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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002128-MR

LAWRENCE T. KERSEY

APPELLANT

v. APPEAL FROM HART CIRCUIT COURT
HONORABLE LARRY D. RAIKES, JUDGE
ACTION NO. 02-CR-00070

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Lawrence T. Kersey brings this appeal from an October 5, 2004, judgment of the Hart Circuit Court upon a conditional plea of guilty to first-degree possession of controlled substance, possession of methamphetamine precursors and misdemeanor charges. We affirm.

On July 23, 2002, the Kentucky State Police received an anonymous tip that Lawrence Kersey was manufacturing

methamphetamine in room 228 of the Budget Host Inn in Horse Cave, Kentucky. Acting on this tip, Detective Jeff Scruggs and three other Kentucky State Police Officers conducted surveillance of the motel for approximately two hours. During their surveillance, the officers confirmed that an individual named Lawrence Kersey was registered in the room as stated in the anonymous tip. The officers also observed Kersey and a female (later identified by Kersey as his cousin) entering and leaving the motel room several times before checking out of the motel. Kersey was then observed placing a cooler and a plastic Wal-Mart bag into his vehicle before both he and the female left the motel in separate vehicles.

Detective Scruggs followed Kersey out of the motel and down the main highway in Horse Cave, where Kersey turned onto Kentucky Highway 335. Detective Scruggs then observed Kersey turn around in a driveway and proceed back toward the main highway. Believing that Kersey realized he was being followed, Detective Scruggs radioed for the other officers to stop Kersey so he could be questioned about the anonymous tip. Kersey was stopped in the road by Trooper Kevin Pickett and other state troopers. After observing methamphetamine in plain view on the console area of his car, the officers conducted a search of the vehicle that revealed additional methamphetamine, numerous

pills, 41 grams of Pseudoephedrine HCL tablets, a loaded pistol, and a loaded rifle.

Kersey was subsequently indicted by the Hart County Grand Jury for manufacturing methamphetamine (Kentucky Revised Statutes (KRS) 218A.1432), trafficking in methamphetamine (KRS 218A.1412), first-degree possession of controlled substances (KRS 218A.1415), possession of a prescription drug not in proper container (KRS 218A.210), carrying a concealed deadly weapon (KRS 527.020), two counts of second-degree possession of controlled substance (KRS 2148A.1416), and six counts of possession of handgun while committing offense (KRS 218A.992).¹ Kersey filed a motion to suppress the evidence obtained from the search, contending the anonymous tip was insufficient to constitute reasonable suspicion of criminal activity to justify the initial stop of his vehicle. The circuit court disagreed and denied Kersey's motion to suppress.

Kersey then entered a conditional plea of guilty to first-degree possession of controlled substance, possession of methamphetamine precursors and to misdemeanor charges. Kersey reserved the right to appeal the circuit court's denial of the motion to suppress. See Ky. R. Crim. P. (RCr) 8.09. Kersey was sentenced to five years' imprisonment. This appeal follows.

¹ Although irrelevant to this appeal, Kentucky Revised Statutes (KRS) 218A.1432, KRS 527.020, and KRS 218A.992 were amended in the 2005 regular session of the General Assembly.

Kersey contends the circuit court erred by denying the motion to suppress evidence. Specifically, he contends the police stop of his vehicle was unconstitutional because it was based upon an anonymous tip without any corroborative evidence of wrongdoing or any indicia of reliability. Upon review of the record and applicable case law, we are compelled to disagree.

It is well-established that "to perform an investigatory stop of an automobile, there must exist a reasonable and articulable suspicion that a violation of the law is occurring." Collins v. Commonwealth, 142 S.W.3d 113, 115 (Ky. 2004)(citing Delaware v. Prouse, 440 U.S. 648, 663, 99 S. Ct. 1391, 1401, 59 L. Ed. 2d 660, 673 (1979)). An anonymous tip, suitably corroborated, may provide the reasonable and articulable suspicion that is necessary to justify such an investigatory stop. Alabama v. White, 496 U.S. 325, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990). However, to determine if an anonymous tip supplied the requisite quantum of suspicion, the court must look at the totality of the circumstances for sufficient indicia of reliability. Id.

In the present case, officers received an anonymous tip specifically stating that Kersey was manufacturing methamphetamine in his motel room at the Budget Host Inn. Looking at the totality of the circumstances, the anonymous tip

was suitably corroborated to give it sufficient indicia of reliability.

By specifically mentioning Kersey by name, the anonymous tipster gave the officers a way to corroborate the tip. Officers observed Kersey for two hours and then corroborated the anonymous tip by confirming he was registered in the room stated in the tip. They observed him placing a cooler and a plastic Wal-Mart bag in his vehicle. Detective Scruggs testified that these items are commonly found by law enforcement officers in methamphetamine manufacturing. "[A] trained officer draws inferences and makes deductions-- inferences and deductions that might well elude an untrained person." United States v. Cortez, 449 U.S. 411, 418, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981). Officers also observed Kersey making an unexplained turnaround while driving. Factors such as these may not be proof of any illegal conduct and may be consistent with innocent travel when taken separately. However, when taken together, this conduct may amount to reasonable suspicion. United States v. Sokolow, 490 U.S. 1, 109 S. Ct. 1581, 104 L. Ed. 2d 1 (1989).

Upon the totality of the circumstances, we are of the opinion the anonymous tip, as corroborated by the officers' observations, was sufficient to create reasonable suspicion that Kersey was engaged in criminal activity; thus, the investigatory

stop was not violative of the Fourth Amendment of the United States Constitution and of Section 10 of the Kentucky Constitution. Accordingly, we hold the circuit court properly denied Kersey's motion to suppress.

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

BUCKINGHAM, JUDGE, CONCURS.

DYCHE, JUDGE, DISSENTS.

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