

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001307-MR

REGINALD HINES

APPELLANT

v. APPEAL FROM BALLARD CIRCUIT COURT
HONORABLE WILLIAM LEWIS SHADOAN, JUDGE
ACTION NO. 03-CR-00026

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, JOHNSON, AND KNOPF, JUDGES.

BUCKINGHAM, JUDGE: Reginald Hines appeals from a judgment of the Ballard Circuit Court wherein he entered a conditional guilty plea to the charges of first-degree trafficking in a controlled substance (cocaine) and trafficking in marijuana, first offense, and was sentenced to five years in prison. The sole issue before this court relates to the trial court's denial of Hines's motion to suppress evidence. We affirm.

On March 7, 2003, law enforcement officers stopped a motor vehicle driven by Ronald Roberson. The officers soon

discovered that Hines, a passenger in the vehicle, was wanted on felony warrants from Ohio. Hines was then arrested and taken to jail.

During a search of Roberson's vehicle, an officer found marijuana seeds in the floorboard. The officers then asked and received permission from Roberson to search his apartment in Barlow, Kentucky. Roberson, who was not under arrest, signed a form consenting to the search of his apartment without the necessity of a search warrant.

During the search of the Roberson apartment, the officers noticed a black canvas duffel bag lying on the living room floor near the front door. The zip-top flap on the bag was open, and one of the officers observed a plastic baggy partially visible at the top of one corner of the bag. Although the contents of the baggy were not visible, the officer testified that he knew from his experience as a police officer that plastic baggies are often used to hold drugs.

The officer then asked Roberson whose bag it was. Roberson replied that he did not know. The officer then proceeded to examine the contents of the open bag and discovered several individual baggies containing marijuana. Further down in the duffel bag the officer discovered between three and three and one-half grams of crack cocaine. The officer also

discovered a wallet containing Hines's identification in an individual pocket in the bag.

Hines was indicted on charges relating to the marijuana and cocaine. He moved to suppress the seized drugs on the ground that the search of the duffel bag was unlawful. The trial court held a suppression hearing pursuant to RCr¹ 9.78, and two of the officers testified on behalf of the Commonwealth. Hines did not present evidence on his own behalf.

Following the suppression hearing, the trial court entered an order denying Hines's motion. The court set forth the facts as set forth above. Based on those facts, the court concluded that the officers should have obtained a search warrant for the bag because it was within their control, that no exigent circumstances existed, and that no one present claimed ownership of the bag. However, the court further concluded that the officers "made an honest mistake in believing that they had the right to search the bag since permission was given for them to search the apartment by the owner/lessee." The court went on to state that the officers' mistaken belief did not constitute bad faith. The court finally concluded that there was "no reason why the defendant should benefit from a mistaken belief in the law of the police." The court added that "the theory of suppressing the evidence would be unduly drastic and harsh with

¹ Kentucky Rules of Criminal Procedure.

the penalty passing on to the public and unreasonably benefiting the defendant.”

Following the court’s denial of his motion to suppress evidence, Hines entered a conditional guilty plea to the aforementioned charges. By a final judgment of the trial court entered on June 20, 2003, Hines was sentenced to five years in prison. This appeal followed.

In reviewing a trial court’s denial of a defendant’s suppression motion, the court’s factual findings shall be conclusive if supported by substantial evidence. See RCr 9.78. However, the court’s legal conclusions are reviewed *de novo*. See Commonwealth v. Whitmore, Ky., 92 S.W.3d 76, 79 (2002). In the case *sub judice*, the factual findings of the court are not disputed. Rather, the parties disagree concerning legal conclusions drawn from the facts by the court.

Hines agrees with the conclusion of the trial court that the officers should have secured a search warrant prior to searching his duffel bag. He agrees with the court that there were no exigent circumstances to justify the warrantless search, and he maintains that Roberson could not have validly consented to the search of the bag because he had no common authority over it. However, Hines argues that the court erroneously denied the suppression motion on grounds of the officers’ good faith and the general interest in protecting the public.

The Commonwealth agrees with Hines that the trial court erroneously concluded that the officers' good faith validated an otherwise warrantless search. See Commonwealth v. Elliott, Ky. App., 714 S.W.2d 494, 497-8 (1986). However, the Commonwealth states that there were other reasons for upholding the court's decision to deny the suppression motion. The Commonwealth notes that appellate courts may uphold a correct result reached at the trial level, even though the result was based upon erroneous reasoning. See Hodge v. Commonwealth, Ky., 116 S.W.3d 463, 470 (2003).

