

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001227-MR

JACKIE JAGGERS

APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE JANET P. COLEMAN, JUDGE
ACTION NO. 05-CR-00113

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: KELLER, LAMBERT, AND STUMBO, JUDGES.

STUMBO, JUDGE: This appeal arises from a conditional guilty plea in which Jackie Jagers (Appellant) reserved the right to appeal the trial court's denial of his motion to suppress. Appellant contends that the consent he gave to police officers to search his house was coerced. At the trial court, he sought to suppress all evidence found at his house. His motion was denied and he was sentenced to 12 years in prison in accordance with the guilty plea. Upon review of the findings of the court, which are supported by the record, we affirm the decision of the Hardin Circuit Court.

The facts of this case are simple. Appellant Jagers, Ray Dupin and Tracy Botto were in the parking lot of the Elizabethtown Kroger. Police officers came to the lot in response to a call that Mr. Dupin had just purchased a large quantity of matches from the store and placed them in Appellant's jeep. Mr. Dupin was apparently known to be involved in the manufacture of methamphetamine by local law enforcement. The striking plates on the matchboxes contain a major ingredient for making methamphetamine. A Detective Turner was first on the scene and approached the three people. He spoke with them and, after a consensual search of Appellant's vehicle, found the matchboxes and packets of yeast, another ingredient used in the manufacture of methamphetamine.

Detective Turner then obtained consent to search each of those present, at which time he found contraband on Ms. Botto. He placed Ms. Botto under arrest and asked if Appellant would be willing to go to the police station and answer some questions. Appellant responded in the affirmative, but stated he would first need to pick up his two children. It is important to note at this time that Appellant and Ms. Botto are the parents of these two children. Detective Turner responded that this would be acceptable, but had another police officer, who had arrived on the scene, follow Appellant.

Appellant and his two children arrived at the police station. From this point on, the events become disputed. Appellant claims that he and his children were in the same room when his questioning began. He then states that Detective Turner asked him to sign a form which would give consent to police officers to search his house. He

replied that they would need to get a search warrant first. During the suppression hearing, Appellant's attorney proffered the following testimony. He stated that the Detective then said "We can do this the easy way or the hard way. The easy way is for you to sign the form and the hard way is we will have to wait as long as it takes to get a search warrant and in the meantime I am going to have your sons taken and turned over to the custody of the state." It was this exchange that Appellant claims coerced him into signing the consent form. Detective Turner testified at the hearing that he never made any threats to Appellant or his family and that Appellant was cooperative and immediately signed the consent form.

The trial court did not make a finding as to whether or not the alleged coercive statement was made, but reasoned that even if the statement was made, it was not coercive because it was true. The court held that the consent was given voluntarily and denied the motion to suppress.

This Court's standard of review for a motion to suppress is:

we first determine whether the trial court's findings of fact are supported by substantial evidence. If they are, then they are conclusive. Based on those findings of fact, we must then conduct a *de novo* review of the trial court's application of the law to those facts to determine whether its decision is correct as a matter of law.

Commonwealth v. Neal, 84 S.W.3d 920, 923 (Ky.App. 2002). While it is unfortunate that the trial court did not make a specific finding of fact as to whether the coercive statement was actually made, it does not affect the outcome of this case. The finding of fact we need to look at is whether or not the consent was voluntarily given. "Whether consent to

search is voluntarily given is a question of fact. Thus a [court's] finding of voluntary consent will be reversed only if clearly erroneous." *U.S. v. Erwin*, 155 F.3d 818, 822 (6th Cir. 1998). The facts and the law support the Commonwealth's contention that this finding was not clearly erroneous. As the trial judge stated, and with whom we agree, the statement, if said, was a statement of truth. The case of *Henson v. Commonwealth*, 20 S.W.3d 466 (Ky. 1999) is illustrative. In that case, a man gave a confession to police after being told that if he did not confess, his girlfriend could also be arrested and therefore lose custody of her children. The court found that his girlfriend could have in fact been arrested, and therefore, this was a true statement. Being a true statement meant that it was not coercive in nature. In a similar fashion, the mother of Appellant's children was already in police custody. Had Appellant been held in custody while a search warrant was procured, the children would have had no immediate guardian to take care of them. The only solution would have been to place the children into state custody until further arrangements could be made. If Detective Turner did in fact make such a statement, it can not be considered coercive because it was true.

The law contained in *Henson* and the fact that Detective Turner denied making any threat supports the trial court's ruling. We can approach this case from both directions and still come to the same conclusion. If the Detective did make the statement, it cannot be coercive because it is fact. If the Detective did not make the statement, as he claims, then there is no coercion. The finding of fact that consent was voluntarily given

is supported by substantial evidence and is not clearly erroneous. The law applied by the trial court to these facts is also correct.

For the foregoing reasons we affirm the trial court's denial of Appellant's motion to suppress.

ALL CONCUR.

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