

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001947-MR

ERIC CUNNINGHAM

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS J. KNOFF, JUDGE
ACTION NO. 96-CR-001478

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: EMBERTON, MILLER, AND SCHRODER, JUDGES.

MILLER, JUDGE: Eric Cunningham brings this appeal from a judgment and sentence of the Jefferson Circuit Court entered August 7, 2000, upon a conditional plea of guilty under Ky. R. Crim. P. 8.09. Appellant was sentenced to twelve years' imprisonment after being declared a second-degree persistent felony offender. Kentucky Revised Statutes 532.020. We affirm.

The facts of the case are these. On April 10, 1996, at approximately 8:00 p.m., Detective Steven Farmer received a telephone call from a confidential informant. The informant provided information to the effect that a black male known as "Goody" was selling drugs out of room 248 of the Royal Inn,

located on Dixie Highway in Jefferson County, Kentucky.

Detective Farmer immediately went to the Royal Inn and met with the informant. Detective Farmer observed room 248 for an hour or so immediately following his meeting with the informant. During that time period, several people entered and exited the room.

Detective Farmer returned on the following day, April 11, 1996, for another hour of observation, which revealed a number of people entering and exiting room 248. They appeared to stay only a brief period of time. Detective Farmer stated that he observed some twenty people during two hours of observation. Based upon his observations on April 10, 1996, and April 11, 1996, and the information furnished by the informant, Detective Farmer obtained a search warrant for room 248.

Upon the foregoing information, a search warrant was issued on April 11, 1996, by Judge Thomas Wine. The warrant was supported by affidavit also dated April 11, 1996. The affidavit stated as follows:

On the 10 day of April, 1996, at approximately 8:00 . . . p.m., affiant received information from . . . : **A reliable confidential informant pursuant to Kentucky Rules of Evidence 508 who was present at the Royal Inn 4444 Dixie Highway Room #248 and observed a black male know [sic] as "Goody" in possession of a quantity of cocaine offering it for sale.**

This C.I. has provided information in the past that has led to numerous drug related arrests and convictions.

The C.I. is familiar with the drug culture and how drugs are packaged and sold.

Acting on the information received, affiant conducted the following independent investigation: **Affiant conducted surveillance of room**

248, Royal Inn and observed at least twenty people going to the room and staying short periods of time. This is consistent with drug trafficking.

Although the affidavit accompanied the warrant when issued, the warrant was served without the affidavit. The accompanying affidavit was not filed in the clerk's office until twelve days later, April 23, 1996.

Appellant filed a motion to suppress based on the Commonwealth's failure to serve the search warrant with the affidavit. The circuit court overruled the motion, resulting in this appeal.

The essential basis of appellant's entry of a conditional plea of guilty was to enable him to contest the validity of the search warrant. We are unable to offer appellant comfort in his contention. We are of the opinion a search pursuant to a valid warrant, though unaccompanied by the underlying affidavit, is nevertheless a valid intrusion. In Commonwealth v. Wilson, Ky. App., 610 S.W.2d 896 (1980), a search based upon an affidavit presented to the court but not filed with the clerk until after the search was held valid. This rule is broad enough to cover the factual situation at hand.

Appellant charges that the affidavit supporting the warrant was insufficient inasmuch as it failed to specify the exact time that the confidential informant observed drug activity. We reject this contention. Any deficiency in the description of the drug offense lies well within the good faith exception to a search warrant enunciated in United States v. Leon, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984) and

adopted in this Commonwealth by Crayton v. Commonwealth, Ky., 846 S.W.2d 684 (1992). In short, we are of the opinion that the affidavit supporting the warrant and the circumstances under which the warrant was issued fully complied with Section 10 of our constitution.

Appellant makes other claims of error concerning irregularities in the suppression hearing. Inasmuch as we are reviewing a guilty plea, we perceive no merit in these contentions. Cf. Waddell v. Commonwealth, Ky. App., 893 S.W.2d 376 (1995), Mattingly v. Commonwealth, Ky. App., 878 S.W.2d 797 (1993).

Finally, appellant complains of the Commonwealth's refusal to identify the informant, whose information led to the search of the motel room. The law is well established that one who is merely a tipster need not be identified. Identification is not required unless it is clearly shown that the identity would be relevant and helpful in the defense. In the case at hand, we believe the identity of the informant was irrelevant. We are further of the opinion appellant was not prejudiced by the Commonwealth's failure to identify the informant. As such, we reject appellant's contention under the precepts of the following cases: Schooley v. Commonwealth, Ky., 627 S.W.2d 576 (1982); Commonwealth v. Balsley, Ky. App., 743 S.W.2d 36 (1987); Thompson v. Commonwealth, Ky. App., 648 S.W.2d 538 (1983).

We have examined the record in this appeal and are convinced the circuit court did not err.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

Eric Cunningham, Pro Se
Louisville, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky
Frankfort, Kentucky

Brian T. Judy
Assistant Attorney General
Frankfort, Kentucky