

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2003-CA-001260-MR

JOSEPH LAMONT WHITE, JR.

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE THOMAS L. CLARK, JUDGE  
ACTION NO. 03-CR-00130

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, DYCHE, AND TAYLOR, JUDGES.

BUCKINGHAM, JUDGE: Joseph Lamont White, Jr., appeals from the portion of a Fayette Circuit Court judgment convicting him of the misdemeanor crime of carrying a concealed deadly weapon and sentencing him to 30 days in jail. We affirm.

Shortly after 7:00 a.m. on November 16, 2002, near the intersection of Midland Avenue and Third Street in Lexington, Kentucky, White was arrested by police officers after being discovered asleep or passed out behind the wheel of his automobile. As a result of the incident, White was convicted by

a jury of fourth-degree assault, possession of marijuana, operating a motor vehicle while under the influence, carrying a concealed deadly weapon, resisting arrest, and no insurance. He was sentenced to five and one-half months in jail and was fined \$1,800. His sentence was probated for a two-year period. He has appealed from that portion of the judgment convicting him of carrying a concealed deadly weapon and sentencing him to 30 days in jail.

"A person is guilty of carrying a concealed weapon when he carries concealed a firearm or other deadly weapon on or about his person." KRS<sup>1</sup> 527.020(1). The term "deadly weapon" includes "[a]ny knife other than an ordinary pocket knife or hunting knife." KRS 500.080(4)(c). The statute further defines "deadly weapon" as including a "[b]illy, nightstick, or club." KRS 500.080(4)(d).

Nine knives were found in a search of White's automobile. A multi-tool with a knife blade was found in his right rear pocket. A butterfly knife and a lockblade tactical knife were found under the front driver's seat. A tactical knife with a seven-inch blade was found wedged between the front seat and console. A dagger was found unsheathed in the rear of the vehicle. Four additional lockblade tactical knives, one with a curved blade, were found in the center console. In

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<sup>1</sup> Kentucky Revised Statutes.

addition to the knives, razor blades and an expandable baton were also found. The expandable baton was located under the front driver's seat.<sup>2</sup>

White testified that he collects knives and that he stores them in his car to keep them from his younger cousins. He also testified that he did not intend for the knives to be concealed. White argues that the Commonwealth failed to introduce evidence that the knives were anything other than ordinary pocket knives and hunting knives and that any knife found which could be considered a deadly weapon either was not concealed or was not "on or about his person."<sup>3</sup> He contends that the trial court should have granted a directed verdict of acquittal on the charge and should not have left it to the jury to determine the issues.

In determining whether to grant a motion for a directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in the Commonwealth's favor. Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991). "On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable

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<sup>2</sup> Although the Commonwealth's brief suggests the expandable baton was in the rear of the vehicle, a review of the cited testimony indicates it was discovered under the front driver's seat.

<sup>3</sup> White's argument, both in his brief and before the trial court, makes no mention of the expandable baton.

for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal." Id.

Having reviewed the evidence, we conclude that the Commonwealth's evidence in connection with three of the knives and the expandable baton was sufficient to overcome White's directed verdict motion. These three knives are the butterfly knife, the lockblade tactical knife that could be opened with one hand, and the tactical knife with the seven-inch blade.

As we have noted, the term "deadly weapon" includes any knife other than an ordinary pocket knife or hunting knife. See KRS 500.080(4)(c). The statute also indicates a "[b]illy, nightstick, or club" falls within the definition of "deadly weapon." See KRS 500.080(4)(d). In Asher v. Commonwealth, Ky., 473 S.W.2d 145 (1971), the court upheld a conviction for carrying a concealed deadly weapon where the trial court instructed the jury that a butcher knife with a sharp-pointed blade approximately six inches in length was a deadly weapon. Id. at 146. In Williams v. Commonwealth, 304 Ky. 761, 202 S.W.2d 408 (1947), a conviction for carrying a concealed deadly weapon was upheld on appeal where the trial court determined that a razor was a deadly weapon and did not submit the issue to a jury. 202 S.W.2d at 409. We conclude that the evidence was sufficient in this case for the jury to determine that each of the three knives in question were not ordinary pocket knives or

hunting knives but were deadly weapons. Similarly, we conclude the evidence was sufficient as to the expandable baton.

We also conclude that the evidence was sufficient for the jury to believe that the knives and expandable baton were concealed and were "on or about [White's] person." A review of the testimony indicates that both the butterfly knife and a lockblade tactical knife that could be opened with one hand were under the front driver's seat. In addition, the tactical knife with a seven-inch blade was wedged between the front seat and console. Finally, the expandable baton, which could be extended with a flick of the wrist, was under the front driver's seat.

In Delk v. Commonwealth, Ky. 344 S.W.2d 832 (1961), the court held that "[t]he concealment must be such as to prevent persons from seeing the weapon whose vision is not obscured by the carrier's person or by anything other than the covering used to conceal it." Id. at 833. In Prince v. Commonwealth, Ky. 277 S.W.2d 470 (1955), the court stated that a weapon is concealed when it is placed in a manner that it cannot readily be seen under ordinary observation. Id. at 472. The three knives in question and the expandable baton were clearly concealed.

Finally, the knives in question and the expandable baton were concealed on or about White's person. To be concealed "on or about his person" means that the items must be

"concealed in such proximity to the person as to be convenient of access and within immediate physical reach." Collier v. Commonwealth, Ky., 453 S.W.2d 600, 601 (1970). In that case, a conviction for carrying a concealed deadly weapon was upheld when a pistol was found on the floor under the front seat of a car being driven by the defendant. Id. As two of the knives and the expandable baton were found under the front seat<sup>4</sup> and the other knife was found between the front seat and console, we conclude that the evidence was sufficient for the jury to determine that the knives and the expandable baton were on or about White's person.

Given the evidence presented concerning three of the knives in question and the expandable baton, we simply cannot find it clearly unreasonable for the jury to have found guilt in this case. The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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<sup>4</sup> The Commonwealth's proof was that the two knives were found under the front driver's seat.