

RENDERED: JUNE 18, 2004; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2003-CA-001922-MR

TERRENCE RICHARDS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LAURANCE B. VANMETER, JUDGE
ACTION NO. 03-CR-00579

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: GUIDUGLI AND KNOPF, JUDGES; AND EMBERTON, SENIOR JUDGE¹.

KNOPF, JUDGE: At about 2:00 a.m. on March 22, 2003, a police officer knocked on the door of room 140 at the New Circle Inn motel in Lexington. Terrence Richards, who was not the registered occupant, answered the knock, admitted the officer to the room, and told the officer his name. When an inquiry

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

revealed warrants outstanding for Richards's arrest, the officer took him into custody and searched him. He found a small quantity of crack cocaine in Richards's pocket.

Following his indictment for first-degree possession of a controlled substance,² Richards moved to suppress the cocaine evidence on the ground that it had been seized in the course of an illegal search. The trial court denied the motion, whereupon Richards pled guilty to the charge but preserved his right to appeal from the suppression ruling. By judgment entered August 27, 2003, the Fayette Circuit Court sentenced him as a second-degree persistent felon to five years in prison. It is from that judgment that Richards has appealed. He contends that the officer's suspicionless, late-night knock upon the motel-room door amounted to an unreasonable search of the premises in violation of the Fourth Amendment to the United States Constitution and Section 10 of the Kentucky Constitution. The trial court erred, he maintains, by failing to so rule. We disagree and affirm.

As a general rule, the police do not need to suspect wrongdoing before they may initiate a consensual encounter with

² KRS 218A.1415.

the occupant of a motel room by knocking on the door.³

Notwithstanding the late hour, there is nothing in the record to suggest that the "knock and talk" in this case should be excepted from that rule. The officer knocked only briefly and did not demand contact under color of authority. Richards voluntarily opened the door and told the officer his name.⁴ Even if the officer's approach was suspicionless, therefore, it was not wrongful.

Richards's contention that, as opposed to a seizure, the knock amounted to an unlawful search of the room is also unavailing. As the Commonwealth notes, even if the knock could be deemed a search, to invoke the constitutional protections against unreasonable searches, a defendant must be able to show that he enjoyed a reasonable and socially sanctioned expectation of privacy in the area searched.⁵ Although apparently the issue has not been addressed in Kentucky, other courts have held, and we agree, that to have such a privacy interest in a motel room,

³ United States v. Adeyeye, 359 F.3d 457 (7th Cir. 2004); United States v. Cormier, 220 F.3d 1103 (9th Cir. 2000); Brown v. State, 835 A.2d 1208 (MD 2003).

⁴ *Cf.* United States v. Jerez, 108 F.3d 684 (7th Cir. 1997) (persistent knocking at motel room door, shouting "police," and shining flashlight into room amounted to a seizure requiring reasonable suspicion).

⁵ Rakas v. United States, 439 U.S. 128, 58 L. Ed. 2d 387, 99 S. Ct. 421 (1978); Foley v. Commonwealth, 953 S.W.2d 924 (1997).

one must at least be an invited guest of the registered occupant.⁶ Richards, who was alone in the room, was not an invited guest. He told the officer that he did not even know who the registered occupant was.

Because Richards was not seized merely by being summoned to the door and because he did not enjoy a constitutionally protected privacy interest in the room, the trial court did not err by denying his motion to suppress.

Accordingly, we affirm the August 27, 2003, judgment of the Fayette Circuit Court.

All CONCUR.

BRIEF FOR APPELLANT:

Herbert T. West
Fayette County Legal Aid
Lexington, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Louis F. Mathias, Jr.
Assistant Attorney General
Frankfort, Kentucky

⁶ State v. Gonzalez, 85 P.3d 711 (Kan. App. 2004); State v. Coleman, 693 N.E.2d 825 (Ohio App. 1997); United States v. Conway, 73 F.3d 975 (10th Cir. 1995).