

SUPREME COURT OF VIRGINIA

Brown v. Commonwealth, 270 Va. 414

620 S.E.2d 760 (2005) · No. Record No. 050639 · Decided November 4, 2005

SUMMARY

The Supreme Court of Virginia held that an officer lacked probable cause to arrest and search Tavares Lamont Brown based on his possession of a partially burned hand-rolled cigarette and the surrounding circumstances. The court concluded that the cigarette could have had a legitimate use and that the additional circumstances did not establish probable cause. It reversed the Court of Appeals, vacated Brown's convictions for possession of cocaine and heroin, and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Elizabeth B. Lacy; Leroy R. Hassell, Sr., Chief Justice; Elizabeth B. Lacy, Justice; Lawrence L. Koontz, Jr., Justice; Barbara Milano Keenan, Justice; Donald W. Lemons, Justice; G. Steven Agee, Justice; Russell, Senior Justice
JURISDICTION	Virginia
DECIDED	November 4, 2005
DOCKET	Record No. 050639
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Brown appealed the denial of his motion to suppress, his convictions for possession of cocaine and possession of heroin, and the affirmance of those convictions by the Court of Appeals of Virginia.
STANDARD OF REVIEW	The court deferred to the trial court's historical factual findings but reviewed de novo whether the legal standard of probable cause was correctly applied to those facts.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Virginia
PARTIES	Tavares Lamont Brown v. Commonwealth of Virginia

TOPICS

- probable cause
- fourth amendment
- search and seizure
- suppression of evidence
- appellate procedure

PRACTICE AREAS

criminal procedure

constitutional law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the totality of the circumstances gave Officer Lambert probable cause to arrest Brown when the officer observed Brown holding a partially burned hand-rolled cigarette.
2. Whether the evidence obtained during the warrantless search should have been suppressed as the fruit of an unconstitutional search.
3. Whether the Commonwealth could invoke inevitable discovery when it raised that theory for the first time on appeal.

HOLDINGS

1. An officer lacks probable cause to arrest a person based solely on observing a hand-rolled cigarette that is also capable of legitimate use; the observation must be combined with some additional circumstance indicating criminal activity. Under the totality of the circumstances, Officer Lambert lacked probable cause to arrest Brown.
2. Because Officer Lambert lacked probable cause to arrest Brown, the warrantless search and seizure were unconstitutional, and the trial court erred in denying Brown's motion to suppress.
3. The court would not consider the Commonwealth's alternative inevitable-discovery argument because it was not raised below.

KEY QUOTATIONS

“To support a finding of probable cause, such observations must be combined with some other circumstance indicating criminal activity.” (270 Va. at 763-64)

“Considering the totality of the circumstances, Officer Lambert did not have probable cause to arrest and search Brown and, thus, the trial court erred in denying Brown's motion to suppress the evidence.” (270 Va. at 764)

FACTUAL BACKGROUND

Officer Edward C. Lambert encountered Brown asleep in the passenger seat of a red automobile parked so as to obstruct an alley in an area where recent shootings and a homicide had occurred. Brown was holding a partially burned hand-rolled cigarette and a lighter; the officer observed no drug-related items and later testified that the cigarette smelled like tobacco. The officer nevertheless seized Brown and searched him based principally on his experience with hand-rolled cigarettes, discovering a folded bill and the cigarette, which laboratory testing showed contained traces of heroin and cocaine, respectively.

PROCEDURAL HISTORY

After a warrantless search of Brown produced a hand-rolled cigarette containing cocaine traces and a folded bill containing heroin traces, Brown moved to suppress the evidence. The trial court denied the motion, convicted

him in a bench trial, and imposed a total sentence of 20 years, with 16 years and 6 months suspended. The Court of Appeals of Virginia affirmed, and the Supreme Court of Virginia reversed, vacated the convictions, and remanded through the Court of Appeals for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the judgment of the Court of Appeals, vacate Brown's convictions, and remand to the Court of Appeals with direction to remand the matter to the trial court for further proceedings, if the Commonwealth be so advised.

CASES CITED

- *Camara v. Municipal Court*, 387 U.S. 523, 528, 87 S. Ct. 1727, 18 L. Ed. 2d 930 (1967)
- *Elkins v. United States*, 364 U.S. 206, 222, 80 S. Ct. 1437, 4 L. Ed. 2d 1669 (1960)
- *Massachusetts v. Sheppard*, 468 U.S. 981, 987-91, 104 S. Ct. 3424, 82 L. Ed. 2d 737 (1984)
- *McDonald v. United States*, 335 U.S. 451, 455-56, 69 S. Ct. 191, 93 L. Ed. 153 (1948)
- *Whren v. United States*, 517 U.S. 806, 819, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996)
- *United States v. Watson*, 423 U.S. 411, 423-24, 96 S. Ct. 820, 46 L. Ed. 2d 598 (1976)
- *Parker v. Commonwealth*, 255 Va. 96, 106, 496 S.E.2d 47, 53 (1998)
- *Jackson v. Commonwealth*, 267 Va. 666, 672, 594 S.E.2d 595, 598 (2004)
- *Ornelas v. United States*, 517 U.S. 690, 699, 116 S. Ct. 1657, 134 L. Ed. 2d 911 (1996)
- *Taylor v. Commonwealth*, 222 Va. 816, 820-21, 284 S.E.2d 833, 836 (1981)
- *Hollis v. Commonwealth*, 216 Va. 874, 877, 223 S.E.2d 887, 889 (1976)
- *Matthews v. Commonwealth*, 218 Va. 1, 2-3, 235 S.E.2d 306, 306-07 (1977)
- *Harris v. Commonwealth*, 241 Va. 146, 154, 400 S.E.2d 191, 196 (1991)
- *Lawson v. Commonwealth*, 217 Va. 354, 355, 357-58, 228 S.E.2d 685, 686-87 (1976)
- *United States v. Anderson*, 401 F. Supp. 996, 1000 (E.D. Tenn. 1975)
- *Thomas v. Superior Court*, 22 Cal. App. 3d 972, 99 Cal. Rptr. 647, 652 (1972)
- *Caplan v. State*, 531 So. 2d 88, 91-92 (Fla. 1988)
- *People v. Wright*, 80 Ill. App. 3d 927, 36 Ill. Dec. 311, 400 N.E.2d 731, 733-34 (1980)
- *State v. Ball*, 124 N.H. 226, 471 A.2d 347, 353 (1983)
- *Italiano v. Commonwealth*, 214 Va. 334, 336, 200 S.E.2d 526, 528 (1973)
- *Eason v. Eason*, 204 Va. 347, 352, 131 S.E.2d 280, 283 (1963)
- *Brown v. Commonwealth*, No. 0160-04-2, 2005 WL 405832 (Va. Ct. App. Feb. 22, 2005)

