

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000982-MR
AND
NO. 2003-CA-001112-MR

RODNEY WOOSLEY

APPELLANT

v. APPEALS FROM UNION CIRCUIT COURT
HONORABLE TOMMY W. CHANDLER, JUDGE
ACTION NO. 01-CR-00119

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, BUCKINGHAM, AND MINTON, JUDGES.

BARBER, JUDGE: Appellant, Rodney Woosley (Woosley), appeals a drug conviction, and an order of forfeiture. The appeal of conviction was filed first, that being action 2003-CA-000982-MR, and then the forfeiture was appealed separately, under 2003-CA-001112-MR. We affirm the conviction and the order of forfeiture entered by the Union Circuit Court.

Woosley was the owner of certain business premises. A Kentucky State Trooper obtained a search warrant for the premises. In support of the search warrant, Trooper Armbrust's affidavit stated that he had received information from a credible and reliable informant who claimed to have observed large quantities of marijuana on the premises. The Trooper's affidavit also stated that he conducted an independent investigation of the claims. The Trooper stated that "[p]reviously the affiant has received information from numerous independent informants, information which indicates that Drug Trafficking is occurring at this location. The affidavit also stated that local police officers had information regarding quantities of marijuana being sold from the premises. When the premises were searched, marijuana and two pistols were found.

Woosley filed a motion to suppress the evidence, claiming that the search warrant was not based on probable cause. This motion was denied by the trial court. Woosley entered a conditional plea of guilty, which permitted him to appeal his conviction based on the argument that the affidavit was insufficient, and therefore, the search warrant was not valid. As a condition of the plea, Woosley agreed to forfeit all items seized from the business premises.

The law requires that a search warrant based on anonymous information must show that the anonymous evidence is

corroborated with outside evidence of criminal behavior.

Illinois v. Gates, 462 U.S. 213, 225, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). The affidavit in support of the search warrant must show that the informant has a "basis of knowledge," and that the informant is "reliable." Illinois v. Gates, supra., 462 U.S. at 230, fn. 4. Woosley asserts that the affidavit underlying the search warrant in his case merely stated that the informant was reliable, and did not prove that fact. The affidavit states that the informant is "credible and reliable," and that the informant has "provided information in the past that has been shown to be truthful and reliable." We find that the assertions contained in the affidavit are sufficient.

Woosley asserts that the trial court's denial of his motion to suppress was in error. Woosley bases this argument on his contention that the officer did not undertake an independent investigation of the charges sufficient to form the basis for issuance of a search warrant. The affidavit states that the officer relied on statements by witnesses and by local law enforcement as his independent investigation. Woosley argues that this investigation was insufficient to support issuance of a search warrant. We disagree. Where, as here, the witnesses provide a high level of detail regarding the illegal actions, such as the amount of the contraband; the location of the guns; and the ongoing drug dealing and packaging activity, there is

probable cause to issue the warrant. Lovett v. Commonwealth, Ky., 103 S.W.3d 72, 78 (2003).

Lastly, Woosley contends that the forfeiture of goods, electronic equipment, and vehicles seized on the business premises was improper. KRS 514.130 provides for forfeiture of property used in the commission of an offense upon the conviction of the property owner. Woosley does not contend that these goods were not used in the commission of the charged offense. Woosley's sole ground for disputing the propriety of the forfeiture is that the search warrant was improper, and that his conviction should be overturned. As we affirm the conviction below, there is no ground to reverse the forfeiture. For this reason, the trial court's order of forfeiture is affirmed.

The Commonwealth fails to rebut any of the assertions made by Rodney Woosley on appeal. Upon motion, the Commonwealth was permitted the opportunity to file a combined brief in the consolidated cases. The Commonwealth filed a brief which fails to name Rodney Woosley, or deal with any of the issues raised in this appeal. The brief filed by the Commonwealth deals solely with the issues raised by Kelly Woosley on appeal in her separate action, 2003-CA-001111-MR. Kelly Woosley's case is not consolidated with the present actions. Nevertheless, the record contains responses filed by the Commonwealth during pre-trial

preparation of this case, which provide the Commonwealth's argument before the trial court that the search warrant should be held valid.

The trial court ruled during pre-trial proceedings that "the affidavit relied upon by the magistrate stated sufficient facts to permit the magistrate to believe with all reasonableness that there was a probability that illegal drugs were being kept on defendant's [business] premises." The trial court ruled that the "totality of circumstances" found in Beemer v. Commonwealth, Ky., 655 S.W.2d 912 (1984) was met with regard to the search warrant for the business premises. We affirm the trial court's ruling, and hold that the affidavit in support of the search of the business premises was sufficient.

As there is no separate ground for finding the forfeiture improper, other than its resulting from the affidavit and search warrant in the criminal case, we affirm the forfeiture as being in accordance with law. As Woosley notes, KRS 514.130 provides that upon the conviction of a party, all property "used in the commission or furtherance of an offense under this chapter or in the transportation of stolen property shall be forfeited. . . ." Woosley has not shown reversible error in the imposition of forfeiture. For this reason, the order of forfeiture is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Steve P. Robey
Valerie L. Bock
Providence, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler, III
Attorney General of Kentucky
Frankfort, Kentucky

John R. Tarter
Assistant Attorney General
Frankfort, Kentucky