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FAYETTE CIRCUIT COURT  
CRIMINAL BRANCH  
THIRD DIVISION

COMMONWEALTH OF KENTUCKY      PLAINTIFF

vs      FINDINGS OF FACT, CONCLUSION OF  
LAW, OPINION AND ORDER

CLARENCE JOHNSON  
HOLLIS KING AND  
JAMELA WASHINGTON

DEFENDANTS

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This matter is before the Court on written Motions to Suppress evidence seized by law enforcement officers on or about October 13, 2005 which led to the Indictment and Charges against the three Defendants herein, namely Clarence Johnson, Hollis King and Jamela Washington. The Court conducted an Evidentiary Hearing on March 23, 2006 at which time Officer Steve Cobb testified in person and the Court heard Arguments of Counsel and established a Briefing Schedule for all Counsel to submit written Briefs on the issues presented. The Court has now had the opportunity to review the Briefs filed by all Counsel and, being otherwise sufficiently advised, now renders its Findings of Fact, Conclusion of Law, Opinion and Order on the pending Motions to Suppress as follows:

**FINDINGS OF FACT**

On or about October 13, 2005 Officer Steve Cobb was involved with other uniform officers, some under-cover officers and a Confidential Informant in a "buy-bust" operation in the Centre Parkway area of Lexington. Officer Cobb testified that a "buy-bust" operation is a law enforcement technique whereby a Confidential Informant, after appropriate precautions and preparations, is sent to purchase illegal drugs from a street level trafficker. This operation would then result in the arrest of the drug trafficker. Officer Cobb explained that his part of the "buy-bust" operation was to move in and make an arrest after the Confidential Informant had purchased the illegal drugs from the street level trafficker after he had been so advised by under cover officers via radio communications.

At about 9:50 p.m. on October 13, 2005 in the area of 1300 Centre Parkway, through the observations of under cover Det. Givens, it was learned that the Confidential Informant had been approached by a subject and had gotten into a vehicle with that subject. Det. Givens was in eye contact with the Confidential Informant and subject and was personally observing this activity. Det. Givens personally observed that a drug transaction had occurred between the Confidential Informant and the suspect. Based on that observation, Det. Givens gave the pre-arranged signal for Officer Cobb and other uniformed officers to go out and arrest the subject from whom the Confidential Informant had just purchased illegal narcotics. Det. Givens described the subject to be arrested as a Male Black wearing a red sweat shirt with a hood ("hoodie"), jeans and tennis shoes. The suspect

had been observed going in to the breezeway of a certain apartment complex located at 1317 Centre Parkway.

At this point, Officer Cobb had gotten out of his marked vehicle and, along with other uniform officers, had moved into the area where Det. Givens had last seen the suspect in the breezeway area as aforesaid. Because Officer Cobb and the other uniform officers had started to move into the described area where the suspect was last seen immediately upon getting the "go" signal from Det. Givens, neither he nor any of the other officers moving in to make the arrest of the suspect heard Det. Givens give one additional crucial bit of information via radio communications. Det. Givens had radioed the additional information that the suspect went into the back right apartment of the apartment unit from the breezeway described. Neither Officer Cobb nor any other officer heard this last bit of information.

Not having this last bit of crucial information, Officer Cobb and the other uniform officers went into the breezeway looking for the suspect not knowing that Det. Givens had observed the suspect going into the back right apartment of the breezeway area. Officer Cobb and the others heard a door shut but could not determine which apartment door or which exact apartment was the location where that had just occurred. Officer Cobb and the others started smelling a burnt marijuana smell about halfway down the breezeway. Upon getting to the end of the breezeway, Officer Cobb and the others smelled a strong odor of burnt marijuana coming from underneath the door of the back left apartment. Det. Maynard, who was accompanying Officer Cobb in the breezeway attempting to locate and arrest the suspect in question, banged on the door of the apartment

on the back left of the breezeway identifying themselves as police officers and demanding that the door be opened by the persons inside. The apartment number of the back left unit was Apt. 78 whereas the apartment number for the back right unit which Det. Givens had observed the suspect going into was Apt. 79. Officer Cobb testified, and the Court Finds, that the officers involved had the requisite training and experience to know the unique smell of burnt marijuana.

