

RENDERED: JULY 11, 2008; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000869-MR

BRANDON LEON WATKINS

APPELLANT

v.

APPEAL FROM TODD CIRCUIT COURT
HONORABLE TYLER L. GILL, JUDGE
ACTION NO. 06-CR-00103

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, VANMETER AND WINE, JUDGES.

ACREE, JUDGE: Brandon Leon Watkins appeals from a judgment of the Todd Circuit Court sentencing him to six years in prison. Watkins entered a conditional plea of guilty to the charges of speeding in excess of 26 miles per hour over the speed limit, failure to comply with instructional permit, fleeing or evading the

police in the second degree, possession of marijuana under eight ounces, possession of a controlled substance in the first and second degree, cocaine. On appeal, Watkins challenges the legality of the search of the automobile he had been driving prior to his arrest. We affirm.

On November 18, 2006, Officer Brian Atkinson observed Watkins speeding. He illuminated his overheard lights and pursued Watkins for some distance before Watkins came to a sudden stop in a median between lanes of traffic. Immediately after the car stopped, Watkins jumped out and ran on foot to a nearby wooded area. After a search, Watkins eventually turned himself over to police.

Upon hearing Watkins was in custody, Atkinson and Officer Rodney Moberly returned to the abandoned automobile. Unsure whether the suspect in custody was the vehicle's driver and/or owner, the officers checked the license tag which revealed the car was registered to a woman. Efforts to contact her were unsuccessful.

The officers contacted a wrecker service to tow the car away. Their search of the passenger and glove compartments for clues about the owner or operator of the car proved fruitless. In order to inventory all items within the car before the wrecker service towed it away, the officers opened the trunk of the car. There they found a red cooler containing three bags of marijuana and one bag containing six smaller bags of cocaine.

Watkins objected to the search of his vehicle stating that no recognized exception to the warrant requirement applied to the scenario. The trial court held a suppression hearing on February 27, 2007. The trial court denied the motion and found Watkins had abandoned the vehicle and thus lacked standing to challenge the search. Regardless of Watkins' abandonment, the trial court also concluded that the search was properly conducted pursuant to the inventory exception to the warrant requirement.

Watkins entered a conditional guilty plea, reserving his right to appeal the trial court's denial of his motion to suppress.

On appeal, Watkins contends that Moberly's and Atkinson's search of his car was unlawful as it did not fall under an exception to the warrant requirement. The Commonwealth argues that Watkins lacked standing to challenge the search of the automobile since he abandoned it in the median after Atkinson attempted to pull him over. The Commonwealth argues that even if we agreed that Watkins retained a reasonable expectation of privacy in the vehicle following his flight, as well as having standing to challenge the search, the evidence is not subject to suppression since the search was performed pursuant to the inventory exception of the warrant requirement.

The Fourth Amendment to the United States Constitution and Section 10 of the Kentucky Constitution prohibit unreasonable searches and seizures. In order to constitute a "search," a person must have a "reasonable expectation of

privacy" in the place to be searched. *Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967).

Watkins directs us to *Joseph v. Commonwealth*, 324 S.W.2d 126 (Ky. 1959), where our Supreme Court held that a defendant who, while attempting to elude police, overturned his vehicle and fled, did not voluntarily relinquish possession or control of the car and thus had standing to object to an unlawful search and seizure.

However, “abandonment is an ultimate fact or conclusion based generally upon a combination of act and intent.” *Friedman v. United States*, 347 F.2d 697, 704 (8th Cir.), cert. denied, 382 U.S. 946, 86 S.Ct. 407, 15 L.Ed.2d 354 (1960). In our recent unpublished opinion, *Blackford v. Commonwealth*, 2006 WL 202339 (Ky.App. 2006)(2005-CA-000603-MR), we noted:

Kentucky has long held that an individual has no standing to challenge the validity of a warrantless search of property that has been abandoned. *Hunt v. Commonwealth*, 488 S.W.2d 692 (Ky. 1972). In *Hunt*, our highest court affirmed the trial court's finding that the defendants had effectively abandoned their parked car by fleeing into nearby woods after they were approached by a uniformed state patrolman. *Id.* Since the defendants had abandoned the vehicle, the Court held that they lacked any reasonable expectation to any continuation of their right to protest a search of the car by police officers. *Id.* Consequently, they had no standing to challenge the legality of the subsequent search. *Id.*

In *Blackford*, the defendant fled his vehicle after he had been pulled over and patted down for weapons. In finding Blackford lacked standing to challenge the search of his vehicle, we reasoned:

The evidence presented at the suppression hearing indicated that Blackford fled the scene on foot, leaving the car unsecured as he attempted to evade apprehension. No evidence indicated that Blackford intended to assert or to retain his limited privacy interest in the vehicle. On the contrary, all evidence indicated that he sought both to avoid arrest and to abandon any incriminating evidence that might be found in the vehicle. Under these circumstances, as a matter of law Blackford also abandoned any reasonable expectation that the vehicle or its contents should be free from governmental intrusion.

Blackford, 2006 WL 202339.

In our opinion, the trial court did not err in finding that Watkins' vehicle had been abandoned. While being pursued by a police officer, Watkins sought to evade police before coming to a sudden stop in a median between lanes of traffic. He immediately got out of the car and fled to a wooded area. As in *Blackford*, this evidence does not suggest Watkins intended to retain any privacy interest in the car. As such, Watkins could not establish that he retained a reasonable expectation of privacy in the automobile once he fled the scene.

Having concluded Watkins lacked standing to contest the search, it is unnecessary for us to address his remaining allegations of error.

For the foregoing reasons, the findings of the Todd Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Linda Roberts Horsman
Assistant Public Advocate
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Heather M. Fryman
Assistant Attorney General
Frankfort, Kentucky