

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2016-CA-000276-MR

RODERICK HILL

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE, JAMES D. ISHMAEL, JR., JUDGE  
ACTION NO. 15-CR-00449

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: J. LAMBERT, STUMBO, AND TAYLOR, JUDGES.

STUMBO, JUDGE: Appellant, Roderick Hill, entered a conditional guilty plea pursuant to Kentucky Rules of Criminal Procedure (RCr) 8.09 to trafficking in a controlled substance in the first degree (less than four grams of cocaine), trafficking in a controlled substance in the first degree (less than two grams of heroin), and persistent felony offender in the second degree. He was sentenced to six years' imprisonment. The issue Hill preserved for appeal is whether the search

of a rental vehicle, rented by another person but driven by Hill during the commission of the criminal acts, was lawful under the Fourth and Fourteenth Amendments of the United States Constitution. Because we conclude that the search was lawful, based on probable cause, we affirm.

The record indicates that a paid informant purchased narcotics from an unknown black male on three occasions. Police officers observed each of these transactions take place, and on each occasion the unknown male drove a black Hertz rental car with Tennessee plates. It was later determined that the car was rented to a woman by the name of Tanee Allen.

After the third transaction, in order to determine the identity of the car's driver, Detective Johnson instructed a uniformed patrol officer to follow the car and pull it over if and when the driver committed a traffic infraction. After conducting a traffic stop, the officer reported to Johnson that the driver of the car was named Roderick Hill, and that there was no one else present in the vehicle. Johnson took the information he received from the officer and printed Hill's photo using the police database. He showed the photo to the informant who identified Hill as the man who had sold him the narcotics. After determining that Hill was on parole, Johnson went to the office of Hill's parole officer and waited for Hill to come in for a scheduled meeting, where he was immediately placed under arrest.

During the arrest, Johnson confiscated the keys Hill had in his possession. Johnson saw that the keychain had a tag connected to it showing a Hertz Rental Car logo. Johnson called Hertz to see if the car had GPS tracking, but was

informed that it did not. After unsuccessfully searching for the vehicle, police officers accessed Hill's jailhouse phone calls to find out who he had been contacting. It was observed that most of the phone calls were being made to a person named Angel. Johnson later found out where Angel lived and went to his residence where he found the Hertz rental vehicle that was observed during the narcotics transactions parked on the street. Johnson immediately called in a K-9 unit to sweep the car. After the K-9 officer alerted on the vehicle, Johnson searched the vehicle; however, the search yielded no drugs. Johnson did find Hill's ID and cell phone. Johnson used his personal cell phone to dial the number his criminal informant used to reach the narcotics dealer. Upon dialing the number, Hill's cell phone rang.

Prior to trial, Hill challenged the search of the rental vehicle. At the suppression hearing, Hill argued that no exigent circumstances existed to justify the warrantless search. The Commonwealth argued that 1) Hill did not have standing to challenge the search of the rental car; 2) even if Hill did have standing, police had probable cause based on the dog sniff; and 3) the evidence would have been inevitably discovered following an inventory either by the police before they returned it to Hertz or by Hertz when it cleaned the car for the next customer. In denying Hill's motion, the trial court found that the search of the rental vehicle was permissible based upon probable cause and the automobile exception. We agree.

In reviewing a trial court's denial of a motion to suppress, we review the court's factual findings for clear error. Under this standard, if the findings of fact

are supported by substantial evidence, then they are conclusive. *Simpson v. Commonwealth*, 474 S.W.3d 544, 546-47 (Ky. 2015). We review *de novo* the court's application of the law to those facts to determine whether the trial court's decision is correct as a matter of law. *McCloud v. Commonwealth*, 286 S.W.3d 780, 784 (Ky. 2009).

