

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002183-MR

LESLIE R. YOUNG

APPELLANT

v. APPEAL FROM MCCREARY CIRCUIT COURT
HONORABLE JERRY WINCHESTER, JUDGE
INDICTMENT NO. 01-CR-00063

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, HENRY, AND JOHNSON, JUDGES.

HENRY, JUDGE: The Appellant, Leslie Young, was driving home when stopped by police for failing to signal. Young gave the officers permission to search his vehicle, and they discovered a pipe with marijuana and cocaine residue, and a plastic bag containing marijuana. A .22-caliber rifle was found between the front seats.

Following his arrest, Young was found to have a capsule containing cocaine residue on his person. Young was tried by a jury and found guilty of cocaine possession. Rather

than take a chance on the jury's recommendation of sentence, Young and his counsel accepted the Commonwealth's offer of a recommendation of the minimum sentence in exchange for his guilty plea to the firearms enhancement charge. In accordance with the agreement Young received a five year sentence.

Young has appealed his sentence on two grounds. He contends that the Commonwealth failed to prove that the rifle found in the car was operable, and therefore it does not meet the definition of "firearm" in the statutes and cannot be used to enhance his sentence. Secondly Young argues that he was not given a fair trial because he was forced to call the arresting officers liars during cross-examination.

FIREARMS ENHANCEMENT

KRS¹ 218A.992 provides for the enhancement of certain criminal penalties when committed "in the possession of a firearm." KRS 218A.992(1). Young points out that KRS 237.060(2) defines a firearm as "any weapon which will expel a projectile by the action of an explosive." Young then objects to the firearm enhancement of his drug conviction based upon the lack of proof that the .22 rifle was operable. Young argues that if the rifle was not operable it would not fit the definition of a firearm.

¹ Kentucky Revised Statutes.

The Commonwealth properly points out that Young pled guilty to the firearms enhancement, and so has waived the issue. A valid guilty plea waives all defenses except that the indictment fails to charge an offense. Corbett v. Commonwealth, 717 S.W.2d 831, 832 (Ky. 1986); Centers v. Commonwealth, 799 S.W.2d 51, 55 (Ky.App. 1990).

CROSS-EXAMINATION

During cross-examination, Young disputed a police record that listed a capsule being discovered in his front pants pocket, stating it was actually found in his vest. The prosecution then asked Young if he was accusing the police officers of not telling the truth. Young agreed, but immediately explained that what he meant was that the officer logging the inventory of his personal items probably just made a clerical mistake because he wasn't paying close attention.

Since no timely objection was made to the questioning during trial, it would normally not be preserved for appellate review. Review is only allowed in situations where a palpable error has occurred and manifest injustice has resulted. RCr² 10.26.

Young relies upon the case of Moss v. Commonwealth, 949 S.W.2d 579 (Ky. 1997), for the position that such

² Kentucky Rules of Criminal Procedure.

questioning is inherently suspect. In Moss the Kentucky Supreme Court indeed criticized such cross-examination, noting that:

A witness should not be required to characterize the testimony of another witness, particularly a well-respected police officer, as lying. Such a characterization places the witness in such an unflattering light as to potentially undermine his entire testimony. Id. at 583.

While we agree that such a line of cross-examination may be improper we also agree that in this case as in Moss it does not rise to the level of palpable error. Id. at 583. If anything the questioning here was much less confrontational than that in Moss, and any prejudice was tempered by Young's additional explanation. We affirm.

ALL CONCUR.

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