

RENDERED: JUNE 23, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000067-MR

JEFFERY TAYLOR

APPELLANT

v. APPEAL FROM MCLEAN CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 04-CR-00022

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER AND MINTON, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

BARBER, JUDGE: Appellant, Jeffery Taylor (Taylor), appeals the McLean Circuit Court's denial of his motion to suppress evidence seized in a search. We affirm the circuit court ruling.

On July 14, 2004, the McLean County Sheriff's Department and the Kentucky State Police searched Taylor's residence without a warrant. Marijuana plants and drug

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

paraphernalia were found during the search. Taylor was charged with criminal offenses. Taylor filed a motion to suppress the evidence seized in the search claiming that the search was illegal. On October 25, 2004, the trial court denied Taylor's motion to suppress, holding that Taylor voluntarily consented to a search of the premises. Taylor entered a conditional plea of guilty to charges of cultivating marijuana, five or more plants, and to possession of drug paraphernalia.

Taylor asserts that the trial court's ruling was in error. Taylor's spouse testified at the hearing. She stated that three officers approached her and told her that they had seen marijuana growing at her home. The officers went to her house and knocked on the door. They told her that they could do it the easy way if she let them in to take the plants, or the hard way by getting a warrant. Mrs. Taylor let the officers into the home. Taylor came out of the bathroom while the officers were in the home. They asked him to show them the plants, and he did so. After seizing the plants, the officers obtained a written consent to search the premises from Taylor. During the ensuing search, drug paraphernalia was discovered.

Deputy Wilkerson of the Sheriff's Office testified at the hearing. Wilkerson stated that the state police notified the Sheriff that they had seen marijuana plants growing at Taylor's house while doing a helicopter search. Deputy

Wilkerson testified that although Mrs. Taylor may have opened the door, Taylor came out of the bathroom immediately thereafter to speak with the officers. When asked to do so, Taylor led them right to 66 marijuana plants in the back yard. Taylor then signed a written consent and led the officers to a room in the house where the drug paraphernalia was discovered.

Taylor claims that the officers coerced his spouse into letting them in the home. He asserts that where there is coercion, there cannot be valid consent. Middleton v. Commonwealth, 502 S.W.2d 517 (Ky. 1973). The Commonwealth argues that, based upon the circumstances in this case, the consent to search was properly found voluntary, and the results of the search held admissible. The voluntary nature of consent to search is to be determined by the trial court with regard to the totality of the circumstances. Talbott v. Commonwealth, 968 S.W.2d 76, 82 (Ky. 1998). Consent must be voluntary in light of the circumstances. Cook v. Commonwealth, 826 S.W.2d 329, 331 (Ky. 1992). A family member may consent to a search of the premises. Colbert v. Commonwealth, 43 S.W.3d 777, 780 (Ky. 2001).

Taylor does not show the Court that Mrs. Taylor was improperly threatened or intimidated so as to coerce her into admitting the officers to the residence. Mrs. Taylor testified that the officers told her that she could let them search

without a warrant, or require them to obtain a warrant with "all the bells and whistles" that went along with that. The officers' statements appear to have been factual and within reasonable bounds so as to not amount to coercion. Taylor has not shown that the motion to suppress was wrongfully denied. For this reason, the circuit court judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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