that a group of people were loitering and

[1] Both the handgun charge and the deadly weapon charge were based upon Mr. Williams's possession of a 9 mm handgun. (TR 1).

"smoking drugs" at 116 South 43rd Street in Louisville. (VR 1, 6/5/08, 09:56:58). Davis and Kaufling went to the area near 116 South 43rd Street, which appeared to be a vacant house. The officers observed the house from a nearby alley. (VR 1, 6/5/08, 09:57:47).

Officer Davis saw nine people: some standing on the sidewalk, some sitting on a retaining wall, some standing in the roadway and some sitting on a vehicle. (VR 1, 6/5/08, 09:58:11). He observed two or three of the people smoking what appeared to be "blunts," which he described as marijuana cigarettes that looked like cigars. (VR 1, 6/5/08, 09:59:52). He called for backup from two other officers, Detective David Haight and Officer Darrin Balthrop. Davis and Kaufling observed the group of people for ten to fifteen minutes and then for an additional two or three minutes after Haight and Balthrop arrived. (VR 1, 6/5/08, 09:59:26). The officers decided to approach the group.

Haight and Balthrop, in plain clothes like Davis and Kaufling, approached the gathering from the north in their unmarked vehicle. As the people in front of the house focused their attention on the vehicle (with some of them remarking that they thought it was the police), Davis and Kaufling came up behind the group and announced that they were police also. (VR 1, 6/5/08, 10:00:23). As Davis concentrated his attention on a person who began backing up on the steps to the house, he saw Detective Haight approach a person on a bicycle. The four officers surrounded the group. (VR 1, 6/5/08, 10:02:10). The individuals who were smoking the blunts threw them down. Davis could smell marijuana. (VR 1, 6/5/08, 10:03:21). Davis saw a large bulge in the pocket of the person that he had approached on the steps to the house. Davis asked what the bulge was, and the person replied that it was a bag of marijuana. (VR 1, 6/5/08, 10:03:58).

Next, Davis heard Officer Kaufling say, "gun," and he saw Kaufling remove a large handgun from a person later identified as John Jones or "Hot Boy." Shortly after that, Detective Haight retrieved a weapon from the person on the bike, later identified as Gregory Liggins. (VR 1, 6/5/08, 10:04:09). Davis then drew his own weapon and ordered everyone to get on the ground, telling them that if anyone else had a weapon to speak up now. Nobody spoke up. (VR 1, 6/5/08, 10:06:51).

All of the persons complied with Davis's order to sprawl on the ground, including Kenneth Williams, who was on crutches, leaning against a parked car. Mr. Williams laid his crutches down and got on the ground, face down. (VR 1, 6/5/08, 10:08:00). According to Davis, the men on the ground were not free to leave. (VR 1, 6/5/08, 10:14:50). When Mr. Williams was on the ground, Officer Davis saw a bulge on Mr. Williams's back. When he touched the bulge, Davis recognized that it was a gun. (VR 1, 6/5/08, 10:08:52). Mr. Williams was arrested. He had a loaded 9mm handgun in the waistband of his pants, covered by his shirt. (VR 1, 6/5/08, 10:08:55).

Officer Davis was not aware that "Hot Boy" had an outstanding warrant for a murder charge. He also did not know that Liggins had recently been released from prison after doing time for shooting someone, but had he known these things he would have had cause for concern. (VR 1, 6/5/08, 10:17:23).

Before he and the other police officers surrounded the group, Officer Davis suspected that three of the people were smoking marijuana in a public area. None of the people were fighting or making noise. (VR 1, 6/5/08, 10:11:06). Davis did not see Mr. Williams smoking a blunt. (VR 1, 6/5/08, 10:12:10). When the officers approached the

area and announced that they were the police, none of the people tried to run away. (VR 1, 6/5/08, 10:12:34).

At the conclusion of the hearing, after brief arguments by counsel, the court requested that the parties submit additional authority in support of their respective positions. (VR 1, 6/5/08, 10:19:30-10:36:10). The parties tendered memoranda, and the matter was submitted to the court for a ruling. (TR 61, 66). On July 18, 2008, the court issued an Opinion and Order denying Mr. Williams's motion. (TR 71-77; App. C1-7).

