

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000337-MR

QUINCY MARQUISE TAYLOR

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 14-CR-00443

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE, CHIEF JUDGE; D. LAMBERT AND VANMETER,
JUDGES.

ACREE, CHIEF JUDGE: Quincy Marquise Taylor appeals from the Fayette Circuit Court's judgment after entering a plea of guilty conditioned on his right to appeal the denial of his motion to suppress evidence. Taylor argues that the warrantless search of his vehicle's passenger compartment violated his Fourth and Fourteenth Amendment rights. After careful review of the record, we affirm.

I. Factual and Procedural Background

Officer Charles Farley was on patrol about 3:37 a.m. near the intersection of Richmond Road and Man O'War Boulevard in Lexington, Kentucky, when he observed Taylor's vehicle in a turn lane. He recognized the vehicle as he had seen it driving around Man O'War and pulling into a sports pub earlier that night. When the traffic light turned green, Taylor's vehicle did not move, and two vehicles had to drive around him. Officer Farley pulled his patrol vehicle behind Taylor's vehicle and sat through another traffic light cycle. He then approached Taylor's vehicle on foot, and saw Taylor, unconscious, with his foot on the brake. The vehicle doors were locked, the keys were in the ignition, and the motor was running.

Officer Berezna then arrived at the scene and the two officers knocked on the vehicle window and shouted but were unable to awaken Taylor. They called for emergency services. Officer Shawn Stafford arrived and opened the passenger side door with a "slim jim," a tool used to open locked car doors. Sergeant Jeremy Brislin entered the vehicle from the passenger side, placed it in park, and unlocked the doors to allow emergency personnel access. The emergency personnel attempted to wake Taylor by giving him sternum rubs and shouting at him. He did eventually come to and was pulled out of the vehicle. He was unsteady on his feet, incoherent, and unresponsive to verbal commands. Officer Stafford recognized Taylor and advised the other officers that Taylor was known to carry weapons.

Taylor then made a move to get back inside the vehicle. Sergeant Brislin instructed Officer Berezna to get Taylor away from the vehicle. Officers Farley and Berezna escorted Taylor to the front of the vehicle while Brislin searched under the driver's seat, passenger seat, and in the center console. He found an open alcohol container underneath the seats, and 134 oxycodone pills and 22.5 grams of cocaine in the center console. Taylor was taken approximately ten feet from the vehicle by the two officers and placed in handcuffs. He was frisked, and field sobriety tests were administered. After Brislin found the narcotics and open container in the vehicle, Taylor was read his *Miranda* rights. The officers then searched the trunk of the vehicle and found marijuana, digital scales, and two packs of suboxone. The officers also found \$3,635 in cash in Taylor's wallet and pockets.

Taylor filed a motion to suppress the items obtained from the search of his vehicle alleging that the search exceeded the scope of the Fourth and Fourteenth Amendments to the United States Constitution as well as Section 10 of the Kentucky Constitution. After a hearing, the trial court denied Taylor's motion to suppress on the grounds that the initial search of the passenger compartment was justified, and that the narcotics recovered from the center console of the vehicle provided the officers with probable cause to search the trunk.

Taylor entered a conditional plea of guilty to the charges of trafficking in a controlled substance in the first degree, possession of drug paraphernalia, operating a motor vehicle under the influence of alcohol and/or drugs and being a persistent

felony offender in the second degree. He received a total sentence of ten years.

This appeal followed.

II. Standard of Review

Our review of a trial court's decision on a motion to suppress is two-fold. First, we must determine whether the trial court's findings of fact are supported by substantial evidence. If so, then they are conclusive. Kentucky Rules of Criminal Procedure (RCr) 9.78. Second, we review *de novo* the trial court's application of the law to those facts. *Brown v. Commonwealth*, 416 S.W.3d 302, 307 (Ky. 2013).

III. Analysis

Taylor argues that the warrantless search of the passenger compartment of his vehicle was unconstitutional because he was restrained and not within reaching distance of his vehicle at the time. "Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." *Arizona v. Gant*, 556 U.S. 332, 351, 129 S. Ct. 1710, 1723, 173 L.Ed.2d 485 (2009). Taylor contends that he had been removed from the vehicle and placed in handcuffs approximately ten feet away from the vehicle while Sergeant Brislin conducted the search of the passenger compartment.

The Commonwealth disputes this contention, pointing out that the trial court found that Taylor was grabbed by the officers and escorted to the front of the vehicle at the same time that Brislin was searching the front passenger

compartment. The trial court also noted that just before that, Officer Stafford had informed the other officers that he recognized Taylor and warned that he knew him to carry weapons. Taylor then attempted to get back in the vehicle.

Substantial evidence in the form of the officers' testimony supports the trial court's findings, and consequently, the search was justified under *Michigan v. Long*, 463 U.S. 1032, 1052, 103 S.Ct. 3469, 3482, 77 L.Ed.2d 1201 (1983), which provides that "a police officer may conduct an area search of the passenger compartment of an automobile to recover weapons, as long as they possess an articulable and objectively reasonable belief that the suspect is potentially dangerous." *Dockstader v. Commonwealth*, 802 S.W.2d 149, 151 (Ky.App.1991), citing *Michigan v. Long*, 463 U.S. at 1052, 103 S.Ct. at 3482, 77 L.Ed.2d at 1221.

Alternatively, even if Taylor was already safely under restraint at the time of the search, it was justified under "*Gant*'s alternative rule—that an officer may search a vehicle even when the arrestee is secured if he has a reasonable suspicion that the vehicle harbors evidence of the crime of arrest[.]" *Rose v. Commonwealth*, 322 S.W.3d 76, 80 (Ky. 2010). Based on Taylor's condition at the traffic light, and the difficulty with which the emergency personnel had in bringing him to consciousness, the police had a reasonable suspicion that Taylor was driving under the influence of drugs or alcohol, and consequently, a reasonable suspicion that the vehicle harbored evidence of the crime of arrest.

As for the search of Taylor's trunk, probable cause existed to search it in light of the contraband that was recovered from the driver's seat, passenger seat, and center console. "[W]here probable cause justifies the search of a lawfully stopped vehicle, it also justifies the search of every part of the vehicle and its compartments and contents that may conceal the object of the search." *Estep v. Commonwealth*, 663 S.W.2d 213, 215 (Ky. 1983). "When police have probable cause to believe a car contains evidence of criminal activity, they may search the entire vehicle, including areas that are not in plain view." *Chavies v. Commonwealth*, 354 S.W.3d 103, 111 (Ky. 2011). Accordingly, the search of Taylor's entire vehicle was proper under these circumstances.

IV. Conclusion

The Fayette Circuit Court did not err in denying Taylor's motion to suppress, and therefore, its final judgment is affirmed.

ALL CONCUR.

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