

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001440-MR

BRADLEE EDWARDS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 01-CR-000711

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: KNOPF, TACKETT, AND VANMETER, JUDGES.

TACKETT, JUDGE: Bradlee Edwards appeals from a judgment entered on a conditional guilty plea to trafficking in a controlled substance in the second degree, possession of marijuana and possession of drug paraphernalia, for which he was sentenced to one year's imprisonment probated for five years. Prior to entering the conditional plea, Edwards challenged the search that led to the discovery of one ounce of psilocyn mushrooms in the trunk of his car, which motion the Jefferson Circuit Court denied. On appeal, Edwards argues that the circuit court should have suppressed the mushrooms as the product of an unlawful

search. We disagree and affirm the judgment of the circuit court.

On July 18, 2000, Edwards had just parked his vehicle near the 1500 block of Long Avenue in Louisville, Kentucky, facing against the flow of traffic. Officer Bryan Fredericks, observing Edwards, motioned for Edwards to approach his police cruiser. Edwards complied with the request. Fredericks asked Edwards to move his car because he did not like the way it was parked, then noted the smell of burnt marijuana coming from Edwards. Fredericks then asked Edwards if he had any "weed" on him, and Edwards surrendered approximately one ounce of marijuana to the officer. Fredericks told Edwards that he was not taking him to jail, but that he would be charged, and placed him in the back of the cruiser. Fredericks then conducted a search of the car and discovered the mushrooms in the trunk. At some point, Fredericks also found cigarette papers, but testified that he did not remember where they were found. He found no contraband in the passenger compartment of the car. This search was conducted without a warrant. Fredericks characterized the search as a search incident to lawful arrest.

At the evidentiary hearing on the defendant's motion to suppress, Fredericks testified that he had no evidence that there was any other contraband in Edwards' car, elaborating that his "training is to always look for more, to always go one step

beyond to be sure that there are no other forms of contraband that might ride on down the road in that vehicle." Edwards argues that the officer's statement reveals that the officer did not have probable cause to search the vehicle. The circuit court, in denying the motion, ruled that the search was not a search incident to lawful arrest, but rather was justified under the "automobile exception" to the warrant requirement.

As the appellant correctly notes, a search conducted without a search warrant is presumptively unreasonable unless it falls within a recognized exception to that rule. Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967); Clark v. Commonwealth, Ky. App., 868 S.W.2d 101, 105 (1993). In this case, the circuit court treated the search as valid under the "automobile exception" to the warrant requirement. This exception requires more than just the fact that the subject of the search is an automobile. The officer must have probable cause to believe that contraband is in the vehicle at the time of the search and there must be some legitimate concern that the automobile might be removed and any evidence within it destroyed in the time a warrant could be obtained. Am Jur 2d, Search and Seizure § 129. The case of Clark v. Commonwealth, supra, is instructive in illustrating the limits of this exception. In that case, the defendant was stopped for a traffic violation and was discovered not to have a

valid driver's license but rather held a learner's permit. The other person in the car with him did not have a valid license, so therefore the driver was not driving legally. In the back seat of the car was a plain cardboard box with a mailing label addressed to someone else. There was no evidence of other criminal activity, but the officer conducted a search of the vehicle and found what he believed to be a controlled substance in the glove compartment. Believing he had the right to search the rest of the car based on that discovery, the officer searched the box and found stolen property. This Court held that the officer had no probable cause under the automobile exception, because at the time the officer conducted the search there was no evidence of criminal activity beyond the traffic violation, and therefore no basis for believing that contraband would be found in the car. Edwards urges us to follow Clark and hold that the officer had no basis for believing that there would be contraband in the vehicle, but unfortunately the facts of this case are unlike those of Clark. The officer would have a reasonable belief, upon finding marijuana on Edwards' person and smelling evidence of its recent consumption, that Edwards might have additional marijuana in the vehicle. Even if the marijuana might be only the butt of a cigarette in the ashtray, the officer has a right and duty to seize that contraband. Also unlike the search incident to lawful arrest requirement, the

officer's search need not be confined to the passenger compartment. See Gray v. Commonwealth, Ky. App., 28 S.W.3d 316 (2000).

Edwards argues that since the arrest was not the product of a traffic stop and the vehicle was some distance away when Edwards was asked to approach the officer, the officer had no reason to search the vehicle. Edwards appears to confuse the requirements for a search incident to a lawful arrest and the requirements of the automobile exception. Under the automobile exception, what is required is that the officer has probable cause to believe that contraband may be inside a vehicle and the opportunity to seize it may be lost if the vehicle is not immediately searched. Unfortunately for Edwards, this search does fit within this exception, and we therefore affirm the judgment of the circuit court.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Thomas Scott Abell
Louisville, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler, III
Attorney General of Kentucky

George G. Seelig
Assistant Attorney General
Frankfort, Kentucky