

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001678-MR

RONALD TERRANCE HARDRICK

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LAURANCE B. VANMETER, JUDGE
ACTION NO. 02-CR-00289-1

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** *

BEFORE: BAKER, GUIDUGLI AND KNOPF, JUDGES.

GUIDUGLI, JUDGE: Ronald Terrance Hardrick ("Hardrick") appeals from a criminal judgment in Fayette Circuit Court on a conditional plea of guilty to charges of first-degree possession of a controlled substance and first-degree persistent felony offender. Hardrick maintains that the trial court erred in overruling his motion to suppress evidence. We affirm.

On January 23, 2002, Probation and Parole Officer Lezlei Kelly ("Kelly") went to Hardrick's residence to conduct a home visitation pursuant to the terms of Hardrick's parole. Hardrick was paroled from a conviction on burglary and persistent felony offender ("PFO") charges in 1996. Kelly was accompanied by Lexington Fayette Police Officer Franklin Patrick ("Patrick").

Upon arrival, Kelly knocked at the door and Hardrick answered. Hardrick stated to Kelly that he needed to put a shirt on, and, according to Kelly, said "come on in". Hardrick partially closed the door, and went back into the residence while Kelly and Patrick remained outside. After waiting for approximately two minutes, Kelly and/or Patrick became suspicious and entered the residence. Kelly heard "rustling" sounds coming from a bedroom and smelled a strong scent of air freshener. When Kelly approached the bedroom, Hardrick closed the door before she could enter. She told Hardrick to come out, and after a brief delay he complied. Hardrick's girlfriend also came out of the bedroom.

Patrick directed Hardrick and his girlfriend to be seated on a couch, and asked Hardrick if he (Hardrick) had any drugs or drug paraphernalia on him. Hardrick then told Patrick that he had a crack pipe in his pocket, and subsequently he was arrested and mirandized. Patrick then went into the bedroom and

retrieved an ashtray containing crack cocaine residue.¹ Hardrick and his girlfriend then admitted that they had some cocaine, and told Patrick where it was located in the residence.

On March 13, 2002, Hardrick was indicted by a Fayette grand jury on one count each of first-degree possession of a controlled substance, tampering with physical evidence, possession of drug paraphernalia, and first degree PFO. On April 10, 2002, Hardrick filed a motion to suppress the admission of the drugs and paraphernalia found at the residence. After a hearing on the matter was conducted and written arguments were filed, the trial court entered an order denying the motion to suppress.

Thereafter, Hardrick entered into a plea agreement under which the tampering and paraphernalia charges were dismissed, and a guilty plea was entered as to the remaining counts. The plea was conditioned on Hardrick's reservation of a right to appeal the suppression issue. He then received an enhanced sentence of ten (10) years in prison. This appeal followed.

The sole issue now before us is whether the trial court erred in overruling Hardrick's motion to suppress. Hardrick argues that Patrick was present at his residence for the sole purpose of accompanying Kelly to ensure her safety, and

¹ Hardrick maintains that Patrick retrieved the ashtray before finding the crack pipe.

that instead Patrick illegally conducted a search of Hardrick's residence. He goes on to argue that he never consented to the search, and claims that Patrick had no probable cause to justify the search. He maintains that since the search was illegal, the evidence obtained should not be admitted against him. He seeks an order reversing the denial of his motion to suppress and the resultant conviction.

We have closely studied Hardrick's claims of error, and find nothing in the record or the law which compels us to tamper with the order on appeal. The first question is whether evidence exists in the record upon which the trial court could conclude that Kelly and Patrick had the lawful authority to enter Hardrick's residence. This question must be answered in the affirmative for at least two reasons. First, Kelly stated that Hardrick said "come on in" when he answered the door. And second, it is uncontroverted that Hardrick, as a condition of his parole, consented in writing to allow a parole officer to enter and conduct a warrantless search of his residence if the officer had "reason to believe" that contraband was present. See generally, Wilson v. Commonwealth, Ky., 998 S.W.2d 473 (1999). Kelly's statement that Hardrick acted "nervous" accompanied by his two-minute absence arguable would give Kelly "reason to believe" that contraband was present. Either way, Kelly's testimony that Hardrick gave them permission to enter is

a sufficient basis upon which the trial court could have concluded that entry was lawful.

The next question is whether the search of Hardrick's person and his bedroom was supported by the law. Given that all parties agree that Hardrick *consented* to be searched, there can be little argument but that this portion of the search was lawful. Similarly, the parties agree that Hardrick told Patrick and Kelly that he was in possession of a crack pipe even before the actual search of Hardrick's body was conducted. It is clear that the search of Hardrick's person was lawful.

Similarly, we must also conclude that the search of Hardrick's bedroom was lawful, given that Patrick stated that he observed an ashtray containing a burned brillo pad in the bedroom, and because Hardrick was found to be in possession of the pipe and admitted that crack cocaine was present in the bedroom. Clearly, Kelly and Patrick had the duty to retrieve the cocaine after Hardrick admitted its existence.

Alternatively, the search of Hardrick's room was lawful given the totality of the circumstances known to Patrick and Kelly at the time. As the Commonwealth notes, the officers were aware that Hardrick was nervous when he answered the door; that he had not returned to the door after two minutes; that the strong odor of air freshener was present; that Patrick observed an ashtray containing a burned brillo pad; and, that rustling

sounds came from the bedroom and that Hardrick closed the door just as Kelly approached. When this knowledge is combined with Hardrick's admitted possession the crack cocaine and pipe, there can be little doubt but that the officers were authorized to retrieve the ashtray and cocaine from the bedroom. Accordingly, we cannot conclude that the trial court erred in overruling Hardrick's motion to suppress. This conclusion is supported by Unites States v. Knights, 534 U.S. 112, 122 S.Ct. 587, 151 L.Ed.2d 497 (2001), wherein the Court ruled that a defendant's status as a probationer, subject to conditions of supervision including that of search and seizure, diminished his reasonable expectation of privacy.

For the foregoing reasons, we affirm the judgment of the Fayette Circuit Court.

ALL CONCUR.

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