

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-002400-MR

DAVEN AARON CRABTREE

APPELLANT

v. APPEAL FROM MCLEAN CIRCUIT COURT  
HONORABLE DAVID H. JERNIGAN, JUDGE  
ACTION NO. 00-CR-00019

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
REVERSING  
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BEFORE: BARBER, BUCKINGHAM, AND MILLER, JUDGES.

MILLER, JUDGE: Daven Aaron Crabtree brings this appeal from a September 13, 2000, judgment of the McLean Circuit Court entered upon a conditional plea of guilty under Ky. R. Crim. P. (RCr) 8.09. We reverse.

The sole issue presented for our consideration is whether the circuit court erred in failing to suppress evidence seized incident to Crabtree's arrest. Our review of the circuit court's factual determination is under the substantial evidence rule. RCr 9.78, see Diehl v. Commonwealth, Ky., 673 S.W.2d 711 (1984). Our review of the applicable law is, of course, *de novo*.

On March 20, 2000, at approximately 6:00 p.m., Crabtree was driving his Chevrolet S-10 pickup truck from Owensboro, Daviess County, Kentucky, along Highway 81 toward his home in McLean County, Kentucky. Detective Jim Saddler of the Owensboro Police Department (OPD) was off duty and going home after a "workout" at the department gym. He was driving an unmarked detective vehicle, wearing gym shorts and a tee-shirt. Detective Saddler observed Crabtree driving erratically in Daviess County. Suspecting Crabtree was driving under the influence (DUI), Detective Saddler called the OPD dispatcher on his cell phone.<sup>1</sup> He asked the dispatcher to contact the Daviess County Sheriff. Realizing he was entering McLean County, he also requested the dispatch unit to notify McLean County law enforcement and Kentucky State Police (KSP). For whatever reason, no contact was made with McLean County law enforcement. Subsequently, Detective Saddler established contact with the KSP by cell phone. Detective Saddler testified that the KSP instructed him to maintain surveillance of Crabtree. The record does not reveal the dispatcher's identity or the extent of his authority.

In McLean County, Crabtree turned off the public highway into a private drive, and Detective Saddler gave up his surveillance. He so advised the KSP. It is unclear whether Detective Saddler terminated his cell phone communication at this time. Nevertheless, Detective Saddler turned his car around with the intention of returning to Daviess County. At this time,

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<sup>1</sup>Detective Saddler testified he did not have his police radio with him at the time.

Crabtree began following him. Detective Saddler pulled into a private drive. He advised the KSP he was back on the case since Crabtree was back on the public highway. Crabtree drove past the drive where Detective Saddler had stopped, then exited onto a McLean County gravel road. He turned his vehicle around and parked facing the highway. Detective Saddler re-entered the highway and then pulled onto the gravel road where Crabtree had stopped, directly facing Crabtree's truck. The vehicles were headlights to headlights. Detective Saddler exited his vehicle. He possessed no indicia of a law enforcement officer. He did, however, possess a pistol which was tucked in the back waistband of his gym shorts. He immediately identified himself as an Owensboro police officer and asked Crabtree if he was carrying any weapons. Crabtree told him that he was carrying a loaded gun in his belt. Detective Saddler then sat Crabtree on the ground and proceeded to take the loaded gun from him. Detective Saddler then noticed Crabtree "fidgeting." Upon inspection, Detective Saddler discovered a black container between Crabtree's legs as Crabtree sat cross-legged on the ground. Detective Saddler opened the container and found baggies of what later proved to be methamphetamine and half of a marijuana cigarette. The record is unclear, but at some point in the foregoing proceedings, Detective Saddler put Crabtree in handcuffs and informed him that he was being detained until the KSP arrived. Kentucky State Trooper J. M. Woo arrived some twenty minutes later.<sup>2</sup> Trooper

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<sup>2</sup>Trooper Woo's Uniform Offense Report indicated that he was dispatched at approximately 6:25 p.m. He arrived at the scene at  
(continued...)

Woo and Detective Saddler both searched Crabtree's vehicle. The search yielded rounds of ammunition and the drug pseudoephedrine, a raw material used in the manufacture of methamphetamine.

