

RENDERED: December 10, 2004; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

2003-CA-002252-MR

KERRY L. DICKERSON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JUDITH MCDONALD-BURKMAN, JUDGE
HONORABLE STEPHEN K. MERSHON, JUDGE
ACTION NO. 01-CR-000269

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; BARBER, JUDGE; MILLER, SENIOR
JUDGE.¹

MILLER, SENIOR JUDGE: Appellant Kerry L. Dickerson (Dickerson)
brings this appeal from a judgment on a plea of guilty and
sentence of probation entered September 24, 2003 in the
Jefferson Circuit Court. The question presented concerns the
trial court's denial of Dickerson's motion to suppress on two
grounds. First, Dickerson argues that the trial court
improperly failed to suppress statements made by him and his
girlfriend, Stacy King, while both were detained during the

¹ Senior Judge John D. Miller, sitting as Special Judge by assignment of the
Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and
Kentucky Revised Statutes (KRS) 21.580.

search of 233 Cecil Avenue pursuant to a valid warrant. Second, Dickerson argues that the trial court improperly failed to suppress the fruits (crack cocaine, digital scales and \$13,000) of the search of 337 South Shawnee Terrace. Having concluded that the trial court properly denied the suppression motion, we affirm.

The facts are these. Police obtained a search warrant for 233 Cecil Avenue, Dickerson and Thomas H. Pendergrass. While conducting the search of the residence the police found Dickerson and his girlfriend, Stacy King, parked in front. The police gave Dickerson and King their rights pursuant to Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) and both were detained during the search of the residence. Recovered from the residence were several firearms, crack cocaine residue and marijuana. While being detained Dickerson told police that he had \$6,000 and some "ounces" at King's residence, 337 South Shawnee Terrace. King's mother, who lived there, consented to a search. Dickerson took police to a curtain above his bed and showed them where he had hidden approximately thirteen ounces of crack and digital scales. He also showed them where he had hidden \$13,000 in cash.

On January 31, 2001, Dickerson was indicted for trafficking in a controlled substance in the first degree (Schedule II: cocaine), Kentucky Revised Statute (KRS)

218A.1412; misdemeanor illegal use or possession of drug paraphernalia, KRS 218A.500; and as a persistent felony offender (PFO) in the second degree, KRS 532.080.

On April 2, 2002, Dickerson filed a motion to suppress, claiming that he and others were detained without probable cause; that he and others were not Mirandized after being taken into custody and that the consent forms to search his residence were obtained through coercion, threat and fraud. On July 19, 2002, following a suppression hearing, the trial court concluded that the search warrant was supported by probable cause; that Dickerson was properly Mirandized and the detention of him and King during the search of 233 Cecil was legal; and that the search of 337 South Shawnee Trace was valid as consented to by owner and resident Yvonne King.

On August 5, 2003, on recommendation by the Commonwealth of dismissal of the PFO II charge, Dickerson pleaded guilty to first degree trafficking in a controlled substance and illegal possession of drug paraphernalia. On September 24, 2003, the trial court sentenced Dickerson to ten years on the trafficking charge and twelve months on the drug paraphernalia charge to run concurrently for a total of ten years to serve, and then probated Dickerson for five years. This appeal follows.

The Commonwealth argues initially that Dickerson's appeal should be dismissed for failure to comply with Rule of Criminal Procedure (RCr) 8.09. We conclude that Dickerson has sufficiently reserved the right to appeal these suppression issues by the reference to "conditional plea" written at the bottom of the first page of the Commonwealth's Offer on a Plea of Guilty. We further conclude that Dickerson is complaining of an abridgement of rights secured to him by the Fourth Amendment to the United States Constitution and Section Ten of the Kentucky Constitution.

The standard for appellate review of a trial court's decision on a suppression motion following a hearing is twofold. First, we must determine whether the factual findings of the trial court are supported by substantial evidence. If so, we must then determine if the trial court violated the rule of law in applying it to the established facts. RCr 9.78; Adcock v. Commonwealth, Ky., 967 S.W.2d 6, 8 (1998).

With regard to Dickerson's suppression arguments, we are bound to assume that the trial court's factual findings are supported by substantial evidence because the record does not contain the videotape of the suppression hearing. When the complete record is not before the appellate court, the appellate court must assume that the omitted record supports the decision

of the trial court. Commonwealth v. Thompson, Ky., 697 S.W.2d 143, 145 (1985).

Having concluded that the trial court's findings are supported by substantial evidence, we next address whether the trial court correctly applied the law. Dickerson argues that the detention of both him and King was unlawful and improperly used to induce consent to search 337 South Shawnee Terrace. This argument fails on several grounds. With regard to the whether the detention was proper, a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted. Michigan v. Summers, 452 U.S. 692, 705, 101 S.Ct. 2587, 2595, 69 L.Ed.2d 340 (1981). Herein, the warrant not only authorized the search of 233 Cecil Avenue but also authorized the search of Dickerson. The detention was valid. And the validity of the consent given by Dickerson and Stacy King is irrelevant, as valid consent to search 337 South Shawnee Terrace was given by owner and resident Yvonne King.

With regard to Dickerson's argument that the search of 337 South Shawnee Terrace was illegal due to the failure of the Commonwealth to produce Yvonne King's signed form authorizing the search, Yvonne King's voluntary consent validated the

search. Dickerson did not live at the address and had no standing to give consent.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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