

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000262-MR

AMIR DADBIN

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE JOHN D. MINTON, JR., JUDGE
ACTION NO. 02-CR-00061

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE, McANULTY, AND SCHRODER, JUDGES.

McANULTY, JUDGE. Amir Dadbin (hereinafter appellant) appeals from a judgment of the Warren Circuit Court following his conditional guilty plea to trafficking in marijuana, five pounds or more, and possession of drug paraphernalia. On appeal, appellant argues that the trial court erred in denying his motion to suppress evidence. Finding no error, we affirm.

On August 27, 2001, Officer Melanie Scott and other officers of the Bowling Green Police Department, utilized an

informant to purchase marijuana from appellant. They gave the informant the "buy money," observed him entering appellant's apartment and exiting the apartment with a shoe box. The box contained a pound of marijuana. The informant left to meet with one of the officers at a convenience store. While this occurred, Officer Scott and two other officers went to appellant's apartment and, without an arrest warrant, took appellant and another occupant of the house into custody. Officer Scott then left to obtain a search warrant. In the search pursuant to the warrant the police seized over twelve pounds of marijuana, \$1,106 in cash (including the buy money), a camera and monitor, two digital scales, a calculator, cigarette roller, rolling papers, and a box of baggies.

Appellant filed a motion to suppress the evidence found in the search of his residence. Appellant alleged that the search warrant was constitutionally defective. The trial court concluded after a hearing that even if the initial entry to arrest appellant was unlawful, suppression was not required under the independent source doctrine, citing United States v. Murray, 487 U.S. 533, 108 S. Ct. 2529, 101 L. Ed. 2d 472 (1988), and Segura v. United States, 468 U.S. 796, 104 S. Ct. 3380, 82 L. Ed. 2d 599 (1984). From that authority the court concluded that an initial unlawful entry did not invalidate the later search of the residence pursuant to a search warrant. The court

stated that review of the affidavit and search warrant showed no defect, that they were particular as to place and scope, and showed adequate facts to establish probable cause to issue the warrant. Appellant filed a motion for reconsideration which the court denied. Appellant entered a conditional plea of guilty to the charges. He was sentenced to seven years on the trafficking charge and six months on the drug paraphernalia charge, to run concurrently.

On appeal, appellant argues that the trial court erred in applying the independent source doctrine in this situation. The independent source doctrine is an exception to the exclusionary rule. Wilson v. Commonwealth, Ky., 37 S.W.3d 745, 748 (2001). The Kentucky Supreme Court explained in Wilson that evidence need not be excluded if the connection between the illegal conduct and the discovery and seizure of the evidence is highly attenuated, or when evidence has been obtained by means sufficiently distinguishable from the initial illegality so that the evidence is purged of the primary taint. Id., citing Segura, 468 U.S. at 805, 104 S. Ct at 3385, 82 L. Ed. 2d at 608, and Wong Sun v. United States, 371 U.S. 471, 488, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963).

Appellant argues that the affidavit in support of the search warrant does not contain information from which to infer there was additional marijuana or paraphernalia in the

residence. He contends there was no reason to believe that more marijuana was present besides that sold to the informant and thus no probable cause to support a search for marijuana. Appellant suggests that information obtained by officers in the initial illegal entry determined what they would search for -- specifically, additional marijuana. Appellant believes that the independent source rule was not appropriate given the officers' initial entry without a warrant. He further asserts that the warrant was a general warrant which did not specify with particularity the places to be searched and items to be seized. Finally he argues that the court should have further investigated whether there was any search of appellant's home during the initial entry.

Appellant's arguments do not persuade us that the trial court's order was incorrect. RCr 9.78 states that if supported by substantial evidence, the factual findings of the trial court following an evidentiary hearing shall be conclusive. The trial court found in the order that "[i]n applying for the warrant, Detective Scott did not mention the prior entry and did not rely on any observation made during the entry." This finding was supported by Scott's testimony at the hearing and by the affidavit itself.

The affidavit asserted that appellant was selling marijuana and described the informant's transaction with him.

This was all information known to the officers through their work with the informant prior to their entering the apartment. The information that appellant was trafficking in sizeable quantities of marijuana provided sufficient probable cause to support a search for additional marijuana. The police were not required to know with certainty that additional drugs would be found in order to make this search -- the affidavit needed only to support "a fair probability that contraband or evidence of a crime will be found in a particular place." Lovett v. Commonwealth, Ky., 103 S.W.3d 72, 77 (2003).

We conclude that the court's findings were supported by substantial evidence, which means we regard them as conclusive. RCr 9.78. We agree that the independent source doctrine was applicable. Further, we agree with the trial court that the warrant was sufficiently particular about what was being sought and did not amount to a general warrant. Finally, the evidentiary hearing was not deficient due to the failure to take additional evidence. What the officers learned after entering the appellant's residence was not significant since whatever they learned played no part in the affidavit for search warrant. Thus, we affirm.

For the foregoing reasons, we affirm the order of the Warren Circuit Court denying the motion to suppress and the judgment of conviction.

ALL CONCUR.

BRIEF FOR APPELLANT:

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