

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001381-MR

AUSTIN COOPER JACKSON

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE STEVE ALAN WILSON, JUDGE
ACTION NO. 07-CR-00074

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON, NICKELL, AND VANMETER, JUDGES.

VANMETER, JUDGE: Austin Cooper Jackson appeals from the Warren Circuit Court's judgment sentencing him to a total of seven years' imprisonment, probated for five years, after he entered a conditional *Alford*¹ plea to two counts of first-degree sexual abuse. Jackson argues that the circuit court erred by failing to suppress evidence of incriminating statements he made during an interview with

¹ *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

detectives at the Bowling Green Police Department. For the following reasons, we affirm.

Jackson was indicted for five counts in January 2007, superseding a January 2006 indictment which the Commonwealth had been prosecuting. In the proceedings regarding the first indictment, Jackson moved the court to suppress evidence of statements he made during a November 2005 interview with police. The court held a hearing on Jackson's motion and ordered briefs filed. No briefs were filed; nor did the court make an oral or written ruling on the suppression issue.

After the superseding indictment was filed, Jackson entered a conditional *Alford* plea to two of the indictment's five counts, and the Commonwealth moved to dismiss the remaining three counts. The circuit court accepted Jackson's guilty plea and sentenced him in accordance with the Commonwealth's recommendation of a total of seven years' imprisonment, probated for five years. This appeal followed.

RCr² 9.78 provides:

If at any time before trial a defendant moves to suppress . . . a confession or other incriminating statements alleged to have been made by the defendant to police authorities, . . . 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 resolving the essential issues of fact raised by the motion or objection and necessary to support the ruling. If supported by substantial evidence the factual findings of the trial court shall be conclusive.

² Kentucky Rules of Criminal Procedure.

Here, the circuit court held a hearing regarding Jackson's suppression motion but never ruled on the motion.

In *Brown v. Commonwealth*, 890 S.W.2d 286, 290 (Ky. 1994), Brown filed a motion to suppress statements he made to police, but the court never ruled upon the motion. The Kentucky Supreme Court, citing *Bell v. Commonwealth*, 473 S.W.2d 820 (Ky. 1971), held that Brown's failure to insist upon a ruling resulted in his waiver of the issue. *Id.* Applying this rule to the matter *sub judice*, we hold that Jackson waived the suppression issue by failing to insist that the circuit court rule upon his suppression motion.

A different result is not compelled by the fact that in Jackson's conditional guilty plea, he reserved the right to appeal the circuit court's denial of his suppression motion. While Jackson was required to enter a conditional guilty plea to preserve his right to appeal, *see* RCr 8.09, he also was required to obtain a ruling on his suppression motion. Since he did not obtain such a ruling, he has waived his right to appeal the issue.

The Warren Circuit Court's judgment is affirmed.

NICKELL, JUDGE, CONCURS.

CLAYTON, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

Dennie Hardin
Bowling Green, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Todd D. Ferguson
Assistant Attorney General
Frankfort, Kentucky