The Court of Appeals agreed with the trial court that the seizure and subsequent search of Mr. Williams was constitutionally justified, finding that "[w]hile police did not observe Williams consuming illegal drugs, he was directly engaged with individuals suspected of consuming drugs." (Opinion, pp. 7-9; App. A7-9). As such, the Court of Appeals concluded that "the police possessed sufficient grounds to execute an investigatory stop of the entire group of individuals." (Opinion, pp. 7-8, App. A7-8). The Court further concluded that, because "police observed at least two suspects with guns during the course of their investigatory stop for suspected drug crimes . . . Williams's constitutional rights were not violated because police were reasonably justified in their actions to ensure their own safety." (Opinion, pp. 9, App. A9). The Court of Appeals affirmed the Judgment of the Jefferson Circuit Court sentencing Mr. Williams to five years' imprisonment. In an Order entered October 13, 2010, this Court granted Mr. Williams's Motion for Discretionary Review of the decision of the Court of Appeals.

ARGUMENT

I. The trial court erred in refusing to suppress the fruits of an unconstitutional detention and search.

A. Preservation

As explained in the Statement of the Case, this issue was preserved for review by the defense motion to suppress the evidence seized as a result of the unconstitutional investigative stop. (TR 43-47). On June 5, 2008, the circuit court held an evidentiary hearing pursuant to RCr 9.78. After the parties submitted memoranda, the trial court denied the motion to suppress, concluding that the police had a reasonable, articulable suspicion that criminal activity was afoot. The Court said that the police were outnumbered and were "justified in immobilizing" the men. (TR 74; App. C4). Mr. Williams subsequently entered a conditional plea of guilty under RCr 8.09, reserving the trial court's suppression ruling for appellate review. (TR 79-82, 83; VR 1, 10/1/08, 09:49:08; 7/29/08, 09:52:00).

B. Standard of Review

Pursuant to Kentucky Rule of Criminal Procedure 9.78, on review of a suppression issue, the appellate court conducts a *de novo* review to determine if the trial court's decision is correct as a matter of law but defers to the trial court's findings of fact if they are supported by substantial evidence. *Fletcher v. Commonwealth*, 182 S.W.3d 556, 558 (Ky. App. 2005). Where, as here, the seizure and subsequent search of a citizen are done without a warrant, the Commonwealth has the burden to prove that an exception to the warrant requirement justifies the police action. "All searches without a valid search warrant are unreasonable unless shown to be within one of the exceptions to the rule that a search must rest upon a valid warrant." *Gallman v. Commonwealth*, 578 S.W.2d 47, 48

(Ky. 1979). See also *Cook v. Commonwealth*, 826 S.W.2d 329, 331 (Ky.1989), citing *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). Because the seizure of Mr. Williams and the subsequent search were not made pursuant to a warrant, the initial presumption is that the search is deemed *per se* unreasonable. "The burden is on the prosecution to show the search comes within an exception [to the warrant requirement]." *Gallman, supra.* 589 S.W.2d at 48. The Commonwealth failed here to meet its burden to prove that the warrantless seizure and search were not unreasonable and unconstitutional.

C. Trial Court's Ruling

In the Opinion and Order denying the motion to suppress, the trial court found that the "four officers approached a distinct group of nine individuals who, reportedly, had been smoking drugs." (TR 73; App. C3). The court went on to find that the police "observed two or more of the individuals actually smoking what appeared to be marijuana cigarettes and the officers actually smelled burning marijuana." *Id.* The officers saw the people discard the blunts, which were on the ground when the officers arrived. *Id.* Next, the officers saw a bulge in one person's clothing, and that person admitted that it was a bag of marijuana. (TR 74; App. B4). From these facts, the court concluded that "the officers possessed more than enough facts to justify a reasonable and articulable suspicion that criminal activity may have been afoot[.]"*Id.* The court then determined that the officers had the right to "immobiliz[e]" all nine of the individuals while they investigated. *Id.* "[S]ince the officers were clearly outnumbered and some of the suspects had been milling about and acting restless, the officers were more than justified in immobilizing them until they had finished their investigation." *Id.*

Having determined that the immobilization of Mr. Williams was justified, the circuit court then found that the discovery of guns on two of the people "dramatically elevate[d] the justification of Officer Davis' actions." (TR 74; App. C4). The court found that it was prudent for Officer Davis to order all of the people to the ground. *Id.*

Rejecting Mr. Williams's argument that the police had no evidence at all that he was involved in criminal activity before he was seized, the court found that *Terry* provided a "sound basis" for the police to order Mr. Williams to lie on the ground. *Id.* The court also rejected Mr. Williams's argument that the police observed nothing that could have led them to believe that anyone in the group was armed or dangerous. *Id.* The court ultimately concluded that because Mr. Williams was in proximity to people smoking marijuana (people who were "openly involved in criminal activity"), he had a diminished expectation of privacy. (TR 76; App. C6).

