

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001999-MR

JAMES MICHAEL QUINN

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LEWIS G. PAISLEY, JUDGE
ACTION NO. 01-CR-00057

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: TACKETT, JUDGE, AND HUDDLESTON AND MILLER, SENIOR
JUDGES.¹

TACKETT, JUDGE: James Michael Quinn appeals from a judgment of the Fayette Circuit Court, entered on a conditional guilty plea to the offenses of obtaining a controlled substance by fraud and being a persistent felony offender in the second degree. Quinn was sentenced to five years' imprisonment, enhanced to seven years, probated. Quinn argues on appeal that the court should

¹ Senior Judge Joseph R. Huddleston and Senior Judge John D. Miller sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

have suppressed evidence obtained by the allegedly unlawful sharing of a KASPER report and his taped statement. We affirm.

KASPER, the Kentucky All Schedule Prescription Electronic Reporting system, is an electronic monitoring system that tracks controlled substance prescriptions. In order to obtain information from the KASPER system, a police officer must be engaged in a "bona fide investigation" of a "designated person."² At the evidentiary hearing, the detectives involved in the case stated that they were conducting an investigation pursuant to a complaint received from Kroger loss prevention which relayed on information that the appellant, a former Kroger employee, was seen filling prescriptions at Kroger's pharmacy and had been the subject of a prior investigation involving forged prescriptions. In furtherance of the investigation, the detectives requested and received a KASPER report, which ultimately led to information obtained from doctors and pharmacists that indicated that the appellant was fraudulently obtaining prescription medication.

The detectives also obtained a statement from Quinn at his home. Quinn testified that he was not read his Miranda rights until after he gave the detectives incriminating information; however, he was not in custody at the time of the interview.

² KRS 218A.202(6)(b).

That evidence was presented to the grand jury, and a multiple-count indictment followed. Quinn entered a conditional guilty plea to the above counts after the circuit court denied his motion to suppress the information obtained through the KASPER report and the statement. This appeal followed.

Kentucky Rule of Criminal Procedure (RCr) 9.78 requires that in matters pertaining to evidentiary hearings, a circuit court's factual findings must be upheld as conclusive if supported by substantial evidence. With respect to the KASPER report, the circuit court found that the report was obtained pursuant to a lawful, bona fide investigation, relying on the testimony of the detectives. We hold that this testimony constitutes substantial evidence, and therefore uphold the circuit court; further, this result is mandated by our holding in Thacker v. Commonwealth, Ky. App., 80 S.W.3d 451 (2002), in which this Court sanctioned the use of a KASPER report under virtually identical circumstances.

With respect to the appellant's statement to the police, we hold that Quinn was not in custody and therefore no violation of his rights under Miranda occurred. The circuit court's ruling was correct and shall not be disturbed on appeal.

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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