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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000630-MR

MONTRIAL JOHNSON — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LEWIS G. PAISLEY, JUDGE
ACTION NO. 00-CR-01320

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION

AFFIRMING

** ** ** ** **

BEFORE: BARBER, BAKER, AND JOHNSON, JUDGES.

BARBER, JUDGE: Appellant Montrial Johnson appeals the trial court's acceptance of his conditional guilty plea due to his assertion that he was not competent to stand trial. Johnson also appeals the court's denial of his motion to suppress evidence.

Johnson was seen speeding in a residential neighborhood. He refused to pull over, and a police chase

ensued. When the vehicle came to a stop in the field behind a house, Johnson ran from the vehicle and was caught by police. Johnson was searched, and a cell phone and $925 were found in his pocket. A search of the scene turned up a car stereo faceplate case containing two baggies with crack cocaine in them. Johnson gave a false name when arrested, but his identity was later discerned.

Johnson claims that the search of his car after his arrest was improper and without warrant, and asserts that the evidence of cocaine found in that search should be suppressed. Johnson asserts that the faceplate case in which the cocaine was found could not be opened without a warrant. Johnson asserts that he was not in the proximity of the vehicle when the case was found, and thus the search was in violation of law.

An officer may search a car where there is reasonable suspicion that contraband may be in the vehicle, or in containers located in the vehicle. Gray v. Commonwealth, Ky. App., 28 S.W.3d 316, 318 (2000). Furthermore, when an officer is legally in any location, he may seize and examine an object in plain view. Stogner v. Commonwealth, Ky. App., 35 S.W.3d 831, 836 (2000). As Johnson admits that the container was outside his vehicle, in the field where the officers were in accordance with law while chasing the fleeing suspect, he cannot object to the seizure of the object laying there in plain view.

The officers were entitled to seize and examine the case, and in so doing, were entitled to ascertain the presence of illegal substances inside the container.

In United States v. Ross, 456 U.S. 798, 102 S. Ct. 2157, 72 L. Ed. 2d 572 (1982), the United States Supreme Court permitted the search of a vehicle and containers within it where there was probable cause to believe contraband was transported in the vehicle. Where no such probable cause exists, the container may be seized and held for a brief time until a warrant is obtained prior to search. United States v. Place, 462 U.S. 696, 103 S. Ct. 2637, 77 L. Ed. 2d 110 (1983). Johnson also asserts that as the case was found five feet from the driver's door of the vehicle, out in a field, there was no evidence linking him to the case.

The Commonwealth argues that this issue was not properly preserved for review, and therefore should not be reviewed on appeal. The record shows that Johnson was extremely uncooperative with counsel, and that defense counsel attempted to suppress the evidence from introduction at trial. Based on the arguments before the trial court, we may properly review this argument.

As Johnson was speeding, refused to stop the vehicle when requested to do so, and attempted to escape the officers both in his vehicle and on foot, the stop was lawful. Taylor v.

Commonwealth, Ky., 987 S.W.2d 302, 305 (1998). The faceplate case was not in the vehicle, and the Commonwealth asserts that its location outside the vehicle shows that it was "abandoned", and thus not subject to Fourth Amendment protections pursuant to United States v. Lewis, 40 F.3d 1325, 1334 (1st Cir. 1994). We disagree, and find that the proximity of the case to the vehicle makes it unlikely that the case was abandoned property.

As the Commonwealth notes, even had the police officers held the case while obtaining a warrant, rather than opening it immediately, the contraband would have been discovered. Nix v. Williams, 467 U.S. 431, 444, 104 S. Ct. 2501, 81 L. Ed. 2d 377 (1984) holds that even if the evidence was unlawfully obtained, where it would inevitably have been discovered by lawful means, premature discovery of the evidence does not constitute reversible error. See also: Hazel v. Commonwealth, Ky., 833 S.W.2d 831, 834 (1992).

Johnson also asserts that he was not competent to plead guilty to the charged offense. Defense counsel requested and received a competency examination prior to entry of the plea. Following this examination, Johnson was found not competent to stand trial. After several months of treatment, a second evaluation was made by a different physician, who found that Johnson was competent. Johnson is diagnosed with multiple mental disorders. The evaluating physician found after the

second examination that Johnson was able to understand the nature of the charges against him, and that his refusal to cooperate with defense counsel was volitional.

The test of competency is "whether he has substantial capacity to comprehend the nature and consequences of the proceeding against him and to participate rationally in his defense." Commonwealth v. Strickland, Ky., 374 S.W.2d 701 (1964). The record indicates that Johnson claimed that each of the four attorneys representing him below were ineffective. Similarly, Johnson asserts that appellate counsel is ineffective. Appellate counsel argues that Johnson is unable to participate in the defense of the charges against him as Johnson discredits the advice of every attorney provided to him. The record shows that Johnson refuses to understand the purpose or result of the suppression hearing.

During the suppression hearing, the trial court conducted a discussion with Johnson fully informing him of the ramifications of his plea, and Johnson acknowledged that he understood the charges against him, and that he made the plea voluntarily and with informed consent. There is insufficient evidence to show that Johnson was unable to understand the nature of the charges against him such that the guilty plea should be found improvidently entered. The record shows that Johnson refused to accept that the issue of possession of the

contraband was not an issue to be resolved in the appeal of the results of the suppression hearing. Johnson argues that because he could not, or did not, understand this, the plea was not actually informed and voluntary. We find that Johnson had sufficient capacity to understand the charges against him, and that he was apprised of the nature of the suppression hearing by numerous counsel, whether or not he agreed with the information they provided to him. For this reason, we find his plea to have been voluntary.

We affirm the denial of the motion to suppress by the Fayette Circuit Court, and the finding that Johnson was competent to enter a guilty plea.

BAKER, JUDGE, CONCURS.

JOHNSON, JUDGE, CONCURS IN RESULT ONLY.

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