

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002104-MR

CHESTER T. PUCKETT

APPELLANT

v. APPEAL FROM HART CIRCUIT COURT
HONORABLE CHARLES C. SIMMS III, JUDGE
ACTION NO. 06-CR-00019

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: COMBS, CHIEF JUDGE; DIXON, JUDGE; KNOFF,¹ SENIOR JUDGE.

KNOFF, SENIOR JUDGE: Chester T. Puckett appeals his September 19, 2006, convictions of one count of possession of anhydrous ammonia in an unapproved container and one count of persistent felony offender in the second degree. We affirm.

On January 3, 2006, two state troopers, along with Hart County Sherriff's officials and Tom Lafollette, Puckett's parole officer, arrived at Puckett's home after numerous complaints of drug activity at the residence. While searching the premises, a tank, later confirmed to be containing anhydrous ammonia, was found in a duffel bag.

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

The bag was discovered behind a garage and buried beneath several tires. No search warrant had been obtained to search the premises.

Puckett was eventually indicted with possession of anhydrous ammonia in an unapproved container with intent to manufacture methamphetamine. His indictment was later amended to include the charge of persistent felony offender in the second degree. Following a jury trial, Puckett was found guilty of possession of anhydrous ammonia in an unapproved container and persistent felony offender in the second degree. He was sentenced to 10 years. This appeal followed.

On appeal, Puckett claims a violation of his rights under the Fourth Amendment of the United States Constitution and Sections Two and Ten of the Kentucky Constitution. Puckett argues that the trial court erred by failing to suppress the evidence seized as a result of the search of his property and claims that the trial court should have *sua sponte* entered an order suppressing the evidence.

Typically, when reviewing a trial's courts admission or exclusion of evidence, this Court is limited to determining whether there was an abuse of discretion. *Clephas v. Garlock, Inc.*, 168 S.W.3d 389, 393 (Ky.App. 2004) (*citing Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 577 (Ky. 2000)). An abuse of discretion exists when the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Id.*

When a party fails to file a suppression motion and request a hearing, and fails to object to the admission of evidence when it is presented, that party waives his right to later raise the admissibility of such evidence. *Deboy v. Commonwealth*, 214 S.W.3d 926 (Ky.App. 2007). Puckett readily admits that this issue was not properly

preserved before the trial court. Therefore, this Court is limited to determining if the trial court's failure to suppress the evidence constituted palpable error. RCr² 10.26.

Palpable error is defined as an error that "affects the substantial rights of a party" and results in "manifest injustice." *Schoenbachler v. Commonwealth*, 95 S.W.3d 830,836 (Ky. 2003) (*citing* RCr 10.26). Manifest injustice can be found by a showing of "probability of a different result or error so fundamental as to threaten a defendant's entitlement to due process of law." *Martin v. Commonwealth*, 207 S.W.3d 1,3 (Ky. 2006).

Having reviewed Puckett's argument, as well as the argument of the Commonwealth and the record, we conclude that there is no proof of manifest injustice. Accordingly, the September 19, 2006, convictions of the Hart Circuit Court are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Donald H. Morehead
Department of Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Kristin N. Logan
Assistant Attorney General
Frankfort, Kentucky

² Kentucky Rules of Criminal Procedure.