

SUPREME COURT OF KENTUCKY

Blane v. Commonwealth

364 S.W.3d 140 (Ky. 2012) · No. 2010-SC-000713-MR · Decided April 26, 2012

SUMMARY

The Supreme Court of Kentucky reviewed Derryl D. Blane’s convictions for drug-trafficking offenses, possession of drug paraphernalia, and first-degree persistent felony offender status. The court held that the search warrant was supported by probable cause and that the Batson challenge was properly denied, but ruled that the trial court improperly amended the marijuana-trafficking charge after granting a directed verdict. The court also found palpable error in admitting prior amended charges during the penalty phase and in applying first-degree PFO status to one count, requiring reversal or remand on those issues.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Scott
JURISDICTION	Kentucky
DECIDED	April 26, 2012
DOCKET	2010-SC-000713-MR
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Blane appealed as a matter of right from convictions and a thirty-year sentence entered after a Christian Circuit Court jury trial.
STANDARD OF REVIEW	Suppression review is bifurcated: factual findings are reviewed for substantial evidence under RCr 9.78, and the legal ruling on the suppression motion is reviewed de novo, with great deference given to the warrant-issuing judge. A Batson determination is reviewed for clear error. Amendment of an indictment is reviewed for abuse of discretion. Unpreserved penalty-phase and PFO claims were reviewed for palpable error under RCr 10.26.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion; binding precedent in Kentucky subject to subsequent treatment.
PARTIES	Derryl D. Blane v. Commonwealth of Kentucky

TOPICS

suppression of evidence

probable cause

jury selection

sentencing

criminal procedure

PRACTICE AREAS

criminal law

criminal procedure

constitutional law

evidence

sentencing

QUESTIONS PRESENTED

1. Whether the search-warrant affidavit contained a deliberately or recklessly false or misleading statement about the reliability of the confidential informant and therefore failed to establish probable cause.
2. Whether the Commonwealth's peremptory strike of an African-American prospective juror violated Batson and the Equal Protection Clause.
3. Whether the trial court could amend the marijuana-trafficking charge after granting a directed verdict of acquittal on the school-zone charge.
4. Whether the penalty phase could include evidence of original charges that had been amended before the defendant was convicted of the amended offenses.
5. Whether the first-degree PFO conviction was valid as to Count 1 when Blane had only one prior felony conviction at the time he committed that offense.
6. Whether the thirty-year aggregate sentence exceeded Kentucky's statutory sentencing limit.
7. Whether Blane could request retroactive application of the amended drug-paraphernalia penalty under KRS 446.110.

HOLDINGS

1. The trial court properly denied suppression because the affidavit was not shown to contain a deliberate falsehood or reckless disregard for the truth, and the affidavit provided a substantial basis for finding probable cause under the totality of the circumstances.
2. The trial court did not clearly err in denying Blane's Batson motion because the Commonwealth provided race-neutral reasons for striking the prospective juror and Blane did not prove purposeful racial discrimination.
3. A trial court may not amend a charge after granting a directed verdict of acquittal on that count, and the amendment was independently impermissible because it charged an additional or different offense.
4. The Commonwealth may introduce the nature of prior offenses for which a defendant was convicted, but may not introduce original charges that were amended before conviction; admitting those charges was palpable error requiring a new penalty phase.
5. Blane's first-degree PFO conviction was invalid as to Count 1 because he had only one prior felony conviction when he committed that offense; the proper PFO degree for that count was second-degree PFO.
6. The maximum permissible aggregate sentence was twenty years, not thirty years, because KRS 532.110(1)(c) capped consecutive indeterminate terms at the longest extended term authorized for the highest class of offense.

7. On remand, Blane may request application of the amended KRS 218A.500 penalty because the amendment mitigated the punishment and judgment was pronounced after the amendment took effect.

KEY QUOTATIONS

“A trial judge cannot in essence grant a directed verdict but not actually grant it.” (151)

“Having granted a directed verdict of acquittal, the trial court had no authority to permit amendment of that count of the indictment under RCr 6.16.” (151)

“We conclude that introducing the original charges of Appellant's prior convictions constitutes palpable error in that it affected a substantial right to due process, resulting in a manifest injustice.” (153)

“Because the plain language of the statute, its commentary, and our case law all prohibit the imposition of a sentence of more than twenty years' imprisonment for the crimes for which Appellant was convicted, on remand he cannot be sentenced to more than twenty years in prison.” (155)

FACTUAL BACKGROUND

Police conducted two controlled drug purchases from Blane at his home, using confidential informants and recording and documented-money procedures. The second purchase, made by Connie Alexander, supplied the probable-cause basis for a search warrant; execution of the warrant produced cash, crack cocaine, and marijuana. At trial, the court allowed the Commonwealth to amend the marijuana charge after ruling that the evidence did not establish the charged school-zone element, and during the penalty phase the Commonwealth introduced the original charges underlying two prior convictions even though those charges had been amended before conviction.

