

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-001594-MR

DAMON DALE CHILDRESS

APPELLANT

v. APPEAL FROM HART CIRCUIT COURT  
HONORABLE CHARLES C. SIMMS, III, JUDGE  
ACTION NO. 04-CR-00005

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: HENRY, TACKETT AND VANMETER, JUDGES.

TACKETT, JUDGE: Damon Childress appeals from the judgment of the Hart Circuit Court entered on a conditional guilty plea to charges of possession of drug paraphernalia (second offense), fleeing or evading police in the second degree, prescription in an improper container, operating a motor vehicle on a suspended license, and improper equipment. A charge of persistent felony offender in the first degree was dismissed by agreement.

Childress argues on appeal that the court should have suppressed

evidence discovered in the truck he was driving. We disagree and affirm.

These charges stemmed from an incident in October 2003 when a police officer, Ron Lafferty, recognized Childress driving in a blue pickup on Highway 218 in Hart County. The officer knew that Childress had an outstanding warrant for his arrest and that he did not have a valid license, so he turned his vehicle around to pull Childress over. Childress at first did not pull over, then pulled into someone's driveway and fled on foot. By chance, Childress' flight led him through the yard of former police chief Kenneth Glass, who happened to be outside and was watching the chase. Glass stepped in front of Childress and ordered him to stop, which he did, and he was arrested by Lafferty.

Lafferty secured Childress in his cruiser, then looked inside the truck, where he saw a metal spoon sticking out of the open glove compartment. The spoon had burn marks on the back, and based on his experience he believed it to be drug paraphernalia. A more thorough search also revealed a syringe and two white pills not in a container. Childress was not the owner of the truck, which was instead owned by one Micky Sanders. Childress claimed to have possession of the truck because he was working on it. He did not specify what he was supposed to be doing with the truck, nor did he ever produce

evidence later showing that he was authorized to use the truck. Childress was charged with the above-listed offenses, and later a charge of persistent felony offender in the first degree was added.

In the circuit court, Childress moved to suppress the evidence found in the truck as the fruit of an illegal search. The circuit court ruled that Childress had no standing to challenge the search, as he had no legitimate expectation of privacy in the vehicle, and in any event the officer saw the drug paraphernalia in plain view, and had probable cause to search further. The officer was also, even if he had not discovered the spoon in plain view, permitted to further search the vehicle after arresting Childress. After the motion was denied, Childress entered a conditional plea to all charges except the persistent felony offender charge, which was dismissed by agreement. This appeal followed.

The circuit court's ruling was correct. As Childress never demonstrated that he had a legitimate possessory interest in the vehicle, he had no reasonable expectation of privacy. Rakas v. Illinois, 439 U.S. 128, 143 (1978). The defendant has the burden of establishing that he had a reasonable expectation of privacy in the vehicle. Rawlings v. Kentucky, 448 U.S. 104 (1980). Mere possession alone does not create such an interest. A bailment, the interest that would exist had Childress shown

that he had possession of the truck because he was working on it for its owner, has been held insufficient to create such an interest. United States v. Padilla, 111 F.3d 685 (9<sup>th</sup> Cir. 1997), United States v. Macias-Treviso, 42 F.Supp.2d 1206 (D.N.M. 1999). We therefore reject Childress's argument that he had a legitimate, reasonable expectation of privacy in the vehicle.

The other grounds raised need not be addressed, as our holding that Childress had no recognizable privacy interest in the contents of the truck and therefore cannot challenge the search renders the other grounds of review superfluous. In the interest of judicial economy we decline to address the merits of those arguments, as our holding on the above ground forecloses those issues as well.

For the foregoing reasons the judgment of the Hart Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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