D. Argument

Several of the circuit court's findings of fact are not supported by substantial evidence. First, the court characterized the nine individuals observed by the police as "a distinct group of nine individuals" and then found that "these individuals were joined together in a distinct group in a manner that indicated they were somehow associated, however loosely." (TR 73, 76; App. C3, C6). There is nothing in Officer Davis's testimony that indicated that the people he observed were associated in any way. Officer Davis saw some people in the yard of the house, some on the sidewalk, some in the roadway and some on a retaining wall. He saw Mr. Williams with crutches, leaning against a parked car. The people were in a public area. (VR 1, 6/5/08, 09:58:29, 10:08:00, 10:11:40). Officer Davis did not describe any interaction among the individuals. Also, the

circuit court found that some of the individuals "had been milling about and acting restless" when the officers made themselves known. (TR 74; App. C4). But Officer Davis never testified that the people were milling about or acting restless, although he did say that it was not uncommon for people to try to walk away when they are approached by police officers. None of the individuals tried to run, and Mr. Williams did not try to walk away. (VR 1, 6/5/08, 10:12:34). Because the court's findings of fact are not supported by substantial evidence, they cannot be upheld on appeal. The erroneous factual findings form the basis for the circuit court's conclusion that the detention and search of Mr. Williams was justified because he was "'engaged in a common enterprise' with others engaging in obviously criminal activity." (TR 76; App. C6). A court's finding or holding which is "unsupported by any evidence" is "clearly erroneous." *Gabbard v. Lair*, 528 S.W.2d 675, 676 (Ky. 1975). See also CR 52.01 and *Clayborn v. Commonwealth*, 701 S.W.2d 413, 414 (Ky.App. 1985).

As stated in *Fletcher, supra,* 182 S.W.3d at 559, "A 'seizure' for Fourth Amendment purposes occurs only when an individual is detained under circumstances that would induce a reasonable person to believe that he or she is not at liberty to leave." The *Fletcher* court went on to say, "Police may make a *Terry* stop for investigative purposes if they have 'a reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection with a completed felony ....' *Id., citing United States v. Hensley*, 469 U.S. 221, 229, 105 S.Ct. 675, 680, 83 L.Ed.2d 604 (1985)." *See also Kotila v. Commonwealth*, 114 S.W.3d 226, 232 (Ky. 2003).

United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981), provides that the totality of the circumstances (the officer's objective observations) must yield a particularized suspicion that the particular individual being detained is engaged in wrongdoing. See also *Collins v. Commonwealth*, 142 S.W.3d 113, 115 (Ky. 2004). Once Officer Davis ordered Mr. Williams to the ground, Mr. Williams was detained. He was not free to leave. (VR 1, 6/5/08, 10:08:00, 10:14:50). But Officer Davis never identified anything that Mr. Williams did that raised any suspicion that Mr. Williams himself was engaged in criminal activity. See *Florida v. Royer*, 460 U.S. 491, 497, 103 S.Ct. 1319, 1324, 75 L.Ed.2d 229 (1983) (plurality) (A person "may not be detained even momentarily without reasonable, objective grounds for doing so.").

"The fact that appellant was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct." *Brown v. Texas*, 443 U.S. 47, 52, 99 S.Ct. 2637, 2641, 61 L.Ed.2d 357 (1979). See also *Simpson v. Commonwealth*, 834 S.W.2d 686, 687 (Ky. 1992). Mr. Williams's proximity to others who appeared to be using marijuana did not mean that he was breaking the law. Even giving "due deference to the trial court in assessing the credibility of the officers and the reasonableness of their inferences," (*Fletcher, supra,* 182 S.W.3d at 558, *citing Ornelas v. United States*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996)), it is clear, based on the undisputed evidence, that the officers' observations were insufficient to create reasonable suspicion that Mr. Williams was engaged in criminal activity.

