

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-001509-MR

ROBERT HAYES PHILLIPS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE ANN O'MALLEY SHAKE, JUDGE  
ACTION NO. 00-CR-000957

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

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BEFORE: BUCKINGHAM, GUIDUGLI AND TACKETT, JUDGES.

GUIDUGLI, JUDGE. Robert Hayes Phillips ("Phillips") appeals from a judgment of the Jefferson Circuit Court reflecting a conditional plea of guilty to first-degree trafficking in a controlled substance and possession of drug paraphernalia. We affirm.

On April 26, 2000, Phillips was indicted by the Jefferson County Grand Jury on two counts of first-degree trafficking in a controlled substance, possession of drug

paraphernalia, and first-degree persistent felony offender. The indictment arose from an investigation conducted by Louisville Metro Narcotics detectives at the Hampton Hall apartments in Louisville, Kentucky. The Louisville police had received numerous complaints of drug activity at the complex, and they began the investigation using surveillance and confidential informants. One of the informants told the detectives that Phillips had received 4 ounces of cocaine from Alfred Bivens ("Bivens") for the purpose of selling it. Both Phillips and Bivens were known to the detectives from prior drug dealings and arrests. Phillips was observed apparently conducting a drug transaction in the parking lot.

Detectives later followed Phillips to a residence on Algonquin Parkway where he met with Bivens. After leaving the residence, both men were stopped by the detectives and questioned. Each was found to be in possession of a large quantity of cash, and a police narcotics dog indicated that the cash was positive for drug residue. When they denied having been at the Algonquin residence, they were detained while the detectives returned to the residence with a search warrant. The search of the Algonquin residence uncovered heroin and cocaine. Phillips and Bivens were then arrested.

A suppression hearing was conducted on November 21, 2001, on the question of whether the detectives had reasonable

suspicion to stop Phillips and Bivens pursuant to Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 8168, 20 L.Ed. 889 (1968), after they left the residence. The court opined that the facts supported the detectives' reasonable suspicion necessary to detain the parties and conduct an investigation.

Phillips later pled guilty to the reduced charges of first-degree trafficking in a controlled substance and possession of drug paraphernalia. The plea was conditioned on Phillips's right to appeal the suppression issue (RCr 8.09). This appeal followed.

Phillips now argues that the trial court erred in concluding that his arrest was constitutional. He maintains that the search of his person after leaving the residence, and the subsequent arrest, were conducted without the requisite reasonable suspicion or probable cause in violation of the 4th Amendment to the United States Constitution and Section 10 of the Kentucky Constitution. He seeks an order remanding the matter to the trial court, with instructions that the charges be dismissed.

We have closely examined the record, the law, and the written arguments, and find no error. As the Commonwealth properly notes, the police may conduct an investigatory stop if there is some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity. See

generally, United States v. Cortez, 449 U.S. 411, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981). That is to say, the police need only to have an articulable suspicion that criminal activity is afoot. Taylor v. Commonwealth, Ky., 987 S.W.2d 302 (1998).

In the matter at bar, the following facts were known to the detectives at the time of the search: Phillips had a history of drug dealing, arrests and incarceration; confidential informants stated that Phillips was in possession of four ounces of cocaine; Phillips was observed apparently conducting a drug sale; and, Phillips was observed meeting with Bivens, a known drug supplier. These facts, taken alone, constitute "some objective manifestation" or "an articulable suspicion" sufficient to justify stopping Phillips to question him, and the trial court did not err in so ruling. Terry, supra.

Phillips also argues that the trial court erred in concluding that the police had probable cause to arrest him. He maintains that he was arrested at 6:20 p.m., which was before the police received a search warrant for the Algonquin house and prior to discovering the cocaine and heroine. Since, according to Phillips, the arrest preceded the discovery of the drugs, probable cause was lacking at the time of the arrest.

An arrest sheet in the record indicates that Phillips was arrested at 18:20 hours or 6:20 p.m., which was before the Algonquin house was searched and the drugs discovered. However,

it appears that the time on the arrest sheet is in error. Detective Robert O'Neil testified at the suppression hearing on November 21, 2001, that Phillips and Bivens were detained until the house was searched, at which time they were arrested. Thus, the trial court had before it testimony which could reasonably have formed its basis for concluding that the search and discovery of the drugs preceded the arrest. There can be little argument that if the search preceded the arrest, Phillips arrest was supported by probable cause.

Phillips goes on to maintain as part of this probable cause argument that he could not be found to be in constructive possession of the drugs at the Algonquin house. While this issue was not raised at the suppression hearing and is moot by virtue of Phillips's guilty plea, we note that Detective O'Neil testified that Phillips entered the Algonquin residence by using a key. The Kentucky Supreme Court has previously held that possession of a key to a locked area where drugs are located supports a claim of constructive possession. Leavell v. Commonwealth, Ky., 737 S.W.2d 695 (1987). As such, even if this issue was raised below at the suppression hearing to bolster Phillips's claim of lack of probable cause for arrest, we would find that the facts relating to Phillips's access to the drugs support the theory of constructive possession.

For the foregoing reasons, we affirm the order of  
Jefferson Circuit Court.

ALL CONCUR.

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