

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000541-MR

GUYLAND BUSHAW WILLIAMS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE SHEILA R. ISAAC, JUDGE
INDICTMENT NO. 01-CR-00692

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE AND McANULTY, JUDGES; JOHN WOODS POTTER¹, JUDGE.
DYCHE, JUDGE. On April 26, 2001, at 11:30 p.m., Lexington
Police Officer D. Jay Williams observed Guyland Bushaw Williams
driving seventy miles per hour in a forty-five mile per hour
zone on New Circle Road. Officer Williams initiated a traffic
stop on appellant. Guyland Williams failed five field sobriety
tests, and the preliminary breath test (PBT) registered the

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.

presence of alcohol in Williams's system. He was arrested for driving under the influence, possession of a controlled substance in the first degree, tampering with physical evidence, persistent felony offender in the first degree, and four misdemeanor traffic offenses. After a jury trial, Guyland Williams was found guilty on all counts, and he was sentenced to a total of thirteen years' imprisonment. He appeals.

Williams first argues that the trial court erred in allowing testimony regarding his failed PBT. Williams cites Kentucky Revised Statute (KRS) 189A.104, which states, in pertinent part:

- (1) The only alcohol or substance testing subject to refusal or enhancement of penalties provided for in this chapter is:
 - (a) Breath analysis testing by a machine installed, tested, and maintained by the Commonwealth for that specific purpose at a police station or detention facility;
 -
- (2) The results of any breath analysis by an instrument other than one specified in subsection (1) of this section shall be inadmissible in court.

Williams insists that this statute, enacted in October 2000, prohibited any mention of the PBT. Prior to the statute's enactment, Kentucky case law was quite clear on this point: Mention of the PBT was not inadmissible, but testimony regarding the specific results was inadmissible. See Commonwealth v. Rhodes, Ky. App., 949 S.W.2d 621 (1996); and Allen v.

Commonwealth, Ky. App., 817 S.W.2d 458 (1991). Here there was no testimony regarding Williams's results on the PBT (the record indicates that it read 0.114%), only that it showed the presence of alcohol. We find no error in the admission of the officer's testimony.

Williams also argues that he was entitled to a directed verdict of acquittal on the charge of tampering with physical evidence. In an attempt to keep from being charged with possession of a controlled substance, Williams had ingested the crack cocaine he had in his pocket when arrested. For this act he received the additional charge of tampering. Williams insists, among other things, that his right against self-incrimination was violated, thus entitling him to the directed verdict. The Kentucky Supreme Court cases of Burdell v. Commonwealth, Ky., 990 S.W.2d 628, 632-633 (1999), and Taylor v. Commonwealth, Ky., 987 S.W.2d 302, 305 (1998), support the trial court's ruling. See also Commonwealth v. Henderson, Ky., 85 S.W.3d 618, 619-620 (2002); and Phillips v. Commonwealth, Ky., 17 S.W.3d 870, 876, cert. denied, 531 U.S. 1016 (2000). We are bound by those decisions. SCR 1.030(8)(a).

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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