Furthermore, under *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the police officers had to have a reason to believe that Mr. Williams was armed

with a weapon before the officers could order him to the ground in order to do a pat down search. Being in a high crime area or even being in the presence of marijuana users cannot be the reason. For a *Terry* search to be proper, the Supreme Court has made it clear that a police officer's reasonable belief or suspicion "must be directed at the person to be frisked." *Ybarra v. Illinois*, 444 U.S. 85, 94, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979). The officer had to have some reasonable, articulable suspicion that Mr. Williams was armed before seizing him.

As noted in the previous section, the circuit court characterized the nine individuals observed by the police as "a distinct group of nine individuals" and then found that "these individuals were joined together in a distinct group in a manner that indicated they were somehow associated, however loosely." (TR 73, 76; App. C3, C6). According to the circuit court, it was this perceived loose association with the others that allowed the police to seize Mr. Williams. But in *United States v. Davis*, 430 F.3d 345 (6th Cir. 2005), the Sixth Circuit, citing *Ybarra*, *United States v. Padro*, 52 F.3d 120 (6th Cir. 1995), and other cases, found that mere association with a person whom the police believe is engaged in criminal conduct is not enough to justify a *Terry* detention and pat down. Furthermore, in *United States v. Bell*, 762 F.2d 495 (6th Cir. 1985), the Sixth Circuit declined to adopt what it described as the "automatic companion" rule. In *Bell*, the Court said, "As to the propriety of the 'automatic companion' rule, we do not believe that the *Terry* requirement of reasonable suspicion under the circumstances, 392 U.S. at 27, 88 S.Ct. at 1883, has been eroded to the point that an individual may be frisked based upon nothing more than an unfortunate choice of associates." *United States v. Bell*, 762 F.2d at 499.

In Mr. Williams's case, Officer Davis did observe two or more of the nine individuals smoking "blunts," but he also said that he did not see Mr. Williams smoking a blunt. (VR 1, 6/5/08, 09:59:52, 10:11:06, 10:12:10). The proximity of Mr. Williams to people using marijuana or even his association with them, could not justify a *Terry* stop of Mr. Williams. In *United States v. Davis*, the Sixth Circuit explained, "The situation is analogous to *Sibron v. New York,* 392 U.S. 40, 62, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968), in which the Court stated, 'The inference that persons who talk to narcotics addicts are engaged in the criminal traffic in narcotics is simply not the sort of reasonable inference required to support an intrusion by the police upon an individual's personal security.'" *United States v. Davis, supra*, 430 F.3d at 353. In *Maryland v. Pringle*, 540 U.S. 366, 371, 124 S.Ct. 795, 157 L.Ed.2d 769 (2003), the Supreme Court confirmed that *Ybarra* stands for the proposition that the reasonable suspicion that must exist to justify a warrantless seizure and search "must be particularized with respect to the person to be searched or seized [citation omitted]." The officers' suspicion in Mr. Williams's case simply was not particularized to Mr. Williams.

Citing *United States v. Miller*, 974 F.2d 953 (8th Cir. 1992), the circuit court in Mr. Williams's case found that it was permissible for Officer Davis to order Mr. Williams to the ground in order to immobilize him because the officers were outnumbered nine to four. The circuit court said that *Miller* stood for the proposition that "handcuffing suspects during *Terry* stop where suspects outnumbered officer 6 to 3 was reasonably necessary to achieve purposes of *Terry* stop." (TR 74; App. C4). Not only is *Miller* not controlling in Kentucky, but *Miller* was a case in which the officers actually testified about the reasons for handcuffing the suspects: "At the suppression hearing,

Officer Hicks testified that he decided to handcuff Miller and Kirtdoll because the suspects in the vicinity outnumbered the officers by six to three, and because he doubted that Customs Agent Kantazar could effectively control two suspects while Hicks and Kessler went to the baggage claim area." *Miller*, *supra*, 974 F.2d at 957. In Mr. Williams's case, Officer Davis did not offer similar testimony regarding the reason for ordering Mr. Williams to the ground.