On May 16, 2000, Crabtree was indicted by the McLean County Grand Jury on four counts, first-degree possession of a controlled substance while in the possession of a firearm (Kentucky Revised Statute (KRS) 218A.1415 and KRS 218A.992), possession of marijuana while in possession of a firearm (KRS 218A.1422 and KRS 218A.992), carrying a concealed weapon (KRS 527.020), and operating a motor vehicle under the influence of a controlled substance, first offense (KRS 189A.010). On August 10, 2000, Crabtree, through counsel, filed a motion to suppress evidence seized incident to his arrest. After a full hearing, the circuit court denied the motion. Crabtree thereupon entered into a conditional plea to amended charges. This appeal follows.

We are presented with the single issue of whether the circuit court erred in failing to suppress the evidence. In its opinion, the circuit court reasoned as follows:

The general principle among law enforcement agencies is to pursue and apprehend criminals who have fled from the vicinity in which the crime was committed. Holland v. Commonwealth, 294 S.W.2d 83 (Ky. 1956). This general principle makes sense in that the public would expect any peace officer to

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<sup>2</sup>(...continued)  
approximately 6:50 p.m. Detective Saddler testified that Crabtree was "detained" for approximately twenty-five minutes before Trooper Woo arrived. Additionally, Trooper Woo's report of the incident was titled "Carrying Concealed Deadly Weapon." We note that Crabtree's detention and Trooper Woo's response time were nearly identical. Considering these facts, we must conclude that Trooper Woo was not officially dispatched until **after** Detective Saddler detained Crabtree and seized the gun.

pursue suspected criminal activity rather than turning away from such conduct. KRS 431.007 authorizes a full-time police officer of any city, county or urban-county government to assist in any matter when within the jurisdiction of the requesting agency. In the case sub judice, Officer Saddler was pursuing suspected criminal activity and was assisting the Kentucky State Police by keeping the Defendant under surveillance. Officer Saddler was in effect detaining the Defendant until the Kentucky State Police could arrive. Certainly, the detention was necessary for the protection of the public due to the erratic driving behavior and because of the exigent circumstance. Officer Saddler had the right to pat down the Defendant for his own personal safety which resulted in the seizure of the pistol. Even though Officer Saddler may not have had the right to seize the black film canister which the Defendant was trying to conceal, this item would have been inevitably discovered at the time Trooper Woo arrived and placed the Defendant under arrest.

Crabtree specifically argues that (1) his detention by Detective Saddler was, in fact, an arrest; and (2) Detective Saddler is an Owensboro police officer and thus was without jurisdiction to effect his arrest in McLean County. We shall address these arguments *seriatim*.

An arrest occurs whenever an individual is significantly deprived of his freedom of action. See Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968) (distinguishing between arrest and mere detention). Detective Saddler seated Crabtree on the ground in front of his cruiser, handcuffed him, and held him over twenty minutes until Trooper Woo arrived. Detective Saddler testified Crabtree was not free to leave at that point. As such, we hold Crabtree was clearly

under arrest. We now turn to Crabtree's next argument of whether Detective Saddler had jurisdiction to arrest in McLean County.

It is well-established that a law enforcement officer may cross jurisdictional boundaries if in actual pursuit of a fleeing suspect. KRS 431.045; See Holland v. Commonwealth, Ky., 294 S.W.2d 83 (1956). Here, the evidence is uncontroverted that Detective Saddler was not in "actual pursuit" of Crabtree. Crabtree was not in the process of fleeing a crime and, in fact, did not know he was being followed by law enforcement as proved by his willingness to follow Detective Saddler. Further, Detective Saddler testified he was merely maintaining surveillance. Hence, we are of the opinion that Detective Saddler was not in "actual pursuit" of Crabtree pursuant to KRS 431.045.

To determine Detective Saddler's extrajurisdictional power of arrest, we must also analyze KRS 431.007(1) which reads:

**431.007. Arrest powers of peace officers assisting in another county -- Exception.**

- (1) A policeman directly employed as a full-time police officer by a Kentucky city, county, or urban-county government and whose department meets the requirements of KRS 15.440 and a sheriff or full-time deputy sheriff who is officially requested by a law enforcement agency in another county in Kentucky to assist in any matter within the jurisdiction of the requesting agency shall possess, while responding to and for the duration of the matter for which the request was made, the same powers of arrest in the requesting county as he possesses in the county in which he is a police officer.

