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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2003-CA-002583-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM CALLOWAY CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 03-CR-00028

JAMES D. DOUBLIN

APPELLEE

OPINION
REVERSING AND REMANDING

** ** *

BEFORE: DYCHE, KNOFF, AND MINTON, JUDGES.

KNOFF, JUDGE: The Commonwealth appeals from an order of the Calloway Circuit Court, entered November 21, 2003, granting James Dublin's motion to suppress evidence derived from a search of his pickup truck. The Commonwealth contends that the warrantless search was lawful because it was incident to the arrest of an occupant of the truck. We agree and so reverse and remand for additional proceedings.

On January 23, 2003, a Murray police officer stopped a red pickup truck for speeding on North 12th Street in Murray. The officer noted that the truck's physical characteristics and license tag matched a description provided earlier that day by the Graves County police of a truck thought likely to contain John Dublin, the subject of a Graves County arrest warrant on charges of manufacturing methamphetamine and receiving stolen property. When the officer learned that James Dublin was driving the truck and that John Dublin, his son, was a passenger, he radioed for assistance and asked that a copy of the Graves County warrant be brought to the scene to confirm that the passenger was in fact the John Dublin wanted in Graves County. Informed that John Dublin was apt to flee, the officer detained him in the back of his cruiser.

Ten to fifteen minutes later, a narcotics detective for the Murray police arrived with a copy of the warrant and a picture of the suspect. The picture confirmed that the wanted John Dublin and the detained John Dublin were one and the same, whereupon the detective served the warrant and formally effected John's arrest. He then approached James, the driver of the pickup, ordered him and another passenger out of the cab, and searched the passenger area. The search uncovered several packages of methamphetamine, apparently readied for sale, and drug paraphernalia. Having discovered this evidence, the

detective arrested James, who was later indicted for trafficking in methamphetamine and for other, related, offenses.

James successfully moved to suppress the evidence seized during the warrantless search of his pickup. Relying on Clark v. Commonwealth,¹ the trial court ruled that, because John had been arrested outside the pickup and detained apart from it, the pickup's cab was not within the area of his immediate control at the time of the arrest and thus the arrest provided no justification for the search of the cab. It is from that ruling that the Commonwealth has appealed.

As the parties note, our state and federal constitutions guarantee that citizens shall be free from unreasonable police searches and seizures.² As a general rule, warrantless searches are unreasonable, but exceptions to the general rule have evolved.³ One of these exceptions is the so-called search incident to an arrest, a rule that permits a police officer without a warrant and without probable cause to search, contemporaneously with the arrest, the person of an

¹ Ky. App., 868 S.W.2d 101 (1993).

² Kentucky Constitution § 10; United States Constitution Amendments Four and Fourteen.

³ Gallman v. Commonwealth, Ky., 578 S.W.2d 47 (1979).

arrestee and the area within the arrestee's immediate control.⁴ This exception was originally justified as a necessary precaution against the arrestee's arming himself or destroying evidence.⁵

But because the rule proved difficult to apply in situations involving the arrest of vehicle occupants, in New York v. Belton,⁶ the United States Supreme Court attempted to fashion a bright-line rule for such situations and held that "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."⁷ The passenger compartment, in other words, was presumed to have been within the arrestee's immediate control, so there was no longer any need for courts to inquire whether in fact it had been. This rule has long been held to apply notwithstanding the fact that the arrestee had been secured at some distance from the vehicle and so posed virtually no threat of reaching into the passenger compartment to arm himself or to

⁴ Chimel v. California, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969).

⁵ *Id.*

⁶ 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981).

⁷ 453 U.S. at 460, 101 S. Ct. at 2864.

destroy evidence.⁸ Recently, indeed, the United States Supreme Court held that the Belton rule applies even when the suspect has left the vehicle before the officer first contacts him.⁹ This state's Supreme Court adopted the Belton rule in Commonwealth v. Ramsey,¹⁰ We agree with the Commonwealth that the detective's search of James Dublin's pickup was a search incident to the lawful arrest of John Dublin, an occupant of the pickup, and thus came within the exception to the warrant requirement announced in Belton.

For several reasons, the trial court's reliance upon Clark v. Commonwealth was misplaced. In Clark the operator of the vehicle, having been stopped for speeding, was arrested outside the vehicle for driving without a valid license. While waiting for transportation for the driver's passenger, who also lacked a valid license, the police officers kept the driver in the back of their squad car. Some thirty or forty minutes after the arrest, when the passenger was finally removed, the officers searched the car and discovered evidence of stolen property. The warrantless search was lawful, the Commonwealth later argued, as a search incident to the driver's arrest.

