RENDERED: December 19, 1997; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-2174-MR

BARRY W. JACKSON — APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LEWIS G. PAISLEY, JUDGE
CRIMINAL NO. 96-CR-000226

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: GUDGEL, CHIEF JUDGE; GUIDUGLI and SCHRODER, Judges.

GUIDUGLI, JUDGE. This is an appeal in a criminal case wherein the appellant, Barry W. Jackson (Jackson), alleges that the evidence used against him was obtained in violation of the Fourth and Fourteenth Amendments of the United States Constitution and Section 10 of the Kentucky Constitution.

On March 25, 1996, a Fayette County Grand Jury indicted Jackson on one count of trafficking in a controlled substance, first degree and on a second count charging him with the traffic violation of unlawfully operating a motor vehicle with only one headlight. The indictment alleged that these offenses occurred on January 20, 1996. Thereafter, the appellant made a motion to suppress evidence obtained by the Lexington police officers

during a search of appellant's vehicle at the time the police stopped him which lead to his arrest and the subsequent indictment. A hearing on said motion was held before the trial court on May 16, 1996.

Officer Scott Smith (Officer Smith) of the Lexington police was the only witness to testify at the hearing. Officer Smith testified that on January 20, 1996, at about 8:30 p.m. he and Officer Sorrell were sitting in their cruisers when they observed a car with only one working headlight pass them. They decided to stop the vehicle for this violation. Officer Smith stated that although it was extremely cold that night when they stopped the vehicle, the driver (Jackson) jumped out of the stopped car. Officer Smith testified this behavior on such a cold night made him suspicious and he instructed Jackson to get back into the vehicle. Officer Smith then proceeded to advise Jackson why he had been stopped and requested Jackson to produce his driver's license, the vehicle registration, and proof of insurance. Officer Smith also asked Jackson if there were any guns or weapons in the car. Jackson responded that the vehicle was not his but that the requested documentation was in the glove compartment. Jackson also advised the officers that there was a gun in the glove compartment. Officer Smith then walked around the car to the passenger compartment. Jackson rolled down the passenger window and Officer Smith opened the glove compartment. Inside the glove compartment there was an empty holster, but no

gun. When asked where the gun was, Jackson responded that he did not know, but that it should be in the glove compartment.

At this point, the officer observed a folded knife on the front seat near Jackson's right leg. Officers Smith and Sorrell, based upon these facts, decided to do a "frisk" of the car. After the officers had Jackson get out of the car, Officer Sorrell looked under the front driver's seat of the car. After looking under the seat, Officer Sorrell placed handcuffs on Jackson and informed him he was being arrested on a charge of possession of cocaine. Officer Sorrell then retrieved a plastic bag of what turned out to be cocaine from under the front seat of the car Jackson had been driving.

After placing Jackson under arrest, a discussion ensued as to whether the cocaine was his or the owner of the car. After first denying that the cocaine was his, Jackson eventually admitted that the drugs were his.

At the suppression hearing, Jackson argued that the search of the vehicle was more extensive than necessary to find the gun and that his constitutional rights against unreasonable search and seizure had been violated. The Fayette Circuit Court overruled the motion to suppress, relying on Michigan v. Long, 463 U.S. 1032 77 L.Ed.2d 1201, 103 S.Ct. 3469 (1983). Jackson thereafter entered a conditional plea of guilty to the charges, reserving his right to appeal the suppression issue, and was sentenced to five years in the state penitentiary. This appeal followed.

Appellant argues that the trial judge erred by refusing to grant his motion to suppress based upon the unreasonable search. Specifically, Jackson claims that the police officers could have something else to insure their safety and that their detailed search went beyond the scope necessary to find the missing gun. The Commonwealth's response is that the officers did not act unreasonably in taking preventive measures to ensure there would be no weapons within Jackson's immediate grasp before permitting him to retrieve the vehicle registration and insurance papers from the glove compartment. The trial court found Michigan v. Long, supra, dispositive on the issue of whether the search in the case was valid or unreasonable.

