

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-000155-MR

BRADLEY MONTGOMERY

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE JOHN R. ADAMS, JUDGE  
ACTION NO. 99-CR-00479

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: BUCKINGHAM, EMBERTON, AND TACKETT, JUDGES.

BUCKINGHAM, JUDGE: Bradley Montgomery appeals from a judgment of the Fayette Circuit Court sentencing him to twelve years in prison for committing criminal offenses and for being a persistent felony offender. In this appeal, he challenges the trial court's order denying his motion to suppress evidence. We affirm.

On March 5, 1999, Montgomery contacted Western Union in an attempt to obtain a money order. His request, placed in the name of Darren Boyer, was denied by Western Union when it learned the credit card he was attempting to use had been reported as stolen. Western Union traced the call back to the Red Roof Inn

in Lexington and then contacted the Lexington police to report the incident. Detective Craig Sorrel and Detective Chris White agreed to meet at the Red Roof Inn to investigate the incident.

Upon arriving at the Red Roof Inn, the detectives verified at the front desk that a Darren Boyer was registered as a guest. The detectives then proceeded to the suspect's room and knocked on the door and announced their identity. The occupant of the room answered the door and claimed to be Darren Boyer. When the detectives asked if they could enter the room to discuss the problem with the money transfer, the suspect agreed.

Once inside the room, Detective Sorrel began questioning the suspect about the money order. Detective White glanced around the room and noticed an open brief case and stacks of mail on the dresser to the right of the door. Detective White had been investigating crimes attributed to Montgomery, had attended several meetings concerning Montgomery with other law enforcement agencies, and, in fact, had a picture of Montgomery on his desk at that time. Detective White then realized that the suspect was Montgomery, not Darren Boyer, and he confronted Montgomery with this fact. Montgomery immediately admitted that he was not Boyer but was Bradley Jay Montgomery. Based on this admission, Montgomery was arrested on several outstanding warrants and informed of his Miranda rights.

After being advised of his rights, Montgomery pointed to the stacks of mail and admitted to stealing them as part of his scheme. He went on to explain how he used the mail for both credit card fraud and a split-check scheme. As the detectives

listened to Montgomery's confession, they could clearly see "the tools of the trade" spread out for view in the hotel room. In addition to the stacks of mail on the dresser, there was an open briefcase that contained binoculars, checks, various identification cards, and several pictures. A computer and scanner were also in plain view. In addition to seizing these items, the detectives seized additional items of stolen mail from Montgomery's car after receiving his permission to search it.

On April 27, 1999, a Fayette County grand jury indicted Montgomery on ten counts of second-degree criminal possession of a forged instrument, one count of fraudulent use of a credit card, nine counts of possession of stolen mail matter, and one count of being a first-degree persistent felony offender. Montgomery's attorney subsequently moved the trial court to suppress the items seized as well as the statements made by Montgomery at the time of his arrest.<sup>1</sup> On August 3, 1999, the trial court entered an order denying Montgomery's motion to suppress.

Montgomery subsequently entered a conditional guilty plea<sup>2</sup> to one count of second-degree criminal possession of a forged instrument, nineteen counts of criminal attempt to commit that offense, and to being a first-degree persistent felony offender. He was sentenced to twelve years in prison on Count 1 as enhanced by the persistent felony offender charge and was

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<sup>1</sup> Montgomery is not challenging the admissibility of his statements in this appeal.

<sup>2</sup> See Kentucky Rules of Criminal Procedure (RCr) 8.09.

sentenced to twelve months in the county jail on the other nineteen charges, which sentences were ordered to run concurrently with the twelve-year sentence. Montgomery was also ordered to pay \$4,476.74 in restitution. His guilty pleas were conditional pursuant to the applicable rule because he desired to challenge the trial court's order denying his suppression motion.

On July 21, 2000, a panel of this court vacated the judgment and conviction and remanded the matter to the trial court. This court noted that the trial court had failed to enter findings of fact to support its ruling as required by RCr 9.78. On remand, the trial court entered an order complying with the requirement of RCr 9.78 and again denied Montgomery's suppression motion. This appeal followed.

Montgomery argues on appeal that the trial court erred in denying his suppression motion because the search and seizure of the items from his hotel room were not accomplished pursuant to any exception to the general search warrant requirement of the Fourth Amendment of the U.S. Constitution and Section 10 of the Kentucky Constitution. The trial court relied in part on the "plain view" exception to the warrant requirement, and Montgomery asserts that the "plain view" exception was not applicable because there was nothing incriminating about the stacks of mail lying in plain view in his hotel room.

In Clark v. Commonwealth, Ky. App., 868 S.W.2d 101 (1993), this court noted that "[t]he 'plain view' exception validates searches and seizures when evidence is visible to the officer, provided the officer has not violated the constitution

in getting to where he can view the evidence; the officer has lawful access to the object itself; and the object's incriminating character is immediately apparent." Id. at 106, citing Hazel v. Commonwealth, Ky., 833 S.W.2d 831, 833 (1992). "If supported by substantial evidence the factual findings of the trial court shall be conclusive." RCr 9.78. See also Clark, 868 S.W.2d at 103. Montgomery has the burden to show that the trial court's ruling was clearly erroneous. See Clark, 868 S.W.2d at 103.

There is no question that the detectives did not violate the constitution in getting to where they could view the evidence. As we have noted, Montgomery granted the detectives' request to enter the hotel room to discuss the money order incident. Further, there is no question that the detectives had lawful access to the evidence. Rather, Montgomery's argument is that the "incriminating character" of the evidence was not immediately apparent to the detectives and, for that reason, the trial court should have ordered the evidence suppressed. In his brief, Montgomery emphasizes the fact that Detective White testified that he did not observe the addresses on the mail prior to Montgomery's arrest.

We disagree with Montgomery's argument. The "incriminating character" of the mail was made "immediately apparent" to the detectives by Montgomery himself. After Detective White confronted Montgomery with the fact that he was not Darren Boyer, Montgomery admitted his identity, confessed to the detectives, and pointed the detectives to the fruits of the

crimes which were in plain view in the hotel room. As the trial court noted in its order, Detective White testified that Montgomery said, "this is all the mail I stole, and this is how I did it." Montgomery's statements, together with Detective White's knowledge that Montgomery was wanted on several warrants relating to past incidents of mail theft and forgery, made the incriminating character of the mail and other items immediately apparent to the detectives. In short, the factual findings and order of the trial court were supported by substantial evidence and are, therefore, conclusive. See RCr 9.78.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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