

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2014-CA-000413-MR

KENNETH GONTERMAN

APPELLANT

v.

APPEAL FROM MEADE CIRCUIT COURT  
HONORABLE BRUCE T. BUTLER, JUDGE  
ACTION NO. 12-CR-00104

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: D. LAMBERT, MAZE AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Kenneth Gonterman appeals from his conviction on the basis that the trial court erred in failing to grant his motion to suppress.

On May 2, 2012, police officers searched Gonterman's home without a warrant, justifying their search based on his written consent. The officers discovered incriminating evidence and arrested Gonterman. Subsequently, he was indicted for first-degree trafficking in a controlled substance, second offense,

enhanced by firearm; manufacturing methamphetamine, first offense, enhanced by a firearm; possession of drug paraphernalia, enhanced by a firearm; convicted felon in possession of a firearm; and persistent felony offender in the second degree (PFO-2). Gonterman filed a motion to suppress arguing he did not validly consent.

At the suppression hearing, Detective James Terry of the Meade County Sheriff's Department and Gonterman testified and provided very different accounts of how the search occurred. Det. Terry testified he received reports about Gonterman from a confidential informant and the drug tip line that Gonterman was cooking and selling methamphetamine and had marijuana plants. He went with his partner to Gonterman's trailer to investigate.

Det. Terry testified they approached the front door of Gonterman's trailer and saw Gonterman outside by his truck. While the officers were both dressed in plain clothes and driving an unmarked vehicle, when they saw Gonterman they told him who they were and Det. Terry held out his badge. The officers were armed, but their firearms were under their shirts and not visible.

While talking to Gonterman, Det. Terry observed a hose sticking out of a pop bottle in the back of Gonterman's truck, which he believed to be a HCL generator for a methamphetamine lab.

Det. Terry testified he told Gonterman that he and his partner were informed Gonterman had marijuana plants and asked Gonterman for his consent to search his home for the plants. Gonterman denied having marijuana plants and

Det. Terry told Gonterman he would not be charged for having any plants. The officers were on Gonterman's front porch when they showed him the consent form, and asked if he could read or write. Gonterman said "yes."

Det. Terry testified he proceeded to go over the form with Gonterman and summarize it for him. Det. Terry told Gonterman he could refuse the search and had the right not to consent. Gonterman signed the form consenting to the search.

Det. Terry testified he and his partner then followed Gonterman inside. Det. Terry followed Gonterman into his room and saw packs of suspected methamphetamine and his partner who was in another room also saw methamphetamine. During the search Gonterman sat on his couch, unrestrained. At the end, Gonterman was crying and Det. Terry told him he would see what he could do to get him help for his drug problem. At the conclusion of the search, the officers took Gonterman into custody and read him his rights.

Gonterman testified the officers identified themselves when they met him outside his home and explained they were investigating reports that he had methamphetamine and marijuana, but did not ask his consent to search before coming in his home. After Gonterman denied he had drugs, he walked around his trailer and in through the back door. He testified he was scared because he knew he had "stuff" in his trailer. The officers followed him inside. He did not know that he had to tell them not to come in. There were drugs on his table. After coming inside, the officers asked him to sit down on the couch and put cuffs on

him. They then proceeded to search through his house. One officer said “it seems like you have a drug problem” and asked if he wanted outpatient help. He said “yes” and the officer said he would talk to the judge.

Gonterman testified that at the conclusion of the search, the officers gave him three papers to sign. They did not explain what the papers said and he signed them without looking. He admitted to signing the consent form, but stated he did not know what he was signing, and signed it after he was handcuffed. They did not tell him his rights, saying that he already knew them. Gonterman admitted he may have smoked methamphetamine on the day of the search but testified he had a good recollection of what happened that day and believed what he remembered was correct.

Gonterman testified that he could not validly consent based on his diminished capacity. He testified he cannot read and write very well. Prior to dropping out of school after finishing the ninth grade, his grades were all Fs but the school promoted him each year.

Gonterman testified that in 1996 he was in a four-wheeler accident, had blood on his brain, suffered brain damage and was in the hospital for three weeks. He was then transferred to rehab and had to learn to walk, talk and use the bathroom. He received disability benefits until 2009, when he became employed for a tree service as a “right-away cutter.” In this job, he uses chain saws and drives.