Ultimately, the circuit court in Mr. Williams' case found that because Mr. Williams was in a public place in the presence of at least two individuals who were using marijuana, he had a diminished expectation of privacy that allowed police officers who observed the marijuana smokers to detain Mr. Williams, order him to the ground and search his person: "The Defendant's reasonable expectation of privacy, while standing in a group of men who were openly involved in criminal activity, two of whom were in possession of a deadly weapon[2], is certainly diminished and must give way to the 'public concerns served by the seizure [and] ... the degree to which the seizure advances the public interest.' [citing *Brown v. Texas*, 443 U.S. 47, 51, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979)]." (TR 76-77; App. C6-7). In *Brown v. Texas*, the Supreme Court did not state that a person who is in public and who is also in the presence of a person who is committing a misdemeanor has a diminished expectation of privacy. The appellant has found no other authority that stands for that proposition. At all times while he was leaning against the parked car on a public street Mr. Williams had the same expectation of privacy as any other citizen. Without reasonable, articulable facts to believe that Mr. Williams was

[2] There is absolutely no evidence in the record that suggests that Mr. Williams knew about the concealed weapons possessed by the others.

engaged in criminal activity and, especially, that Mr. Williams was armed with a weapon, the police were without authority to seize Mr. Williams or to search his person.

E. The Court of Appeals Opinion

The Commonwealth argued on appeal that the court should affirm Mr. Williams's conviction by applying the ""automatic companion rule"" to Mr. Williams's case. The Commonwealth relied upon *United States v. Berryhill*, 445 F.2d. 1189 (9th Cir. 1971), for a definition of the "automatic companion rule": "All companions of the arrestee within the immediate vicinity, capable of accomplishing a harmful assault on the officer, are constitutionally subjected to the cursory 'pat-down' reasonably necessary to give assurances that they are unarmed." *Berryhill*, 445 F. 2d at 1193.

Although the Court of Appeals did not specifically address the "automatic companion rule" in its Opinion, by approving the search of Mr. Williams under the facts of his case, the court did, in fact, apply the rule. The Court of Appeals (like the circuit court) found that Mr. Williams was part of a group of people on a public street, some of whom were using drugs. (App. A7; App. C6). The Court of Appeals specifically found that "the police possessed sufficient grounds to execute an investigatory stop of the entire group of individuals." (App. A8).

This Court's decision in *Owens v. Commonwealth*, 291 S.W.3d 704 (Ky. 2009), adopted the ""automatic companion rule"," but its application is limited to passengers in vehicles. This Court emphasized that the rule is very limited in its application, applying only to passengers of vehicles, stating:

> Toward that end, our holding is a limited and narrow exception to the exclusionary rule, designed to apply only in situations in which the driver of a vehicle has been lawfully arrested and the passengers of the vehicle have

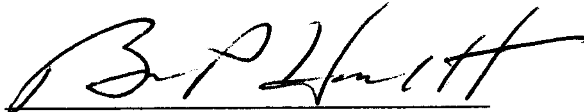
> been lawfully expelled in preparation for a lawful search of the vehicle. Only in those limited circumstances, which are fraught with danger for officers and bystanders alike, may an officer conduct a brief pat-down for weapons (not a full-blown search) of the vehicle's passengers, regardless of whether those passengers' actions or appearance evidence any independent indicia of dangerousness or suspicion.

Owens v. Commonwealth, 291 S.W.3d at 712. Thus, the explicit limitation of the "automatic companion rule" to passengers of vehicle precludes the rule from applying in this case where Mr. Williams was standing among a group of individuals on a public street.

Because the seizure of Mr. Williams and the subsequent search of his person were unlawful, the evidence obtained as a result thereof should have been suppressed as the "fruit of the poisonous tree." *Wong Sun v. United States*, 371 U.S. 471, 488, 83 S.Ct. 407, 417, 9 L.Ed.2d 441 (1963). The illegal seizure violated Mr. Williams's Fourth, Fifth, Sixth and Fourteenth Amendment rights under the United States Constitution and his rights under Sections Two, Ten and Eleven of the Kentucky Constitution to be free from unreasonable seizures and searches. Mr. Williams is entitled to have his case remanded to the trial court with directions to grant his motion to suppress.

CONCLUSION

For the foregoing reasons, the appellant, Kenneth Williams, respectfully requests that the judgment be reversed and remanded with directions that the evidence obtained in the illegal search be suppressed and that Mr. Williams be permitted to withdraw his plea of guilty if he wishes to do so.



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