

RENDERED: MARCH 21, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002641-MR

CARL COLON STRINGFELLOW

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
INDICTMENT NO. 01-CR-00799

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE AND McANULTY; JUDGES; AND JOHN WOODS POTTER,
SPECIAL JUDGE¹.

DYCHE, JUDGE. On May 26, 2001, after 11:00 p.m., Carl Colon Stringfellow was pulled over by Lexington Police Officer Joseph Eckhardt for driving without headlights. Upon exiting his vehicle, Stringfellow had trouble standing without assistance. He failed four field sobriety tests, and was arrested for driving under the influence (DUI), fourth offense, driving while

¹ Senior Status Judge John Woods Potter sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution.

his license was suspended for DUI, second offense, and failure to illuminate headlights.

Stringfellow was later indicted on these charges. Counsel filed a motion to suppress two of Stringfellow's three prior DUI convictions. A suppression hearing was held, and the trial court denied the motion. Stringfellow then entered a conditional plea of guilty (Kentucky Rule of Criminal Procedure [RCr] 8.09) to the DUI and suspended license charges, reserving the right to appeal his suppression issue. He was sentenced to one year on each count, with half of the second count ordered to run concurrently with the first for a total of one and one half years' imprisonment.

Stringfellow's attack on his prior convictions is twofold: He was not represented by counsel when entering guilty pleas to DUI, second offense, and DUI, third offense; and the Commonwealth was unable to present as evidence a certified copy of Stringfellow's conviction for the DUI, third offense. Appellant thus urges that the trial court erred in denying the motion to suppress the convictions.

We disagree. Not all uncounseled guilty pleas are deemed invalid for enhancement purposes. The record here reveals that Stringfellow was advised of his rights and knowingly, voluntarily, and intelligently chose to plead guilty. See Boykin v. Alabama, 395 U.S. 238 (1969), and its progeny.

The trial court's determination that Stringfellow's uncounseled guilty pleas were constitutionally sound was supported by substantial evidence and is therefore conclusive. RCr 9.78; Diehl v. Commonwealth, Ky., 673 S.W.2d 711 (1984).

We likewise concur in the trial court's determination that the Commonwealth's inability to produce the certified copy of appellant's third conviction was not fatal to proving its validity. The Commonwealth made all reasonable efforts to obtain a copy of the guilty plea form but was only able to produce the videotape of the proceeding. Given the circumstances surrounding the plea and the fact that Stringfellow neither denies its existence nor objected to the introduction of the videotape, we can discern no error in the trial court accepting same as the "best evidence" of appellant's prior conviction. See Commonwealth v. Duncan, Ky., 939 S.W.2d 336, 337 (1997).

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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