

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000631-MR

MONTRIAL JOHNSON

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LEWIS G. PAISLEY, JUDGE
ACTION NO. 01-CR-00176

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BARBER, BAKER, AND JOHNSON, JUDGES.

BARBER, JUDGE: Appellant Montrial Johnson appeals from a conviction for possession of a controlled substance, and of being a persistent felony offender.

After entry of a plea of guilty to a charge of possession of contraband, Johnson was placed on expanded community supervision with electronic monitoring, and home visits. The supervising officer noted that he had observed Johnson operating a motor vehicle, and informed him that he was not permitted to drive an automobile until he obtained a

driver's license. Two days later, Johnson informed his parole officer that he had obtained a driver's license, and would begin work the next day. Several days later, the parole officer noted Johnson's car in an area that was not work-related. The officer began to follow the car. Johnson threw a baggie out of the car, and continued driving. The officer stopped and picked up the baggie. Several blocks later, the officer found Johnson's car abandoned beside the roadway.

A suppression hearing was held during which Johnson asserted that the attempt to stop his vehicle was unlawful. The officer testified that he wanted to stop the vehicle to ask why Johnson was not at work. Johnson argues that the stop was unlawful because the attempted stop was unreasonable under Griffin v. Wisconsin, 483 U.S. 868, 873, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987). Kentucky law provides parole officers with the power to arrest a parolee who has violated the terms of probation. KRS 439.430. The parole officer can exercise that power where he has "reason to believe that a parolee has violated the terms of his release." Id. Johnson argues that because some valid reason may have existed for his operating the vehicle downtown at the time he was observed, the attempted stop of his vehicle was unlawful.

The trial court denied the motion for suppression. The trial court noted that the parole officer believed Johnson was

employed, and questioned his proximity to a street with a high rate of drug trade in the middle of the workday. The trial court found these facts sufficient to support the parole officer's attempts to stop Johnson and determine what he was doing. An officer may stop and briefly detain an individual where a reasonable suspicion exists that the individual may be engaged in illegal activity. Darden v. Commonwealth, Ky., 52 S.W.3d 574, 576 (2000); Stewart v. Commonwealth, Ky. App., 44 S.W.3d 376, 378 (2000).

The parole agreement permitted the officer to search Johnson and his residence at any time. In a similar case, the Kentucky Supreme Court permitted a parole officer to search the parolee's home and his belongings under a similar parole agreement. See: Clay v. Commonwealth, Ky., 818 S.W.2d 264, 265 (1991). Search of a parolee is permissible under the terms and conditions of standard parole. Wilson v. Commonwealth, Ky., 998 S.W.2d 473, 475 (1999).

Additionally, a police officer may make an investigatory stop where the officer shows a specific articulable fact and a reasonable and articulable suspicion that the person in question is engaged in illegal activity. See: Simpson v. Commonwealth, Ky. App., 834 S.W.2d 686, 687 (1992). The trial court found that the parole officer believed Johnson was not at work, as required by the parole agreement. The

parole officer also noticed Johnson in an area of the city used for drug trade. As Johnson was on parole for drug related offenses, the officer believed Johnson was engaged in, or about to engage in, illegal activity. Under such circumstances, an investigatory stop is permitted by law. Taylor v. Commonwealth, Ky., 987 S.W.2d 302, 305 (1998).

The standard of review of the trial court's denial of a motion to suppress is two part. Initially, the reviewing court must determine whether the findings of the trial court are conclusive if supported by substantial evidence. Secondly, the reviewing court must make a de novo review to determine whether the trial court's decision was correct. Stewart v. Commonwealth, Ky. App., 44 S.W.3d 376, 380 (2000).

After the trial court denied Johnson's motion to suppress the evidence of the contraband found in the baggie thrown from his vehicle, Johnson entered a conditional plea of guilty. In the proceeding in which Johnson was on parole at the time of his second arrest, Johnson had argued that he was not competent to stand trial. In the present action, Johnson again argued that he was not competent. The trial court found him competent, and accepted his plea of guilty and his claim that the plea was made with informed consent.

A determination of competency to stand trial is made where an expert witness determines that the defendant did not

lack the capacity to appreciate the nature and consequences of the proceedings and was capable of participating in his defense. Sanders v. Commonwealth, Ky., 801 S.W.2d 665, 682 (1990). The same standard is applied to determine competency to enter a guilty plea to the charges against him. Short v. Commonwealth, Ky., 519 S.W.2d 828, 833 (1975). Appellant does not argue that the expert witness' evaluation of Johnson's competency was in error, but rather that the trial court should have noted Johnson's fixation on having the possession issue addressed on appeal, when such issue was not appealable. Johnson argues that his incorrect analysis of the law should have indicated that he was not fully aware of the legal ramifications of his plea.

We affirm the trial court's ruling as to suppression of the evidence, find Johnson competent to enter a plea of guilty, and affirm the Fayette Circuit Court.

BAKER, JUDGE, CONCURS.

JOHNSON, JUDGE, CONCURS IN RESULT ONLY.

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