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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002067-MR

JIMMY L. MCFARLAND APPELLANT

v. APPEAL FROM CRITTENDEN CIRCUIT COURT
HONORABLE TOMMY W. CHANDLER, JUDGE
ACTION NO. 00-CR-00041

COMMONWEALTH OF KENTUCKY APPELLEE

OPINION

AFFIRMING

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BEFORE: DYCHE, AND McANULTY, JUDGES; AND JOHN WOODS POTTER, SENIOR JUDGE.[1]

McANULTY, JUDGE. Appellant Jimmy L. McFarland entered a conditional guilty plea pursuant to RCr 8.09, to possession of a controlled substance in the first degree, marijuana cultivation

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[1] Senior Judge John Woods Potter sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

less than five plants, possession of marijuana and possession of drug paraphernalia. He contends on appeal that the trial court should have granted his motion to suppress, in which he argued that the warrantless search of his residence by a parole officer was illegal because he acted as a "stalking horse" for police officers who could not have obtained a warrant to search.

The search in question was performed by parole officer Dan Hooks with the assistance of two police officers, Detective Charles Miller of the Pennyrile Narcotics Task Force and State Trooper Brent White. Approximately four months prior to the search, Detective Miller had called Hooks and informed him that he had received information concerning drug trafficking at appellant's home. He did not inform Hooks of the source or details of what he had learned. Hooks took no action based on the information. At a later time, Hooks asked Trooper White about appellant. Trooper White told him that he had heard of possible drug trafficking by appellant.

On July 25, 2000, Hooks ran into Trooper White at the Crittenden County Courthouse, and they went to have lunch together. Later, Detective Miller came in and sat with them. Appellant's name arose and Hooks asked the law enforcement officers if they were still hearing about drug trafficking at appellant's house. Both verified that they were. Hooks suggested that they go to appellant's house and check it out.

When they went to appellant’s house, Hooks went to the front door. Appellant admitted Hooks to the house. Hooks told appellant he had information that there was drug trafficking taking place there and he would like to search the house. Hooks read a “consent to search form” to appellant, filled it out and appellant signed it. Thereafter, Hooks and the law enforcement officers conducted a thorough search of appellant’s residence.

The trial court found two bases for the validity of the search. First, the trial court found that appellant gave written consent to search. The court further concluded that it was not significant that appellant might have given consent because he “might have thought it would go hard for him if he didn’t do it.” Second, the court concluded that the parole officer has a right to search appellant’s premises on a surprise visit if he believes there is a parole violation because parolees agree to those terms of supervision as a condition of parole. In addition, the court concluded that Hooks possessed a reasonable suspicion to support the search because appellant was on parole for drug offenses and two police officers told him they believed there was illegal drug activity at appellant’s house. The trial court concluded that the parole officer’s search was at his own direction and instigation and was not a surreptitious method for the police officers to search the house without a warrant. The court noted that the parole officer had

a right to request the assistance of law enforcement in carrying out his duties.

On appeal, appellant maintains that the law enforcement officers used the parole officer to gain entry to a home when they could not have obtained a warrant. Appellant argues that in this case without law enforcement's involvement there would have been no entry and search of his home. He acknowledges that the fourth amendment criteria may be lessened when parolees are involved, but argues that when a parole officer conducts a warrantless search acting as a "stalking horse" for police, the search is invalid. See United States v. Grimes, 225 F.3d 254, 259 (2d Cir. 2000); United States v. McFarland, 116 F.3d 316, 318 (8th Cir. 1997); United States v. Ooley, 116 F.3d 370, 372 (9th Cir. 1997).

However, the Kentucky Supreme Court in Riley v. Commonwealth, 2003 Ky. LEXIS 119 (not yet final), held that there is no "stalking horse" defense. The court determined that the purpose behind a search of a parolee or probationer's premises may not be challenged as part of the fourth amendment inquiry. Id. at ___. Therefore, we will not give it consideration here.

The United States Supreme Court held that a state's operation of such systems as probation and parole present "'special needs' beyond normal law enforcement that may justify

departures from the usual warrant and probable-cause requirements." Griffin v. Wisconsin, 483 U.S. 868, 873-74, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987). The Supreme Court, in Griffin, held that a warrantless search of a probationer's home pursuant to a Wisconsin statute providing for such searches on reasonable grounds satisfied the Fourth Amendment. Griffin, 483 U.S. at 872, 107 S.Ct. at 3167-68. In Kentucky, the policy established by the Department of Corrections relating to warrantless searches for parolees requires reasonable suspicion to believe that the parolee is violating a condition of supervision or evidence of a violation of the terms and conditions of supervision before an officer may search without a warrant. See Coleman v. Commonwealth, Ky., 100 S.W.3d 769 (2002).

The trial court in this case found that the parole officer had a reasonable suspicion of a new crime committed by appellant based on the information given to him by the police officers. The trial court further found that he had a reasonable belief that evidence of trafficking would be found based on the statements from two law enforcement officers. The standard of review following a hearing on the suppression issue is that the factual findings of the trial court shall be conclusive if supported by substantial evidence. RCr 9.78. The parole officer and trooper both testified at the suppression

hearing that the parole officer initiated the decision to search, and not the police. Therefore, we agree that there was substantial evidence to support the trial court's decision.

Additionally, the trial court correctly found that the search in question was valid because appellant gave consent. Thus, the search did not violate the Fourth Amendment warrant requirement. Appellant has not alleged that his consent to search was not freely given. Moreover, we do not find any reason why it would not be considered valid under the circumstances by which it was obtained. Schneckloth v. Bustamonte, 412 U.S. 218, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973); Talbott v. Commonwealth, Ky., 968 S.W.2d 76 (1998). Therefore, we find no error in the search conducted in this case by appellant's parole officer since it was performed pursuant to a valid consent to search. The trial court correctly denied the motion to suppress.

For the foregoing reasons, we affirm appellant's conviction in the Crittenden Circuit Court.

ALL CONCUR.

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