

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-002342-MR

MARION D. SHERRARD

APPELLANT

v. APPEAL FROM MEADE CIRCUIT COURT
HONORABLE BRUCE T. BUTLER, JUDGE
ACTION NO. 08-CR-00008

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE AND CLAYTON, JUDGES; HARRIS,¹ SENIOR JUDGE.

HARRIS, SENIOR JUDGE: Marion Sherrard appeals from a Meade Circuit Court judgment convicting him of first-degree possession of a controlled substance, possession of marijuana, and possession of drug paraphernalia and sentencing him to five years' imprisonment. Sherrard maintains that the trial court erroneously

¹ Senior Judge William R. Harris 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.

denied his motion to suppress the evidence seized in a search of his home.

Because we conclude that probable cause existed to support the warrant and subsequent search, we affirm the Meade Circuit Court's judgment.

On April 19, 2007, the Meade County Sheriff's Department received a tip from the Harrison County (Indiana) Sheriff's Department that two individuals were purchasing items used in the manufacture of methamphetamine. The tip also included a license plate number that was traced back to Sherrard. Detective Ezra Stout² began an investigation. Detective Stout attempted several trash pulls³ at Sherrard's home but each time found that the trash had not been placed on the curb for pickup.

On October 18, 2007, Detective Stout successfully conducted a trash pull at Sherrard's residence. Inside the trash, Detective Stout found three burnt aluminum foil strips, two empty packages of rolling papers, a deposit slip with Sherrard's name, a pharmacy label with Sherrard's name, marijuana residue, marijuana stems and seeds, and several baggies containing marijuana residue with the corners missing. These items were consistent with the drug use and identified Sherrard as the owner of the items.

² Throughout its brief, the Commonwealth continuously refers to the detective as "Detective Stone". Our review of the record and Sherrard's brief indicates that the detective's last name is actually Shout.

³ The phrase "trash pulls" commonly refers to a police search of trash that has been abandoned and left on the curb for garbage collection.

Following the trash pull, Detective Stout obtained a search warrant for Sherrard's residence. During the search, Detective Stout found and seized numerous items that were indicative of drug use.

On July 17, 2008, a suppression hearing was held. The trial court found that probable cause existed to support the issuance of the warrant. On October 17, 2008, Sherrard was found guilty by a jury of the aforementioned offenses. This appeal follows.

When reviewing a trial court's decision concerning suppression issues, we must apply the two-step process detailed by *Ornelas v. U.S.*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996), and adopted by Kentucky in *Adcock v. Commonwealth*, 967 S.W.2d 6 (Ky. 1998). First, we must review the trial court's factual findings to determine if they are supported by substantial evidence. *Id.* at 8. Second, we must conduct a *de novo* review of the trial court's conclusions of law. *Welch v. Commonwealth*, 149 S.W.3d 407, 409 (Ky. 2004). Sherrard does not contest the facts of this case. Therefore, we must only examine whether the court correctly applied the law.

Sherrard first argues that the trial court erroneously denied his motion to suppress because the search warrant lacked probable cause and was based upon an affidavit that included stale information. *Illinois v. Gates*, 462 U.S. 213, 238-39, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527 (1983), describes whether an affidavit establishes probable cause:

The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a “substantial basis for . . . conclud[ing]” that probable cause existed.

While the tip standing alone was arguably stale information, the affidavit also stated the date of the trash pull and the items collected. Sherrard maintains that the trial court should have determined whether probable cause existed from the evidence collected in the trash pull standing alone. We disagree.

In *Ragland v. Commonwealth*, 191 S.W.3d 569 (Ky. 2006), the Kentucky Supreme Court found that otherwise stale information may be rehabilitated if it is corroborated by recently obtained information. *Id.* at 584. Although a significant period of time elapsed between the initial tip and the issuance of the search warrant, it is not unreasonable that the issuing court found that criminal activity was still occurring based upon the items found in the trash pull.⁴

Next, Sherrard argues that the trial court erred by denying his motion to suppress because the affidavit failed to provide a nexus between the place to be searched and the evidence sought, under *U.S. v. Carpenter*, 360 F.3d 591, 594 (6th Cir. 2004). However, a relationship between the evidence sought and the place to

⁴ Sherrard cites several cases from other states that seem to conclude that information obtained from the trash pulls in those particular cases did not constitute probable cause. Those cases, however, include different fact patterns. Further, our Court is not bound by those decisions.

be searched was established by items from the trash pull which contained Sherrard's name and address.

Sherrard also argues that the good faith exception does not apply to this case. Because we have found that the warrant was supported by probable cause, we will not address this argument.

Accordingly, the judgment of the Meade Circuit Court is affirmed.

ALL CONCUR.

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