

SUPREME COURT OF KENTUCKY

Commonwealth of Kentucky v. Perry Bell

2021-SC-0252-DG · No. 2021-SC-0252-DG · Decided October 19, 2022

SUMMARY

The Supreme Court of Kentucky affirmed the Court of Appeals' reversal of Perry Bell's conviction for tampering with physical evidence. The court held that Bell's act of dropping synthetic marijuana in the presence of police, where it was quickly and easily retrieved, constituted mere abandonment rather than tampering under KRS 524.100. The court overruled Taylor v. Commonwealth to the extent it conflicted with this holding and remanded for entry of a consistent judgment.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Conley; Chief Justice Minton; Justice Hughes; Justice Lambert; Justice Nickell; Justice Keller; Justice VanMeter
JURISDICTION	Kentucky
DECIDED	October 19, 2022
DOCKET	2021-SC-0252-DG
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Supreme Court of Kentucky granted the Commonwealth's motion for discretionary review of the Court of Appeals' reversal of Bell's conviction for tampering with physical evidence.
STANDARD OF REVIEW	A directed verdict is proper only when, under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt. The evidence and reasonable inferences are viewed in favor of the Commonwealth, with credibility and weight reserved for the jury.
PRECEDENTIAL VALUE	Published and precedential; opinion marked TO BE PUBLISHED.
PARTIES	Commonwealth of Kentucky v. Perry Bell

TOPICS

- criminal procedure
- evidence
- statutory interpretation
- standard of review
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Commonwealth presented sufficient evidence to support Bell's conviction for tampering with physical evidence under KRS 524.100.
2. Whether Bell's conduct of dropping or abandoning the synthetic marijuana in the presence and view of police constituted concealment or removal rather than mere abandonment.
3. Whether the court's holding conflicted with *Taylor v. Commonwealth* and, if so, whether *Taylor* should be overruled.

HOLDINGS

1. The Commonwealth presented insufficient evidence for a reasonable jury to find that Bell tampered with physical evidence; the trial court therefore should have granted a directed verdict on the tampering charge.
2. *Taylor v. Commonwealth* is overruled to the extent that the present case conflicts with its holding.
3. The Court of Appeals correctly reversed Bell's tampering conviction.

KEY QUOTATIONS

“[W]here a defendant merely drops, throws down, or abandons drugs in the vicinity of the defendant and in the presence and view of the police, and the officer can quickly and readily retrieve the evidence, the criminal act of concealment or removal has not taken place.” (at 4)

“One cannot conceal something that is already hidden from view.” (at 5)

FACTUAL BACKGROUND

Early one morning, Sergeant Cardwell encountered a vehicle parked without its lights on in a dead-end road known for drug activity. Bell, who was sitting in the passenger seat, clenched his hand, moved it beneath his right leg, and later brought it back up open while officers were present. After Corporal Cook opened the passenger door, he immediately saw a plastic bindle containing synthetic marijuana between the passenger door and seat, where it was clearly visible and quickly retrievable.

PROCEDURAL HISTORY

A Marion County jury convicted Bell of tampering with physical evidence and being a second-degree persistent felony offender, and he received an eight-year sentence. The trial court denied Bell's motions for a directed verdict. The Court of Appeals reversed and remanded. The Supreme Court of Kentucky affirmed the Court of Appeals and remanded for entry of a consistent judgment.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The case was remanded to the trial court to enter judgment consistent with the opinion, following reversal of Bell's tampering conviction.

CASES CITED

- Commonwealth v. Benham, 816 S.W.2d 186 (Ky. 1991)
- Commonwealth v. Sawhill, 660 S.W.3d 3 (Ky. 1983)
- Commonwealth v. James, 586 S.W.3d 717 (Ky. 2019)
- Hunter v. Commonwealth, 587 S.W.3d 298 (Ky. 2019)
- Taylor v. Commonwealth, 987 S.W.2d 302 (Ky. 1998)
- Hawkins, 406 S.W. 3d at 133
- McGuire v. Commonwealth, 595 S.W.3d 90 (Ky. 2019)
- University of Louisville v. Rothstein, 532 S.W.3d 644 (Ky. 2017)