Previously, the trial court received a report from the Kentucky Correctional Psychiatric Center (KCPC) regarding Gonterman's competence, which largely corroborated Gonterman's account of his accident based upon records from the University of Louisville Hospital. Independent testing by KCPC indicated Gonterman's intelligence score fell within the borderline range, he had no significant ongoing deficits from his head injury but had low preexisting functioning.

The trial court orally denied the motion to suppress:

After hearing the testimony, I find that the defendant could read and write. He has been examined for competency issues and found to be competent to stand trial. The detective testified he explained the consent form to the defendant. The testimony of the detective was that he did not threaten the defendant to sign the consent and that he was not promised anything at the time he signed the consent. Detective Terry testified that he offered to get him some help after the consent was signed. The defendant testified that he did not really know what he was doing when he gave consent. Although he did testify that he had a head injury he's worked for several years since then. It's hard for this court to believe that he would be incapable of understanding a consent to search his house, not able to understand that, but still be able to understand how to work and operate chain saws and machinery and so forth. This court's going to make a finding that this consent to search was voluntary and knowing and intelligently given by the defendant. I am going to overrule the motion to suppress.

The trial court did not enter a written order.

Gonterman entered a conditional plea of guilty to amended charges: firearm enhancements from charges were deleted, the PFO-2 charge was dismissed

and the trafficking charge was amended from second offense to first offense. The trial court sentenced Gonterman in accordance with the Commonwealth's recommendations to five-years' incarceration for trafficking in a controlled substance in the first degree, first offense; ten years for manufacturing methamphetamine, first offense; twelve months for possession of drug paraphernalia; and five years for felon in possession of a firearm. The sentences for trafficking, felon in possession of a firearm and possession of drug paraphernalia were imposed concurrent to each other, but consecutive to the manufacturing sentence, for a total of fifteen-years' incarceration.

Gonterman appealed, arguing the trial court erred by denying his motion to suppress because he did not voluntarily consent to the search of his trailer.

All searches without a warrant are unreasonable unless they come under an exception, such as voluntary consent. *Cook v. Commonwealth*, 826 S.W.2d 329, 331 (Ky. 1992). Therefore, we must determine whether the trial court properly found that Gonterman voluntarily consented in denying his motion to suppress.

In reviewing the trial court's decision denying a motion to suppress, we apply a more deferential standard of review to its factual findings compared to its legal conclusions; while factual findings supported by substantial evidence are conclusive, we conduct a *de novo* review of how the trial court applies the law to those facts. *Payton v. Commonwealth*, 327 S.W.3d 468, 471-72 (Ky. 2010); *Commonwealth v. Neal*, 84 S.W.3d 920, 923 (Ky.App. 2002).

“[T]he question whether a consent to a search was in fact ‘voluntary’ or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances.” *Hampton v. Commonwealth*, 231 S.W.3d 740, 749 (Ky. 2007) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 227, 93 S.Ct. 2041, 2047–48, 36 L.Ed.2d 854 (1973)). It is the Commonwealth’s burden to demonstrate Gonterman’s consent was voluntary by a preponderance of the evidence, considering all the circumstances. *Cook*, 826 S.W.2d at 331-32; *Neal*, 84 S.W.3d at 925. In making its factual findings, the trial court may properly choose between competing and inconsistent versions of events presented at the suppression hearing. *Hampton*, 231 S.W.3d at 749. In determining whether Gonterman voluntarily consented to the search, we apply the objective perspective of a reasonable officer, rather than viewing the consent from Gonterman’s subjective perspective. *Payton*, 327 S.W.3d at 472, 474.

Substantial evidence supported the trial court’s factual findings that Gonterman could read and write, the detective explained the consent form, no threat or promise was made to induce consent and Gonterman was able to understand what he was doing. Implicit in these factual findings is that the trial court believed Det. Terry’s account that Gonterman signed the consent form prior to the search being conducted. Considering the totality of the circumstances, the trial court did not err in determining Gonterman voluntarily consented.

Accordingly, we affirm Gonterman's conviction by the Meade Circuit Court because it properly denied his motion to suppress.

ALL CONCUR.

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