

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001257-MR

LARRY WAYNE SPICER

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LAURENCE B. VANMETER, JUDGE
ACTION NO. 01-CR-01132

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: JOHNSON, KNOPF AND McANULTY, JUDGES.

JOHNSON, JUDGE: Larry Wayne Spicer has appealed from a final judgment and sentence of the Fayette Circuit Court entered on May 8, 2002, which, following Spicer's conditional plea of guilty, sentenced him to ten years in prison. Having concluded that all of Spicer's claims of error are without merit, we affirm.

On November 19, 2001, a Fayette County grand jury indicted Spicer on one count of possession of a handgun by a

convicted felon,¹ one count of carrying a concealed deadly weapon,² and one count as being a persistent felony offender in the second degree (PFO II).³ On January 23, 2002, a suppression hearing was held to consider Spicer's motion to suppress evidence of the handgun found at the scene of his arrest and incriminating statements made by him to various police officers.

Evidence from the suppression hearing revealed that on September 15, 2001, Officer David Peel of the Lexington Police Department observed Emmett Harris driving an automobile in Fayette County, Kentucky. Officer Peel recognized Harris and knew that he was operating the vehicle without a valid driver's license. Spicer was a passenger in this automobile. After Officer Peel pulled the car over, he observed Spicer exit the vehicle and walk toward the right, front wheel area where he knelt down and appeared to place his hands in and around the wheel well. Officer Peel asked Spicer to step away from the vehicle and Spicer complied. Officer Peel then called for back-up.

After Harris was cited for driving without a valid license, Officer Peel walked over to the right, front wheel area where he knelt down and saw a handgun lying on the ground

¹ Kentucky Revised Statutes (KRS) 527.040.

² KRS 527.020.

³ KRS 532.080(2).

underneath the vehicle. Spicer was then placed under arrest and Officer Matt Brotherton read Spicer his Miranda⁴ rights. After taking Spicer to jail, Officer Peel began questioning Spicer about the gun. According to Officer Peel, Spicer told him that it was not his handgun, but he admitted possessing the handgun while in the vehicle and placing the handgun behind the wheel to avoid detection. Spicer also told Officer Peel that he had some "information" about some individuals who might be dealing drugs and/or guns in the area. Officer Peel testified that he made no promises to Spicer, but did tell him that he would have someone come to talk to him about his alleged "information."

Following Officer Peel's initial interrogation of Spicer, he contacted the Bureau of Alcohol, Tobacco, and Firearms. Agents Brad Brashear and Scott Teal responded and came to the jail to meet with Spicer later that same evening. Officer Peel also contacted Detective Smoot⁵ of the Lexington Police Department to give him the opportunity to question Spicer regarding any possible knowledge he might have about drug activity in the area.⁶ According to the testimony of both Agent

⁴ Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

⁵ Detective Smoot's first name is not mentioned in the record.

⁶ According to the testimony of Officer Peel, Detective Smoot interviewed Spicer approximately two days after he was arrested.

Brashear and Agent Teal, Spicer was unable to provide them with any beneficial information.

On February 2, 2002, Spicer filed a memorandum in support of his motion to suppress much of the evidence against him, arguing (1) that the manner in which Officer Peel found the handgun was unconstitutional, and (2) that the statements he made to the investigating officers were not voluntary. Approximately one month later, on March 6, 2002, the trial court denied Spicer's motion.

Rather than go to trial, Spicer elected to enter a conditional guilty plea, reserving his right to appeal the issues regarding the legality of the manner in which the handgun was discovered and the voluntariness of his statements. On April 3, 2002, the trial court accepted Spicer's conditional guilty pleas to the possession of a handgun by a convicted felon charge and the PFO II charge.⁷ Following a pre-sentence investigation, the trial court sentenced Spicer to five years' imprisonment on the conviction for possession of a handgun by a convicted felon, which was then enhanced to ten years' imprisonment pursuant to the PFO II conviction, for a total sentence of ten years' imprisonment. This appeal followed.

⁷ Count two of Spicer's indictment, carrying a concealed deadly weapon, was dismissed.

Spicer first claims that Officer Peel discovered the handgun as a result of an unconstitutional search.

