

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002148-MR

EUGENE NOBLE

APPELLANT

v. APPEAL FROM BREATHITT CIRCUIT COURT
HONORABLE LARRY MILLER, JUDGE
INDICTMENT NO. 02-CR-00088

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

REVERSING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE, AND GUIDUGLI, JUDGES.

DYCHE, JUDGE: Eugene Noble entered a conditional plea of guilty (RCr 8.09) to the charge of Possession of a Controlled Substance, First Degree, reserving his right to appeal the denial of his motion to suppress certain evidence against him. Because we find that the evidence was obtained as a result of the use of an invalid search warrant, we reverse.

Kentucky State Police were in the process of conducting a drug investigation in Breathitt County in August 2002. A Detective Smoot was working on the investigation; he

was later replaced by Detective Crandall Hurt, who supervised the use of a confidential informant to gather evidence against Noble and his mother.

On September 17, 2002, Det. Hurt obtained a search warrant from the Trial Commissioner of the Breathitt District Court, Mitchell Wireman, a non-attorney, who happens to be Det. Smoot's father-in-law. As a result of the search pursuant to the warrant, Noble was charged and eventually entered his plea of guilty.

Prior to the plea, however, Noble moved the court to suppress the evidence obtained as a result of the search on various grounds. Because we find that Commissioner Wireman should have not acted in this particular case, we reverse without considering any other grounds raised by Noble.

It is axiomatic that an application for a search warrant must be evaluated by a neutral and detached magistrate. Brandenburg v. Commonwealth, 114 S.W.3d 830, 831-2 (Ky. 2003). As in the cited case, we hold that, because of the familial relationship between the police officer and the issuing commissioner, an appearance of impropriety arose herein, "destroy[ing] the trial commissioner's character as a neutral and detached issuing authority," and the evidence therefore should have been suppressed.

The judgment of the Breathitt Circuit Court is reversed.

GUIDUGLI, JUDGE, CONCURS.

BUCKINGHAM, JUDGE, DISSENTS BY SEPARATE OPINION.

BUCKINGHAM, JUDGE, DISSENTING BY SEPARATE OPINION. I respectfully dissent. In my opinion, the fact that the trial commissioner was the father-in-law of a detective who had previously worked on the investigation was insufficient to cause an appearance of impropriety. There is no indication that the trial commissioner knew that his son-in-law had previously worked on the case, and the mere fact that the trial commissioner was related to a member of the law enforcement agency that procured the warrant was insufficient to destroy his status as a neutral and detached magistrate.

In Dixon v. Commonwealth, 890 S.W.2d 629 (Ky. App. 1994), it was held that the trial commissioner was not a neutral and detached magistrate for the purpose of issuing a search warrant in a criminal case where she was a law partner of the county attorney. Id. at 632. In Commonwealth v. Brandenburg, 114 S.W.3d 830 (Ky. 2003) a 4-3 decision by the Kentucky Supreme Court, it was held that the trial commissioner, who issued a search warrant in a criminal case, was not a neutral and detached magistrate because she was married to an employee of the commonwealth attorney's office. Id. at 635. Had the trial

commissioner's son-in-law presented the warrant to the trial commissioner for issuance, then I would agree that there would have been an appearance of impropriety. Under these facts, however, I disagree.

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