IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: JUNE 19, 2014
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2013-SC-000269-MR

BRIAN WILLIS — APPELLANT

V.

ON APPEAL FROM GRAYSON CIRCUIT COURT
HONORABLE BRUCE T. BUTLER, JUDGE
NO. 12-CR-00048

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant, Brian A. Willis, entered a conditional guilty plea to first offense manufacturing methamphetamine, second-degree possession of a controlled substance, possession of drug paraphernalia, and being a second-degree persistent felony offender (PFO). For these convictions, Appellant was sentenced to twenty-five years' imprisonment and now appeals as a matter of right alleging that: 1) he was subjected to an unconstitutional search and seizure; and 2) that the trial court erred by failing to provide sufficient findings of fact and conclusions of law when denying his motion to suppress. For the reasons that follow, we affirm the trial court.

In February 2012 Sergeant Brandon Cook drove by a Dollar General Store in Grayson County around midnight where he noticed a Ford Sport Trac parked in the store's parking lot. Cook returned to the store over an hour later and became suspicious when he saw a Chevrolet Cavalier parked beside the

Sport Trac in the rear of the building near a dumpster. Due to his suspicions, Cook shined his spotlight on the Cavalier and got out of his cruiser. Once he got out of his car, Cook noticed a very strong chemical odor that he immediately associated with a methamphetamine lab.

The brightness of the spotlight was sufficient to partially illuminate the interior of the Cavalier and, upon looking inside, Cook saw what he recognized as a methamphetamine "generator" in plain view inside the Cavalier. Cook also saw Appellant crawling from the driver's side to the passenger's side of the Cavalier. Based upon these circumstances, and because Appellant was acting "jittery," Cook asked Appellant to step outside the vehicle and place his hands on the roof. Shortly after, Appellant was read his *Miranda* rights and placed in handcuffs. Following a search, a one-step methamphetamine lab and other contraband were discovered in his vehicle.

Appellant was indicted for manufacturing methamphetamine, second-degree possession of a controlled substance, possession of drug paraphernalia, and for being a first-degree PFO. Shortly after his indictment, Appellant moved to suppress the evidence seized from his car. In his motion Appellant claimed that the search of his vehicle was illegally conducted without a warrant, on his mother's property, which happened to be right beside the Dollar General Store. In addition Appellant alleged that there were no exigent circumstances justifying an exception to the warrant requirement in connection with the search.

At the suppression hearing Cook testified that the parking lot is clearly defined with curbs all the way around it, and that there was no question that the vehicle was parked in the parking lot and not on Appellant's mother's property. Following Cook's testimony, Appellant's mother testified that while she did live directly next door to the Dollar General Store, she was not aware of where the vehicle was parked at the time of the search and seizure.

Appellant testified that his vehicle was parked in the grass on his mother's property, and that there was no way that he could have driven over the curb of the parking lot. Following Appellant's testimony, the trial court asked if the location of the vehicle was the crucial fact in resolving the issue, and Appellant's counsel agreed that it most definitely was.

Following this the tow truck driver, who towed away Appellant's vehicle, testified that when he picked up Appellant's vehicle it was close to the edge of the property line, but definitely was in the parking lot of the Dollar General Store. Detective Jeff Kelsey of the Grayson County Sheriff's Department and Officer Ian Renfro of the Leitchfied Police Department were also called as witnesses and testified that Appellant's car was parked in the parking lot.

Following additional briefing the trial court denied Appellant's suppression motion, concluding that the facts clearly supported that Appellant's vehicle was not parked on his mother's property and that the contraband seized was "in plain view."

Appellant eventually entered a conditional guilty plea, reserving the right to appeal the denial of his suppression motion. It is from this conviction and sentence that this appeal ensues.

Appellant first argues that he was subjected to an unconstitutional search and seizure. More specifically, Appellant contends that the trial court erred in concluding that the meth lab was in "plain view" because Officer Cook was only able to see inside the vehicle by using the police cruiser's spotlight.

