

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001067-MR

WILLIAM CABBIL, JR.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BARRY WILLETT, JUDGE
ACTION NO. 05-CR-002446 AND 06-CR-000378

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: LAMBERT AND MOORE, JUDGES; BUCKINGHAM, SENIOR JUDGE.¹

BUCKINGHAM, SENIOR JUDGE: William Cabbil, Jr., entered a conditional guilty plea in the Jefferson Circuit Court to trafficking in a controlled substance (heroin) in the first degree, criminal mischief in the first degree, illegal possession of a controlled substance (hydrocodone) in the second degree, and possession of

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

drug paraphernalia. He also pleaded guilty to being a persistent felony offender in the second degree. The court sentenced Cabbil to serve ten years in prison. Cabbil reserved the right to appeal the court's denial of his motion to suppress the evidence. We affirm.

A Louisville police detective, Lisa Doyle, received a tip from a confidential informant on December 20, 2004, that a black male "in his forties" who went by the name of Junne was selling illegal drugs out of the first-floor apartment at 961 South Preston in Louisville. That apartment was Cabbil's residence. The informant was known to the detective and had provided reliable information a number of times in the past. The informant stated that he (or she) had been inside the apartment within 24 hours prior to providing the information and had seen illegal drugs packaged for sale.

While conducting surveillance later that day, Detective Doyle observed a man drive in front of the apartment, enter and stay inside for a short time, and then exit the apartment and drive away. The detective stopped that person for reckless driving and found drug paraphernalia, a syringe, and heroin residue. The person admitted that he was a heroin addict, that he had gone to the apartment to buy drugs from a black male known as Junne, and that he had done so numerous times in the past. He further indicated he had witnessed a quantity of heroin packages for sale inside the apartment that day.

Detective Doyle filled out an affidavit for a search warrant of the residence and listed the name of Junne Crawford as the subject of the requested

warrant. The detective testified at the suppression hearing that she knew of another heroin dealer named Junne Crawford and that person was not Cabbil, but she stated she had inadvertently added the last name of Crawford in the affidavit. Neither the informant nor the person stopped following the surveillance provided the last name of the suspect to the detective.

The warrant ordered the immediate search of Cabbil's apartment, as well as the search of a green, two-door, older-model Lincoln Mark-7 automobile located at the apartment and the search of a black male in his forties known as Junne Crawford. At the suppression hearing, Detective Doyle did not recall the name of the judge who signed the warrant, and she was not able to identify the judge's signature on the warrant. She did testify, however, that she had personally presented the affidavit to a district court judge who signed the warrant in her presence. There were no other witnesses called to testify at the hearing.

While the detective was presenting the search warrant affidavit to the judge, another detective was monitoring the apartment. Cabbil was observed leaving the apartment and driving the Lincoln automobile described in the warrant. After the warrant had been signed and after getting into position approximately three miles from the apartment, the police executed what they described as a swoop technique to stop Cabbil's vehicle. In essence, a swoop technique involves a group of police vehicles surrounding or boxing in the subject vehicle forcing it to stop. After the officers surrounded Cabbil's vehicle, he continued to drive it into one of the officer's vehicle.

Cabbil was removed from his vehicle and searched. The police found heroin packaged for sale and prescription drugs in his possession. They then executed a search of the apartment and found more heroin and drug paraphernalia at that location.

Cabbil first argues that the search was unlawful because he was not named as a subject of the search and because the listed age was incorrect. The search warrant designated a black male in his forties named Junne Crawford, but Cabbil was not Junne Crawford and was 57 years old.

The warrant must “reasonably identify” the person, place, or thing that is the subject of the search. *Williams v. Commonwealth*, 261 S.W.2d 416, 417 (Ky. 1953). Cabbil resided in the apartment and was a black male. He was not in his forties; rather, he was 57 years old. While Cabbil was not the same person as Junne Crawford, there was no evidence to rebut the information the officers had that Cabbil sold drugs under the name of Junne. Further, the court found that Detective Doyle simply made a mistake by adding the name Crawford in her affidavit when, in fact, she had no intent to do so. Under these circumstances, we conclude that the warrant was not defective in regard to the search of Cabbil’s person even though its description of Cabbil was not entirely accurate.

Cabbil next relies on *Parks v. Commonwealth*, 192 S.W.3d 318 (Ky. 2006), for the proposition that a warrant to search a particular premises does not authorize the search and seizure of an individual who is a distance away from that location. This argument was not raised before the circuit court and thus was not

preserved for appellate review. We review it only for palpable error. *See* Kentucky Rule of Criminal Procedure (RCr) 10.26.

In *Parks*, the appellant, who was driving a vehicle not listed in the search warrant, was seen leaving the residence for which a search warrant was to be issued with the two persons who were the subject of the investigation. The officer conducting the surveillance of the residence followed the appellant's vehicle until being advised by radio that the search warrant had been obtained. The officer then stopped the vehicle and searched it, even though the vehicle had not been listed in the search warrant and even though the appellant, as driver, was not named in the warrant and had not committed a traffic offense. *Id.* at 329. Under these circumstances, the Kentucky Supreme Court reversed the trial court and held the search invalid and the evidence seized inadmissible. *Id.* at 334.

This case differs from *Parks* in that the warrant in his case also commanded the immediate search of the vehicle Cabbil was driving. We agree that pursuant to *Parks* the search of Cabbil and his vehicle would have been improper if the warrant had only specified the apartment and Cabbil was stopped and searched three miles away. *See id.* at 331. Further, we agree that pursuant to *Parks* the search of Cabbil and his vehicle would have been improper if the warrant had only specified the apartment and any vehicles located on the premises to be searched. *Id.* Here, however, the warrant specifically included the vehicle Cabbil was driving. Thus, as the facts here are distinguishable from those in

Parks, we conclude that the stopping of the vehicle for the purpose of searching it was a lawful detention.

Once the officers stopped the vehicle so as to search it, Cabbil, who was in the car, was removed from the car and searched. Because the search warrant authorized the search of the car and of Cabbil himself, and because Cabbil was in the car when the officers stopped it so as to search it, we find no error in the officers' search of Cabbil's person in conjunction with their search of the car. *See Parks* at 332, discussing *Michigan v. Summers*, 452 U.S. 692, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981).

Cabbil next argues that because the detective could not recall the name of the judge or decipher the signature on the warrant, the warrant is invalid. The law requires that a search warrant be approved and signed by a neutral and detached magistrate. *Johnson v. United States*, 333 U.S. 10, 14, 68 S.Ct. 367, 369, 92 L.Ed.2d 436 (1948). Cabbil contends that there was no proof to establish this requirement. However, he did not raise this argument before the circuit court, either. We will review it only for palpable error. *See* RCr 10.06.

The suppression hearing took place over a year and a half after the issuance of the search warrant. Detective Doyle testified at the suppression hearing that she took the affidavit and warrant to a district court judge and watched the judge sign it. Cabbil offered no evidence to dispute the detective's testimony; rather, he relied on the detective's lack of detailed memory in his effort to

invalidate the warrant. Again, this allegation of error was not preserved for our review. We find no palpable error.

Finally, Cabbil argues that the police should not be allowed to rely on the good-faith exception to the exclusionary rule created in *United States v. Leon*, 468 U.S. 897, 922, 104 S.Ct. 3405, 3420, 82 L.Ed.2d 677 (1984). Here, however, the warrant was valid and the manner in which it was executed was not improper. Thus, the good-faith exception argument is moot.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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