

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-002188-MR

AND

NO. 2007-CA-000113-MR

ROBERT LEE CONNER

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE R. JEFFREY HINES, JUDGE  
ACTION NOS. 05-CR-00319 AND 05-CR-00319-002

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \*\* \* \*\* \*

BEFORE: THOMPSON, JUDGE; BUCKINGHAM AND HENRY, SENIOR JUDGES.<sup>1</sup>

THOMPSON, JUDGE: Robert Lee Conner appeals from two judgments of the McCracken Circuit Court following his conditional guilty plea to possession of a controlled substance in the first degree. Pursuant to his plea, Conner reserved the right to appeal the denial of his suppression motion. Concluding that the trial court did not err, we affirm.

---

<sup>1</sup> Senior Judges David C. Buckingham and Michael L. Henry sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On June 15, 2005, Paducah Police Detective William Gilbert was contacted by a confidential informant (CI) regarding a potential drug transaction. According to the CI, who Gilbert believed was reliable from previous experience, Hashim Ahmad<sup>2</sup> had approached him, showed him a quantity of cocaine, and offered to sell the drugs to him. Deciding to organize a drug bust operation, Gilbert instructed the CI to contact Ahmad and order one hundred and fifty dollars (\$150) worth of cocaine. Additionally, he obtained the assistance of other officers to participate in making any arrests.

On June 16, 2005, after the drugs had been ordered, the CI and Gilbert drove to the TK Food Mart on North Thirteenth Street where Ahmad was employed as a store attendant. After they arrived and requested drugs, Ahmad informed them that he did not have any drugs in his possession but that his contact would soon arrive with a delivery. Ahmad requested that they wait outside in their car until his contact arrived. After the passage of several minutes, Ahmad approached the waiting men and attempted to obtain the drug purchase money. Gilbert rebuffed his request because he had not been shown any drugs. Ahmad then returned inside the store.

After more time had passed, Gilbert and the CI re-entered the store, and Gilbert told Ahmad that he did not expect to wait to purchase drugs. Ahmad stated that he would again call his contact. Subsequently, a vehicle turned into the store's parking lot, and the CI identified the vehicle as belonging to a drug dealer. Robert Conner exited

---

<sup>2</sup> On direct appeal, this Court used the name "Hashim." However, he has also been referred to as "Hisham" during the proceedings of this case.

the front passenger side of the vehicle, went inside the store, and returned to his vehicle a short time later.

Ahmad then exited the store, approached the CI's car, showed Gilbert crack cocaine, and stated, "see, I told you he would show up." Gilbert and Ahmad then exchanged money for drugs. Following this exchange, Gilbert signaled to other officers and Ahmad and Conner were then arrested. Shortly after the arrests, Conner's vehicle was searched and a handgun was found in the trunk of the car.

On August 5, 2005, a McCracken County grand jury indicted Conner for trafficking in a controlled substance, first offense, first-degree; being a convicted felon in possession of a handgun; receiving stolen property; and being a persistent felony offender in the second degree. Subsequently, he moved to suppress "any and all evidence seized in this case." Asserting that his arrest was not supported by probable cause, Conner contended that the search and seizure of evidence was made pursuant to an invalid arrest and thus should be suppressed.

After a suppression hearing, the trial court denied Conner's suppression motion. The court ruled that probable cause was established by Gilbert's direct participation in the events leading up to Conner's arrest coupled with the CI's corroborated statements regarding the drug transaction.

Conner then proceeded to trial on the felony possession of a handgun charge which had been severed from his three other charges. Following a jury trial, he was convicted and sentenced to five years' imprisonment. Subsequently, Conner entered

a conditional guilty plea to the amended charge of possession of a controlled substance, first-degree. The receiving stolen property and persistent felony offender charges were dismissed. In accordance with his plea agreement, he was sentenced to five years' imprisonment which was ordered to be served concurrently with his felony possession of a handgun sentence. This appeal followed.<sup>3</sup>

On appeal, Conner contends that his arrest and search were violative of the Fourth Amendment to the United States Constitution because they were unsupported by probable cause. Alleging that the CI's tip was unreliable and uncorroborated and that Gilbert did not observe him commit a crime, Conner contends that the police neither had probable cause to arrest nor to search his car. Thus, he contends that the evidence obtained as a result of his arrest should have been suppressed.

On appellate review of a trial court's denial of a motion to suppress, we must apply the two-step process set out in *Ornelas v. U.S.*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996), and adopted by Kentucky in *Adcock v. Commonwealth*, 967 S.W.2d 6 (Ky. 1998). First, we review the trial court's findings of fact under the substantial evidence standard. *Id.* at 8. Under this standard, the trial court's findings of fact will be deemed conclusive if they are supported by substantial evidence. *Drake v. Commonwealth*, 222 S.W.3d 254, 256 (Ky.App. 2007).

