

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000984-MR

KENNETH PATTERSON

APPELLANT

v. APPEAL FROM HART CIRCUIT COURT
HONORABLE LARRY D. RAIKES, JUDGE
INDICTMENT NO. 02-CR-00068

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE, AND SCHRODER, JUDGES.

DYCHE, JUDGE: Shortly after midnight on July 15, 2002, Kenneth Patterson drove an eighteen-wheeler through a guardrail on an entrance ramp to I-65 in Hart County, Kentucky. Patterson was still behind the wheel of the truck when the police arrived. He smelled strongly of alcohol and admitted to drinking a few beers earlier that evening. Patterson refused to give a breath or urine sample to test for alcohol or drugs. He was placed under arrest, and the cab of his vehicle was searched. The arresting officer found a small pouch behind the driver's seat; there were

several pipes containing residue of what later tested positive for cocaine. The passenger in Patterson's truck was arrested for alcohol intoxication.

Patterson was indicted for driving under the influence (DUI), possession of a controlled substance, and possession of drug paraphernalia. He moved to suppress the evidence of the warrantless search of his vehicle. A hearing was held, and the trial court denied Patterson's motion. Patterson entered a guilty plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), to the DUI and possession of drug paraphernalia; the possession of cocaine charge was dismissed. Patterson was sentenced to time served (270 days), conditionally discharged for two years. He appeals the denial of his motion to suppress.

Patterson argues here, as he did in the trial court, that the arresting officer had no authority to conduct a search of the vehicle without a warrant. Patterson insists that none of the exceptions to the warrant requirement existed and that, therefore, the trial court erred in failing to suppress the fruits of the search. We disagree.

In New York v. Belton, 453 U.S. 454, 460 (1981), the court stated: "When a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile. It follows from this conclusion

that the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach." See also Commonwealth v. Ramsey, Ky., 744 S.W.2d 418, 419 (1987); and Commonwealth v. Wood, Ky. App., 14 S.W.3d 557, 558-9 (1999). And "there is no question that arrest is typical for the offense of . . . DUI. The search in this case immediately followed the arrest and there was the additional concern of a passenger in the vehicle. Therefore, although [Patterson], who had been removed from the vehicle prior to the search, posed no immediate threat to the officer or others, evidentiary concerns remained." Wood, 14 S.W.3d at 559.

"With regard to the factual findings of the trial court 'clearly erroneous' is the standard of review for an appeal of an order denying suppression. [RCr 9.78.] However, the ultimate legal question of whether there was reasonable suspicion to stop or probable cause to search is reviewed *de novo*. Ornelas v. United States, 517 U.S. 690, 691 (1996)." Commonwealth v. Banks, Ky., 68 S.W.3d 347, 349 (2001). We find no clear error in the trial court's factual findings, nor are we convinced that the trial court's reliance on Belton, supra, was improper.

The judgment of the Clark Circuit Court is affirmed.

ALL CONCUR.

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