

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000158-MR

AARON H. TENNYSON

APPELLANT

v.

APPEAL FROM MEADE CIRCUIT COURT
HONORABLE SAM H. MONARCH, JUDGE
ACTION NO. 06-CR-00060

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: HOWARD,¹ NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Aaron H. Tennyson brings this appeal from a December 22, 2006, judgment of the Meade Circuit Court upon his conditional plea of guilty to manufacturing methamphetamine, possession of marijuana, and possession of drug paraphernalia. We affirm.

Appellant was indicted upon the offenses of manufacturing methamphetamine, possession of marijuana, and possession of drug paraphernalia, all enhanced by possession of a firearm. Appellant subsequently filed a motion to suppress

¹ Judge James I. Howard concurred in this opinion prior to the expiration of his appointed term of office on December 6, 2007. Release of the opinion was delayed by administrative handling.

evidence seized from his garbage cans placed upon the street curb for pickup. By opinion and order entered November 30, 2006, the circuit court denied appellant's motion to suppress. Thereafter, appellant entered a conditional guilty plea upon the offenses of manufacturing methamphetamine, possession of marijuana, and possession of drug paraphernalia, and was sentenced to total of ten years' imprisonment. Ky. R. Crim. P. (RCr) 8.09. This appeal follows.

Appellant contends the circuit court committed error by denying his motion to suppress evidence. Upon review of a circuit court's decision to deny a motion to suppress evidence, the circuit court's findings of fact are affirmed if supported by substantial evidence of a probative value and issues of law are reviewed *de novo*. RCr 9.78; *Canler v. Commonwealth*, 870 S.W.2d 219 (Ky. 1994); *Commonwealth v. Banks*, 68 S.W.3d 347 (Ky. 2001).

In his brief, appellant's argument consists of one and a half pages and, substantively, is summed up as follows:

The Appellant argues in this case that the police had no basis justifying reasonable suspicion that the subject was violating the law.

The police based their search solely on people coming in and going out of the residence. The Appellant therefore argues that the police did not have a basis justifying reasonable suspicion to conduct a trash search.

Appellant's Brief at 3. Apparently, appellant believes that the police must possess a “reasonable suspicion” to search garbage located at the curb for pickup. However, such

is a misstatement of the law. The United States Supreme Court has held there exists no reasonable expectation of privacy in garbage located outside the curtilage of a house. See *California v. Greenwood*, 486 U.S. 35, 106 S.Ct. 1625, 100 L.Ed.2d. 30 (1988).

In denying the motion to suppress, the circuit court's opinion was well-reasoned, and we quote it herein approvingly:

Det. Ezra Stout of the Kentucky State Police testified at the suppression hearing in this matter that the Defendant placed his garbage at the curb for collection and that instead of Meade County Solid Waste and Recycling picking up the garbage, the garbage was seized by Det. Stout. Evidence found in the garbage formed the basis for the issuance of a warrant to search the Defendant's residence. The affidavit for search warrant and search warrant are a matter of record. The Defendant challenges the right of police to seize the garbage.

The Fourth Amendment to the United States Constitution and Section 10 of the Kentucky Constitution prohibit unreasonable searches and seizures. In order to constitute a "search," a person must have a "reasonable expectation of privacy" in the place to be searched. Katz v. United States, 389 U.S. 347 (1967). The United States Supreme Court has held that the Fourth Amendment does not prohibit the warrantless search and seizure of garbage left for collection outside the curtilage of a home. California v. Greenwood, 486 U.S. 35 (1984). The Supreme Court reasoned that plastic garbage bags left at or near the side of a public street are readily accessible to animals, children, scavengers, snoops, or other members of the public and that a person could have no reasonable expectation of privacy in items which he has discarded. Kentucky has adopted the legal reasoning of California v. Greenwood in Hause v. Commonwealth, Ky.App., 83 S.W.3d 1 (2001), Colbert v. Commonwealth, Ky., 43 S.W.3d 777 (2001), Adams v. Commonwealth, Ky.App., 931 S.W.2d 465 (1996), Deemer v. Commonwealth, Ky., 920 S.W.2d 48 (1996), and LaFollette v. Commonwealth, Ky., 915 S.W.2d 747 (1996). Since the

Defendant's garbage was lawfully seized, the warrant was proper.

Upon the whole, we are of the opinion that the circuit court's findings of fact are supported by substantial evidence of a probative value and that the circuit court did not err by denying appellant's motion to suppress evidence.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

John T. Fowler III
Louisville, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Courtney J. Hightower
Assistant Attorney General
Frankfort, Kentucky