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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000089-MR

ARNOLD LINDQUIST — APPELLANT

v.

APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE PAUL E. BRADEN, JUDGE
ACTION NO. 03-CR-00044

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: THOMPSON AND VANMETER, JUDGES; PAISLEY,[1] SENIOR JUDGE.

VANMETER, JUDGE: Arnold Lindquist appeals from the Whitley Circuit Court's judgment sentencing him to a total of eight years' imprisonment after he entered a conditional guilty plea to first-degree possession of a controlled substance and bribery of a public servant. Lindquist argues on appeal that the circuit court erred by failing to

[1] Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

suppress certain evidence as being obtained as a result of an unlawful search and seizure. For the following reasons, we affirm.

At a September 21, 2005, hearing regarding Lindquist's suppression motion, the following testimony was given. Kentucky State Police Trooper Michael Witt testified that on November 10, 2002, he and Trooper Scott Bunch were traveling in separate police cruisers on a secluded gravel road. Witt saw a new-model van parked with its lights on some fifty yards off the gravel road, down a dirt logging road. Since there were no houses or other structures near the van, it was near midnight, and the area was one where the police had found burned and stolen vehicles, Witt pulled behind the van. Witt and Bunch approached the van on foot.

Witt found Lindquist in the van's driver's seat with his pants down to his knees, blood on his left arm, and bloody towels on the dashboard. Witt also testified that he could readily see that Lindquist's arm had been stuck with an intravenous needle. Further, Bunch found a syringe on the ground next to the passenger's rear sliding door. After Witt briefly talked to Lindquist, he instructed Lindquist to get out of the van. When Lindquist did so, Witt observed a small bag containing a white powdery substance in the driver's side cup holder, located under the radio. At that point Witt arrested Lindquist for possession of a controlled substance.

Lindquist, by contrast, testified that when he was arrested, he was in his 2003 Dodge conversion van, which does not have a sliding door. Lindquist also testified that as his van's cup holders are four to five inches deep, the bag could not have been in

Witt's plain view. Lindquist further testified that he did not have blood on his arms when Witt approached, he did not know anything about the syringe or bag, and he had possession of his van all of that day.

Based on the seclusion of the area in which Lindquist was arrested, and the other circumstances as described by Witt, including the fact that Witt testified the bag was in plain view once Lindquist exited the car, the court overruled Lindquist's suppression motion. The court thereafter accepted Lindquist's conditional guilty plea and sentenced him to a total of eight years' imprisonment, as set forth above. This appeal followed.

Lindquist argues that the circuit court erred by failing to grant his suppression motion. We disagree.

> On appeal from a trial court's determination following a motion to suppress,
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> > we first determine whether the trial court's findings of fact are supported by substantial evidence. If they are, then they are conclusive. Based on those findings of fact, we must then conduct a *de novo* review of the trial court's application of the law to those facts to determine whether its decision is correct as a matter of law.

Commonwealth v. Neal, 84 S.W.3d 920, 923 (Ky.App. 2002) (footnotes omitted). Here, despite Lindquist's argument to the contrary, the circuit court expressly found that it believed the circumstances as described by Trooper Witt, including that the bag in Lindquist's cup holder was in plain view once Lindquist left the vehicle. As these facts were supported by substantial evidence, i.e., Trooper Witt's testimony, we now turn to the application of the law to these facts.

A seizure occurs when a police officer, "by means of physical force or show of authority, has in some way restrained the liberty of a citizen[.]" *Terry v. Ohio*, 392 U.S. 1, 19 n.16, 88 S.Ct. 1868, 1879 n.16, 20 L.Ed.2d 889 (1968). Here, Witt did not seize Lindquist when he approached Lindquist's already-parked van, as "law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place[.]" *Florida v. Royer*, 460 U.S. 491, 497, 103 S.Ct. 1319, 1324, 75 L.Ed.2d 229 (1983). Indeed, Witt did not even know anyone was in the van until he got to the driver's window. Nor was Lindquist seized when Witt initially talked to him. *See Florida v. Bostick*, 501 U.S. 429, 434, 111 S.Ct. 2382, 2386, 115 L.Ed.2d 389 (1991) ("a seizure does not occur simply because a police officer approaches an individual and asks a few questions . . . [s]o long as a reasonable person would feel free 'to disregard the police and go about his business'") (internal citation omitted). Rather, at the earliest, Lindquist was seized when he got out of his van at Witt's request.

Under the totality of the circumstances, Witt clearly had the requisite reasonable suspicion, *Baltimore v. Commonwealth*, 119 S.W.3d 532, 538-39 (Ky.App. 2003), to order Lindquist out of his van at that moment. During his initial encounter with Lindquist, Witt saw bloody towels on the dashboard, blood on Lindquist's left arm, and marks on Lindquist's arm indicating the use of an intravenous needle. Further, Bunch found a needle on the ground near the van. After Lindquist stepped out of his van, Witt saw the bag containing a white powdery substance in plain view. *Commonwealth v.*

Hatcher, 199 S.W.3d 124, 126 (Ky. 2006). At that point Witt undoubtedly had probable cause to arrest Lindquist. *Baltimore*, 119 S.W.3d at 538-39.

The Whitley Circuit Court's judgment is affirmed.

ALL CONCUR.

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