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Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001547-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JOHN E. REYNOLDS, JUDGE
ACTION NO. 18-CR-00227

CRAIG LOUIS DEAN MILNER

APPELLEE

OPINION
VACATING AND REMANDING

** ** * ** * ** *

BEFORE: GOODWINE, MAZE, AND SPALDING, JUDGES.

SPALDING, JUDGE: On December 26, 2017, Officer Christopher Carrington (“Officer Carrington”) of the Lexington Police Department responded to a report of an unconscious individual (“Milner” or “appellee”) in the front seat of a vehicle located in the parking lot of a business in Lexington, Kentucky. The authorities became aware of the circumstances described herein after receiving a phone call

from a third-party caller (“Phillips”), who observed an unconscious Milner after pulling into the parking lot of a hardware store off Richmond Road.

Upon arriving at Milner’s location, Officer Carrington approached Milner’s vehicle and called out to Milner in order to wake him. Officer Carrington noticed the presence of a “glass pipe,” as well as a “small baggie of an unknown substance,” in plain view inside Milner’s vehicle. Officer Carrington requested Milner step out of the vehicle. Milner complied but continued to place his hands in his pockets throughout the interaction, despite Officer Carrington’s requests that he refrain from doing so. Therefore, Officer Carrington asked Milner whether he could search his pockets. Milner consented.

The subsequent search of Milner’s pockets revealed the presence of “three or four white pills,” later identified as Lyrica tablets. It was later determined that Milner had been prescribed the Lyrica medication. However, the search also revealed the presence of a Christmas ornament with a white residue present on the inside of the ornament.

At this point, it became apparent to Officer Carrington that Milner was under the influence of illicit substances. Milner was placed in handcuffs and read his *Miranda* rights. Milner relayed to Officer Carrington that he had used methamphetamine earlier in the day. Milner was ultimately charged with public

intoxication, possession of a controlled substance, and possession of drug paraphernalia.

On August 22, 2018, Milner, through counsel, filed a “Motion to Dismiss Pursuant to KRS 218A.133(2).” Specifically, Milner sought to have counts one (possession of a controlled substance, first degree) and two (possession of drug paraphernalia) dismissed pursuant to statute. On August 27, 2018, the circuit court held a hearing on the motion. On September 20, 2018, the circuit court granted Milner’s motion and entered its “Order Granting Motion for KRS 218A.133 Suppression” (the “Order”). This appeal followed.

KRS 218A.133(2), commonly referred to as the “Good Samaritan Statute,” provides as follows:

(2) A person shall not be charged with or prosecuted for a criminal offense prohibiting the possession of a controlled substance or the possession of drug paraphernalia if:

(a) In good faith, medical assistance with a drug overdose is sought from a public safety answering point, emergency medical services, a law enforcement officer, or a health practitioner because the person:

1. Requests emergency medical assistance for himself or herself or another person;
2. Acts in concert with another person who requests emergency medical assistance; or
3. Appears to be in need of emergency medical assistance and is the individual for whom the request was made;

(b) The person remains with, or is, the individual who appears to be experiencing a drug overdose until the requested assistance is provided; and

(c) The evidence for the charge or prosecution is obtained as a result of the drug overdose and the need for medical assistance.

Subsection (1)(a) defines “drug overdose”:

(1) As used in this section:

(a) “Drug overdose” means an acute condition of physical illness, coma, mania, hysteria, seizure, cardiac arrest, cessation of breathing, or death which reasonably appears to be the result of consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a layperson would reasonably believe requires medical assistance[.]

On this appeal, we must first address the circuit court’s entry of an order suppressing “the drugs and glass pipe found in plain view on the center console of the car[.]” Suppression of the evidence at issue was the incorrect remedy to provide under KRS 218A.133. The statute calls for the “[e]xemption from prosecution for possession of [a] controlled substance or drug paraphernalia” where applicable, not the suppression of evidence obtained by law enforcement. (emphasis added). Subsection (2) of the statute, as provided above, explicitly provides that “[a] person *shall not be charged with or prosecuted for a criminal offense*” where the requisite elements of the statute have been satisfied. (Emphasis added). Thus, because the statute provides for immunity the circuit court erred in

suppressing evidence because suppression is not the relief provided by the statute. Although Milner may have been immune insofar as the criminal action pertained to possession, he was not immune to prosecution for other crimes. The suppressed items could have constituted evidence of other illegal activity. Indeed, subsection (3) of the statute expressly supports this principle: “[t]he provisions of subsection (2) of this section shall not extend to the investigation and prosecution of any other crimes committed by a person who otherwise qualifies under this section.” *See Commonwealth v. Kenley*, 516 S.W.3d 362, 366 (Ky. App. 2017) (declining to extend immunity to other crimes committed by an individual while simultaneously using and overdosing on drugs). Thus, this order must be vacated as it was not proper.

Both parties, while alleging or conceding that the circuit court’s entry of a suppression order was improper, nevertheless urge this Court to address the issue of whether the statute applies. Because that is necessary for a full adjudication of the matter, we will do so.