The United States Supreme Court has long expressed as a basic tenet of Fourth Amendment jurisprudence that warrantless searches are presumptively unreasonable, "subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct 507, 514, 19 L.Ed.2d 576 (1967) (footnote omitted). While the Court has recognized that individuals' privacy interests in their vehicles are constitutionally protected, it has also recognized that the basic attributes of vehicles "justif[y] a lesser degree of protection of those [privacy] interests." *California v. Carney*, 471 U.S. 386, 390, 105 S.Ct. 2066, 2068, 85 L.Ed.2d 406 (1985). Accordingly, one of the exceptions to the warrant requirement that the Supreme Court has identified is the so-called automobile exception. *See Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925). Regarding this exception, the Court explained, "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more." *Pennsylvania v. Labron*, 518 U.S. 938, 940, 116 S.Ct. 2485, 2487, 135 L.Ed.2d 1031 (1996) (citation omitted).

Here, Hill concedes that probable cause to search the rental vehicle existed after the K-9 officer alerted on the rental vehicle, but expresses concern with the use of the dog to establish probable cause. *See Meghoo v. Commonwealth*, 245 S.W.3d 752, 756 (Ky. 2008) (once a trained dog alerts to the odor of drugs on a vehicle, probable cause exists to search the vehicle for contraband). Hill argues that the vehicle was not readily mobile; therefore, no exigent circumstance requiring immediate search of the vehicle existed. Thus, Hill argues, police were required to secure a warrant before searching the vehicle. In support of his argument, Hill highlights some of the trial court's factual findings. Specifically, Hill calls attention to: 1) the fact that the car was parked on the street in front of a home; 2) the fact that the person allegedly using the car to traffic in narcotics sat locked in a cell; 3) the fact that Detective Johnson had the keys to the vehicle; and 4) the fact that Detective Johnson admitted at the suppression hearing that there was time to apply for a warrant. We remain unconvinced as Hill's argument is inconsistent with Kentucky case law.

Regarding "ready mobility," our Supreme Court explained in *Chavies v. Commonwealth*, 354 S.W.3d 103 (Ky. 2011), that the term refers to the capability of moving the vehicle and not the probability:

Ready mobility refers to the capability of using an automobile on the highways, not the probability that it will be used to do so. In *California v. Carney*, the Supreme Court held that a stationary automobile is *readily mobile by the turn of an ignition key, if not actually moving*. An individualized assessment of the likelihood that the car will be driven away or that its

contents will be tampered with during the period required to obtain a warrant is unnecessary. And a search of an automobile is proper even if the occupants or owners are taken into custody. The mobility of an automobile is an exigent circumstance, per se. And the 'automobile exception' has no separate exigency requirement.

*Id.* at 111 (Emphasis in original; internal quotations and citations omitted). The Court went on to explain that the other basis for the automobile exception is a lower expectation of privacy with respect to vehicles. *Id.*

Here, the rental car, while not being currently used, was readily mobile by the turn of a key. Not only was the vehicle capable of being driven away, it was also probable in this case. In the time necessary for police to secure a warrant, the authorized renter, who may have possessed an extra set of keys, could have come and removed the vehicle. In addition, Hertz could have come and taken possession of the vehicle or anyone could have called and had the vehicle towed. Regardless, it is the inherent nature of a vehicle, and not the probability of it being moved, that makes the vehicle readily mobile. *Id.* Thus, it is of no consequence that Hill was in custody at the time the car was searched or that the car was parked. The fact that Detective Johnson possessed a set of keys to the vehicle is also irrelevant. Those facts do not detract from the vehicle's ready mobility. Accordingly, we find that the rental vehicle was readily mobile and probable cause existed to search the vehicle by virtue of the K-9 alert; therefore, a warrant was not required. The trial court properly denied Hill's motion to suppress.

Because we conclude that the search of the rental vehicle was permissible because it was based upon probable cause, we find it unnecessary to address the Commonwealth's arguments regarding standing and inevitable discovery.

For the foregoing reasons, we affirm the Fayette Circuit Court.

ALL CONCUR.

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