We believe the intent of KRS 431.007(1) is to augment county law enforcement in Kentucky's myriad counties by allowing one county to officially request the assistance of another county when the situation dictates. We think the statute is restricted to county-to-county involvement and does not extend to include requests for assistance made by the KSP. As no contact was ever made with McLean County law enforcement, we are of the opinion that KRS 431.007(1) is inapplicable to the case at hand.

Even if the KSP could be viewed as a law enforcement agency under KRS 431.007(1), we cannot say that Detective Saddler received an "official request" as mandated thereunder. To trigger the statute, it is clear that an official request must be tendered before assistance may be rendered. While the term official request is not defined, we think that its meaning may be gleaned from the statute itself and from the term's ordinary usage.

KRS 431.007(1) bestows upon an assisting law enforcement officer "the same powers of arrest . . . as he possesses in the county in which he is a police officer." We are mindful that under the statute the full complement of police powers are unleashed upon an official request. Hence, in our interpretation, we must be cognizant of such monumental facet. We are likewise cognizant that under our system the jurisdiction of all officials is predetermined and specifically prescribed; otherwise, it would open the door to impermissible use of arbitrary power. Ky. Const. §2.

We turn to an examination of the term "officially requested" as found in KRS 431.007(1). "Officially" is obviously derived from the root word official, which generally means:

Pertaining to an office; invested with the character of an officer; proceeding from, sanctioned by, or done by, an officer.  
Authorized act.

Black's Law Dictionary, p. 1084 (6<sup>th</sup> ed. 1990). To constitute an "official request," we think it axiomatic that the individual making the request must be an official acting in his official capacity by virtue of the office. In the case at hand, the record is devoid of the identity of the individual at KSP who allegedly asked Detective Saddler to survey Crabtree. We view the identification of the person making the request as critical in triggering KRS 431.007(1). Without such, it cannot be concluded that an official at KSP, with authority to do so, requested Detective Saddler to assist in surveying Crabtree. Our inquiry, however, cannot end with the conclusion that KRS 431.007(1) is inapplicable.

Initially, Detective Saddler began surveying Crabtree in Daviess County.<sup>3</sup> By virtue of KRS 95.019(1), Detective Saddler, as an Owensboro police officer, had jurisdiction to arrest in Daviess County. Detective Saddler, however, continued to survey Crabtree into McLean County. At this time, Detective Saddler was acting outside of his jurisdiction, yet he identified himself as a law enforcement officer upon exiting his vehicle to

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<sup>3</sup>Detective Saddler testified he did not stop Crabtree within Daviess County as his vehicle was equipped only with a flashing blue light and Owensboro Police Department policy requires both the light and a siren in order to make a stop.



arrest Crabtree. Upon these undisputed facts, we conclude that Detective Saddler was acting under "color of his office." That is, Detective Saddler utilized the force and effect of his official position to arrest Crabtree. We think it inherently unconstitutional for an officer to effect an improper extrajurisdictional arrest and seizure by using the force and effect of his official position. U.S. Const. amend. IV, and Ky. Const. §10. Indeed, as recognized in Collins v. State, 143 So. 2d 700, 703 (Fl. 1962):

Any other rule would undermine "the right of the people to be secure in their persons, houses, papers and effect," and **would obliterate one of the most fundamental distinctions between our form of government, where officers are under the law, and the police-state where they are the law.**

(Emphasis added.)

In sum, we are of the opinion the circuit court committed reversible error by failing to grant Crabtree's motion to suppress. Under the precepts of Johantgen v. Commonwealth, Ky. App., 571 S.W.2d 110 (1978), we reverse as a conviction is impossible absent the unconstitutionally seized evidence.

For the foregoing reasons, the judgment of the McLean Circuit Court is reversed.

BARBER, JUDGE, CONCURS.

BUCKINGHAM, JUDGE, DISSENTS.

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