

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-002364-MR

DIANE AUSTIN HILL

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT  
HONORABLE HENRY M. GRIFFIN, III, JUDGE  
ACTION NO. 98-CR-00015

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION AND ORDER DISMISSING APPEAL

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BEFORE: GUIDUGLI, HUDDLESTON AND JOHNSON, JUDGES.

GUIDUGLI, JUDGE. Diane Austin Hill (Hill) appeals from an order of the Daviess District Court which sentenced her to twelve months' incarceration, probated for two years following her conditional guilty plea to two counts of theft by unlawful taking of property valued at less than \$300. Having noted sua sponte that this Court is without jurisdiction to consider this matter, we order that her appeal be dismissed.

On January 6, 1998, Hill was indicted on one count of theft by unlawful taking of property valued at \$300 or more and one count of theft by unlawful taking of property valued at less than \$300. Hill's first trial before the Daviess Circuit Court

resulted in a mistrial when the jury was unable to agree upon a verdict.

On June 20, 2000, Hill filed a motion in the Daviess Circuit Court seeking to suppress any and all evidence taken from her at the time she was stopped and arrested on the grounds that the stop was not based on probable cause, that the search of her purse was improper because there was no search warrant, and because she was not advised of her rights as required by Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). On August 18, 2000, the Daviess Circuit Court denied Hill's motion.

Before the second trial could be held, Hill and the Commonwealth made a joint motion before the Daviess Circuit Court asking that the count of theft by unlawful taking of property valued at \$300 or more be amended to one count of theft by unlawful taking of property valued at less than \$300. In an order entered September 11, 2000, the Daviess Circuit Court granted the motion and, noting that both charges against Hill were now misdemeanors, remanded the matter to the Daviess District Court for final disposition. Despite the fact that the matter had been remanded to the Daviess District Court for final disposition and before the Daviess District Court could act, Hill filed a notice of appeal in the Daviess Circuit Court from the order denying her motion to suppress.

On September 18, 2000, the Daviess District Court entered an "Order on a Misdemeanor Conditional Plea of Guilt

Pursuant to North Carolina v. Alford.<sup>1</sup> Under the terms of the order, Hill entered an Alford plea to two counts of theft by unlawful taking of property valued at less than \$300 and was sentenced to two concurrent twelve month terms in the Daviess County jail probated for two years.

No further proceedings were conducted by either court in this matter, and Hill filed her notice of appeal with this Court on October 6, 2000. Once again, Hill stated that she was appealing from the Daviess Circuit Court's denial of her motion to suppress. However, on page one of her appellate brief, Hill acknowledged that "[t]his appeal arises as a matter of right, from a criminal conviction rendered against [her] by the Daviess District Court, dated September 19, 2000."

Pursuant to KRS 24A.110, district courts have exclusive jurisdiction over misdemeanor offenses. Although the original indictment was properly before the Daviess Circuit Court because it contained a felony and a misdemeanor charge, once the felony charge was amended to a misdemeanor charge, the Daviess Circuit Court acted properly in remanding the matter to the Daviess District Court for final disposition. See Jackson v. Commonwealth, Ky., 806 S.W.2d 643, 646 (1991) (holding that where misdemeanor and felony charges are combined in single indictment and felony charge is later dismissed, circuit court must immediately remand remaining misdemeanor charge to district court for disposition).

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<sup>1</sup>400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

We find that once the Daviess District Court entered its order on Hill's Alford plea, the only avenue of appeal available to her by law was an appeal to the Daviess Circuit Court. Pursuant to KRS 23A.080(1), direct appeals from final actions of a district court are to be taken to the circuit court level. If the Daviess Circuit Court were to rule against her, then the only way Hill could present this matter to us for review would be a motion for discretionary review pursuant to CR 76.20. The records on appeal from the Daviess District and Circuit Court show that Hill failed to appeal the Daviess District Court's order to the Daviess Circuit Court, therefore we are unable to entertain this appeal.

Nor do we believe that Hill's notice of appeal from the Daviess Circuit Court's order denying her motion to suppress is sufficient to trigger our jurisdiction. That order is merely a ruling on an evidentiary issue alone and was not a final disposition of the matter as was the Daviess District Court's order of September 18, 2000.

Having considered the parties' arguments, this appeal is hereby dismissed.

ALL CONCUR.

ENTERED: September 21, 2001

Daniel T. Guidugli  
JUDGE, COURT OF APPEALS

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