

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002363-MR

VERNON DAVIS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE SHEILA R. ISAAC, JUDGE
ACTION NO. 99-CR-00674

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: DYCHE, EMBERTON, AND MILLER, JUDGES.

MILLER, JUDGE: Vernon Davis brings this appeal from a judgment of the Fayette Circuit Court entered August 31, 1999, upon a conditional plea of guilty pursuant to Ky. R. Crim. P. 8.09. We affirm.

On June 28, 1999, the Fayette County Grand Jury indicted appellant upon three counts of first-degree trafficking in a controlled substance (Kentucky Revised Statutes (KRS) 218A.1412) arising from three separate sales to a confidential informant. The informant was wired with a recording and transmission device. The sales were said to have occurred on

March 11, 1998, June 16, 1998, and May 4, 1999. Appellant questioned the validity of the arrest and pursuant search under the Fourth Amendment to the United States Constitution and Section 10 of the Kentucky Constitution and requested a suppression hearing. A hearing was held on August 16, 1999, and the circuit court overruled the motion to suppress. On August 27, 1999, appellant entered the conditional guilty plea from which this appeal springs. He was sentenced to an enhanced sentence of ten years' imprisonment as a first-degree persistent felony offender. KRS 532.080.

Our review of the circuit court's decision in failing to suppress the evidence is under the substantial evidence rule. Richardson v. Commonwealth, Ky. App., 975 S.W.2d 932 (1998).

Appellant's argument surrounds his arrest incident to the third transaction which occurred on May 4, 1999. It was said that the confidential informant was to provide a signal to a nearby police officer when the transaction was completed, whereupon the officer would cause an arrest. The essence of appellant's argument is that no signal was given or that an improper signal was given, to the effect that the ensuing arrest was without knowledge that a sale had been made. Perforce, appellant argues that evidence found on his person (crack cocaine) after the arrest was unlawfully admitted into evidence. We are of the opinion that the circumstances of the case support a finding of probable cause for the arrest and subsequent search under the rule enunciated in Eldred v. Commonwealth, Ky., 906 S.W.2d 694 (1995). There is evidence the informant gave the

arresting officer a transmitted signal that the sale had been completed when he stated "I appreciate it." We are convinced this acknowledgment clearly indicated the unlawful transaction had been completed.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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