

RENDERED: May 27, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001319-MR

ANTHONY CARR

APPELLANT

v. APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE RON JOHNSON, JUDGE
ACTION NO. 03-CR-00077

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MINTON AND GUIDUGLI, JUDGES; EMBERTON, SENIOR JUDGE.¹

EMBERTON, SENIOR JUDGE: Anthony Carr was found guilty of receiving stolen property valued over \$300 and pleaded guilty to persistent felony offender in the second degree. On appeal, the sole issue raised is whether the circuit court erred when it denied Carr's motion to suppress evidence allegedly obtained as a result of an illegal search and seizure. We hold that the

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

circuit court's finding that Carr consented to the search is supported by substantial evidence and affirm.

On December 30, 2002, Robert Farley, of the Kentucky State Police, observed a vehicle operated by Carr weaving while traveling Highway 421 in Harlan County. Suspecting that the operator was intoxicated, Farley pulled the vehicle over and administered field sobriety tests to the driver, Anthony Carr. Farley testified that after Carr passed the tests, Farley asked and received Carr's permission to conduct a dispatch check on the vehicle identification number on a Honda motor bike that he observed in the backseat. The check revealed that the motor bike was reported as stolen, and Carr was arrested. Carr denied that he gave consent and argues that even if consent was given, that he was detained beyond the reasonable time permitted to conduct the sobriety tests rendering the consent invalid.

The standard for appellate review of a court's ruling on a suppression motion is a two step process. First, we are required to determine whether the trial court's findings of fact are supported by substantial evidence. Then we must review de novo the legal conclusions in applying the protections of the Fourth Amendment.²

The factual dispute in this case arises from the two different versions of the events given by Carr and Farley

² RCr 9.78; Commonwealth v. Banks, 68 S.W.3d 347 (Ky. 2001).

surrounding the checking of the bike's VIN number.

Specifically, Carr denies that he gave Farley consent.

Police officers are permitted to draw inferences of illegal activity from facts that appear innocent to a lay person and a "reviewing court should give due weight to the assessment by the trial court of the credibility of the officer and the reasonableness of the inferences."³ Farley's testimony that Carr consented to the taking of the VIN number from the bike is sufficient to support the trial court's decision and will not be disturbed. There is no evidence, and Carr does not suggest, that his consent was involuntary or otherwise coerced.

Carr contends that even if consent was voluntarily given, the evidence must be suppressed because he was detained for a period longer than necessary to investigate his possible intoxication, the reason for the initial stop. In Commonwealth v. Erickson⁴ the defendant alleged that his consent to search his vehicle was given in the course of an illegal detention and was inadmissible. Like Carr, Erickson was stopped for a minor traffic violation. After giving Erickson a verbal warning, the officer asked and was given permission to look inside the vehicle. Ten baggies of methamphetamine were discovered. With citation to authority from the federal courts, this court held

³ Commonwealth v. Whitmore, 92 S.W.3d 76, 79 (Ky. 2002).

⁴ 132 S.W.3d 884 (Ky.App. 2004).

that even where there is no reasonable suspicion that there is criminal activity separate from that giving rise to the initial stop, a request by an officer to search a vehicle does not per se render a detention unreasonable. The delay in permitting the suspect from leaving the scene is a minor inconvenience and the suspect could readily decline to answer any of the officer's questions. When a motorist is stopped for a valid purpose and gives consent to a search of his vehicle, "the voluntariness of his consent is the only issue to consider for purposes of the Fourth Amendment- -and not whether the continued detention was justified by reasonable suspicion."⁵

We will not disturb the trial court's finding that Carr voluntarily gave consent to the search of his vehicle. In accord with Erickson, there was no unreasonable detention. The judgment is affirmed.

ALL CONCUR.

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⁵ Id. at 889.