After Det. Maynard announced the presence of the police officers at the door of the back left apartment, Apt 78, Officer Cobb and the others heard "things being moved in that apartment (78)". Officer Cobb later described the noise as people moving around as opposed to furniture being moved. It seemed to the officers that the occupants of Apt. 78, from which the strong odor of burnt marijuana had been smelled, may have been in the process of destroying evidence. Because of Officer Cobb's fear that the persons inside Apt. 78 were in the process of destruction of evidence, Officer Cobb knocked the door down to Apt. 78 by kicking it open. Officer Cobb and the other uniform officers then entered Apt. 78. They immediately conducted a protective sweep of the apartment while observing three subjects in the front room. The three subjects observed upon entering the apartment turned out to be three defendants in the within cause of action. One subject (Johnson) was observed smoking a marijuana cigarette. The officers also observed, in plain view, illegal narcotics and drugs on the coffee table in the unit. All three subjects were placed under arrest and given appropriate Miranda warnings. As aforesaid, Officer Cobb and the others observed marijuana and powder cocaine on the coffee

table in plain view. This evidence was seized and later determined to be 25 grams of marijuana and 4.6 ounces of powder cocaine.

After their arrest and being given the appropriate Miranda warnings, Defendant Washington took responsibility for all of the drugs in the apartment. Officer Cobb noted strong eye contact between Defendant Washington and Defendant King while Washington was making these statements. Defendant King refused any comment. Defendant Johnson told the officers that he was just in the apartment to get high and that none of the items seized were his drugs. A subsequent search of the apartment by the officers turned up two marijuana pipes, some marijuana "roaches", some crack cocaine, some scales and other drug paraphernalia, \$2,500.00 in cash and three cell phones. All of these items were seized and are the evidence upon which law enforcement relies in its prosecution of these three Defendants on the pending Charges.

It was undisputed testimony that when Officer Cobb, Det. Maynard and the other uniform officers entered the breezeway in question and started down the hall toward the back apartments that the officers did not know into which the apartment the suspect which they were seeking as described by Det. Givens had entered. They had heard an apartment door shut, but they could not tell from which apartment the noise had come. These officers going to arrest the suspect in question did not have the information that Det. Givens had transmitted via radio communications that the suspect in the aforementioned "buy-bust" operation had run into Apt. 79, the right rear apartment.

When asked directly to articulate the reasons which he thought justified the forced entry into Apt. 78 (apartment on back left of hall) by knocking down the door, Officer Cobb testified that he and the other officers thought that there was a crime occurring inside Apt. 78 based on the strong odor of burnt marijuana being detected from under the door and, from the noise heard through the door, that its occupants were engaging in destruction of evidence. Officer Cobb candidly admitted that there is no legal obligation for occupants of these apartments or any other residence or dwelling unit to open the door to a knock and demand from law enforcement officers. Officer Cobb also candidly admitted that people move inside apartments without being involved in illegal criminal activity. Officer Cobb and the other officers thought that drugs were being destroyed inside Apt. 78 which justified knocking down the door to that unit. Sometime subsequent to the apartment 78 door being knocked down and the three Defendants in this case being arrested, Apt. 79 was also entered and the suspect who had been observed in the "buy-bust" operation was arrested. For some reason not explained at the Evidentiary Hearing, the charges against the suspect in Apt. 79 were later dismissed.

#### CONCLUSION OF LAW

The first legal issue presented is whether or not all three Defendants have "standing" to challenge the warrantless entry into the subject apartment and the seizure of the evidence at issue. Defendant Washington rents the apartment so she clearly has the requisite standing as is conceded by the Commonwealth.



