

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-001094-MR

DEXTER MOORE

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE THOMAS B. WINE, JUDGE  
ACTION NO. 00-CR-000813

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: EMBERTON, Chief Judge, BUCKINGHAM and GUDGEL, Judges.

BUCKINGHAM, JUDGE: Dexter Moore appeals from a judgment of the Jefferson Circuit Court wherein he was convicted of trafficking in a controlled substance (cocaine) in the first degree and of being a persistent felony offender in the second degree. We affirm.

On January 3, 2000, police officers executed a search warrant at Moore's residence. When they entered the residence, the officers found Moore standing naked in front of his open bedroom window. The co-defendant, Vicki Jackson, was in bed.

The officers retrieved nine pieces of crack cocaine that were found below the open bedroom window. During the

search, the officers also found \$8,508 in cash and other incriminating items of evidence.

A Jefferson County grand jury indicted Moore on charges of trafficking in a controlled substance (cocaine) in the first degree, illegal use or possession of drug paraphernalia, and persistent felony offender in the second degree. Jackson was also indicted for the trafficking and drug paraphernalia offenses.

Moore was arraigned by the trial court on April 17, 2000. A discovery order which contained reciprocal discovery provisions was entered at that time. Two days later, on April 19, 2000, the Commonwealth filed a response to the court's discovery order and requested reciprocal discovery from Moore and Jackson. Moore was apparently arraigned again on September 8, 2000, and a second discovery order was entered by the court at that time. That order likewise contained reciprocal discovery provisions.

The case went to trial on January 11-12, 2001. Upon the motion of the Commonwealth, the court dismissed the drug paraphernalia charges against Moore and Jackson prior to trial. At the conclusion of the presentation of the Commonwealth's case, the charges against Jackson were dismissed. However, the jury found Moore guilty of the trafficking offense at the conclusion of the trial. Prior to the penalty phase of the trial, an agreement was reached regarding Moore's sentence, whereby he would be sentenced to five years on the trafficking charge enhanced to ten years by virtue of the persistent felony offender

charge. The final judgment was entered by the trial court on April 20, 2001, and this appeal by Moore followed.

During the trial, the Commonwealth introduced evidence that \$8,508 in cash was seized during the search and that said cash constituted proceeds from sales of crack cocaine. After the charges against Jackson were dismissed, she testified that a portion of the cash (\$5,037.63) represented proceeds from a loan for the purchase of a new automobile. Moore sought to introduce into evidence a loan document to support Jackson's testimony. The Commonwealth objected to the admissibility of the document on the ground that Moore had failed to provide it prior to trial. The trial court agreed with the Commonwealth and did not allow the document to be admitted into evidence. At the conclusion of Jackson's testimony, a juror or jurors inquired of the court as to the existence of documents to support Moore's claim as to the loan proceeds. The court declined to respond to the question.

Moore's sole argument on appeal is that the trial court committed reversible error in denying his right to introduce the loan document to support Jackson's testimony. Moore states that his trial counsel was not made aware of the document until the day before trial and that counsel cannot be charged with the failure to comply with the discovery rule.

RCr<sup>1</sup> 7.24(2)(ii) states as follows:

If the defendant requests disclosure under Rule 7.24(2), upon compliance with such request by the Commonwealth, and upon motion of the Commonwealth, the court may order that the defendant permit the Commonwealth to

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<sup>1</sup> Kentucky Rules of Criminal Procedure.

inspect, copy, or photograph books, papers, documents or tangible objects which the defendant intends to introduce into evidence and which are in the defendant's possession, custody, or control.

RCr 7.24(9) states as follows:

If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or an order issued pursuant thereto, the court may direct such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as may be just under the circumstances.

Because Moore waited until the trial was in progress before giving notice of the document to the Commonwealth, the trial court clearly had the authority pursuant to RCr 7.24(9) to prohibit Moore from introducing the document into evidence. The issue is whether the trial court abused its discretion in doing so.

Moore was aware of the discovery order as early as his arraignment on April 17, 2000. Further, as we have noted, a second discovery order was entered on September 8, 2000. This second order was entered approximately four months before the trial date. Nevertheless, Moore did not make his counsel aware of the loan document until the day before the trial. Further, the Commonwealth was not notified of its existence until after the trial had commenced. Under these circumstances, we conclude that the trial court did not abuse its discretion in excluding the document from evidence. See Nunn v. Commonwealth, Ky., 896 S.W.2d 911, 914 (1995). Furthermore, in light of the fact that

there was an additional \$3,500 in cash that was seized at the residence, we conclude that Moore could not have been prejudiced by the trial court's exclusion of the evidence.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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