⁸ United States v. White, 871 F.2d 41 (6th Cir. 1989); United States v. McLaughlin, 170 F.3d 889 (9th Cir. 1999).

⁹ Thorton v. United States, U.S. , 124 S. Ct. 2127, 158 L. Ed. 2d 905 (2004).

¹⁰ Ky., 744 S.W.2d 418 (1988).

In rejecting that argument, the Clark Court noted three facts that removed this search, the court believed, from the Belton rule. First, the Court doubted the propriety of an arrest for such a minor offense. The Court's concern seems to have been that the search bore no relationship to the traffic offense for which the driver was arrested; the officers had no need, and could not reasonably hope, to discover additional evidence of that offense.¹¹ Because it gives rise to such situations, the Belton rule has been criticized as tending to allow general warrantless searches of automobiles.¹² As Justice Scalia noted in his concurring opinion in Thorton v. United States,¹³ the problem arises when the search is not reasonably likely to yield evidence supporting the arrest. In this case, however, unlike Clark, the arrest was for methamphetamine manufacturing, not a traffic offense, and the search of the pickup was reasonably likely to yield evidence of that crime.

Second, in Clark, at the time of the arrest the driver was outside the car, and following the arrest he was promptly secured in the police cruiser. The interior of the car had not

¹¹ *Cf. Knowles v. Iowa*, 525 U.S. 113, 119 S. Ct. 484, 142 L. Ed. 2d 492 (1998) (declining to extend the Belton rule to searches incident to citations in part because there is no evidentiary justification for such searches).

¹² *United States v. McLaughlin*, 170 F.3d 889 (9th Cir. 1999) (concurring opinion by Judge Trott).

¹³ *supra*.

been within his immediate control, and he had never posed a realistic threat of arming himself from inside the car or of destroying evidence. The Clark court ruled that this lack of threat precluded application of the search-incident-to-arrest exception. This is the portion of Clark that the trial court cited. Apparently because John similarly did not pose much of a threat to officers or evidence, the trial court ruled that his arrest likewise did not justify a warrantless search. As noted above, however, Belton and Ramsey do not require that the arrestee pose an actual threat of reaching into the passenger compartment for a weapon or evidence. That threat is presumed from the volatile nature of vehicle arrests. To the extent that Clark held otherwise, it is controlled by those higher authorities.¹⁴ The trial court erred by failing to so rule.

Finally, in Clark the Court held that the half-hour delay between the arrest and the search rendered the search not contemporaneous with the arrest. James argues that the ten or fifteen minute delay between John's detention in the police cruiser and the detective's search of the pickup similarly invalidates this search. The Commonwealth maintains that John was not arrested until the detective arrived with the warrant, and thus that the search followed the arrest almost immediately.

¹⁴ Cf. Commonwealth v. Wood, Ky. App., 14 S.W.3d 557 (1999) (noting Clark's deviation from Belton and Ramsey).

We need not decide at what point John was arrested, for even if his initial detention be deemed an arrest, the search followed soon enough to come within the Belton rule.

As James notes, the exception does not apply unless the search was a contemporaneous incident of the arrest. The general rule, however, is that a reasonable delay between arrest and search is permitted. What is reasonable will, of course, depend of the circumstances of each case.¹⁵ The ten or fifteen minute detention in this case to permit the police officers to make sure that they were proceeding against the right person satisfies this reasonableness standard.

In sum, the warrantless search of James's pickup was lawful as a contemporaneous incident of the arrest of James's passenger notwithstanding the fact that during and after the arrest the interior of the pickup may not have been within the passenger's immediate control. The passenger was detained upon his removal from the pickup, the search of the pickup followed the arrest without unreasonable delay, and the search was reasonably likely to yield evidence of the offense for which the passenger was arrested. These facts bring the search within the search-incident-to-arrest exception to the warrant requirement.

¹⁵ United States v. French, 974 F.2d 687 (6th Cir. 1992) (Forty-five minute wait for drug-sniffing dog was reasonable); United States v. McLaughlin, 170 F.3d 889 (9th Cir. 1999) (Search after five-minute wait and the removal of the arrestee from the scene was reasonable).

The trial court erred, therefore, by ordering that the fruits of the search be suppressed. Accordingly, we reverse the November 21, 2003, order of the Calloway Circuit Court and remand for additional proceedings.

ALL CONCUR.

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