The burden of demonstrating that the statute applies rests with the defendant. *Allen v. Commonwealth*, No. 2017-CA-000389-MR, 2018 WL 4523207 at *3 (Ky. App. Sept. 21, 2018) (stating that a defendant must “show satisfaction of every element of the immunity provision[.]”). Thus, where a defendant argues that he or she is entitled to immunity based upon the provisions

of KRS 218A.133, it is incumbent upon said defendant to establish, by a preponderance of the evidence, that the requisite elements of KRS 218A.133 have been satisfied. If, after holding a hearing on the matter, the circuit court determines that the defendant has successfully demonstrated that immunity applies, the court shall enter an order of dismissal of a charge of possession of a controlled substance or possession of drug paraphernalia.

The circuit court's order in this matter does not systematically address the elements of KRS 218A.133(2). To find immunity under the statute, we believe that, first, KRS 218A.133(2)(a) must be satisfied that: (1) in good faith; (2) medical assistance with a drug overdose; (3) is sought from a public safety answering point, emergency medical services, a law enforcement officer, or a health practitioner; (4) because one of the three events identified by KRS 218A.133(2)(a)(1-3) is taking place. Next, the court must find that the person charged remained with the person needing help or is that person. KRS 218A.133(2)(b). Finally, the court must find that the evidence for the charge or prosecution is obtained as a result of the drug overdose and the need for medical assistance. KRS 218A.133(2)(c). Furthermore, a "drug overdose" is defined by the statute. KRS 218A.133(1)(a).

Having established the procedure to be followed, we now turn to the primary issue on appeal, which concerns the circuit court's interpretation of KRS

218A.133. A trial court's interpretation of a statute presents an issue of law; therefore, the standard of review is *de novo*. *Ford v. Perkins*, 382 S.W.3d 821, 824 (Ky. 2012) (citations omitted); *Rhodes v. Commonwealth*, 417 S.W.3d 762, 764-65 (Ky. App. 2013) (citing *Cumberland Valley Contractors, Inc. v. Bell County Coal Corp.*, 238 S.W.3d 644, 647 (Ky. 2007)).

In reviewing the circuit court's interpretation of KRS 218A.133, we are ever mindful that the cardinal rule of statutory construction mandates a court determine legislative intent and give effect to said intent. *See, e.g., Commonwealth, Cab. for Human Res., Interim Office of Health Planning and Certification v. Jewish Hosp. Healthcare Serv., Inc.*, 932 S.W.2d 388, 390 (Ky. App. 1996) (citations omitted). However, "where the language of a statute is clear and unambiguous on its face, we are not free to construe it otherwise even though such construction might be more in keeping with the statute's apparent purpose." *MPM Fin. Group, Inc. v. Morton*, 289 S.W.3d 193, 197 (Ky. 2009) (citing *Whittaker v. McClure*, 891 S.W.2d 80, 83 (Ky. 1995)). With these principles in mind, we turn to the circuit court's interpretation of the statute at issue and its application of that interpretation to the facts at hand.

Here, the circuit court, while not making every finding that the statute required, made several findings that impact the interpretation and application of subsection (2)(c) of KRS 218A.133. Specifically, on page one of the court's

Order, the court found that “[n]o medical treatment was rendered to [Milner] nor was any necessary.” The court further found that, at some point during the interaction described above, it “became apparent” to Officer Carrington that “the [appellee] did not need medical attention.” Despite these findings, the court held, on page two of the Order, that “the fact that [Milner] was in fact not overdosing” was not “fatal to the protection” afforded by the statute. Therefore, the circuit court concluded that KRS 218A.133(2) applied to this situation.¹

We disagree with the circuit court’s interpretation of KRS 218A.133(2)(c). The statute clearly requires a defendant establish that “[t]he evidence for the charge or prosecution” be “obtained *as a result of the **drug overdose and the need for medical assistance.***” (emphasis added). The language of the statute requires a drug overdose – not a “perceived drug overdose,” an “apparent drug overdose,” or a “presumed overdose.” Likewise, the language requires the need for medical assistance – not the “perceived need for medical assistance,” an “apparent need for medical assistance,” or the “presumed need for medical assistance.” The language of subsection (2)(c) is in objective terms. Its

¹ Again, the circuit court did not dismiss the charges requested by Milner in his motion but technically suppressed the evidence as a result of its ruling. Regardless of the remedy provided by the court, it is clear that it found the requisite provisions of KRS 218A.133(2) to be satisfied and, therefore, concluded that Milner was immune under the facts presented.

application does not turn on the subjective belief of the individual seeking medical assistance.

The court's evidentiary findings contradict its decision. The court provides that Milner "was in fact not overdosing" and "did not need medical attention." Due to the non-existence of an overdose and the absence of a need for medical assistance, neither element of KRS 218A.133(2)(c) was met in this case. Therefore, Milner was not entitled to immunity, as both elements must be met for immunity to be granted.

The Order of the Fayette Circuit Court holding that Milner is entitled to relief under KRS 218A.133 is hereby **VACATED** and **REMANDED**.

ALL CONCUR.

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