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Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001382-MR

AMOS STATON, JR. APPELLANT

v. APPEAL FROM MARTIN CIRCUIT COURT
HONORABLE JOHN DAVID PRESTON, JUDGE
ACTION NO. 15-CR-00141

COMMONWEALTH OF KENTUCKY APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, MAZE, AND NICKELL, JUDGES.

NICKELL, JUDGE: Amos Staton, Jr., appeals from the final judgment and sentence of the Martin Circuit Court after entering a conditional plea of guilty. Staton argues the trial court erred in denying his suppression motion because police used illegally-obtained evidence to secure a search warrant for his home.

Martin County Sheriff John Kirk received a tip that drugs were being sold at Staton's residence on West Eden Lane. Sheriff Kirk and two deputies set up a traffic safety checkpoint at the mouth of the hollow where West Eden Lane connects to the highway, about a quarter of a mile from Staton's house. Shortly after setting up the checkpoint, the officers stopped a vehicle driven by Jack Horn. They observed some pills under Horn's leg as he reached toward his glove compartment. Horn told them he had just bought the pills from Staton. Horn turned over the pills to police and gave a written statement.

The police officers obtained a search warrant for Staton's house and property. The affidavit supporting the warrant stated:

> Sheriff Kirk had received a tip that drugs were being sold at the residence of Amos Staton Jr. on Eden West. The Sheriff set up a safety checkpoint at the mouth of Eden West and stopped a Suzuki car and the driver showed the Sheriff 4 methadone pills hid under his leg that the driver stated that he had just got them from Amos Staton Jr on Eden West.

Police executed the warrant and discovered numerous pills and pill bottles, a police radio and a large amount of cash.

Staton was indicted for first-degree trafficking in a controlled substance; two counts of trafficking in a legend drug, first offense; possession of a controlled substance not in a proper container; possession of a radio that sends/receives police signals; and being a second-degree persistent felony offender

(PFO). Staton moved to suppress the evidence on multiple grounds, including that the traffic checkpoint which led to the police obtaining a warrant was unconstitutional.

Following a hearing at which Sheriff Kirk and one of the deputies testified, the trial court denied the motion to suppress. Staton entered a plea of guilty conditioned on his right to appeal denial of the motion. Pursuant to an agreement with the Commonwealth, his charges were amended to dismiss the PFO charge and the Commonwealth agreed to recommend a total sentence of five years. The trial court sentenced Staton in accordance with the agreement and this appeal followed.

Our standard of review is twofold:

> [W]e first determine whether the trial court's findings of fact are supported by substantial evidence. If they are, then they are conclusive. Based on those findings of fact, we must then conduct a *de novo* review of the trial court's application of the law to those facts to determine whether its decision is correct as a matter of law.

Commonwealth v. Neal, 84 S.W.3d 920, 923 (Ky. App. 2002) (footnotes omitted).

Staton argues the initial anonymous tip saying he was selling drugs from his home was insufficiently reliable to give police reasonable suspicion to search his house and property. Their resultant establishment of the traffic checkpoint was also flawed, he contends, because it flouted proper constitutional procedure and was without foundation. Consequently, he concludes, the recovery

of evidence stemming from it should be excluded as "fruit of the poisonous tree." *See Wong Sun v. United States*, 371 U.S. 471, 488, 83 S.Ct. 407, 417, 9 L.Ed.2d 441 (1963). The trial court found, although the safety checkpoint did not pass constitutional muster under *Buchanon v. Commonwealth*, 122 S.W.3d 565 (Ky. 2003), Staton did not have standing to challenge its legality.

Even if we assume, solely for the sake of argument, the stop of Horn's vehicle violated the Fourth Amendment, the right which was hypothetically violated was Horn's, not Staton's. "It has been recognized that the protection of the Fourth Amendment against unreasonable search and seizure is a personal right and cannot be vicariously asserted." *Garcia v. Commonwealth*, 185 S.W.3d 658, 666 (Ky. App. 2006) (citing *Rakas v. Illinois*, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978) (citing *Alderman v. United States*, 394 U.S. 165, 89 S.Ct. 961, 22 L.Ed.2d 176 (1969)). We agree with the trial court. Staton lacks standing to challenge the legality of the stop. "To have standing to contest a search and seizure, an individual must possess a legitimate expectation of privacy in the area searched or property seized." *Id*. (citing *Rakas*).

