

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002759-MR

ERIC D. PARMLEY

APPELLANT

v. APPEAL FROM JESSAMINE CIRCUIT COURT
HONORABLE ROBERT J. JACKSON, JUDGE
ACTION NO. 1998-CR-00058

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BUCKINGHAM, KNOPF, AND MILLER, JUDGES.

KNOPF, JUDGE: This is an appeal from a judgment of conviction on a conditional guilty plea before the Jessamine Circuit Court. Finding that the trial court's decision to overrule the appellant's motion to suppress was based upon substantial evidence, we affirm.

The appellant, Eric D. Parmley, was indicted by a Jessamine Circuit Court Grand Jury on the felony charge of trafficking in a controlled substance (methamphetamine). The indictment also charged Parmley with the misdemeanor offenses of theft by unlawful taking under \$300, two counts of possession of drug paraphernalia, trafficking in marijuana less than 8 ounces,

possession of marijuana, two counts of carrying a concealed deadly weapon, and operating a motor vehicle on a suspended licence. Parmley moved to suppress evidence seized from his vehicle pursuant to a search warrant. Following a hearing, the trial court denied the motion to suppress.

Parmley then entered a conditional guilty plea pursuant to RCr 8.09. The Commonwealth agreed to drop the theft and suspended licence charges, and to amend the trafficking in marijuana charge to possession of marijuana. The trial court accepted Parmley's guilty plea and sentenced him to a total of two years on all of the charges. Parmley's appeal of the trial court's suppression ruling now follows.

Parmley does not contest the initial warrantless search of his vehicle, or the search pursuant to the first search warrant. Rather, the sole issue in this appeal is whether the trial court erred in denying Parmley's motion to suppress evidence seized pursuant to the second search warrant. The evidence presented at the hearing was as follows. On February 27, 1998, Parmley was observed leaving a gas station without paying for the gas he had pumped. He was later stopped and arrested for theft and for driving on a suspended licence. Subsequent to this arrest, the police officers searched the vehicle and found several guns, along with stereo equipment, marijuana, and drug paraphernalia. The property was left in the vehicle, and the vehicle was towed to an impound yard.

Detective Mike Elder of the Nicholasville Police Department applied for a search warrant of the vehicle. Detective Elder's affidavit stated that he suspected that the

guns and electronic equipment were stolen. Based on this information, Jessamine District Judge C. Hunter Daugherty issued a search warrant for the vehicle on February 27, 1998. Due to poor lighting conditions and lack of time, the search was not very thorough. However, the police were able to determine that a number of the items in the vehicle belonged to Parmley.

Following the search of the vehicle, during the early morning hours of March 1, Parmley approached the owner of the yard where the vehicle was impounded and offered him \$1,000.00 to obtain access to the vehicle. The owner of the impound yard declined the offer and notified the police. Based on this information, Detective Elder applied for a second search warrant. His affidavit contained the same information as the first, as well as the new information from the impound yard owner. In addition, the affidavit indicated that the previous search had not been complete, and that the officers were unable to obtain serial numbers from all of the items in the vehicle. However, the affidavit did not disclose that none of the items which were checked were found to be stolen. Based on this affidavit, Jessamine District Judge Bill Johnson issued the second search warrant on March 2. While searching the vehicle pursuant to this warrant, the Nicholasville Police found a quantity of methamphetamine wrapped in duct tape inside a box lying on the floorboard of the back seat of the vehicle.

Parmley argues that the trial court erred in finding that probable cause existed for the issuance of the second search warrant. He points out that Detective Elder's affidavit contained most of the same information as the affidavit for the

first warrant. Parmley alleges that Detective Elder's affidavit failed to completely detail the results of the search pursuant to the first warrant. Had Detective Elder revealed that the first search revealed no evidence of stolen property, Parmley contends that probable cause would not have existed for the issuance of the second search warrant. The only additional information was the evidence of Parmley's attempted bribe of the impound yard owner. Parmley further contends that this information was insufficient to provide probable cause for the second search warrant.

For an affidavit in support of a search warrant to be sufficient, the information sworn to by the officer must establish a substantial basis for concluding that contraband or evidence of a crime will be found in the place to be searched. Beemer v. Commonwealth, Ky., 665 S.W.2d 912, 914 (1984), quoting Illinois v. Gates, 462 U.S. 213, 76 L. Ed. 2d 527, 103 S. Ct. 2317 (1984). Probable cause exists when the totality of the circumstances creates a fair probability that contraband or evidence of crime is contained in the automobile. Id. Where the trial court conducts a suppression hearing, the factual findings of the court are conclusive if those findings are supported by substantial evidence. RCr 9.78.

We agree with the trial court that the affidavit's failure to fully discuss the results of the first search did not render it invalid. To attack a facially sufficient affidavit, it must be shown that (1) the affidavit contains intentionally or recklessly false statements, and (2) the affidavit, purged of its

falsities, would not be sufficient to support a finding of probable cause. The same basic standard also applies when affidavits omit material facts. An affidavit will be vitiated only if the defendant can show both that the police omitted facts with the intent to make, or in reckless disregard of whether the omission made the affidavit misleading, and that the affidavit, as supplemented by the omitted information, would not have been sufficient to support a finding of probable cause. Commonwealth v. Smith, Ky. App., 898 S.W.2d 496, 503 (1995). In this case, there was no showing that Detective Elder's second affidavit contained intentionally or recklessly false statements. Indeed, the affidavit stated that the first search of the vehicle had not been thorough. Furthermore, the mere fact that the items in the vehicle which the police were able to check were shown not to be stolen would not have dispelled the other grounds stated in the affidavit supporting the finding of probable cause.

Moreover, we do not agree with Parmley that evidence of his attempt to bribe the impound yard owner was insufficient to create probable cause for an additional search of the vehicle. The fact that Parmley approached the owner of the impound lot at 2:00 a.m. and offered a large sum of cash in exchange for access to the car was sufficient to establish probable cause justifying issuance of the second search warrant. Considering the totality of the circumstances, we find that the trial court correctly found the second search warrant valid. Since the search warrant was valid, we need not consider the further argument regarding Parmley's expectation of privacy in his impounded vehicle.

Accordingly, the order of the Jessamine Circuit Court denying Parmley's motion to suppress is affirmed.

ALL CONCUR.

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