

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002263-MR

JAMES L. FULTZ

APPELLANT

v. APPEAL FROM ELLIOTT CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
INDICTMENT NO. 01-CR-00017

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BARBER, DYCHE, AND McANULTY, JUDGES.

DYCHE, JUDGE. James L. Fultz brings this appeal following his conditional plea of guilty (RCr 8.09) to the offense of possession of a handgun by a convicted felon. We affirm.

The handguns which triggered the charge herein were found during the execution of a search warrant by the FIVCO Area Drug Enforcement (FADE) task force. The guns were in a kitchen cabinet along with some controlled substances. Fultz claims that the affidavit in support of the search warrant was

defective, in that it did not specify when the illegal items were observed in Fultz's residence. "Therefore, if we had how, when and a time when this observation was made by the informant the staleness issue would not come into play." (Appellant's brief, p.6).

We have that information. As found by the trial court, the "further investigation" portion of the pre-printed affidavit form indicates that the Commonwealth's informant was admitted into the Fultz residence, and made a purchase of illegal drugs, "On Tuesday, November 21, 2000, at approximately 8:08 p.m. . . ." The staleness argument has no merit.

Fultz next complains of the lack of particularity of the items to be seized if discovered during the search; specifically, he argues that the guns were not identified, and the officers therefore had no reason to seize them. We disagree. The trial court found, as a fact, that Fultz was a convicted felon. RCr 9.78. Even if, as Fultz argues, the officers did not know he was a convicted felon, the weapons would nevertheless have been subject to seizure as evidence of a violation of KRS 218A.992, "Enhancement of penalty when in possession of a firearm at time of commission of offense."

The judgment of the Elliott Circuit Court is affirmed.

ALL CONCUR.

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