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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001867-MR
&
NO. 2010-CA-001868-MR

RONNIE JOHNSON

APPELLANT

v. APPEAL FROM POWELL CIRCUIT COURT
HONORABLE FRANK ALLEN FLETCHER, JUDGE
ACTION NOS. 10-CR-00035-002 AND 10-CR-00036

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CLAYTON AND WINE,¹ JUDGES.

WINE, JUDGE: Ronnie Wayne Johnson appeals from two judgments of conviction in the Powell Circuit Court following a conditional guilty plea. He argues that the officers from Operation UNITE (Unlawful Narcotics Investigation

¹ Judge Thomas B. Wine authored this opinion prior to his retirement effective January 6, 2012. Release of the opinion was delayed by administrative handling.

Treatment and Education), acting under the authority of the Attorney General's Office, lacked jurisdiction to investigate and prosecute offenses in Powell County. As a result, he contends that the trial court should have either dismissed the indictments or suppressed the evidence seized as a result of the investigation. We conclude that the trial court properly interpreted Kentucky Revised Statutes (KRS) 218A.240(1) as authorizing the Attorney General's Office to investigate and prosecute drug-related offenses. In the alternative, we conclude that Johnson lacked standing to object to the Attorney General's participation in this criminal matter. In either case, the trial court properly denied Johnson's motions to dismiss or to suppress. Hence, we affirm.

On March 3, 2010, a Powell County grand jury returned two indictments charging Johnson with various drug crimes. Indictment No. 2010-CR-00035-2 charged Johnson with one count each of first-degree trafficking in a controlled substance (Oxycodone), and second-degree trafficking in a controlled substance (Hydrocodone). Both of the charged offenses occurred on September 9, 2009.² Johnson was also charged as a second-degree persistent felony offender (PFO II). Indictment No. 2010-CR-00036 charged Johnson with one count of first-degree trafficking in a controlled substance (Oxycodone), occurring on August 7, 2009. The sole witness before the grand jury for both indictments was Detective Randy Cline, an investigator with Operation UNITE out of Prestonsburg, Kentucky.

² The indictment also charged Johnson's wife, Shawna Johnson, as a co-defendant.

Thereafter, Johnson filed a motion to dismiss the indictments or suppress the evidence seized as a result of his arrest. He argued that both cases were investigated by UNITE officers and investigators from the Attorney General's office, and that neither group had jurisdiction to conduct investigations in Powell County. Following a hearing, the trial court denied the motions to suppress and to dismiss, concluding that KRS 218A.240(1) vests the Attorney General's Office with the authority to investigate and make arrests on offenses involving controlled substances.

Following this ruling, Johnson entered a conditional guilty plea to the charges, reserving his right to appeal the jurisdictional issue. The trial court sentenced Johnson to a total of ten years of imprisonment. Johnson now appeals.

Johnson again argues that the UNITE officers, acting under the authority of the Attorney General's Office, were without jurisdiction to conduct investigations in Powell County. Consequently, he maintains that any evidence seized as a result of that investigation, including Detective Cline's testimony to the grand jury, must be suppressed. In denying the motion, the trial court noted that it had previously addressed this issue in another case out of the same circuit.³ Since this matter turns on the construction and application of statutes setting out the Attorney General's authority, our review on appeal is *de novo*, without deference to the trial court's interpretation. *Bob Hook Chevrolet Isuzu, Inc. v.*

³ *Floyd Grover Johnson v. Commonwealth*, Nos. 09-CR-00133, 09-CR-00133-002, & 09-CR-00143. The appeal from that case is currently pending before another panel of this Court in *Floyd Grover Johnson v. Com.*, No. 2010-CA-000607-MR.

Commonwealth Transp. Cabinet, 983 S.W.2d 488, 490 (Ky. 1998); *Osborne v. Commonwealth*, 185 S.W.3d 645, 648 (Ky. 2006).

Operation UNITE is a federally-funded drug task force program serving the twenty-nine counties of Kentucky's Fifth Congressional District. *See* <http://operationunite.org/about/overview/> (last visited December 17, 2011). The parties agree that Powell County is not within the Fifth Congressional District. The Powell County Judge-Executive executed an Interlocal Cooperation Agreement to become a participant in UNITE, but the Agreement was not executed by all parties necessary to become effective pursuant to the Interlocal Cooperation Act, KRS 65.210-65.300. Rather, the Commonwealth argues that the UNITE officers and the investigators were acting under the authority of the Attorney General's Office. The trial court agreed, concluding that KRS 218A.240(1) provided the Attorney General's office with the authority to investigate Johnson's crime.

Since this matter concerns the extent of the Attorney General's authority, we begin with KRS 15.020, which sets out that the Attorney General is the chief law officer of the state and can exercise all common-law duties and authority pertaining to the office of the Attorney General, except when modified by statute. It is well-established that the General Assembly can modify the powers of the Office of the Attorney General. *See Commonwealth ex rel. Hancock v. Paxton*, 516 S.W.2d 865 (Ky. 1974), *Matthews v. Pound*, 403 S.W.2d 7, 10-11 (Ky. 1966), *Commonwealth ex rel. Ferguson v. Gardner*, 327 S.W.2d 947, 948 (Ky. 1959), and

Johnson v. Commonwealth ex rel. Meredith, 291 Ky. 829, 165 S.W.2d 820, 826 (Ky. App. 1942).

