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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000145-MR

BRADLEY PIKE

APPELLANT

v. APPEAL FROM GARRARD CIRCUIT COURT
HONORABLE C. HUNTER DAUGHTERTY, JUDGE
ACTION NO. 08-CR-00018

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; MOORE; JUDGE; LAMBERT,¹ SENIOR JUDGE.

COMBS, CHIEF JUDGE: Bradley Pike conditionally pled guilty to one count of possession of a controlled substance in the first degree. After our review of the record, we affirm the Garrard Circuit Court.

On February 1, 2008, the Kentucky State Police (KSP) received a tip from an employee of the Kentucky Department of Transportation (KDOT) in

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Danville. The informant told the KSP that another KDOT employee would be driving a state-owned truck in the Bright Leaf Estates subdivision in Garrard County. According to the informant, the employee in the truck would be intoxicated, would be going to Mt. Hebron Road to trade Lortabs for methadone, would also be travelling to Shelbyville to purchase cocaine, and would have drugs in a black duffel bag.

The KSP responded by notifying the Garrard County Sheriff's Department of the tip. Deputy Addison went to Bright Leaf Estates where, within minutes, he observed a state-owned truck disregard a stop sign and fail to use a turn signal before entering Highway 27. Deputy Addison then stopped the truck, which Pike was driving.

When Deputy Addison approached Pike's vehicle on foot, he noticed the odor of alcohol and bubble gum. He asked Pike if he had been drinking. Pike admitted that he had consumed part of a beer at home and had part of a beer in the console. Addison continued asking Pike questions about the other elements of the tip. Pike admitted that he was going to buy methadone from someone on Mt. Hebron Road, but he denied trading Lortabs for it. Furthermore, he admitted that he had bought cocaine in Shelbyville but that he would not do so anymore.

Addison asked Pike for consent to search the truck. Pike declined. Then Addison told him that he would obtain consent from the KDOT. At that point, Pike reached into a black duffel bag, retrieved a bottle of methadone, and

handed it to Addison. In the subsequent search incident to arrest, officers found more drugs and paraphernalia. The entire stop was recorded by a camera in Addison's car. Pike was charged with three counts related to possession of controlled substances. He filed a motion to suppress the methadone, which the court denied. Pike then entered a conditional guilty plea to one count of possession of a controlled substance in the first degree. He now appeals the denial of the motion to suppress.

The standard of a review for a motion to suppress evidence is two-fold. First, Kentucky Rule of Criminal Procedure (RCr) 9.78 provides that, "If supported by substantial evidence the factual findings of the trial court shall be conclusive." The trial court's application of the law to the facts is reviewed *de novo*. *Lynn v. Commonwealth*, 257 S.W.3d 596, 598 (Ky. App. 2008).

The only issue in Pike's appeal is whether he voluntarily abandoned the bottle of methadone or whether Deputy Addison obtained it from him by means of improper coercion. This court has held that "where a motorist is initially stopped for a valid purpose and subsequently gives consent to a search of his vehicle, the voluntariness of his consent is the only issue to consider for purposes of the Fourth Amendment[.]" *Commonwealth v. Erickson*, 132 S.W.3d 884, 889 (Ky. App. 2004).

A search conducted without a warrant is considered violative of the Fourth Amendment of the United States Constitution unless it falls within a recognized exception to the warrant requirement. *Cook v. Commonwealth*, 826

S.W.2d 329, 331 (Ky. 1992) (citing *Coolidge v. New Hampshire*, 403 U.S. 443 (1971)). One of those exceptions is consent. *Id.* Consent is valid only if it is given voluntarily; *i.e.*, if it is not a result of coercion. *Bumper v. North Carolina*, 391 U.S. 543, 549 (1968). When determining whether conduct was coercive, we must examine the objective actions of the police officer rather than analyze the subjective perception of those actions by the accused. *Farmer v. Commonwealth*, 6 S.W.3d 144, 146 (Ky. App. 1999).

Pike premises his appellate argument on the coercive behavior that he alleges on the part of Deputy Addison and his threat to obtain consent from KDOT to search the vehicle. Although Pike characterizes Deputy Addison's conduct as aggressive and forceful, the Commonwealth characterizes the interaction between the two men as casual and polite. In his brief, Pike's only evidence of Addison's alleged coercion is contained on the video recording from the deputy's car.

However, the videotape was not included in the appellate record. Therefore, we "must assume that the [videotape] supports the decision of the trial court."

Commonwealth v. Thompson, 697 S.W.2d 143, 145 (Ky. 1985). The trial court specifically stated in its order that it had viewed the videotape and that it did not find Deputy Addison's behavior coercive. *Thompson* dictates that we cannot substitute our judgment under these circumstances.

Pike did not hand over the bottle containing the methadone *until after* Addison offered to obtain consent from KDOT to search the truck. Neither side disputes that fact. Pike argues that the threat alone was coercive. We disagree.

Addison's statement that he could obtain permission from the KDOT to search Pike's vehicle was a statement of fact. A third party who has "shared use and joint . . . control" has authority to consent to a search. *Colbert v. Commonwealth*, 43 S.W.3d 777, 785 (Ky. 2001) (citing *U.S. v. Matlock*, 415 U.S. 164 (1974)). Certainly, the KDOT could have provided legitimate third-party consent to search its own vehicle. In addition, the initial tip to the KSP came from a KDOT supervisor. Pike was aware of these facts. Our Supreme Court has held that the mere stating of matters of fact does not constitute coercion in the objective, legal sense. *Henson v. Commonwealth*, 20 S.W.3d 466, 469 (Ky. 2000).

The trial court made findings as to the circumstances of the stop after viewing the video recording. There was no impropriety in Deputy Addison's conduct. Accordingly, we conclude that there was substantial evidence to support the Garrard Circuit Court's denial of the motion to suppress.

We affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

David Russell Marshall
Nicholasville, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

John Paul Varo
Assistant Attorney General
Frankfort, Kentucky