

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001092-MR

MARSHALL CLINTON THOMAS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE REBECCA M. OVERSTREET, JUDGE
INDICTMENT NO. 02-CR-01305

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; DYCHE AND TACKETT, JUDGES.

DYCHE, JUDGE. Following the denial of his motion to suppress evidence, Marshall C. Thomas entered a conditional guilty plea pursuant to RCr 8.09; he now appeals, challenging the trial court's denial of the motion. We affirm.

We will take the statement of facts from Thomas's brief:

At the February 11, 2003 hearing Officer Mathew J. Hutti of the Lexington-Fayette Urban County Police Department testified

that at approximately 2:30 A.M. on Saturday, November 2, 2002 he received a dispatch concerning a disorder outside an apartment building located at 912 North Limestone Street. When he arrived at 912 North Limestone Street two or three other officers had also responded to the dispatch. No one was outside the apartment building. The officers, using flashlights, conducted a search of the outside of the apartment building. Eventually, Wayne Bronson who lived in apartment #3 came out and told to Officer Hutti that he had been in an argument and had been stabbed in his head by a Mr. Jones who is appellant's son and lived in apartment #1.

The officers noticed Mr. Jones through the window of apartment #1. Mr. Jones was pulling the blinds up and down and cursing the police. The officers noticed broken glass on the ground in front of apartment #1 and heard two males, the appellant and his son, Mr. Jones, arguing. Hutti knocked on the door to apartment #1 and talked to an individual in the window. The individual told the officers "you are not coming in." The argument continued.

The officers waited two to three minutes discussing what action they should take. They decided that an assault could be taking place in the apartment. They decided exigent circumstances existed so they broke down the door to apartment #1 and forcibly entered.

Three persons were inside the apartment, the appellant, his son Mr. Jones and a female. The officers made them get down on the floor and told them to do as the officers instructed. Mr. Jones was arrested for the incident involving Wayne Bronson. Mr. Jones and the female were taken out of the apartment. The appellant sat on a couch and Hutti explained to him what was happening. The appellant became upset and

belligerent. Hutti testified the appellant threatened him. Hutti arrested appellant for menacing and resisting arrest. The appellant was handcuffed and patted down to check for weapons. No weapons were found.

When appellant arrived at the Fayette County Detention Center a search of his person revealed a bag of cocaine, approximately 1.2 grams.

Thomas was charged with, and pled guilty to, possession of a Controlled Substance, first degree, and Resisting Arrest; he was sentenced to confinement for one year and thirty days, respectively.

Thomas challenges the finding of the trial court that the officers had probable cause to enter his apartment, and that exigent circumstances permitted entry absent a search warrant. We agree with the trial court and the Commonwealth that the presence of the assault suspect in the apartment, along with the belligerent attitude displayed by Thomas, combined with the continuing arguing and general commotion emanating from the apartment, sufficiently justified the entry by the officers into the apartment. It was reasonable for the officers to believe that an emergency, perhaps another assault, was occurring in the apartment, and delay might prove harmful to them or another person. The trial court's ruling denying suppression was supported by the evidence, and the legal conclusions drawn from the facts were correct.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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