

RENDERED: MAY 25, 2007; 2:00 P.M.

NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001114-MR

EDWARD BRIAN YOUNG

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 06-CR-00028

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AFFIRMING

** ** *

BEFORE: COMBS, CHIEF, JUDGE; KELLER, JUDGE; BUCKINGHAM, SENIOR JUDGE.¹

BUCKINGHAM, SENIOR JUDGE: Edward Brian Young appeals from a judgment entered upon a conditional guilty plea convicting him of manufacturing methamphetamine or complicity to manufacture methamphetamine and to possession of anhydrous ammonia in an unapproved container or complicity to possession of anhydrous ammonia in an unapproved container, and sentencing him to 16 years' imprisonment. The issue is whether the circuit court erred by denying Young's motion to suppress

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 .

evidence discovered by police following a search of the vehicle. For the reasons stated below, we affirm.

On January 25, 2006, Officer Dewayne Harvey of the Greenville Police Department stopped a vehicle, a 1997 Ford Mustang, being driven by Young. The passengers in the vehicle were Katina Young, Charles Young, and Christopher Latham. In connection with the stop, Officer Harvey and other police officers on the scene searched the vehicle and discovered evidence indicative of methamphetamine manufacturing.

Young was indicted for the offenses of manufacturing methamphetamine, second offense, as principal or by complicity, Kentucky Revised Statutes (KRS) 218A.1432, KRS 502.020; possession of anhydrous ammonia in an unapproved container, as principal or by complicity, KRS 250.991(2), KRS 502.020; and of being a second-degree persistent felony offender, KRS 532.080.

Young filed a motion to suppress all evidence seized from the vehicle. Following a suppression hearing, the circuit court entered an order denying the motion. The court determined that the initial stop was proper based upon a failure to signal a turn and that the search of the passenger compartment was proper under both the automobile exception and as a search incident to arrest.

Young thereafter entered a conditional guilty plea to manufacturing methamphetamine or complicity to manufacture methamphetamine and to possession of anhydrous ammonia in an unapproved container or complicity to possession of anhydrous

ammonia in an unapproved container. Reserved for appeal is the circuit court's denial of Young's motion to suppress the evidence seized from the vehicle following the traffic stop.

Young contends that the circuit court erred by concluding that the search of the passenger compartment of the vehicle was, pursuant to both the automobile exception and as a search incident to arrest, constitutionally permissible. We disagree.

Our standard of review of the trial court's decision on a motion to suppress evidence requires that we first determine whether the trial court's findings of fact are supported by substantial evidence. *Commonwealth v. Neal*, 84 S.W.3d 920, 923 (Ky.App. 2002). If they are, then they are conclusive. See Kentucky Rules of Criminal Procedure (RCr) 9.78. Based upon those findings, we must then conduct a de novo review of the trial court's application of law to those facts to determine whether its decision is correct as a matter of law. *Adcock v. Commonwealth*, 967 S.W.2d 6, 8 (Ky. 1998); *Commonwealth v. Opell*, 3 S.W.3d 747, 751 (Ky.App. 1999).

Following the suppression hearing, the circuit court entered an order containing the following findings of fact:

On the morning of January 25, 2006, Officer Harvey received a telephone call from a known individual advising him that drug activity was being carried out at Latham's residence on Scott Road near Graham, Kentucky. The caller also advised Officer Harvey that there was a white Mustang at this residence. Acting on the information, Officer Harvey traveled to this area looking for the white Mustang.

Upon arriving near Scott Road, Officer Harvey observed a white Mustang in front of him turning right from U.S.

Highway 62 to Highway 175. This vehicle turned right without using a turn signal. Therefore, Officer Harvey activated his blue lights and eventually stopped the car.

Upon approaching the driver's side of this vehicle, the driver rolled the window down and Officer Harvey immediately smelled the odor of anhydrous ammonia. Officer Harvey, from his training and experience, was familiar with the smell of anhydrous ammonia and knew that it was associated with making methamphetamine. As Officer Harvey got the driver out of the car, being Defendant, Edward Brian Young, he received information over his radio that Mr. Young had a suspended driver's license. Officer Harvey also noticed that Mr. Young had bloodshot eyes and appeared extremely nervous. Believing that Mr. Young was operating a motor vehicle while under the influence of intoxicants, he administered a field sobriety test. In Officer Harvey's opinion, Mr. Young failed this test. Therefore, Mr. Young was placed under arrest for operating a motor vehicle while under the influence of intoxicants and operating a motor vehicle on a suspended or revoked license. Officer Harvey searched the Defendant and found a lithium battery, a wire cutter and pliers in his pockets.

By the time Officer Harvey arrested Mr. Young, Officer Casey arrived on the scene. It was decided that the passenger compartment of the vehicle would be searched and therefore, the officers had the three passengers get out of the car. Both officers observed plastic tubing lying on the backseat of this vehicle and knew from their training and experience that this item was also commonly used in the manufacturing of methamphetamine.

While the three occupants were sitting on the ground, the driver was placed in the back of Officer Harvey's cruiser. At this point, Officer Casey observed a syringe lying near Defendant, Charles W. Young. All three passengers, being Charles W. Young, Katina Young and Christopher S. Latham, denied that the syringe was theirs. Charles W. Young did show his arms to Officer Casey and Officer Casey observed needle marks on him. Therefore, Officer Casey arrested Charles W. Young for possession of drug paraphernalia. In

the process of searching the person of Charles W. Young, Officer Casey found another needle in his pocket. Charles W. Young was placed in the back of Officer Casey's cruiser. Officer Casey also read the Miranda warning to Charles W. Young.