Finally, we conduct a *de novo* review of the trial court's application of the law to the established facts to determine whether its ruling was correct as a matter of law.

---

<sup>3</sup> In this appeal, Conner's convictions for felony handgun possession and possession of a controlled substance have been consolidated. Thus, our resolution of Conner's Fourth Amendment challenge in this appeal will be dispositive of his two judgments of conviction.

*Welch v. Commonwealth*, 149 S.W.3d 407, 409 (Ky. 2004). Under this standard, we afford no deference to the trial court's application of the law to the facts found. *Cinelli v. Ward*, 997 S.W.2d 474, 476 (Ky.App. 1998).

Conner has not contested the trial court's findings, and the record reveals nothing that would cast doubt upon these findings. Thus, we conclude that the facts relied upon by the trial court were supported by substantial evidence and are conclusive for the purpose of this appeal. Therefore, our remaining task is focused solely upon whether the trial court properly applied the law to the facts.

It is well established that police must have probable cause to believe that a defendant committed a crime before they can effect an arrest. *Patterson v. Commonwealth*, 630 S.W.2d 73, 74 (Ky.App. 1981). "Probable cause involves whether the known facts provide reasonable grounds or a fair probability that a circumstance exists supported by less than prima facie proof but more than mere suspicion." *Baltimore v. Commonwealth*, 119 S.W.3d 532, 538 (Ky.App. 2003). Essentially, probable cause for an arrest requires that the police have reasonable grounds to believe that the suspect has committed, is committing, or is about to commit a crime. *Id.* at 538-39.

Furthermore, probable cause to make an arrest can be based in part on a tip from an informant. *Williams v. Commonwealth*, 147 S.W.3d 1, 8 (Ky. 2004). "In order to show probable cause justifying a warrantless arrest which is based upon an informant's tip, it must be established that the informant is a reliable source and that substantial parts of the information furnished were confirmed by police before the arrest." *Faught v.*

*Commonwealth*, 656 S.W.2d 740, 741 (Ky. 1983); *Brock v. Commonwealth*, 627 S.W.2d 39 (Ky.App. 1981).

After applying the law to the facts of this case, we conclude that the police had probable cause to arrest Conner and search his vehicle. As previously noted, a reliable informant notified police that he had been solicited to purchase narcotics by Hashim Ahmad. After the informant and an undercover police detective approached and requested drugs from Ahmad, he informed them that he did not have any drugs but that his contact would soon arrive with a delivery.

Forty-five minutes later, when Conner arrived, the informant identified his car as a drug dealer's car. Following his arrival, Conner joined Ahmad inside the store in which Ahmad worked. Thereafter, Ahmad approached the undercover agents, showed them drugs, and said, "see, I told you he would show up." From the totality of these facts, there was a reasonable and fair probability that Conner had committed a crime and that contraband may be found in his vehicle. Thus, the arrest of Conner and search of his vehicle were supported by probable cause.

Conner contends that the CI's tip was unreliable and uncorroborated and that Gilbert did not observe him commit a crime. While the informant did not initially state that Conner would be involved in the transaction, this inaccuracy by omission is not fatal to the determination of the informant's reliability. An informant's inaccuracy as to one fact is not fatal to his credibility if his other statements can establish his overall reliability. *Lovett v. Commonwealth*, 103 S.W.3d 72, 77-78 (Ky. 2003). Moreover, the

informant's identification of Conner's vehicle as "the dealer's vehicle," without identifying Robert Conner by name, is likewise not fatal.

From a review of the record, the informant placed the police in a position where they could personally participate in an illegal drug transaction. Thereafter, police observed Conner's participation in the sequence of events leading up to Ahmad's sale of cocaine to Gilbert. Although Conner was not observed supplying Ahmad drugs, it could reasonably be inferred that he was the "contact" that supplied Ahmad the drugs. Accordingly, the CI's information was sufficiently corroborated, and the police had probable cause to believe that Conner had participated in drug trafficking.

Finally, we conclude that the search of Conner's vehicle was valid. He was arrested for delivering drugs; thus, there was certainly probable cause to search his vehicle for contraband pursuant to the automobile exception. *Dunn v. Commonwealth*, 199 S.W.3d 775, 776 (Ky.App. 2006)(the automobile exception permits police to search a legitimately stopped automobile where probable cause exists that contraband is inside the vehicle). Accordingly, the trial court's application of the law to the facts of this case was correct as a matter of law.

For the foregoing reasons, the two judgments of the McCracken Circuit Court are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Erin Hoffman Yang  
Assistant Public Advocate  
Department of Public Advocacy  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

James C. Shackelford  
Assistant Attorney General  
Frankfort, Kentucky