

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2005-CA-000603-MR

ANTONIO DEMETRIUS BLACKFORD

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE JAMES D. ISHMAEL, JR., JUDGE  
ACTION NO. 04-CR-00772

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; DYCHE AND JOHNSON, JUDGES.

COMBS, CHIEF JUDGE: Antonio Demetrius Blackford appeals from a judgment of the Fayette Circuit Court sentencing him to twelve-months' imprisonment -- probated for two years. Blackford entered a conditional plea of guilty to the charges of trafficking in a controlled substance within one thousand yards of a school, second-degree fleeing or evading police, carrying a concealed deadly weapon, and possessing drug paraphernalia. On appeal, Blackford challenges the legality of the search of the

automobile that he had been driving prior to his arrest. We affirm.

On April 30, 2004, undercover narcotics officers working with the Lexington metropolitan police department observed what appeared to be a hand-to-hand drug transaction at Winburn Avenue in Lexington. The transaction involved a black male driving a maroon Oldsmobile with a gray front bumper. The undercover officers radioed this information to Officer Benjamin Shirley, a uniformed officer driving a marked cruiser in the vicinity. The undercover officers also advised Officer Shirley that the vehicle was traveling in the direction of McCullough Drive.

Officer Shirley immediately located the vehicle and initiated a stop. When Officer Shirley approached the vehicle, he identified himself and asked for Blackford's operator's license. Although Blackford complied with the request, Officer Shirley observed that he appeared fidgety and extremely nervous. For his own safety, Officer Shirley asked Blackford to step out of the car in order that he might perform a pat-down search for weapons. Officer Shirley felt a bulge in Blackford's trousers pocket and asked Blackford to identify it. As Shirley reached for Blackford's hands, Blackford pushed free and ran away. Officer Shirley chased Blackford but quickly lost sight of him. Other officers joined the pursuit and Blackford was apprehended

two to five minutes later. In the meantime, Officer Shirley returned to search Blackford's automobile, finding a loaded handgun, a black digital scale, and a clear plastic bag containing 0.8 grams of marijuana.

Contending that the warrantless search of the car violated his constitutional rights, Blackford moved to suppress the evidence against him. The Fayette Circuit Court denied Blackford's motion following an evidentiary hearing, and Blackford entered his conditional guilty plea. This appeal followed.

Blackford contends that Shirley's search of his car was unlawful as it was not supported by probable cause. The Commonwealth argues that Blackford lacked standing to challenge the search of the automobile since he abandoned it on McCullough Drive. The Commonwealth argues that even if we agreed that Blackford retained a reasonable expectation of privacy in the vehicle following his flight as well as having standing to challenge the search, the evidence is not subject to suppression since the search was adequately supported by probable cause.

Kentucky has long held that an individual has no standing to challenge the validity of a warrantless search of property that has been abandoned. Hunt v. Commonwealth, 488 S.W.2d 692 (Ky. 1972). In Hunt, our highest court affirmed the trial court's finding that the defendants had effectively

abandoned their parked car by fleeing into nearby woods after they were approached by a uniformed state patrolman. Id. Since the defendants had abandoned the vehicle, the Court held that they lacked any reasonable expectation to any continuation of their right to protest a search of the car by police officers. Id. Consequently, they had no standing to challenge the legality of the subsequent search. Id.

Before the trial court was required to analyze the constitutionality of the challenged search, Blackford first had to establish his "reasonable expectation of privacy" in the car. See Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). The evidence presented at the suppression hearing indicated that Blackford fled the scene on foot, leaving the car unsecured as he attempted to evade apprehension. No evidence indicated that Blackford intended to assert or to retain his limited privacy interest in the vehicle. On the contrary, all evidence indicated that he sought both to avoid arrest and to abandon any incriminating evidence that might be found in the vehicle. Under these circumstances, as a matter of law Blackford also abandoned any reasonable expectation that the vehicle or its contents should be free from governmental intrusion.

Since Blackford failed to establish that he retained a reasonable expectation of privacy in the automobile once he had

fled the scene, abandonment and lack of standing would have provided a sufficient basis upon which to deny Blackford's motion to suppress. However, since the trial court did not find that the property had been abandoned, we shall also address Blackford's contention that the officer lacked probable cause to search the automobile.

The trial court determined that the search of Blackford's automobile was proper under the automobile exception to the warrant requirements of the Fourth and Fourteenth Amendments of the Constitution of the United States and Section 10 of the Kentucky Constitution. When a trial court's findings of fact resulting from a suppression hearing are supported by substantial evidence, they are conclusive. RCr 9.78; Commonwealth v. Neal, 84 S.w.3d 920 (Ky.App. 2002). In this case, the findings of fact are supported by substantial evidence in the record and are not clearly erroneous. In addition, the court's legal conclusion is correct.

In Clark v. Commonwealth, 868 S.W.2d 101 (Ky.App. 1993), we held that the automobile exception to the warrant requirement allows police officers to search a legitimately stopped automobile where probable cause exists to believe that contraband or evidence of a crime will be found in the vehicle.

The search may be as thorough as a magistrate could authorize via a search warrant, including all compartments of the

automobile and all containers in the automobile which might contain the object of the search.

Id. at 106, citing United States v. Ross, 456 U.S. 798, 823-24, 102 S.Ct. 2157, 2172-73, 72 L.Ed.2d 572, 593. Probable cause must exist and be known to the investigating officer at the time that he commences the search. See Sampson v. Commonwealth, 609 S.W.2d 355 (Ky. 1980).

There was no contention in this case that the stop of Blackford's car was anything other than legitimate. The trial court found that at the time the challenged search was initiated, Officer Shirley knew that Blackford matched the description conveyed to him by the undercover narcotics agents, that a suspicious bulge had been located in his trouser pocket, and that he had fled the scene (presumably in order to avoid arrest). Taken together, all of these facts strongly suggested that Blackford was engaged in the narcotics trade and that evidence of the recently observed drug transaction would likely be found in his automobile. Consequently, the trial court did not err by determining that Officer Shirley had probable cause to search Blackford's vehicle.

The judgment and sentence of the Fayette Circuit Court are affirmed.

ALL CONCUR.

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