

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002608-MR

DEWAYNE M. RHODES

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANN O'MALLEY SHAKE, JUDGE
INDICTMENT NO. 01-CR-000105

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * **

BEFORE: COMBS, DYCHE, AND JOHNSON, JUDGES.

DYCHE, JUDGE. On November 1, 2000, Dewayne Rhodes encountered a road block at the intersection of Clay and Jacob Streets in Louisville, Kentucky. Rather than stop, Rhodes continued to drive on in spite of vigorous hand and flash light gestures from Officer Charles Jones. When Officer Jones perceived that he was about to be struck by Rhodes's vehicle, he signaled other officers for assistance. Rhodes was stopped at the intersection of Broadway and Clay Street, and he was detained for wanton

endangerment of Officer Jones, as well as for driving without a license. A search of his car revealed a significant amount (twenty-seven grams) of crack cocaine.

Rhodes was arrested and charged with first degree wanton endangerment, first degree trafficking in a controlled substance, operating a motor vehicle without a license, and persistent felony offender in the second degree ("PFO II"). After denial of his motion to suppress evidence, Rhodes entered a conditional plea of guilty, pursuant to RCr 8.09 and North Carolina v. Alford, 400 U.S. 25 (1970), to the amended charge of possession of a controlled substance, plus the charges of operating without a license, and PFO II. The wanton endangerment charge was dropped. He was sentenced to a total of eight years' imprisonment.

On appeal Rhodes argues that the trial court erred in failing to suppress the fruits of the search of his vehicle. He insists that, but for the road block, which the Commonwealth concedes was illegal (see City of Indianapolis v. Edmond, 531 U.S. 32 (2000)), there was no basis for stopping him. Without a legitimate stop, the narcotics would not have been found; thus, he continues, his conviction is infirm. Rhodes further states that he never swerved toward Officer Jones but rather proceeded in an orderly fashion until he was stopped at a red light half a block away.

We are held to the standard of accepting the trial court's findings of fact after the suppression hearing, if same are substantially supported in the record. RCr 9.78; Watkins v. Commonwealth, Ky., 105 S.W.3d 449, 451 (2003). Therefore, having found that support in the record, we cannot heed Rhodes's arguments with the facts as found.

As for the conclusions of law, we must conduct a *de novo* review "to determine whether the court's decision is correct as a matter of law." Stewart v. Commonwealth, Ky., 44 S.W.3d 376, 380 (2000). We agree with the trial court that the act of swerving towards the officer provided a separate and distinct reason for the police to stop Rhodes. Failure to produce a valid driver's license provided further cause that appellant was engaging in illegal activity. Once the basis for the stop was established, the search incident thereto (which was additionally justified when the arresting officers saw Rhodes and his passenger manipulating something in the console of the vehicle) and the fruits of that search were admissible versus Rhodes. Commonwealth v. Wood, Ky. App., 14 S.W.2d 557, 558-559 (1999).

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Elizabeth B. McMahon
Assistant District Defender
Office of the Jefferson
District Public Defender
Louisville, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky

Wm. Robert Long, Jr.
Assistant Attorney General
Frankfort, Kentucky