The trial court concluded that KRS 218A.240(1)⁴ specifically grants state-wide jurisdiction to officers employed by the Attorney General's Office to enforce provisions of KRS Chapter 218A and all other statutes relating to controlled substances. Johnson argues that the statute does not expand the Attorney General's jurisdiction, but merely provides a general statement of legislative intent that the enumerated law enforcement officers shall, within their respective jurisdictions, enforce controlled substances laws and shall cooperate with all agencies charged with the enforcement of the laws of this state. He further argues that the Attorney General's authority to investigate and prosecute drug offenses is limited by KRS 15.200(1), which provides as follows:

Whenever requested in writing by the Governor, or by any of the courts or grand juries of the Commonwealth, or upon receiving a communication from a sheriff, mayor, or majority of a city legislative body stating that his participation in a given case is desirable to effect the administration of justice and the proper enforcement of the laws of the Commonwealth, the Attorney General may intervene, participate in, or direct any investigation

⁴ KRS 218A.240(1) mandates:

All police officers and deputy sheriffs directly employed full-time by state, county, city, urban-county, or consolidated local governments, the Department of Kentucky State Police, the Cabinet for Health and Family Services, their officers and agents, and of all city, county, and Commonwealth's attorneys, and the Attorney General, within their respective jurisdictions, shall enforce all provisions of this chapter and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.

or criminal action, or portions thereof, within the Commonwealth of Kentucky necessary to enforce the laws of the Commonwealth.

Johnson takes the position that KRS 15.200 requires a local invitation before the Attorney General's Office has jurisdiction to intervene in a local criminal matter. The parties agree that there has been no local request for the Attorney General's Office to participate in this matter. Absent such an invitation, Johnson maintains that the Attorney General's Office had no authority to investigate this matter or to present evidence to the grand jury.

Johnson points to *Hancock v. Schroering*, 481 S.W.2d 57 (Ky. 1972), as supporting this view. In *Hancock*, a Jefferson County grand jury invited the Attorney General's Office to participate in the investigation and prosecution of criminal matters relating to alleged gambling and prostitution. The Attorney General's Office ultimately agreed, on the condition that his office has exclusive responsibility for the investigation and prosecution of the criminal matters at issue. The local Commonwealth's Attorney's office objected, arguing "that the Attorney General[']s Office] did not have the legal right to completely exclude the local prosecutor[.]" *Hancock*, 481 S.W.2d at 58-9.

In addressing this issue, the former Court of Appeals first noted that the Attorney General and the Commonwealth's Attorney are both constitutional offices whose respective authority is set out by the legislature. The Court found that KRS 15.200 operates as a limitation on the Attorney General to intervene, participate in, or exclusively direct the investigation and prosecution of criminal

activities. The Attorney General has authority to intervene only upon a specific request from the designated local officials. But upon receiving and accepting such a request, the Court concluded that the Attorney General's Office "had the right to exclusively control the investigation and any resultant prosecutions in the limited area defined." *Id.* at 61.

Johnson reads KRS 15.200 and *Hancock* as limiting the jurisdiction of the Attorney General's Office to intervene in the prosecution of a local criminal matter. But in *Hancock*, the matter arose by a declaratory judgment action filed by the Commonwealth Attorney against the Attorney General, and not as a challenge to the validity of the underlying prosecutions. Furthermore, the former Court of Appeals did not suggest that the Attorney General lacked any authority to investigate and prosecute local offenses. Rather, the Court implied that the Attorney General and the local Commonwealth Attorney have concurrent jurisdiction, but the local Commonwealth's Attorney's jurisdiction is primary and the Attorney General may intervene and take exclusive jurisdiction only upon a specific request by a designated local official. The absence of a local request may permit the Commonwealth Attorney to intervene and to re-assert primary jurisdiction. However, we do not read *Hancock* as invalidating any criminal investigation and prosecution initiated by the Attorney General without a local request.

Moreover, in *Hancock*, there was no other statutory authority which would permit the Attorney General's Office to participate in the investigation of a

local criminal matter. As the trial court in this case noted, KRS 218A.240(1) specifically authorizes officers employed by the Attorney General to investigate and prosecute drug-related offenses on a state-wide basis. Given this state-wide authority, we conclude that the requirements of KRS 15.200 do not apply in this case. Therefore, the trial court properly denied Johnson's motion to dismiss the indictment or to suppress evidence seized as a result of this investigation.

Accordingly, the judgment of conviction by the Powell Circuit Court is affirmed.

ACREE, JUDGE, CONCURS.

CLAYTON, JUDGE, DISSENTS WITHOUT A SEPARATE
OPINION.

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