

Virginia Court of Appeals -

Unpublished

Kennedy v. Commonwealth: October 8, 2024

MALIK LUQUAM KENNEDY

v. Record No. 1737-23-1

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION* BY JUDGE WILLIAM G. PETTY OCTOBER 8, 2024

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK Everett A. Martin, Jr., 1 Judge (J. Barry McCracken, Assistant Public Defender, on brief), for appellant. Appellant submitting on brief. Virginia B. Theisen, Senior Assistant Attorney General (Jason S. Miyares, Attorney General, on brief), for appellee. Malik Luquam Kennedy challenges the trial court's denial of his motion to suppress evidence recovered from his vehicle. He argues that the officers seized him in violation of his Fourth Amendment rights. Finding no error in the trial court's judgment, we affirm.

Norfolk: Defendant appeals his conviction for Possession of a Firearm by Felon on Fourth Amendment grounds.

Facts: The defendant, a convicted felon, possessed a handgun in his lap while sleeping in a vehicle that was blocking a resident's driveway. The resident summoned the police, and an officer responded, noticing the handgun. The officer stepped away and waited for a backup officer to arrive. While he waited, he noticed the defendant awake and begin moving around in the vehicle. When the officer returned to the vehicle, he noticed the defendant had hidden the firearm. The defendant denied that there was a firearm in the vehicle.

The defendant put his hands on the steering wheel but initially refused to open the door or exit the truck. He agreed to exit the truck only after additional officers arrived. One of the responding officers had discovered from a local police database that the defendant had been arrested for multiple felonies or felonious events in the city of Norfolk. The officers asked the defendant to exit the truck to further investigate the presence and location of the firearm. After the defendant exited the truck, an officer handcuffed him and

looked for the firearm within the area of the defendant's wingspan. An officer found the defendant's handgun inside the center console. After recovering the firearm, officers called the Police Operations Center and learned that the defendant was a convicted felon.

The defendant moved to suppress the firearm, asserting that the officers did not have a reasonable articulable suspicion that he was committing a crime when they detained him. The defendant argued that because it is not a crime to sleep in a vehicle with a firearm on one's lap, nor is it a crime to secure a firearm in the center console or glove compartment of a vehicle, neither officer had articulated any objective facts supporting the decision to detain him for further investigation.

Held: Affirmed.

The Court found that the trial court properly concluded that the officers had a reasonable, articulable suspicion that the defendant possessed a firearm unlawfully. The Court pointed out in a footnote that the officers did not detain the defendant until he exited the vehicle. Prior to the seizure, the Court noted that the defendant refused to open the door and did not fully cooperate or comply with officer demands until after a backup officer arrived and convinced the defendant to exit the truck. The Court also agreed that the officer's command that the defendant place his hands on the steering wheel and open the door was reasonable, as he did not know the firearm's location but knew it "was still in play."

In this case, the Court ruled that the officers' articulated facts supported their reasonable suspicion that the defendant was either concealing a weapon inside the truck or possessing a weapon as a convicted felon. The Court found that the defendant's actions in concealing the weapon after he saw the officer, lying about the presence of the gun inside the truck, and refusing to comply with the officer's commands, coupled with his history of felony arrests, would lead an experienced police officer to reasonably suspect "that criminal activity may be afoot." Therefore, the Court ruled that given those circumstances, the officers could briefly detain the defendant to confirm or dispel their suspicions and to prevent him from causing harm to the officers or others.

The Court insisted that the officers were not required to be certain that the defendant was a convicted felon before detaining him and trying to locate the concealed firearm; instead, they merely needed reasonable suspicion.

Tags: Investigative Detention – Reasonable Suspicion - Possession of Firearm by Felon

