

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-001863-MR

JEFFREY HANKINS

APPELLANT

v. APPEAL FROM TODD CIRCUIT COURT  
HONORABLE TYLER L. GILL, JUDGE  
ACTION NO. 01-CR-00072

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
VACATING AND REMANDING

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BEFORE: JOHNSON, MINTON AND TACKETT, JUDGES.

JOHNSON, JUDGE: Jeffrey Hankins has appealed from a final judgment and sentence of the Todd Circuit Court entered on August 29, 2002, which, following Hankins's conditional pleas of guilty to possession of marijuana under eight ounces,<sup>1</sup> possession of drug paraphernalia, second offense,<sup>2</sup> operating a motor vehicle

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<sup>1</sup> Kentucky Revised Statutes (KRS) 218A.1422. Possession of marijuana is a Class A misdemeanor.

<sup>2</sup> KRS 218A.500(2). Possession of drug paraphernalia is a Class A misdemeanor for a first offense, and a Class D felony for second and subsequent offenses.

on a suspended license,<sup>3</sup> and operating a motor vehicle without insurance,<sup>4</sup> sentenced Hankins to three years' imprisonment in accordance with the Commonwealth's recommendations. Having concluded that Hankins was entitled to an evidentiary hearing on his motion to suppress evidence and to have findings of fact and conclusions of law entered into the record, we vacate and remand for further proceedings.

In November 2001 Hankins was indicted by a Todd County grand jury on one count of possession of marijuana under eight ounces, one count of possession of drug paraphernalia, second offense, one count of operating a motor vehicle on a suspended license, one count of operating a motor vehicle without insurance, one count of trafficking in a controlled substance in the first degree, first offense,<sup>5</sup> and as being a persistent felony offender in the first degree (PFO I).<sup>6</sup> In December 2001 Hankins entered pleas of not guilty to all of the charges in his indictment.

On January 30, 2002, Hankins filed a motion to dismiss all of the charges in his indictment, on grounds that the alleged offenses did not take place in Kentucky, and that the

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<sup>3</sup> KRS 186.620(2).

<sup>4</sup> KRS 304.39-080.

<sup>5</sup> KRS 218A.1412. Trafficking in a controlled substance in the first degree is a Class C felony for a first offense.

<sup>6</sup> KRS 532.080(3).

trial court therefore lacked jurisdiction. The trial court conducted an evidentiary hearing that same day, which revealed the following facts.

On or around September 2, 2001, Officer John Hancock of the Guthrie Police Department was performing routine patrol duties when he noticed a vehicle leaving an anhydrous ammonia storage lot. Officer Hancock followed the vehicle as it crossed the state line into South Guthrie, Tennessee. Officer Hancock observed a white male driving the vehicle and a black male in the passenger seat. Officer Hancock testified that although he made no effort to pull the car over in Kentucky, he did form the intent to stop the vehicle while he was following the car in Kentucky.

After the vehicle turned into the driveway of an abandoned house, Officer Hancock pulled in behind the car, activated the lights on his police cruiser, and blocked the vehicle's means of egress. Officer Hancock stated that after blocking the vehicle in the driveway, the black male passenger exited the vehicle and fled the scene. Shortly thereafter, police officers from Tennessee arrived on the scene and arrested Hankins, who was the driver of the automobile. A search of Hankins's person revealed a partially burned marijuana cigarette and rolling papers. A search of the area around where Hankins was arrested revealed a baggie containing crack cocaine, which

Hankins had apparently thrown onto the ground after exiting the vehicle.

Following Officer Hancock's testimony, the trial court orally denied Hankins's motion to dismiss. The trial court stated that it did not have the authority to dismiss the charges against Hankins, and further stated that since Hankins was found to be in possession of drugs in Tennessee, it allowed for an inference that Hankins had also been in possession of drugs while he was in Kentucky. Finally, the trial court noted that there may be issues with regard to the legality of the stop of the vehicle in Tennessee.

On March 18, 2002, Hankins filed a motion to suppress all of the evidence seized on the date of his arrest, and a motion to sever the charge of possession of drug paraphernalia, second offense. In his motion to suppress, Hankins raised the issue of the legality of his arrest. On March 20, 2002, without conducting an evidentiary hearing, the trial court denied both motions, but did not enter findings of fact or conclusions of law.

