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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001623-MR

CAROL ROWLAND — APPELLANT

v.

APPEAL FROM BRECKINRIDGE CIRCUIT COURT
HONORABLE ROBERT A. MILLER, JUDGE
ACTION NO. 03-CR-00135

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BUCKINGHAM, DYCHE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Carol Rowland brings this appeal from a July 12, 2004, judgment of the Breckinridge Circuit Court upon a conditional plea of guilty to first-degree trafficking in a controlled substance and possession of drug paraphernalia. We affirm.

In August 2003, the Cloverport Police Department received a bulletin that an individual named Gary Thompson was

manufacturing methamphetamine and selling methamphetamine in Daviess and Hancock Counties. The bulletin also advised that Thompson was armed and had an active felony warrant for his arrest from Perry County, Indiana.

Officer David Pace later received information that Thompson was at appellant's residence. Officer Pace, Cloverport Chief of Police Rob Vanderhoef, and another officer proceeded to appellant's residence in order to locate Thompson. Upon arrival, Officer Pace and Chief Vanderhoef proceeded on foot up the driveway to appellant's residence and left the other officer in the patrol car at the end of the driveway. As they approached the residence, the officers encountered two individuals standing outside the residence, who were later identified as Thompson and his son. Thereupon, Officer Pace walked around the property while approaching the residence. During this time, he looked in a garage and noticed in plain view a black nylon bag containing weapons. Officer Pace then knocked on the back door of the residence. At that time, Officer Pace noticed appellant's husband fleeing out of the front of the residence. Appellant answered the door, and Officer Pace inquired as to whether methamphetamine was being manufactured on the property. Appellant answered in the negative. Officer Pace then asked appellant "if she cared if we looked around." Appellant answered go ahead and that she did

not care. Officer Pace proceeded to the garage and found two handguns, two sets of digital scales, lithium batteries, crushed ephedrine pills, binoculars, lighters, used coffee filters, flashlights, sinus pills, and a beater in the black nylon bag.

After the search of the garage, the residence was searched. The search of the residence produced methamphetamine and marijuana, as well as drug paraphernalia and several guns. Subsequent to the search of the garage and residence, appellant became combative and had to be subdued. At this point, appellant inquired as to how the police could search without a warrant. Thereafter, the police also conducted a search of a trailer on adjoining property, which the police suspected was being used by appellant in manufacturing methamphetamine. The search netted a propane tank, ether cans, funnels, tubing, hosing, respirators, commercial type digital scales, a large number of plastic baggies, and empty film containers.

On October 23, 2003, appellant was indicted by the Breckinridge County Grand Jury upon manufacturing methamphetamine, first-degree trafficking in a controlled substance and possession of drug paraphernalia. Appellant thereafter filed a motion to suppress evidence seized from the search of her residence, garage, and the trailer. Appellant argued the consent to search had not been voluntary, thus

rendering the search unconstitutional. By opinion and order entered May 14, 2004, the circuit court concluded:

> Herein, the Commonwealth has met its burden of proof to establish the search of the Rowlands' residence, garage and curtilage did not require a search warrant. When Carol Rowland gave her free and voluntary consent without actual, implied or direct force, coercion or duress, no search warrant was necessary. Additionally, the prior safety warning police had received regarding Mr. Thompson and Mr. Rowland's fleeing from the residence, created an exigent circumstance justifying entry onto and into the premises to protect the safety of the officers.
>
> However, as relates to the trailer on the adjoining tract, by the point in time of the search of that trailer, Ms. Rowland had to be subdued, had been arrested and had asked the police if they had a search warrant. The voluntary consent at that point as to the adjoining tract was effectively revoked. The Commonwealth failed to meet its burden in relation thereto and the evidence seized from the adjoining tract should be suppressed.

Thus, the circuit court denied appellant's motion to suppress the evidence seized from the residence, garage, and curtilage, but granted appellant's motion to suppress the evidence seized from the trailer.

Pursuant to a plea agreement, appellant entered a conditional plea of guilty to the charges of first-degree trafficking in a controlled substance and possession of drug paraphernalia. Appellant was sentenced to a total term of seven

years' imprisonment. Appellant reserved the right to appeal the circuit court's decision to deny her motion to suppress the evidence seized from her residence, garage, and surrounding area. This appeal follows.

Appellant contends the circuit court committed error by denying her motion to suppress evidence seized from her residence, garage, and surrounding area. Upon review of a motion to suppress evidence, we view the trial court's findings of fact under the clearly erroneous standard and review its conclusions of law *de novo*. Commonwealth v. Neal, 84 S.W.3d 920 (Ky.App. 2002). The findings of fact of the trial court are not clearly erroneous if supported by substantial evidence of a probative value. Id.

In this appeal, appellant's primary allegation revolves around whether she gave voluntary consent to search her residence, garage, and curtilage. Appellant claims that she did not and specifically argues:

> Officer Pace's request "to look around" should not be construed a valid request to search the Rowland's home and curtledge [sic]. Without a valid and articuable [sic] request no consent could be voluntary under the circumstances.
>
> Reasonableness under the circumstances should mandate that the officer's language be such that Carol Rowland could reasonably understand that the police intended a complete and unrestricted search. The inquiry was posed outside, at night, and

> without a adequate clarity to be construed as an explicit and clear request to search one's home.

Appellant's Brief at 3-4.

In essence, appellant is arguing that her consent was involuntary because she did not believe Officer Pace was requesting consent to search. She claims that Officer Pace's request "to look around" did not inform her of his intention to search the premises. Appellant believes that her consent to search could not be voluntary because it was not given knowingly.

It is well-established that a valid consent to search must be given voluntarily. Baltimore v. Commonwealth, 119 S.W.3d 532 (Ky.App. 2003). The question of whether consent to search was voluntary must be determined based upon the circumstances of each specific case. Commonwealth v. Sebastian, 500 S.W.2d 417 (Ky. 1973). However, this question is to be resolved by "an objective evaluation of police conduct and not be defendant's subjective perception of reality." Farmer v. Commonwealth, 6 S.W.3d 144, 146 (Ky.App. 1999)(quoting Cook v. Commonwealth, 826 S.W.2d 329, 331 (Ky. 1992)).

In the case at hand, the record indicates that Officer Pace initially asked appellant if methamphetamine was being manufactured at her residence and appellant responded in the negative. The record also indicates that appellant's husband

fled out the front door of the residence around this time. Furthermore, the record discloses that appellant did not object to the search of her residence or to the search of her garage. Viewing the facts objectively, we must conclude that appellant knowingly and voluntarily gave her consent to search upon Officer Pace's request to look around. Under these unique circumstances, the request by Officer Pace can only be objectively viewed as a request for consent to search the premises. Accordingly, we hold the circuit court did not err by denying appellant's motion to suppress evidence seized from her residence, garage, and surrounding area.

We view appellant's remaining contentions as moot.

For the foregoing reasons, the judgment of the Breckinridge Circuit Court is affirmed.

BUCKINGHAM, JUDGE, CONCURS.

DYCHE, JUDGE, DISSENTS.

BRIEFS FOR APPELLANT:

Paul L. Madden, Jr.
Paul L. Madden
MADDEN & MADDEN
Hawesville, Kentucky

ORAL ARGUMENT FOR APPELLANT:

Paul L. Madden, Jr.
MADDEN & MADDEN
Hawesville, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Jeffrey A. Cross
Assistant Attorney General
Frankfort, Kentucky

ORAL ARGUMENT FOR APPELLEE:

Jeffrey A. Cross
Assistant Attorney General
Frankfort, Kentucky