IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: AUGUST 21, 2014
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2013-SC-000664-MR

ALLAN WIDDIFIELD — APPELLANT

V.

ON APPEAL FROM HANCOCK CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
NO. 12-CR-00040

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

A Hancock Circuit Court Jury found Appellant, Allan Widdifield, guilty of manufacturing methamphetamine (firearm enhanced), first-degree trafficking in a controlled substance (firearm enhanced), unlawful possession of anhydrous ammonia in an unapproved container with intent to manufacture methamphetamine, and possession of drug paraphernalia (firearm enhanced). As a result, he was sentenced to twenty years' imprisonment. He now appeals as a matter of right, Ky. Const. § 110(2)(b), asserting that (1) the trial court erred by finding that he consented to a warrantless search of his property, (2) the subsequent search of his home pursuant to a search warrant was "fruit of the poisonous tree," and (3) the search warrant was overly broad and failed to identify with particularity the persons and places to be searched. For the following reasons, we affirm.

I. BACKGROUND

On May 10, 2012, Hancock County Sheriff's Deputy Aaron Emmick and Kentucky State Police Trooper James Gaither drove to Appellant's residence in order to execute an indictment warrant of arrest on Appellant for a theft case in Hancock Circuit Court. At the time, Appellant shared a house with his wife, Jacqueline Widdifield.

When the officers first encountered Appellant, he immediately advised them that he had a loaded pistol on his person, and one of the officers removed the pistol from Appellant's pants pocket. After informing Appellant of the theft warrant, the officers placed him in custody.

Deputy Emmick claims that after he served the arrest warrant on Appellant, Appellant consented to a search of the premises and led the officers on a walk-through of the curtilage around his house. Appellant denies consenting to the search. It is undisputed that the search revealed the presence of firearms and evidence of the manufacture of methamphetamine. Following the officers' search of the curtilage, Jacqueline Widdifield refused to let the officers enter the house, but, on the basis of the items discovered in their search of the curtilage, the officers were able to secure a search warrant for Appellant's house. Once inside, they discovered methamphetamine and several firearms.

Appellant was subsequently indicted on several drug- and firearm-related charges.[1] He moved to suppress the evidence discovered on the property surrounding his house, arguing that he did not consent to the search and that his protection against warrantless searches under the Fourth Amendment to the United States Constitution and Section Ten of the Kentucky Constitution had been violated. Additionally, Appellant claimed that the evidence found within his house should have been suppressed because the search warrant was obtained with information unlawfully discovered by the officers during their warrantless search of the curtilage. Thus, according to Appellant, the evidence discovered pursuant to the search warrant was "fruit of the poisonous tree."

Three witnesses testified at the suppression hearing. Deputy Emmick was called for the Commonwealth. Appellant and Jacqueline Widdifield both testified for the defense. Emmick testified that, after arresting Appellant and placing him in the back of his cruiser, he advised Appellant that he had received information about drug activity on Appellant's property from the Owensboro Police Department.

Emmick further testified that, after being read his *Miranda* rights, Appellant acknowledged that there was drug contraband on the premises.

---

[1] The full indictment charged Appellant with manufacturing methamphetamine (firearm enhanced), first-degree trafficking in a controlled substance (firearm enhanced), first-degree possession of a controlled substance, unlawful possession of anhydrous ammonia in an unapproved container with intent to manufacture methamphetamine, possession of marijuana (firearm enhanced), and possession of drug paraphernalia (firearm enhanced). The possession of a controlled substance and possession of marijuana charges were later dismissed.

According to Emmick, Appellant led the officers to a shed where a loaded shotgun and a tub containing sludge residue, a by-product of the manufacture of methamphetamine, were found. Emmick also stated that Appellant showed the officers to the rear of the shed where a stove and other items (camping fuel, coffee filters, ether, and liquid drain cleaner) used to manufacture methamphetamine were found. At this point, Appellant allegedly told Emmick that another person, whom he would not name, had been manufacturing methamphetamine on his property. Thereafter, Emmick asked Appellant if any anhydrous ammonia was on the property, and Appellant admitted that some ammonia had been on the property but that it was no longer present. Appellant walked Emmick near a tree line and showed him where anhydrous ammonia had once been buried but was no longer located.

Continuing with Emmick's account of the search, he testified that he asked for and received permission from Appellant to search the house. However, Jacqueline refused to allow the officers to enter the house. Appellant allegedly informed Emmick that Jacqueline was probably refusing entry because there may have been some marijuana in the house. Eventually, Appellant withdrew his consent to search the residence, and Emmick proceeded to obtain a search warrant. It took a couple of hours for the officers to obtain the search warrant but, after some time, they were able to enter the residence. Once inside, law enforcement officers found numerous firearms and a lockbox containing methamphetamine.

