

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-000516-MR

CHARLES D. CLEMMONS

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE MARTIN MCDONALD, JUDGE  
ACTION NO. 03-CR-001573

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: THOMPSON AND WINE, JUDGES; HENRY,<sup>1</sup> SENIOR JUDGE.

HENRY, SENIOR JUDGE: Charles Clemmons entered a conditional guilty plea to complicity to theft by unlawful taking in an amount over \$300, and to being a persistent felony offender in the first degree. He was sentenced to serve ten years in prison. He brings a single issue on appeal. He argues that the trial court erred when it failed to provide findings of fact and conclusions of law related to a suppression hearing, or, in the

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<sup>1</sup>Senior Judge Michael L. Henry, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

alternative, that the trial court should have suppressed statements he provided to the police. We find no error and affirm the decision of the trial court.

Clemmons was in a tobacco outlet retail store when his co-defendant walked out of the store with a case of cigarettes valued in excess of \$300. The clerk told police that Clemmons distracted her while the co-defendant left the building with the merchandise. The police arrested Clemmons, and he provided a statement admitting his role in the theft.

A hearing was held on Clemmons' motion to suppress the statements made to the police. Clemmons testified at that hearing. He stated that he originally volunteered to talk to the police officers and provide information about what he had witnessed. He then testified that once he realized he was a suspect, he repeatedly asked to be allowed to speak to his attorney but those requests were ignored. A detective testified that he provided Clemmons with his rights as required by *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). He further testified that Clemmons signed a statement waiving his rights before discussing the matter with the detective. The detective did not recall Clemmons ever requesting to speak with counsel. The trial court found Clemmons' testimony "self serving" and "not credible" and refused to suppress the statements given to the police. At the close of the Commonwealth's evidence at trial, both Clemmons and his co-defendant elected to enter guilty pleas. This appeal followed.

We first examine the record to determine if the trial court failed to provide findings of facts and conclusions of law. *See* Kentucky Rules of Criminal Procedure

(RCr) 8.22 and 9.78. The trial court did, in the written order, find that the statement was voluntary, that Clemmons was apprised of his rights and that the statement was reliable. Those findings of fact and conclusions of law are sufficient to make a proper determination of whether Clemmons' statement should have been suppressed. There was no error. Had Clemmons desired additional findings of fact or conclusions of law, the burden was upon him to request them. Kentucky Rules of Civil Procedure (CR) 52.04; RCr 13.04; *Lovell v. Commonwealth*, 695 S.W.2d 429, 432 (Ky.App. 1985). He did not do so and therefore any alleged error in this regard is waived.

We next consider whether the evidence presented at the suppression hearing required the trial court to suppress the statement Clemmons gave to the police. Our standard of review when considering an appeal of a trial court's denial of a suppression motion is whether the decision was clearly erroneous. *Commonwealth v. Banks*, 68 S.W.3d 347, 349 (Ky. 2001). We are to review factual findings for clear error, giving due weight to the inferences drawn from those facts by the trial court. *Ornelas v. United States*, 517 U.S. 690, 699, 116 S.Ct. 1657, 1663, 134 L.Ed.2d 911 (1996). Here, the trial court found the officer's testimony more credible. "At a suppression hearing, the ability to assess the credibility of witnesses and to draw reasonable inferences from the testimony is vested in the discretion of the trial court." *Sowell v. Commonwealth*, 168 S.W.3d 429, 431 (Ky.App. 2005) (internal citation omitted). Those decisions are conclusive provided they are supported by substantial evidence, as they are in this case. *Stewart v. Commonwealth*, 44 S.W.3d 376, 380 (Ky.App. 2000).

There is nothing in our review of the record to indicate that the decisions of the trial court were clearly erroneous. The credibility of the witnesses and the reasonableness of the conclusions reached from that testimony are sufficient to support the decision of the trial court. There was no error. The judgment of the Jefferson Circuit Court is affirmed in all respects.

ALL CONCUR.

BRIEF FOR APPELLANT:

Donald H. Morehead  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

Clint E. Watson  
Assistant Attorney General  
Frankfort, Kentucky