

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002096-MR

GREGORY ALLEN CONN

APPELLANT

v. APPEAL FROM MEADE CIRCUIT COURT
HONORABLE SAM H. MONARCH, JUDGE
INDICTMENT NO. 02-CR-00099

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE, KNOPF, AND MINTON, JUDGES.

DYCHE, JUDGE: While Gregory Allen Conn was in federal custody in Ohio for manufacturing methamphetamine, his sister volunteered to clean his apartment. She and her husband obtained a key from Conn's landlord, then drilled a hole in the lock to gain access to Conn's bedroom. Upon entering the bedroom, the sister immediately left and contacted the state police. After she described the contents of her brother's

bedroom, a trooper and later two detectives were dispatched to the apartment.

A search warrant was eventually obtained and executed, leading to Conn's indictment. When his motion to suppress the search and its fruits was unsuccessful, Conn entered a conditional plea of guilty to manufacturing and trafficking methamphetamine as well as possession of drug paraphernalia. He was sentenced to a total of ten years' imprisonment. Conn appeals; his sole argument is that the trial court erred in denying his motion to suppress. We affirm.

Our standard of review of a circuit court's decision on a suppression motion following a hearing is twofold. First, the factual findings of the court are conclusive if they are supported by substantial evidence. [RCr 9.78.] The second prong involves a *de novo* review to determine whether the court's decision is correct as a matter of law. [Adcock v. Commonwealth, 967 S.W.2d 6, 8 (Ky. 1998).] [A] reviewing court should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers.

Stewart v. Com., 44 S.W.3d 376, 380 (Ky.App. 2000)(footnotes omitted). We have reviewed the record in its entirety and hold that the trial court's factual findings were supported by substantial evidence. RCr 9.78. It was undisputed that Conn had recently begun serving a sixty-three month sentence. He had

asked his sister to "clean up and clean out" his apartment, as he was behind in rent and would not be out of custody in the foreseeable future. Conn was aware of the contents of his apartment when he gave his sister the absolute authority to enter his apartment. He cannot later complain that she was "acting as a government agent" when she reported her findings to the police. And, as the Commonwealth contends, Conn's methamphetamine laboratory would have been inevitably discovered by the landlord in the event that his sister had not reported it.

We secondly hold that the trial court's denial of the motion to suppress was correct as a matter of law. Adcock, supra. The information used by the police to obtain the search warrant was lawfully obtained, and the execution of the search warrant was lawfully conducted.

The judgment of the Meade Circuit Court is affirmed.

ALL CONCUR.

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