Staton does not claim a legitimate expectation of privacy in Horn's vehicle. He is therefore without standing to contest the validity of the stop. Consequently, he is also without standing to invoke the doctrine of the fruit of the poisonous tree because, to invoke that doctrine, the defendant must show: "(1) he

or she has standing to challenge the original violation, i.e., the tree; (2) the original police activity violated his or her rights; and (3) the evidence sought to be admitted against him or her, i.e., the fruit, was obtained as a result of the original violation." *Meece v. Commonwealth*, 348 S.W.3d 627, 659 (Ky. 2011) (quoting Leslie W. Abramson, 8 Kentucky Practice, *Criminal Practice and Procedure*, § 17:5 (2010–2011)). "Standing is required regardless of whether the illegal search directly yields the inculpating evidence or merely supplies the initial catalyst in a reaction ultimately producing such evidence. . . . [T]he fruit of the poisonous tree doctrine applies only when the defendant has standing regarding the Fourth Amendment *violation* which constitutes the poisonous tree." *United States v. Davis*, 750 F.3d 1186, 1190 (10th Cir. 2014) (quoting *United States v. Olivares–Rangel*, 458 F.3d 1104, 1117 (10th Cir. 2006) (citing *United States v. Salvucci*, 448 U.S. 83, 85, 100 S. Ct. 2547, 65 L.Ed.2d 619 (1980)) (internal quotation marks omitted).

Staton's further claims—the affidavit and search warrant were based upon an "unconstitutional foundation"—are also premised on the fruit of the poisonous tree doctrine which requires the claimant to show standing to challenge the underlying violation. In evaluating a search warrant, we must determine whether the trial judge correctly determined that the issuing judge had a substantial basis for concluding that probable cause existed, based on the "totality of the circumstances" presented within the four corners of the affidavit. *Commonwealth*

v. Pride, 302 S.W.3d 43, 49 (Ky. 2010). Staton has not shown the information contained in the four corners of the affidavit failed to provide a substantial basis to conclude probable cause existed to issue the warrant.

Staton has also not argued or shown any of the following four circumstances warranting exclusion of evidence recovered pursuant to a warrant was present in this case:

> (1) the affidavit contains "false or misleading information"; (2) the judge who issued the search warrant has abandoned his "detached and neutral role"; (3) the affidavit is so lacking in indicia of probable cause such that the officer's reliance cannot be reasonable; or, (4) the warrant is "facially deficient by failing to describe the place to be searched or the thing to be seized."

Commonwealth v. Opell, 3 S.W.3d 747, 752 (Ky. App. 1999) (citing *Crayton v. Commonwealth*, 846 S.W.2d 684, 687-88 (Ky. 1992)).

Staton's argument that the doctrine of inevitable discovery is inapplicable will not be addressed as it is moot.

Finally, Staton argues the Commonwealth impermissibly shifted the burden of proof to the defense at the suppression hearing. After introducing the warrant and affidavit into evidence, the Commonwealth attorney passed the burden of proof to the defense. Defense counsel did not object to the alleged error, and Staton has not requested palpable error review. "Absent extreme circumstances amounting to a substantial miscarriage of justice, an appellate court will not engage

in palpable error review pursuant to [Kentucky Rules of Criminal Procedure] RCr 10.26 unless such a request is made and briefed by the appellant." *Shepherd v. Commonwealth*, 251 S.W.3d 309, 316 (Ky. 2008). Although the extreme circumstances warranting unsought palpable error review are not present in this case, we will address the claim because it may be briefly and easily resolved. Staton's attorney did not object because the burden was indeed upon the defendant:

> Where a search warrant is regular upon its face and sufficient in its terms, there is a presumption that it is valid as is the case with any other legal process. If this validity is attacked, the burden of producing evidence is upon the one who attacks it. And, when a defendant in a criminal action attacks the validity of a search warrant, he must assume the burden of proving every ground of the defense.

Lumpkins v. Commonwealth, 425 S.W.2d 535, 536 (Ky. 1968); *see also Bailey v. Commonwealth*, 464 S.W.2d 232, 232 (Ky. 1971).

Because the trial court did not err in denying Staton's motion to suppress, we affirm the judgment and sentence on a plea of guilty.

ALL CONCUR.

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