

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000843-MR

RICHARD COLEMAN

APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT
HONORABLE JOHN T. DAUGHADAY, JUDGE
ACTION NO. 02-CR-00126

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; TACKETT AND VANMETER, JUDGES.

TACKETT, JUDGE: Richard Coleman appeals from the judgment of the Graves Circuit Court, entered on a conditional guilty plea to manufacturing methamphetamine. This case involves two separate incidents, and with respect to each, Coleman argues on appeal that the circuit court should have suppressed the evidence obtained in the searches for lack of valid consent. Coleman also argues that he could not be convicted of manufacturing methamphetamine because the evidence does not support a conviction, under Kotila v. Commonwealth, Ky., 114 S.W.3d 226 (2003). We affirm.

In the January incident, police were first drawn to an area because of the strong odor of ether detected by an officer from passing by the house on State Route 1710 in Graves County. Detective George Workman was called out to the scene by Deputy Sheriff Brett Miller, who first detected the odor while on a routine patrol. Workman and Miller proceeded to track the odor to a detached garage at 388 State Route 1710. Workman went to the adjacent house, knocked on the door, and a woman, the appellant's mother, answered. Workman testified that the officers also found the appellant's brother in the house and detained him in handcuffs for safety. Workman stated that the appellant's mother stated that she was the owner of the property and that the appellant was living in the garage, to which she did not have a key. She gave the officers permission to enter and search the building. After no one responded to knocking, the police told her that they would have to kick the door in, and she assented. Inside the garage, Coleman was found lying on the floor in front of a glass door, and a woman, Stephanie Purcell, in the bed. The officers found a bag with two jars of ether, a white powder which was proven to be methamphetamine, and other items the officers said were consistent with manufacturing methamphetamine, including coffee filters with residue, a tray with a gas generator, plastic tubing, and digital scales. Both Coleman and Purcell were arrested and

charged with manufacturing methamphetamine. Before being placed in the patrol car, an officer overheard him tell his mother that it was the first time he had tried making methamphetamine, and that he did it because he had no other way to make money. Appellant admitted the same to the police during questioning. Later, on January 30, Coleman and Purcell were released on bond.

The next month, the same detective was driving down Hayes School Road when he noticed an odor of ether. Once again following the smell, Detective Workman first stopped at a trailer in search of the source of the odor, when he noticed the porch lights come on at a nearby house. A woman opened the door, saw the officers, went back inside the house and turned off the porch lights. The detective considered this suspicious, so he went to the house and knocked on the door. Appellant answered the door, and Purcell was also in the house. The detective told Coleman that they had stopped in the area because they smelled ether, and Coleman said that the smell must be coming from across the street. Appellant told the officers that they could come in the house and look around because nothing was there, and the detective recorded Coleman's consent on a mini-cassette recorder. He also signed a consent form, but told the officers that it was his brother's property and that he should ask his brother, who lived next door. The police obtained the consent of the brother, searched the premises and discovered 760

pseudoephedrine tablets, coffee filters, a funnel, a jar containing ether, empty blister packs, an empty drain cleaner container, aluminum foil with burnt residue, a glass jar with residue and a roll of black tape, which the officers stated were consistent with the manufacture of methamphetamine.

The circuit court denied appellant's motion to suppress the evidence obtained in both searches, ruling that the searches were the product of consent. Coleman then entered a conditional guilty plea pursuant to an agreement, wherein the two counts of manufacturing methamphetamine were amended to criminal attempt to manufacture methamphetamine, the trafficking in methamphetamine was amended to criminal attempt to manufacture methamphetamine, and charges of wanton endangerment and possession of drug paraphernalia charges were dismissed. The court sentenced Coleman to a total of ten years' imprisonment, probated for five years, according to the agreement.

Coleman reserved his right to appeal the denial of the suppression motion by entering a conditional guilty plea. This appeal concerns the legality of the searches and the propriety of the charges of manufacturing methamphetamine in light of the Kentucky Supreme Court's recent decision in Kotila v. Commonwealth, supra.

We note at the outset that the threshold for reversal of an evidentiary ruling is quite high. The circuit court's ruling on factual matters relating to an evidentiary issue is deemed conclusive if supported by substantial evidence.

Commonwealth v. Neal, Ky. App., 84 S.W.3d 920, 923 (2002).

Further, we note that the sufficiency of written findings of fact is waived if the defendant does not request additional findings in the circuit court. Since the record reveals that Coleman made no such request of the circuit court, we hold that his argument that the court's findings are insufficient to support its conclusions must fail.

The circuit court's holding that the January search of the garage was the product of valid consent is supported by substantial evidence. The detective testified that he obtained consent to search from the owner of the property. Even though at the suppression hearing, the appellant's mother testified that her daughter actually owned the premises, and the appellant argued that therefore, she did not have authority to consent to the search, under Illinois v. Rodriguez, 497 U.S. 177, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990), the information available to the officers at the scene was enough for the officers to believe that she had the apparent authority to consent to the search. At the scene, Mrs. Coleman told the officers that she, not her daughter, owned the property, and that her son was living in the

garage without paying rent. That is sufficient to lead a reasonable peace officer to believe that she had the authority to consent to a search. Even if Mrs. Coleman's testimony at the suppression hearing is true, under Rodriguez the search does not violate the Constitution.

Coleman also argues that the jars of ether found in the January search were not in plain view, but rather were in a closed container, and that the consent given to search the premises did not extend to closed containers. As this argument was never raised in the court below, we must reject it as it is not preserved for appellate review and raised for the first time on appeal.

With respect to the February search, we hold that there was substantial evidence to support the court's conclusion that the consent given by Appellant's brother and by the Appellant himself was valid. In this case, the Appellant asserts that the consent should be deemed invalid because his brother signed the consent form after the police had already found the incriminating evidence. The officer's statement contradicts this assertion, as he testified that he obtained both Coleman brothers' consent prior to the search. As the circuit court is the sole judge of the credibility of the witnesses in a suppression hearing, we defer to the circuit

judge's decision to believe the testimony of the detective rather than the defendant.

Turning to the issue of whether the evidence was sufficient to support a conviction for the charge to which he pled guilty, we likewise reject the appellant's contention that it was not. As the Commonwealth states, it is well settled that a guilty plea waives all defenses other than that the indictment fails to charge an offense. Mattingly v. Commonwealth, Ky. App., 878 S.W.2d 797 (1993), Sanders v. Commonwealth, Ky. App., 663 S.W.2d 216 (1983). Since appellant entered a guilty plea (albeit conditional, to allow him to pursue an appeal of the court's ruling on the above evidentiary issues) he waived all issues regarding the sufficiency of the evidence. Accordingly, we reject this contention on appeal.

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

ALL CONCUR.

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