In Long, the Court stated:

> ...we have also expressly recognized that suspects may injure police officers and others by virtue of their access to weapons, even though they may not themselves be armed. In the Term following Terry, we decided Chimel v. California, 395 U.S. 752, 23 L.Ed.2d 685, 89 S.Ct. 2034, (1969), which involved the limitations imposed on police authority to conduct a search incident to a valid arrest. Relying explicitly on Terry, we held that when an arrest is made, it is reasonable for the arresting officer to search "the arrestee's person and the area 'within his immediate control'--construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." 395 U.S. at 763, 23 L.Ed.2d 685, 89 S.Ct. 2034. We reasoned that "[a] gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested." Ibid. In New York v. Belton, 453 U.S. 454, 69 L.Ed.2d 768, 101 S.Ct. 2860 (1981), we determined that the lower courts "have found no workable definition of 'the area within the immediate

> control of the arrestee' when that area arguable includes the interior of an automobile and the arrestee is its recent occupant." Id., at 460, 69 L.Ed.2d 768, 101 S.Ct. 2860. In order to provide a "workable rule," ibid., we held that "articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon' ...." Ibid. (quoting Chimel, supra, at 673, 23 L.Ed.2d 685, 89 S.Ct. 2034). We also held that the police may examine the contents of any open or close container found within the passenger compartment, "for if the passenger compartment is within the reach of the arrest, so will containers in it be within his reach." 453 U.S., at 460, 69 L.Ed.2d 768, 101 S. Ct. 2860 (footnote omitted). See also Michigan v. Summers, 452 U.S. 692, 702, 69 L.Ed.2d 340, 101 S. Ct. 2587 (1981). Long, supra, at 1219.

Our past cases indicate then that protection of police and others can justify protective searches when police have a reasonable belief that the suspect poses a danger, that roadside encounters between police and suspects are especially hazardous,a nd that danger may arise from the possible presence of weapons in the area surrounding a suspect. These principles compel our conclusion that the search of the passenger compartment of an automobile, limited to those areas in which a weapons may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on "specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant" the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons. Terry, 392 at 21, 20 L.Ed.2d 889, 88 S.Ct. 1868, 44 Ohio Ops 2 383. "[T]he issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." Id., at 27, 20 L Ed 2d 889, 88 S Ct 1868, 44 Ohio Ops 2d 383. If a suspect is "dangerous," he is no less dangerous simply because he is not arrested. If, while conducting a legitimate Terry search of the interior of the automobile, the officer should, as here, discover contraband other than weapons, he clearly cannot be required to ignore the contraband, and the Fourth Amendment does not require its suppression in such circumstances. (citations omitted). Long, supra, at 1220.

Finally, in Michigan v. Long, supra, at 1221, the Court held, "Therefore, the balancing required by Terry clearly weighs in favor of allowing the police to conduct an area search of the passenger compartment to uncover weapons, as along as they possess an articulable and objectively reasonable belief that the suspect is potentially dangerous." The analysis and holding set forth in Long, supra, is consistent with that set forth in Docksteader v. Commonwealth, Ky. App., 802 S.W.2d 149 (1991) and Dunn v. Commonwealth, Ky. App., 689 S.W.2d 23 (1984).

Applying these cases to the circumstances of this case, it is clear that Officers Smith and Sorrell were justified in their reasonable belief that Jackson posed a danger. After Jackson was stopped for a routine traffic offense, he jumped out of the vehicle on a bitterly cold night, he stated a gun was in the glove compartment, yet only the holster was found, and a knife was observed on the seat next to him. The subsequent search of the car was restricted to those areas to which Jackson would generally have immediate control and that could contain a weapon. For the foregoing reasons it is clear that the trial court's denial of Jackson's motion to suppress was correct. Therefore, we affirm.

ALL CONCUR.

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