Following the denial of his motion to suppress evidence and motion to sever, Hankins elected to accept the Commonwealth's plea offer and entered conditional pleas of guilty to possession of marijuana under eight ounces, possession of drug paraphernalia, second offense, operating a motor vehicle

on a suspended license, and operating a motor vehicle without insurance, while preserving his right to appeal the denial of his motion to dismiss and motion to suppress evidence. In exchange for Hankins's conditional guilty pleas, the Commonwealth agreed to recommend that Hankins be sentenced to 12 months in jail for his conviction for possession of marijuana, that he be sentenced to three years' imprisonment for his conviction for possession of drug paraphernalia, second offense, that he be sentenced to 90 days in jail for his conviction for operating on a suspended license, and that he be fined \$500.00 for his conviction for operating a motor vehicle without insurance. The Commonwealth also recommended that all of Hankins's sentences be served concurrently for a total sentence of three years' imprisonment. In addition, the Commonwealth agreed to recommend that prosecution of the charge for trafficking in a controlled substance be diverted and that the PFO I charge be dismissed. On August 29, 2002, the trial court entered a final judgment and sentence against Hankins and sentenced him to three years' imprisonment.<sup>7</sup> This appeal followed.<sup>8</sup>

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<sup>7</sup> It is unclear from the record whether the charge for trafficking in a controlled substance in the first degree was dismissed by the trial court or whether prosecution of the charge was diverted. In addition, \$400.00 of Hankins's \$500.00 fine was ordered probated upon sufficient proof of insurance.

<sup>8</sup> On November 4, 2002, Hankins filed a motion to suspend further execution of his sentence pursuant to KRS 439.265. On November 12, 2002, the trial court

Hankins's sole claim on appeal is that he is entitled to a limited remand in order for the trial court (1) to conduct an evidentiary hearing regarding the issues raised in his motion to suppress evidence; and (2) to enter findings of fact and conclusions of law into the record following such a hearing.

In its brief to this Court, the Commonwealth agrees that a remand is appropriate, but argues that it should be left to the discretion of the trial court as to whether an evidentiary hearing is necessary, i.e., the Commonwealth argues that if the trial court determines that the factual record from the evidentiary hearing on Hankins's motion to dismiss is sufficient to address the issues raised in Hankins's motion to suppress evidence, the trial court should not be required to conduct an additional evidentiary hearing, but instead it should only enter findings of fact and conclusions of law. Hankins argues that an additional evidentiary hearing is necessary and we agree.

Pursuant to RCr<sup>9</sup> 9.78, if a defendant properly presents a motion to suppress evidence, "the trial court shall conduct an evidentiary hearing outside the presence of the jury and at the conclusion thereof shall enter into the record findings

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granted Hankins's motion, conditioning Hankins's probation on his completion of a drug treatment program.

<sup>9</sup> Kentucky Rules of Criminal Procedure.

resolving the essential issues of fact raised by the motion or objection and necessary to support the ruling [emphases added].” The “shall” language of this provision reflects the mandatory nature of the rule.<sup>10</sup> Furthermore, an evidentiary hearing is required even where the defendant has not specifically asked for a hearing on his motion to suppress evidence.<sup>11</sup>

In addition, as Hankins has noted in his brief, during the evidentiary hearing conducted pursuant to his motion to dismiss, the parties were not necessarily focused on the factual and legal issues that might be relevant to a motion to suppress evidence. Therefore, we hold that on remand, the trial court must conduct an evidentiary hearing to address the issues raised in Hankins’s motion to suppress evidence. If, after the evidentiary hearing, the trial court grants Hankins’s motion to suppress evidence, Hankins shall be allowed to withdraw his conditional guilty plea and plead anew. Accordingly, we vacate the trial court’s denial of Hankins’s motion to suppress evidence, and remand this matter with directions to conduct an evidentiary hearing and to enter the appropriate findings of fact and conclusions of law into the record.

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<sup>10</sup> See Moore v. Commonwealth, Ky., 634 S.W.2d 426, 433 (1982)(holding that “[t]he provisions of RCr 9.78 are mandatory”).

<sup>11</sup> See Mills v. Commonwealth, Ky., 996 S.W.2d 473, 481 (1999)(noting that “RCr 9.78 places affirmative duties upon the trial court. The rule does not require that the defendant move for an evidentiary hearing. Instead, the rule mandates that a trial court shall hold an evidentiary hearing outside of the presence of the jury whenever a defendant moves to suppress a confession or other incriminating statements made to the police”).

Based on the foregoing, the trial court's denial of Hankins's motion to suppress evidence is vacated, and this matter is remanded for further proceedings consistent with this Opinion.

ALL CONCUR.

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