

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-001413-MR

ANSAR MCIVER

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE PAMELA R. GOODWINE, JUDGE  
ACTION NO. 04-CR-00673

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON, MOORE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Ansar McIver brings this appeal from a June 15, 2006, judgment of the Fayette Circuit Court upon a conditional guilty plea to numerous criminal charges.

We affirm.

On the morning of March 5, 2004, Detective Byron Smoot, a detective with the Lexington Police Department, was a passenger in an unmarked police car. Appellant was driving a white chevrolet four-door vehicle when Detective Smoot spotted him.

Detective Smoot testified that he suspected appellant was driving on a suspended license.

Apparently, Detective Smoot arrested appellant some four months earlier (in November) for driving on a suspended license. Based upon Detective Smoot's suspicion that appellant was driving on a suspended license, Detective Smoot then followed appellant. Shortly thereafter, appellant was observed pulling his vehicle over next to an unknown black male. The unknown male entered appellant's vehicle on the passenger's side. Appellant drove to a nearby home and went inside for a short time.

During this time, Detective Smoot attempted to contact a police patrol unit to effectuate a stop of appellant's vehicle. Detective Smoot's unmarked vehicle was not equipped with emergency equipment. Shortly after appellant re-entered the vehicle and began driving, the police patrol unit attempted to stop appellant's vehicle. However, appellant did not stop but rather fled. During the chase, appellant briefly pulled over, and the passenger exited the vehicle. Eventually, the police stopped appellant's vehicle, and he was arrested. Upon searching appellant, he was discovered to be in possession of marijuana. A subsequent search of appellant's vehicle produced heroine. A search of the passenger produced crack cocaine.

Appellant was indicted upon the offenses of two counts of trafficking in controlled substance (first degree), criminal syndicate to traffic in controlled substance (first degree), possession of a firearm by convicted felon, possession of marijuana, fleeing/evading the police (second degree), operating on suspended operator's license, and operating a motor vehicle with no insurance. Thereafter, appellant filed a motion to suppress evidence seized from his person and vehicle. After an evidentiary hearing, the

circuit court denied the motion. Appellant then entered a conditional plea of guilty to the offenses of criminal conspiracy to traffic in a controlled substance (first degree), possession of a controlled substance (first degree), possession of marijuana, and operating on suspended or revoked operator's license. This appeal follows.

Appellant contends the circuit court committed error by denying his motion to suppress evidence. Upon a denial of a motion to suppress, we review the circuit court's findings of fact under the clearly erroneous standard. *Hughes v. Commonwealth*, 87 S.W.3d 850 (Ky. 2002). “If supported by substantial evidence the factual findings of the trial court shall be conclusive.” Ky. R. Crim. P. 9.78. Questions of law as applied to the facts are reviewed *de novo*. *Welch v. Commonwealth*, 149 S.W.3d 407 (Ky. 2004).

Appellant specifically contends that the police lacked reasonable suspicion of criminal activity to justify a warrantless stop of his vehicle under *Terry v. Ohio*, 392 U.S. 1 (1968). In particular, appellant points out that Detective Smoot relied upon his suspicion that appellant was driving on a suspended license to justify the stop. However, appellant maintains that this information was “stale” because it was based on information some four months old. Moreover, appellant argues that a seizure took place when “patrol officers and cruisers approached his vehicle with their lights on.” We disagree.

In *Taylor v. Commonwealth*, 125 S.W.3d 216 (Ky. 2003), the Supreme

Court held:

A seizure occurs when an officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen. *California v. Hodari D.*, 499 U.S. 621, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1991). A seizure does not

occur, however, if in response to a show of authority, the subject does not yield. In that event, the seizure occurs only when the police physically subdue the subject. *Hodari D, supra.*

Here, it is undisputed that when the officer turned on his lights, Taylor failed to yield to his authority. Instead, he led police on a high-speed chase, which included driving in the wrong lane of traffic. Taylor's seizure only occurred when the police physically apprehended him following the chase. Thus, the police officer's justification for initially attempting to stop Taylor is immaterial . . . .

*Id.* at 219-220. Thus, in *Taylor*, the Court held that a seizure did not occur when the defendant failed to yield to police authority. Under such circumstances, the *Taylor* Court recognized that a defendant was seized only when “physically subdued” by the police. Moreover, the Supreme Court pointed out that a police officer's justification for initially attempting to stop the defendant was immaterial once the defendant failed to yield.

In the case *sub judice*, appellant failed to yield and to stop his vehicle when pursued by police. As such, the police possessed probable cause to stop and arrest appellant for fleeing or evading police under Kentucky Revised Statutes 520.100. Officer Smoot's initial justification for ordering the stop of appellant's vehicle is simply immaterial. As the police possessed probable cause to stop and arrest appellant, we are of the opinion that the circuit court properly denied appellant's motion to suppress evidence.

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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