Appellant's recounting of the circumstances surrounding the search of his house and the surrounding property differed greatly from Emmick's testimony. At the suppression hearing, Appellant testified that he never gave the officers consent to search his property. According to Appellant, the officers immediately arrested him on the unrelated theft warrant, and he was placed in the back of Emmick's cruiser. Appellant further testified that he did not exit Emmick's cruiser until he was placed in Trooper Gaither's cruiser while Emmick left the scene to obtain a search warrant. Appellant claimed that he never consented to any type of search and that he never took Emmick on a walk-through of the property. Appellant also attempted to use motion-sensored video from his property surveillance system to corroborate his claim. However, the video did not contain any audio, was short in duration, and had multiple gaps in time.

Jacqueline Widdifield also testified at the suppression hearing. She stated that she witnessed Appellant get arrested and placed in Emmick's car. She indicated that Appellant was in the back of a cruiser the entire evening and that he never led the officers on a walk-through of the property.

At the conclusion of the suppression hearing, the trial court denied Appellant's motion to suppress, finding that Appellant voluntarily consented to the search of the property surrounding his home. Furthermore, the trial court determined that, once Appellant had withdrawn his consent, a warrant was legally obtained on the basis of the items already discovered.

Following the trial court's denial of Appellant's motion to suppress, the case proceeded to a jury trial. A Hancock Circuit Court Jury found Appellant guilty of manufacturing methamphetamine (firearm enhanced), first-degree trafficking in a controlled substance (firearm enhanced), unlawful possession of anhydrous ammonia in an unapproved container with intent to manufacture methamphetamine, and possession of drug paraphernalia (firearm enhanced). For these crimes, Appellant received sentences of twenty, fifteen, twelve, and two years, respectively, to be run concurrently for a total of twenty years' imprisonment. This appeal followed as a matter of right. Ky. Const. § 110(2)(b).

II. ANALYSIS

A. The Trial Court Did Not Err by Denying Appellant's Motion to Suppress

Appellant argues that the trial court erred when it denied his motion to suppress evidence recovered during the warrantless search of the curtilage of his home because there was not sufficient evidence to support a finding that he consented to the search. Furthermore, Appellant asserts that, since the search warrant for his house was awarded based on information obtained through the improper search of the curtilage, the evidence found in his house was "fruit of the poisonous tree," which also should have been suppressed.

1. Consent to Search

Warrantless searches are presumed to violate the Fourth Amendment unless they fall into one of the exceptions to the warrant requirement. *E.g.*, *Commonwealth v. Ousley*, 393 S.W.3d 15, 23 (Ky. 2013); *Cook v.*

Commonwealth, 826 S.W.2d 329, 331 (Ky. 1992). Voluntary consent to search is a well-established exception to the warrant requirement. *E.g.*, *Commonwealth v. Jones*, 217 S.W.3d 190, 198 (Ky. 2006); *Cook*, 826 S.W.2d at 331. Here, the trial court determined that because Appellant consented to the search, no warrant was needed.

The question whether consent to a search was given is a preliminary issue to be decided by the trial court. KRE 104(a); *Talbott v. Commonwealth*, 968 S.W.2d 76, 82 (Ky. 1998). It is a question of fact to be determined by a preponderance of the evidence from the totality of the circumstances. *Talbott*, 968 S.W.2d at 82 (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973); *Cook*, 826 S.W.2d at 331). The factual findings of the trial court are reviewed under the clear error standard, which is our most deferential standard of review. *Hampton v. Commonwealth*, 231 S.W.3d 740, 749 (Ky. 2007). So long as a trial court's factual findings are supported by substantial evidence, they are not clearly erroneous. RCr 9.78; *see also, e.g.*, *Turley v. Commonwealth*, 399 S.W.3d 412, 418 (Ky. 2013); *Diehl v. Commonwealth*, 673 S.W.2d 711, 712 (Ky. 1984). Substantial evidence is "evidence sufficient to induce conviction in the mind of a reasonable person." *Turley*, 399 S.W.3d at 418. The evidence need not be "absolutely compelling or lead inescapably to but one conclusion." *CertainTeed Corp. v. Dexter*, 330 S.W.3d 64, 72 (Ky. 2010).

Appellant argues that each witness's testimony at the suppression hearing was equally plausible and there was no other evidence to support the existence of consent. According to Appellant, the competing witness testimony

equally offsets, thus, the Commonwealth failed to prove consent by a preponderance of the evidence. We disagree.