The Commonwealth argues that Hines failed to meet his burden of establishing that he had a reasonable expectation of privacy in the contents of the duffel bag. Further, the Commonwealth argues that, regardless of Hines's privacy interest or lack thereof, Roberson's consent to the search of the apartment extended to the search of the bag. We agree with the arguments of the Commonwealth.

In order to establish standing to attack the search, Hines had the burden of establishing that he had a legitimate expectation of privacy in the contents of the duffel bag. See Rawlings v. Kentucky, 448 U.S. 98, 104, 100 S.Ct. 2556, 2561, 65 L.Ed.2d 633, 641 (1980); Foley v. Commonwealth, Ky., 953 S.W.2d 924, 934 (1997). He did not argue to the trial court or in his brief to this court that he had a reasonable expectation of

privacy in the bag. Rather, he argues that the officers should not have searched the bag because he owned it and they did not have either a warrant or his consent to search.

We agree with the Commonwealth that Hines did not meet his burden of establishing a reasonable expectation of privacy in the bag. First, he presented no evidence in that regard at the suppression hearing other than his mere ownership in the bag. Ownership alone did not entitle Hines to challenge the search of the bag. See Rawlings, 448 U.S. at 105. More importantly, the bag was located by the front door of the apartment, it was open, and its contents were partially visible to anyone who stepped inside the door. Furthermore, there was no evidence at the hearing that Hines even resided in the apartment. Under these circumstances, we conclude that he failed to establish a legitimate expectation of privacy in the contents of the bag.

We also agree with the Commonwealth that Roberson's consent to the search of the apartment included consent to search the bag. Assuming Hines had a reasonable expectation of privacy in the bag, then a warrantless search of it would have been unlawful unless one of the valid exceptions to the warrant requirement applied. One such exception is consent.

First, it must be determined whether Roberson had authority to consent to the search of the bag. Although the bag

belonged to Hines, it was located in Roberson's apartment. Furthermore, Roberson had not disclosed to the officers any information as to the owner of the bag, other than to tell the officers that he did not know who owned it.

In United States v. Matlock, 415 U.S. 164, 94 S.Ct. 988, 39 L.Ed.2d 242 (1974), the U.S. Supreme Court stated:

[W]hen the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by the defendant, but may show that permission to search was obtained from a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected.

415 U.S. at 171. Also, the Court stated that "the consent of one who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared." 415 U.S. at 170. At any rate, regardless of whether Roberson had actual authority to consent to the search of the bag, he had the apparent authority to do so. See Illinois v. Rodriguez, 497 U.S. 177, 186, 110 S.Ct. 2793, 2800, 111 L.Ed.2d 148 (1990).

We now turn to the issue of whether Roberson's general consent to search his apartment included his consent to search containers such as a duffel bag. In Estep v. Commonwealth, Ky., 663 S.W.2d 213 (1983), the Kentucky Supreme Court stated as follows:

The scope of a warrantless search is defined by the object of the search and the places in which there is probable cause to believe it may be found. A lawful search of a fixed premises generally extends to the entire area in which objects may be found and is not otherwise limited. Thus a warrant to search a home also provides authority to open closets, drawers and containers in which the object of the search might be concealed.

Id. at 215. Furthermore, “[g]eneral consent [to a search] permits the opening of closed but unlocked containers found in the place as to which consent was given.” U.S. v. Gant, 112 F.3d 239, 243 (6th Cir. 1997).

“The standard for measuring the scope of a suspect’s consent under the Fourth Amendment is that of ‘objective’ reasonableness --- what would the typical reasonable person have understood by the exchange between the officer and the suspect?” Florida v. Jimino, 500 U.S. 248, 251, 111 S.Ct. 1801, 1804-05, 114 L.Ed.2d 297 (1991). In that case the court held that the scope of the suspect’s general consent for officers to search his car for drugs implicitly carried with it consent to search a closed paper bag within the car. As the court stated, “[a] reasonable person may be expected to know that narcotics are generally carried in some form of a container.” Id.

In this case the officers had discovered marijuana seeds on the floor of Roberson’s vehicle. When they requested and obtained Roberson’s consent to search his apartment, it was

apparent that they would be searching for marijuana and/or other drugs. By consenting to the search of his apartment in general, Roberson consented to the search of places and items such as closets, drawers, and, without question, open containers lying next to the front door. In short, we conclude that the officer had the right to search the duffel bag pursuant to Roberson's consent to search the apartment without first obtaining a search warrant.

Because the court did not err in denying the suppression motion, we affirm the final judgment and sentence.

ALL CONCUR.

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