

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000742-MR

RYAN ROBERT WHITE

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE SHEILA ISAAC, JUDGE
INDICTMENT NO. 05-CR-00074

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM,¹ HENRY, AND VANMETER, JUDGES.

HENRY, JUDGE: Ryan Robert White entered a conditional guilty plea in the Fayette Circuit Court to charges of first-degree possession of a controlled substance, second-degree fleeing or evading police, and driving on a suspended license. He appeals from the trial court's adverse ruling on his motion to suppress. Because we affirm the trial court's suppression ruling, we therefore also affirm White's convictions on his guilty plea.

¹ Senior Judge David C. Buckingham, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On November 29, 2004, Lexington Police Officer J. S. Curtsinger was on routine patrol in a marked police car in the Bluegrass-Aspendale neighborhood of the city. In the early morning hours, Officer Curtsinger observed the appellant Ryan Robert White both speeding and driving his vehicle erratically. Apparently unaware that Officer Curtsinger was following him, White turned onto New Office Street, parked, and exited his vehicle. Immediately thereafter, Officer Curtsinger pulled in behind White and commanded him to wait by his vehicle.

White looked back at Officer Curtsinger and immediately began running away from his vehicle and toward an apartment complex, all the time ignoring Officer Curtsinger's commands to stop. In the darkness, Officer Curtsinger gave chase on foot and managed to apprehend White. While Officer Curtsinger placed White in handcuffs, White admitted that he had been driving on a suspended license.

Just after the arrest, Officer Curtsinger approached White's vehicle and smelled the odor of marijuana coming from the car. He also peered in and noticed, in plain view, marijuana in the vehicle. In light of Officer Curtsinger's observations, the police entered White's vehicle and seized the contraband therein. Also, when booking White at the station house, they recovered cocaine from his person.

Based on the events surrounding his arrest and booking, the Fayette County Grand Jury indicted White for (1) first-degree possession of a controlled substance, (2) possession of marijuana, (3) possession of drug paraphernalia, (4) tampering with physical evidence, (5) second-degree fleeing or evading police, (6) reckless driving, and (7) driving on a suspended license. In response to the indictment, White moved to suppress all physical evidence seized by the police as well as his statement regarding the suspended license made to Officer Curtsinger contemporaneously to his arrest. After conducting an evidentiary hearing, the trial court credited the testimony of Officer Curtsinger and found the initial traffic stop, the police pursuit and apprehension of White, and the subsequent search and seizures all to be constitutionally valid.

After the denial of his suppression petition, White entered a conditional guilty plea, reserving the trial court's adverse suppression ruling for appeal. On appeal, White now argues only that (1) the initial traffic stop was unconstitutional, and (2) his arrest was improper as he was not guilty of second-degree fleeing and evading the police. We review a trial court's suppression rulings de novo, save that findings of fact are reviewed for clear error. Commonwealth v. Whitmore, 92 S.W.3d 76, 79 (Ky. 2002), citing Ornelas v. United States, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996).

At the suppression hearing Officer Curtsinger testified that he observed White speeding and driving erratically. This testimony constitutes substantial evidence supporting the trial court's decision to find that White was in fact driving recklessly. Thus this finding is conclusive. RCr² 9.78. Moreover, the fact that White was driving erratically justified Officer White's attempted traffic stop. See Commonwealth v. Hagan, 464 S.W.2d 261 (Ky. 1971). Thus, we reject White's first contention that the initial attempt of Officer Curtsinger to stop White and question him about his driving was unconstitutional.

We also reject White's second contention that he was not guilty of fleeing or evading police. Indeed, White has already entered a guilty plea to that charge, which constitutes a waiver of all defenses except that the indictment charges no offense. Centers v. Commonwealth, 799 S.W.2d 51, 55 (Ky.App. 1990). Hence, he may not now deny his guilt on that charge for the purpose of challenging his arrest and the searches and seizures in this case. In any event, we note that White's flight from Officer Curtsinger's legitimate traffic stop did in fact create a substantial risk of physical injury to both White himself and to Officer Curtsinger because the flight occurred on foot in darkness, where either could have easily lost his

² Kentucky Rules of Criminal Procedure.

footing, tripped or collided with an obstacle and been badly hurt. Officer Curtsinger's suppression-hearing testimony, which was accepted by the trial court, supports a finding that White committed the arrestable offense of second-degree fleeing or evading police as defined by KRS³ 520.100(1). Thus, White's claim that his arrest and the searches and seizures incident to it were improper, lacks merit.

In sum, as we have rejected both of White's two claims of error on appeal, we affirm the trial court's suppression ruling and therefore also affirm White's convictions on his plea of guilty.

ALL CONCUR.

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³ Kentucky Revised Statutes.