Specifically, Spicer argues:

[T]he [handgun] was not clearly visible in the vehicle. Officer Peel had bent down, looked under the vehicle in the area of the front wheel, and then he discovered a handgun on the ground. The handgun was not in plain view of anyone. Officer Peel was conducting a general search when he found the handgun, a search not as a result of reasonably articulable suspicion or probable cause.

According to Spicer, Officer Peel needed "reasonabl[e] articulable suspicion or probable cause" before he could constitutionally look underneath the vehicle where the gun was found. We disagree.

In Minnesota v. Dickerson,⁸ the United States Supreme Court discussed the elements required to justify the warrantless seizure of an item under the "plain view" doctrine:

Under [the plain view] doctrine, if police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant.

In the case sub judice, it is not disputed (1) that Officer Peel was standing on a public street when he saw the handgun lying underneath the vehicle; (2) that Spicer left the handgun on the

⁸ 508 U.S. 366, 375, 113 S.Ct. 2130, 36-37, 124 L.Ed.2d 334 (1993). See also Hazel v. Commonwealth, Ky., 833 S.W.2d 831, 833 (1992).

ground underneath the vehicle; and (3) that the incriminating character of the handgun was readily apparent.⁹ Therefore, since the handgun was in "plain view," there was no invasion of Spicer's privacy, and hence, no unconstitutional search.¹⁰

The fact that Officer Peel had to kneel down to see the handgun underneath the car does not change the result in this case. In Texas v. Brown,¹¹ the United States Supreme Court stated:

[T]he fact that [Officer] Maples "changed [his] position" and "bent down at an angle so [he] could see what was inside" Brown's car, is irrelevant to Fourth Amendment analysis. The general public could peer into the interior of Brown's automobile from any number of angles; there is no reason Maples should be precluded from observing as an officer what would be entirely visible to him as a private citizen. There is no legitimate expectation of privacy [citations omitted].

Similarly, in the case at bar, any member of the general public could have stooped down to see the handgun lying underneath the vehicle. Thus, Officer Peel was not precluded as a police officer from observing what would have been visible to him as a

⁹ Spicer also concedes the fact that Officer Peel had probable cause to initiate the stop of the vehicle.

¹⁰ See Payton v. New York, 445 U.S. 573, 587, 100 S.Ct. 1371, 1380, 63 L.Ed.2d 639 (1980)(holding that "[t]he seizure of property in plain view involves no invasion of privacy and is presumptively reasonable, assuming that there is probable cause to associate the property with criminal activity").

¹¹ 460 U.S. 730, 740, 103 S.Ct. 1535, 1542, 75 L.Ed.2d 502 (1983).

private citizen. Accordingly, the seizure of the handgun was lawful.

Spicer next argues that the incriminating statements he made to the investigating officers were not voluntary because "he was [] intoxicated as a result of all the medications he had taken that day," and he only talked to the officers because "he thought he would get [help] from them for his cooperation." This claim of error is unpersuasive as well.

The voluntariness of a statement is determined by examining the totality of the circumstances surrounding the making of that statement.¹² A finding by the trial court that a defendant voluntarily made incriminating statements to police officers is conclusive if it is supported by substantial evidence in the record.¹³ In the instant case, we hold that the trial court's finding that Spicer's statements were voluntary is supported by substantial evidence in the record.

Both Officer Peel and Agent Teal testified at the suppression hearing that Spicer did not appear to be under the influence of any intoxicants during their interrogations. Agent Teal further testified that Spicer denied being intoxicated or impaired before Agent Teal began his questioning of Spicer. Both Officer Peel and Agent Teal testified that Spicer was given

¹² Mills v. Commonwealth, Ky., 996 S.W.2d 473, 481 (1999).

¹³ See Kentucky Rules of Criminal Procedure (RCr) 9.78; and Harper v. Commonwealth, Ky., 694 S.W.2d 665, 668 (1985).

his Miranda warnings prior to each interrogation. Officer Peel stated that Spicer made several incriminating statements regarding the handgun prior to the time when Spicer claims that "promises of help" were allegedly made to him. Finally, Officer Peel, Agent Teal, and Agent Brashear all testified that they did not make any promises or guarantees to Spicer with respect to getting him "help" with the Commonwealth's Attorney's office in exchange for his statements. Accordingly, based on the totality of the circumstances, we hold that the trial court's finding that Spicer's statements were voluntary is supported by substantial evidence in the record.

Based on the foregoing, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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