"On appellate review of a trial court's denial of a motion to suppress, we apply the two-step process adopted in *Adcock v. Commonwealth*, 967 S.W.2d 6 (Ky. 1998)." *Smith v. Commonwealth*, 410 S.W.3d 160, 164 (Ky. 2013). "First, we review the trial court's findings of fact under a clearly erroneous standard." *Id.* (citing *Welch v. Commonwealth*, 149 S.W.3d 407, 409 (Ky. 2004)). "Under this standard, the trial court's findings of fact will be conclusive if they are supported by substantial evidence." *Id.* (citing RCr 9.78 and *Canler v. Commonwealth*, 870 S.W.2d 219, 221 (Ky. 1994)). "We then 'conduct a de novo review of the trial court's application of the law to the facts to determine whether its decision [was] correct as a matter of law.'" *Id.* (citing *Payton v. Commonwealth*, 327 S.W.3d 468, 471–72 (Ky. 2010) (quoting *Commonwealth v. Neal*, 84 S.W.3d 920, 923 (Ky. App. 2002)).

We begin by noting that, unlike in this appeal, during the proceedings below Appellant identified the main issue as being whether the car was parked in the Dollar General Store parking lot or on Appellant's mother's property at the time of the search and seizure. All of the testimony, except for that of the

Appellant, was that the car was parked in the parking lot. Appellant's own counsel even conceded that there was no dispute as to the car's location. For these reasons, we find that the trial court's determination that the vehicle was in the store's public parking lot was supported by substantial evidence, and thus this finding is conclusive for purposes of our review. *See* RCr 9.78.

While at the suppression proceedings Appellant's argument for relief focused on the location of the vehicle, on appeal his argument is that the contraband located inside the vehicle was not "in plain view" because Officer Cook was able to observe the contraband only by using the police cruiser's spotlight. Because, as noted by the Commonwealth, this issue was not properly preserved in Appellant's arguments at the suppression hearing, we will limit our review to the palpable error standard. RCr 10.26; KRE 103. "A finding of palpable error must involve prejudice more egregious than that occurring in reversible error, . . . and the error must have resulted in 'manifest injustice.'" *Id.* (citing *Brock v. Commonwealth*, 947 S.W.2d 24, 28 (Ky. 1997)).

We have previously held that "a determination of whether or not contraband is in plain view should not depend on existing lighting conditions or the time of day. For example we have held that one seeking to maintain his privacy should reasonably expect that persons disposed to look inside a motel room will not hesitate to enhance their visibility by use of a widely available device such as a flashlight." *Commonwealth v. Johnson*, 777 S.W.2d 876, 879 (Ky. 1989).

In the present case, we find no error in the trial court's determination that the items seized were in plain view. The search of the vehicle was conducted in the middle of the night, and thus the use of the spotlight to aid Cook's view into the Cavalier was completely reasonable, if, for no other reason, the safety of the officer conducting the search. Therefore, any items that the officer could see in the vehicle with the aid of the spotlight would be considered to be "in plain view." *Id.*

Appellant next argues that the trial court erred when it failed to provide sufficient findings of fact and conclusions of law when overruling his motion to suppress. More specifically he argues that at the suppression hearing the trial court made a cursory oral statement that the car was parked in the store parking lot and that the items seized were in plain view. Appellant further argues that the trial court did not make findings of fact on the issues brought into dispute, such as whether the use of a spotlight was a plain view search. Appellant asserts that the trial court's conclusory findings regarding the use of a spotlight hinders this Court's ability to review the denial of his motion to suppress. He argues that the matter should therefore be remanded to the trial court for the entry of additional findings in support of its decision to deny his motion.

While it is true that the trial court failed to enter a written order of its findings of fact and conclusions of law, we believe that the factual basis for the trial court's ruling is readily discernible from the suppression hearing record. *See Coleman v. Commonwealth,* 100 S.W.3d 745, 749 (Ky. 2002) (stating that

evidence offered at the suppression hearing, in conjunction with the trial judge's oral comments, may, as here, provide a sufficient insight into the court's findings of fact). Accordingly, we discern no need for a remand for additional findings of fact to be entered by the trial court.

For the aforementioned reasons, the judgment of the Grayson Circuit Court is affirmed.

All sitting. All concur.

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