RENDERED: AUGUST 26, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000387-MR
AND
NO. 2015-CA-000468-MR

VICTOR JONES APPELLANT

v.

APPEAL FROM HARRISON CIRCUIT COURT
HONORABLE JAY DELANEY, JUDGE
ACTION NOS. 14-CR-00064 AND 14-CR-00065

COMMONWEALTH OF KENTUCKY APPELLEE

<u>OPINION</u>
<u>AFFIRMING</u>

** ** ** ** **

BEFORE: ACREE, STUMBO AND TAYLOR, JUDGES.

STUMBO, JUDGE: Victor Jones appeals from the circuit court's denial of his motion to suppress. Jones argues that police officers impermissibly entered his apartment and any evidence seized should be suppressed. We find no error and affirm.

The following facts are undisputed and were testified to at the suppression hearing. On February 28, 2014, members of the Cynthiana Police Department obtained information from an informant regarding the whereabouts of Jones, for whom there was an outstanding arrest warrant. Based on this, four members of the police department went to Jones's apartment. The officers' names were Officer Mike Kiskaden, Assistant Chief William Denton, Officer Sean Raims, and Officer Dottie Batte.

It is at this point the facts become disputed. All four officers on the scene testified at the suppression hearing. Susan Wornall and Jordan Tucker also testified at the hearing. They were Jones's friends who were also present inside the apartment on the day at issue. The officers testified that as they approached the door of the apartment, the door opened and Tucker began to exit the apartment. Tucker was pulled from the apartment by the officers and placed on the ground. Jones claimed in his motion to suppress that as he began exiting the apartment, Officer Kiskaden pushed him back into the apartment and into the living room, where he was arrested. This was supported by the testimony of Tucker and Wornall. The officers testified that Jones had not exited the apartment. Officer Kiskaden and Assistant Chief Denton testified that when Jones observed the officers, he began backing further into the apartment. Officer Kiskaden testified that he approached Jones and they got into a scuffle which ended in the living room with Officer Kiskaden apprehending Jones. Assistant Chief Denton testified similarly. The other two officers were unable to see into the apartment.

Once Jones was apprehended, Officer Kiskaden and Assistant Chief Denton testified that they noticed drugs and paraphernalia in plain view on top of a coffee table in the living room. Officer Kiskaden also testified that a shotgun was in plain view behind the front door.[1] The officers then secured the scene and obtained a search warrant.

Jones was indicted on charges for possession of drugs, paraphernalia, and being a felon in possession of a firearm. Jones moved to suppress the evidence from the apartment on the grounds that the officers illegally entered his apartment. The trial court denied the motion. Jones then entered a guilty plea in which he reserved his right to appeal the suppression issue. This appeal followed.

> Our standard of review of a circuit court's decision on a suppression motion following a hearing is twofold. First, the factual findings of the court are conclusive if they are supported by substantial evidence. The second prong involves a *de novo* review to determine whether the court's decision is correct as a matter of law.

Stewart v. Commonwealth, 44 S.W.3d 376, 380 (Ky. App. 2000) (footnotes and citations omitted).

Jones's argument on appeal is that the officers were not lawfully in the spot from which they observed the contraband because they unlawfully dragged Jones into the living room. We disagree with this argument.

This case ultimately comes down to which witness testimony the trial court found more credible.

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[1] Assistant Chief Denton testified that the shotgun was found after executing the search warrant.

> The Court of Appeals, however, [is] entitled to set aside the trial court's findings only if those findings are clearly erroneous. And, the dispositive question that we must answer, therefore, is whether the trial court's findings of fact are clearly erroneous, i.e., whether or not those findings are supported by substantial evidence. "[S]ubstantial evidence" is "[e]vidence that a reasonable mind would accept as adequate to support a conclusion" and evidence that, when "taken alone or in the light of all the evidence, . . . has sufficient probative value to induce conviction in the minds of reasonable men." Regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding, "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses" because judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court. Thus, "[m]ere doubt as to the correctness of [a] finding [will] not justify [its] reversal," and appellate courts should not disturb trial court findings that are supported by substantial evidence.

Moore v. Asente, 110 S.W.3d 336, 353-354 (Ky. 2003) (citations omitted).

The trial court found that Jones had not exited his apartment when the police officers arrived. The court also found that Jones began backing further into his apartment, the police officers entered the apartment with a valid arrest warrant, and that Jones was then secured. These findings are supported by the testimony of the four officers involved in arresting Jones.

We agree with the trial court that the officers lawfully entered Jones's apartment. "An arrest warrant authorizes a limited invasion of the arrestee's privacy interest in order to execute the warrant. A valid arrest warrant also permits the police to enter the home of the arrestee to serve the warrant." *McCloud v. Commonwealth*, 279 S.W.3d 162, 166 (Ky. App. 2007) (citations and footnote

omitted). In addition, after Jones was secured, Officer Kiskaden and Assistant Chief Denton both observed the drugs and paraphernalia on the coffee table. "The plain-view exception to the warrant requirement applies when the object seized is plainly visible, the officer is lawfully in a position to view the object, and the incriminating nature of the object is immediately apparent." *Chavies v. Commonwealth*, 354 S.W.3d 103, 109 (Ky. 2011).

Based on the foregoing, we believe the trial court correctly denied Jones's motion to suppress. The officers were legally in Jones's apartment and the contraband found was within plain view; therefore, we affirm.

ACREE, JUDGE, CONCURS.

TAYLOR, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

Molly Mattingly
Assistant Public Advocate
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear
Attorney General of Kentucky

M. Brandon Roberts
Assistant Attorney General
Frankfort, Kentucky