

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-002515-MR

CHESTER HOLLIFIELD

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE REBECCA M. OVERSTREET, JUDGE  
ACTION NO. 01-CR-00046

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
VACATING AND REMANDING  
\*\* \*\*

BEFORE: COMBS, GUIDUGLI AND SCHRODER, JUDGES.

GUIDUGLI, JUDGE. Chester Hollifield (hereinafter "Hollifield") has appealed from the October 16, 2001, final judgment of the Fayette Circuit Court entered following the entry of a conditional guilty plea pursuant to RCr 8.09. He was sentenced to two concurrent twelve-month terms for amended charges of criminal attempt to obtain a controlled substance by fraud in violation of KRS 218A.140. Pursuant to the terms of the plea agreement, the remaining five charges were dismissed. His guilty plea was conditioned on his being able to appeal the denial of his motion to suppress evidence obtained through use of the Kentucky All Schedules Prescriptive Electronic Reporting system

(hereinafter "KASPER.") However, because the circuit court failed to hold a competency hearing after receiving Hollifield's psychological evaluation, we are constrained to vacate the judgment and remand.

As the facts do not appear to be in dispute, we will only briefly address them. Detective Lynn Thompson (hereinafter "Detective Thompson") received a complaint from Detective Dan Smoot (hereinafter "Detective Smoot") in December 2000 indicating that Hollifield had been "doctor shopping", or obtaining controlled substances by fraud. At that time, Detective Smoot had been involved in a task force regarding Oxycontin in Eastern Kentucky. Following receipt of this complaint, Detective Thompson requested a KASPER report pursuant to KRS 218A.202(6)(b). KRS 218A.202 provides for an electronic system for monitoring controlled substances, and requires every dispenser in the Commonwealth or who is licensed by the Kentucky Board of Pharmacy to report data for each controlled substance dispensed. Pursuant to KRS 218A.202(6)(b), "[t]he Cabinet for Health Services shall be authorized to provide data to: . . . (b) A state, federal, or municipal officer whose duty is to enforce the laws of this state or the United States relating to drugs and who is engaged in a bona fide specific investigation involving a designated person."

Once she received the information from the KASPER system, Detective Thompson reviewed the report for overlapping prescriptions, verified the information by contacting the pharmacies, and compiled an independent list regarding those

overlapping prescriptions. She then contacted the prescribing physicians to determine whether they would have prescribed the controlled substance had they known of the previous prescriptions. Detective Thompson did not show the information on the KASPER report to anyone. Based upon Detective Thompson's testimony, the grand jury returned an indictment against Hollifield for five counts of obtaining a controlled substance by fraud.

Hollifield moved to suppress the evidence Detective Thompson obtained through her use of the KASPER system as it was obtained without a warrant. The circuit court denied this motion, noting that the statute was constitutional and that the use of the statute by police and the Commonwealth did not invade any of Hollifield's rights. Following this ruling, Hollifield entered a conditional guilty plea, reserving the right to appeal the propriety of the circuit court's denial of his motion to suppress. This appeal followed.

On appeal Hollifield not only attacks the suppression ruling but also argues before this Court that the case should be remanded to the circuit court to allow for resolution of the competency issue. At a status conference on February 23, 2001, Hollifield's counsel moved the circuit court for a psychological evaluation. According to information counsel received from his wife, Hollifield had been hallucinating in jail and at his February 8, 2001, arraignment. By order entered February 27, 2001, the circuit court granted Hollifield's request and ordered an examination by Kentucky Center for Psychiatric Care

(hereinafter "KCPC") to determine whether he was incompetent to stand trial pursuant to KRS 504.060(3) and whether he should be exculpated for his conduct under KRS 504.010(1). Following receipt of the report from KCPC, which is a sealed portion of the certified record on appeal, counsel indicated that he would be negotiating a plea agreement with the Commonwealth. However, a competency hearing was never held and the circuit court later allowed Hollifield to enter a conditional guilty plea.

Although Hollifield concedes that the issue of his competency was not preserved, the Supreme Court made it clear in Thompson v. Commonwealth, Ky., 56 S.W.3d 406 (2001), that once raised, a defendant cannot waive the issue of competency. Pursuant to KRS 504.100, the court is to appoint a psychologist or psychiatrist to examine a defendant, and to treat and report on his or her mental condition when "the court has reasonable grounds to believe the defendant is incompetent to stand trial." Once the report is filed, "the court shall hold a hearing to determine whether or not the defendant is competent to stand trial." Here, based upon counsel's assertion regarding Hollifield's apparent hallucinations, we believe the circuit court had reasonable grounds to question whether he was competent to stand trial and to order a competency evaluation. Pursuant to Thompson, once it is established that reasonable grounds existed, it is up to the trial to determine whether a retrospective competency hearing is permissible and, if so, to conduct a competency hearing. Therefore, we vacate the circuit court's

judgment and remand the matter for further proceedings in light of Thompson, supra.

As to the issue regarding the use of information obtained from the KASPER system, this Court recently issued the opinion of Thacker v. Commonwealth, Ky.App., \_\_ S.W.3d \_\_ (2002), which directly addresses the issues raised in this appeal regarding the KASPER system and is binding here. In Thacker, this Court rejected both of the appellant's arguments that the detective's use of the information received from the KASPER report in communication with the doctors and before the grand jury violated the confidentiality provisions of KRS 218A.202 and that the examination of the data from the KASPER report was an unreasonable search and seizure under the federal and Kentucky Constitutions.

We also agree with the trial court that requirement of "a bona fide specific investigation involving a designated person" pursuant to KRS 218A.020(6)(b) was also satisfied in this case. Detective Thompson received a complaint from Detective Smoot of the state police in Hazard, who had received a complaint of doctor shopping regarding Hollifield. The receipt of this information from a detective, as opposed to an anonymous tipster, satisfied the verified complaint requirement. Therefore, there was sufficient evidence to justify a search of the KASPER system. The circuit court did not commit any error in denying the motion to suppress.

For the foregoing reasons, the judgment of the Fayette Circuit Court is vacated and remanded for further proceedings in light of Thompson, supra.

ALL CONCUR.

BRIEF FOR APPELLANT:

Alicia A. Sneed  
Lexington, KY

BRIEF FOR APPELLEE:

A. B. Chandler, III  
Attorney General

William Robert Long, Jr.  
Assistant Attorney General  
Frankfort, KY