It is the province of the trial court to weigh the credibility of witnesses and draw reasonable inferences and factual findings from their testimony. *See* RCr 9.78; *Commonwealth v. Whitmore*, 92 S.W.3d 76, 79 (Ky. 2002). The discretion of the trial court is not diminished when testimony at an evidentiary hearing is conflicting or inconsistent. As this Court noted in *Hampton v. Commonwealth*, a case concerning competing versions of whether a search was consented to,

> While the court was ultimately required to choose between various competing and inconsistent versions of the events, that does not undermine the decision. In fact, that is the essential function of the trial court as the trier of fact when presented with preliminary questions such as whether consent was voluntarily given.

231 S.W.3d at 749.

In this case, the trial court heard competing, contradictory stories from Deputy Emmick and the Widdifields as to the circumstances surrounding the search of the curtilage of the Widdifields' house. The trial court ultimately determined that Emmick's version of the facts was more credible. There was substantial evidence to support the trial court's decision. Emmick was able to recall in detail various statements made by Appellant during the walk-through of his property. The trial court also found that Appellant's surveillance camera evidence lacked probative value. Because Emmick's testimony amounted to substantial evidence, we conclude that the trial court's finding that Appellant consented to the search was not clearly erroneous. *See, e.g., Turley*, 399

S.W.3d at 418; *Diehl*, 673 S.W.2d at 712. Thus, the trial court correctly denied Appellant's motion to suppress the evidence discovered in the officers' search of the curtilage of Appellant's home.

2. Fruit of the Poisonous Tree

Since the officers' search of the curtilage was legally proper, the search warrant for Appellant's home, which was obtained on the basis of the firearms and methamphetamine ingredients found on the curtilage, was valid,[2] and the items recovered in the Widdifields' home pursuant to the search warrant were not "fruit of the poisonous tree." Therefore, the trial court did not err by denying Appellant's request to suppress the evidence discovered in the Widdifields's home.

B. The Search Warrant Issued was Constitutionally Sufficient

Appellant asserts that the search warrant issued in this case was overly broad and failed to describe with proper particularity the items or places to be searched. Furthermore, Appellant claims the warrant improperly contained a blanket provision authorizing a search of all persons present on the property. These arguments are without merit.

Under the Fourth Amendment, a search warrant is sufficient if the officer charged with making the search is able with reasonable effort to identify and ascertain the place intended to be searched with certainty. *E.g.*, *Steele v.*

---

[2] Deputy Emmick's affidavit in support of a search warrant relied on the firearms and methamphetamine ingredients discovered on the curtilage of Appellant's home. The presence of guns and drug contraband undoubtedly ensured that there was a substantial basis for concluding that probable cause existed to justify a search warrant. *See Beemer v. Commonwealth*, 665 S.W.2d 912, 915 (Ky. 1984).

United States, 267 U.S. 498, 503 (1925). Section Ten of the Kentucky Constitution is also satisfied by a description of such certainty as to reasonably identify the premises to be searched. *E.g.*, *Taulbee v. Commonwealth*, 465 S.W.2d 51, 52 (Ky. 1971). Put another way, a search warrant "must contain such a description of the place, person, or thing to be searched or seized as will reasonably identify them." *Williams v. Commonwealth*, 261 S.W.2d 416, 417 (Ky. 1953).

In this case, Deputy Emmick swore the affidavit supporting the judge's issuance of a search warrant. As explained in detail above, Emmick had been to Appellant's property immediately prior to filing the affidavit. The description in the warrant, based on information given in Emmick's affidavit, provides Appellant's complete mailing address. Street numbers alone are sufficient descriptions so long as it is not shown that more than one house in the city had the same number. *Lyons v. Commonwealth*, 292 S.W. 499, 501 (Ky. 1927). Furthermore, the search warrant in this case describes Appellant's home, a shed, and vehicles on the property. Certainly, the search warrant was specific enough to enable the officers to find the property with reasonable effort. *See Taulbee*, 465 S.W.2d at 52.

Moreover, the search warrant at issue does not contain a blanket provision to search all persons present on the property as alleged by Appellant. In fact, it specifically authorizes a search of the persons of Appellant and

Jacqueline Widdifield.[3] Thus, the search warrant was constitutionally sufficient. *See Williams*, 261 S.W.2d at 417.

III. CONCLUSION

For the aforementioned reasons we affirm Appellant's convictions and sentence.

All sitting. All concur.

COUNSEL FOR APPELLANT:

Albert William Barber, III

COUNSEL FOR APPELLEE:

Jack Conway
Matthew Robert Krygiel

[3] Two search warrants were issued in this case. Appellant's brief only challenges the constitutionality of the first search warrant obtained May 10, 2012, which was the subject of Appellant's first motion to suppress. Appellant filed an amended motion to suppress relating to the second warrant, which Appellant admits is not the subject of this appeal. Thus, our consideration of Appellant's arguments on appeal is limited to the first search warrant. Nonetheless, we note that nothing in the second warrant authorizes a blanket search of all individuals located on Appellant's property.