Defendant King and Defendant Washington have a child together which prompts Defendant King to have frequent and extended visits and living there. The Commonwealth again concedes that Defendant King has the requisite standing to challenge this seizure. Defendant Johnson was apparently a guest in the apartment. The Commonwealth argues that Defendant Johnson had no expectation of privacy as a guest in this particular apartment.

The issue of whether or not a defendant has an expectation of privacy in the area searched is determined upon the facts of each particular case. Estep v. Commonwealth, 663 S.W.2d 213 (Ky. 1984). Unlike the case in Rawlings v. Commonwealth, 448 U.S. 98 (1980) where a defendant challenged the search of his female friend's purse, Defendant Johnson in the case at bar was an invited guest into another's "castle" i.e., apartment. The Court Concludes that defendant Johnson does have standing to challenge this search and seizure as he would have a reasonable expectation of privacy as a guest in another person's apartment under these circumstances. Therefore, the Court Concludes that all three Defendants have the requisite standing to challenge the search and seizure at issue.

All warrantless searches are presumed to be unreasonable and unlawful, requiring the Commonwealth to bear the burden of justifying the search and seizure under one of the expectations to the warrant requirement. Commonwealth v. Erickson, 132 S.W.3d 884, 887 (Ky.App. 2004); Cook v. Commonwealth, 826 S.W.2d 329, 331 (Ky. 1992). The right of the people to be secure in their persons and houses against unreasonable searches and seizures has

been an established Constitutional right from the beginning of our nation. United States Constitution, Amendment IV. Kentucky has also recognized the prohibition against unreasonable searches and seizures through its Constitution. Kentucky Constitution, Section 10. It hardly requires citation of authority to note that a warrant is ordinarily required to enter a person's home. The United States Supreme Court has held that "the Fourth Amendment has drawn a firm line at the entrance to the house", adding that "absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." Payton v. New York, 455 U. S. 573 (1980). "It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable." Id. at 590; Coolidge v. New Hampshire, 403 U.S. 443 (1971). Nevertheless, there are exceptions to this warrant requirement, including "...imminent destruction of evidence." Minnesota v. Olsen, 495 U.S. 91(1990). With these Constitutional principles firmly in mind, the Court addresses the legal issues in the case at bar.

The Commonwealth argues that because of the smell of burnt marijuana coming from under the door at Apt. 78 where the three Defendants were inside, coupled with the hearing of the movement inside the apartment by Officer Cobb and the others, the conclusion of Officer Cobb and the others that exigent circumstances existed for entering the apartment due to the possible destruction of evidence justified the warrantless entry into the subject apartment. Exigent circumstances justify a warrantless entry into a home only where there is also probable cause to enter the residence. United

step in a logical manner demonstrates that this case has the necessary probable cause and exigent circumstances present to justify the warrantless entry. The act of a police officer knocking down the door to a citizen's residence is not taken lightly by this Court. The Court has kept the Constitutional principles set out above firmly in mind as the legal research was conducted and applied to the undisputed facts in this case.

CONCLUSION

Based on the undisputed Findings of Fact from the Evidentiary Hearing conducted on March 23, 2006 and the Conclusions of Law by the Court that officers had both probable cause to continue the investigation, there existed exigent circumstances because of the officers' fear that persons inside the apartment were in the act of destroying evidence.

Based upon all of the foregoing Findings of Fact and Conclusions of Law, the Motion of the Defendants to Suppress the evidence seized is hereby DENIED.

Dated this 2<sup>nd</sup> day of June, 2006.

Hon. James D. Ishmael, Jr.  
Hon. James D. Ishmael, Jr.

This is to certify that a true and correct copy of the foregoing Findings of Fact, Conclusions of Law and Opinion and Order was served upon the following parties via First Class Mail this 2<sup>nd</sup> day of June 2006:

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