

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-002055-MR

ROY BENTLEY

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE GREGORY A. LAY, JUDGE
ACTION NOS. 05-CR-00241 AND 05-CR-00241-0

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, VANMETER AND WINE, JUDGES.

ACREE, JUDGE: Roy E. Bentley appeals from a judgment of the Laurel Circuit Court sentencing him to ten years in prison. Bentley was convicted of manufacturing methamphetamine (meth). On appeal, Bentley challenges the legality of the search which led to his arrest and the sufficiency of the evidence upon which he was convicted. We affirm.

On June 15, 2005, Deputy Albert Hale and Officer Michael Harrison visited Bentley's camper trailer after there had been a complaint of meth manufacturing on the property and to serve an outstanding warrant on Bentley's girlfriend, Rachel Lantos. According to the officers, the address consisted of a central driveway with a house on the right hand side and Bentley's trailer on the left hand side. A garbage pile was located behind the house and adjacent to the trailer.

Upon arrival both officers smelled ether, a common component used in meth manufacturing. Harrison located the owner of the property, Bentley's mother, in the house. Although bedridden, Bentley's mother consented to a search of the property. Bentley's sister, Margie Mills, who was present in the house, confirmed this account.

The officers followed the scent and looked over the property, leading them to a garbage burn pile behind a fence near the trailer. Located in the burn pile were components typical to a meth manufacturing: a camp fuel can, a linseed oil can, a denatured alcohol can, a plastic bottle, lithium strips removed from batteries, a plastic cap with a tube inserted that acts as a gas generator, coffee filters, paper towels, blister packs, a cold pill box, and a Pyrex baking pan from which samples were taken that later tested positive for meth and pseudoephedrine.

Bentley was arrested on a charge of manufacturing meth. Lantos was arrested on her outstanding indictment warrant for possession of meth. Three others were arrested in connection with the meth lab.

Bentley filed a motion to suppress the evidence found in connection with his arrest, alleging it was obtained illegally during a warrantless search. The Commonwealth argued that the officers were at the location to serve an arrest warrant on Lantos and upon smelling ether and receiving the consent of the property owner, they lawfully searched the property. A suppression hearing was held on April 28, 2006. The trial court found the search to be reasonable and performed with the consent of the property owner and denied the motion.

At Bentley's trial, Lantos testified pursuant to a plea agreement reducing her sentence. Lantos admitted that she and Bentley were trying to make meth on June 15, 2005. She stated that Bentley was "cooking" the meth, and it was in the "smoking off" or last stage of the process, when the police arrived. Lantos stated that Bentley lived in the camper on the property.

Bentley took the stand in his own defense. He testified that he did not live in the trailer, but lived instead with Lantos at another location. He denied any knowledge of meth or the manufacturing process.

Bentley's sister who was present that day was called to testify on his behalf. She confirmed that her mother gave consent to the police to search. She also noted that there was no garbage service at the residence and they would just pile the trash in a hole to burn it. She stated Bentley owned the trailer, but claimed he did not live there at the time.

Bentley was found guilty by a jury of manufacturing meth and was sentenced on August 28, 2006 to ten years in prison. This appeal followed.

Bentley contends that he was entitled to an order suppressing evidence obtained during the search because it was conducted without probable cause or a warrant. He maintains that the search of the property was illegal, and as such the evidence of alleged criminal conduct subsequently found by officers should be suppressed. Bentley contends that but for the officers' warrantless, unlawful search, the evidence of alleged criminal conduct would not have been discovered and as such should have been held inadmissible.

The standard of review for a suppression ruling is twofold. The trial court's findings of fact are conclusive if supported by substantial evidence; however, we review *de novo* the legal correctness of the trial court's ruling. *Stewart v. Commonwealth*, 44 S.W.3d 376, 380 (Ky.App. 2000).

Having studied the written arguments, the record and the law, we find no basis for concluding that the trial court erred in denying Bentley's motion to suppress. “It is fundamental that all searches without a warrant are unreasonable unless it can be shown that they come within one of the exceptions to the rule that a search must be made pursuant to a valid warrant.” *Cook v. Commonwealth*, 826 S.W.2d 329, 331 (Ky. 1992), *citing Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). The trial court found the search to have been conducted pursuant to an accepted exception, ruling that the search was the product of consent.

The trial court's decision was supported by substantial evidence. Both arresting officers had training and experience in investigating methamphetamine

labs. Both were familiar with the smell of ether and its association with making meth. Coupled with Lantos' meth related arrest warrant, it was reasonable for the officers to believe that activities related to the manufacture of methamphetamine and evidence of such criminal activity might be located in the area and to seek consent of the property owner to search the area.

Based upon their suspicions, the officers approached the main residence on the property to find the owner. Inside the home, they spoke with Bentley's mother and sister and Ms. Bentley, the home owner, gave her permission to search the area. Although being elderly and recently out of the hospital, Ms. Bentley was able to communicate with and understand the officers. No evidence was presented in the hearing or at trial to refute Ms. Bentley's ability to converse with the police, to cast doubt on her consent, or to indicate any undue coercion placed upon her by the officers. The trial court correctly denied Bentley's motion to suppress.

Turning to the issue of whether the evidence was sufficient to support a conviction for the charge, Bentley argues he should have been granted a directed verdict because the so-called "snitch" testimony of Lantos was insufficient to support a conviction. We disagree.

KRS 218A.1432 details the offense of manufacturing methamphetamine. The statute provides, in relevant part, as follows:

- (1) A person is guilty of manufacturing methamphetamine when he knowingly and unlawfully:
 - (a) Manufactures methamphetamine; or

(b) Possesses the chemicals or equipment for the manufacture of methamphetamine with the intent to manufacture methamphetamine.

During the trial, the jury heard not only Lantos' testimony that she and Bentley were making meth on June 15, 2005, but also from the arresting officers and from Detective Jason O'Bannon who testified as an expert in the process of manufacturing meth. After viewing photos and the case file, O'Bannon concluded that the items found in Bentley's garbage pile were used in meth production. While Bentley denied his guilt when he testified, it is the province of the jury to assess the credibility of witnesses and the weight to assign to their testimony. *Roark v. Commonwealth*, 90 S.W.3d 24 (Ky. 2002).

In ruling on a motion for directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth to determine if the evidence is sufficient to induce the jury to believe beyond a reasonable doubt that the defendant is guilty. *Penman v. Commonwealth*, 194 S.W.3d 237, 247 (Ky. 2006). On appeal, the test is "if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt" then the defendant is entitled to a directed verdict *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991). A review of the evidence presented in this case reveals that the trial court properly determined that a reasonable jury could find guilt beyond a reasonable doubt. As such, there was no error.

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

ALL CONCUR.

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