While the officers were searching the passenger compartment of the vehicle, Sheriff Mayhugh arrived and advised Officer Casey that Charles W. Young appeared to be moving about in the back of the cruiser. Officer Casey opened the back door to the cruiser and observed that Mr. Young had a bag of Sudafed pills, which bag had spilled open and pills were on the floorboard and in Mr. Young's shoe. Officer Casey knew from his training and experience that Sudafed pills were used in the process of manufacturing methamphetamine.

The officers requested permission to search the vehicle, but the Defendants refused permission. Therefore, Officer Casey left to go to the Courthouse to obtain a search warrant for the trunk of this car, as the source of the anhydrous ammonia smell had not been found. The other officers at this point arrested Defendants, Katina Young and Christopher S. Latham, and they were placed in separate cruisers. All Defendants had their rights read to them.

Edward Brian Young was taken to the hospital and Officer Harvey read the implied consent form. Mr. Young requested an opportunity to call his lawyer and Officer Harvey lent him his phone. While in the presence of Officer Harvey, Mr. Young called his attorney, Dennis Ritchie. The Officer heard the Defendant say to his attorney that "he was dirty." Mr. Young refused to take a blood test and was taken to jail.

Meanwhile, Officer Casey obtained a search warrant and executed same on the vehicle operated by Mr. Young. From the trunk of this car, the officers found several items known to be used in the manufacture of methamphetamine. . . .

At the police station, Charles W. Young waived his rights and gave statements implicating the Defendants' roles in manufacturing methamphetamine. Katina Young made a

statement that they were going to use the money gained from this enterprise to pay off her cold checks and fines.

Young does not challenge the above findings. In any event, the circuit court's findings are supported by substantial evidence - the suppression hearing testimony of Officer Harvey - and, accordingly, the court's findings are conclusive upon our review. Moreover, Young does not challenge the legality of the stop itself, the search of his person incident to arrest, the seizure of the Sudafed pills which spilled out into Officer Harvey's cruiser, or the search of the vehicle's trunk, which was conducted pursuant to a search warrant. Therefore, we need not address those issues.

We first consider Young's argument that the circuit court erred in concluding that the search of the passenger compartment was permissible under the automobile exception.

All warrantless searches are “presumed to be unreasonable and unlawful, requiring the Commonwealth to bear the burden of justifying the search and seizure under one of the exceptions to the warrant requirement.” *Commonwealth v. Erickson*, 132 S.W.3d 884, 887 (Ky.App. 2004) (citing *Cook v. Commonwealth*, 826 S.W.2d 329, 331 (Ky.1992)). The automobile exception is one such exception. The automobile exception to the warrant requirement provides that automobiles may be searched without a warrant if there is probable cause to believe that the car contains articles that the officers are entitled to seize. *Chambers v. Maroney*, 399 U.S. 42, 48, 90 S.Ct. 1975, 1979, 26 L.Ed.2d 419, 426 (1970). The scope of the search includes “all compartments

of the automobile and all containers in the automobile which might contain the object of the search.” *Gray v. Commonwealth*, 28 S.W.3d 316, 319 (Ky.App. 2000).

As set forth above, the circuit court’s findings included findings that upon Officer Harvey’s approaching the vehicle he smelled the odor of anhydrous ammonia; that Officer Harvey, from his training and experience, was familiar with the smell of anhydrous ammonia; and that Officer Harvey knew that anhydrous ammonia was associated with the making of methamphetamine. Based upon these findings, Officer Harvey had probable cause to believe that the occupants of the vehicle were engaging in activities related to the manufacture of methamphetamine and that evidence of such criminal activity might be located in the vehicle. As such, the automobile exception permitted the police to search the vehicle.

Young contends that for the automobile exception to apply there must be exigent circumstances and that such were not present in this case. However, this is a misstatement of the automobile exception. Exigent circumstances are not required before the automobile exception is applicable. *See Adams v. Commonwealth*, 931 S.W.2d 465, 468 (Ky.App. 1996).

Young also contends that the circuit court erred in its determination that the search of the passenger compartment was permissible as a search incident to the arrest. A search incident to an arrest is an exception to the general rule requiring a warrant prior to searches and seizures pursuant to the Fourth Amendment of the United States Constitution and applicable to the states through the Due Process Clause of the

Fourteenth Amendment. *See Mapp v. Ohio*, 367 U.S. 643, 655, 81 S.Ct. 1684, 1691, 6 L.Ed.2d 1081 (1961). As the exception has evolved, now, “once an officer lawfully arrests an automobile's 'recent occupant,' the officer may search the automobile's passenger compartment as a search incident to arrest.” *Thornton v. United States*, 541 U.S. 615, 621-623, 124 S.Ct. 2127, 2131-2132, 158 L.Ed.2d 905 (2004); *Rainey v. Commonwealth*, 197 S.W.3d 89, 93 (Ky. 2006). As Young and the remaining occupants of the vehicle were arrested and were recent occupants of the vehicle, the search of the passenger compartment was constitutional as a search incident to arrest.

The judgment of the Muhlenberg Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Stephanie D. Ritchie
Clarksville, Tennessee

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Ken W. Riggs
Assistant Attorney General
Frankfort, Kentucky