PROCEDURAL HISTORY

Blane was convicted of two counts of first-degree cocaine trafficking, trafficking in marijuana of eight ounces or more, second-or-subsequent-offense possession of drug paraphernalia, and first-degree persistent felony offender status. The trial court imposed a thirty-year sentence. The Supreme Court of Kentucky affirmed the remaining convictions, reversed the marijuana-trafficking conviction, reversed the first-degree PFO conviction as to Count 1, vacated the corresponding sentences and enhancements, and remanded for a new penalty phase.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the conviction for trafficking in marijuana, eight ounces or more, and vacate its sentence; reverse the first-degree PFO conviction as to Count 1 and vacate the enhancement for that count; conduct a new penalty phase; do not admit prior amended charges for which Blane was not convicted; determine whether Blane is guilty of second-degree PFO as to Count 1; impose no aggregate sentence exceeding twenty years; and permit Blane to request application of the amended drug-paraphernalia penalty under KRS 446.110.

CASES CITED

- Franks v. Delaware, 438 U.S. 154 (1978)
- United States v. Halsey, 257 F. Supp. 1002 (S.D.N.Y. 1966)
- Aguilar v. Texas, 378 U.S. 108 (1964)
- Commonwealth v. Pride, 302 S.W.3d 43 (Ky. 2010)
- Ornelas v. United States, 517 U.S. 690 (1996)
- Illinois v. Gates, 462 U.S. 213 (1983)
- Taylor v. Commonwealth, 987 S.W.2d 302 (Ky. 1998)
- Lovett v. Commonwealth, 103 S.W.3d 72 (Ky. 2003)
- Batson v. Kentucky, 476 U.S. 79 (1986)
- Harris v. Commonwealth, 134 S.W.3d 603 (Ky. 2004)
- Commonwealth v. Coker, 241 S.W.3d 305 (Ky. 2007)
- Purkett v. Elem, 514 U.S. 765 (1995)
- Gilbert v. Commonwealth, 838 S.W.2d 376 (Ky. 1992)
- Commonwealth v. Combs, 316 S.W.3d 877 (Ky. 2010)
- Parks v. Commonwealth, 192 S.W.3d 318 (Ky. 2006)
- Owens v. Commonwealth, 329 S.W.3d 307 (Ky. 2011)
- Johnson v. Commonwealth, 105 S.W.3d 430 (Ky. 2003)
- Riley v. Commonwealth, 120 S.W.3d 622 (Ky. 2003)
- Schambon v. Commonwealth, 821 S.W.2d 804 (Ky. 1991)
- Henderson v. Commonwealth, 636 S.W.2d 648 (Ky. 1982)
- Stephens v. Commonwealth, 397 S.W.2d 157 (Ky. 1965)
- Frizzell v. Commonwealth, 511 S.W.2d 200 (Ky. 1974)
- Maum v. Commonwealth, 490 S.W.2d 748 (Ky. 1973)
- Cook v. Commonwealth, 129 S.W.3d 351 (Ky. 2004)
- Robinson v. Commonwealth, 926 S.W.2d 853 (Ky. 1996)
- Chavies v. Commonwealth, 354 S.W.3d 103 (Ky. 2011)
- Taulbee v. Commonwealth, 438 S.W.2d 777 (Ky. 1969)
- Carver v. Commonwealth, 303 S.W.3d 110 (Ky. 2010)
- Sanders v. Commonwealth, 301 S.W.3d 497 (Ky. 2010)
- Bray v. Commonwealth, 703 S.W.2d 478 (Ky. 1985)
- White v. Commonwealth, 770 S.W.2d 222 (Ky. 1989)
- Sanderson v. Commonwealth, 291 S.W.3d 610 (Ky. 2009)
- Hendley v. Commonwealth, 573 S.W.2d 662 (Ky. 1978)
- Lawson v. Commonwealth, 53 S.W.3d 534 (Ky. 2001)
- Mapp v. Ohio, 367 U.S. 643 (1961)
- In re Winship, 397 U.S. 358 (1970)

