Cite as 2011 Ark. App. 269

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR09-410

KITAKA LAUDERDALE APPELLANT	**Opinion Delivered** April 13, 2011 APPEAL FROM THE CRAIGHEAD COUNTY CIRCUIT COURT, WESTERN DISTRICT [NO. CR-2005-225]
V.	HONORABLE JOHN N. FOGLEMAN, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant was convicted of two counts of possession of a controlled substance with intent to deliver (cocaine and methamphetamine) and sentenced to lengthy terms of imprisonment. On appeal, he argues that the trial court erred in denying his request for a continuance; in granting the State's motion to reconsider its grant of appellant's motion to suppress evidence; in ruling that police officers acted in good faith in relying on the search warrant; and in ruling that appellant was not illegally detained following the search. We affirm.

Appellant argues that the trial court erred in denying his eve-of-trial motion for a continuance so that he could terminate his retained attorneys and hire attorney John Wesley Hall, Jr., to replace them. A motion for continuance is addressed to the sound discretion of

the trial court, whose judgment will not be reversed on appeal in the absence of a clear abuse of that discretion. *Brown v. State*, 374 Ark. 341, 288 S.W.3d 226 (2008). Appellant bears the burden of establishing such abuse: to do so, he must not only demonstrate that the trial court abused its discretion by denying the motion for a continuance, but must also show prejudice that amounts to a denial of justice. *Id.* We find no such error in this case.

The right to counsel of one's choice is not absolute and may not be used to frustrate the inherent power of the court to command an orderly, efficient, and effective administration of justice. *Wilson v. State*, 88 Ark. App. 158, 196 S.W.3d 511 (2004). Once competent counsel is obtained, the request for a change in counsel must be considered in the context of the public's interest in the prompt dispensation of justice. *Id.* Appellant had previously been granted nine continuances. Furthermore, on the very day he moved for a continuance to obtain new counsel, appellant filed a pleading stating that he was completely satisfied with the legal services provided by his present attorneys, and that they had represented him competently, diligently, adequately, and informatively. Finally, appellant's request for a continuance and change of counsel was made late on a Sunday afternoon, the day before trial was to begin. In light of these facts, we hold that the trial court did not abuse its discretion by denying appellant's motion. The right to counsel cannot be used to delay trial or be manipulated to play cat-and-mouse with the trial court. *Wilson v. State*, *supra*.

Following the suppression hearing, the trial court ruled that evidence seized pursuant to a search warrant was inadmissible because the warrant was defective. Subsequently, the

State moved for reconsideration of this ruling. The trial court granted the motion and, upon reconsideration, ruled that the evidence was admissible because the police officers seized it in good-faith reliance on the warrant. Appellant argues that the trial court lacked authority to grant the State's motion for reconsideration of the order granting his suppression motion. We do not agree. A motion *in limine* is a threshold motion, and the trial judge is at liberty to reconsider his prior rulings during the course of a single trial. *Estacuy v. State*, 94 Ark. App. 183, 228 S.W.3d 567 (2006); *see also Smith v. State*, 354 Ark. 226, 118 S.W.3d 542 (2003). We cannot say that the trial judge abused his discretion in reconsidering his earlier ruling on appellant's motion.

Appellant further argues that the police officers could not in good faith rely on the warrant issued by Judge Laser because it did not specifically indicate when the alleged criminal activity occurred. In reviewing a trial court's denial of a motion to suppress evidence, we conduct a de novo review based on the totality of the circumstances, reviewing findings of historical fact for clear error and determining whether those facts give rise to reasonable suspicion or probable cause, giving due weight to inferences drawn by the trial court and proper deference to the trial court's findings. *Jackson v. State*, 359 Ark. 297, 197 S.W.3d 468 (2004). The test for determining whether the good-faith exception enunciated in *United States v. Leon*, 468 U.S. 897 (1984), should be applied in a given case is whether it was objectively reasonable for a well-trained police officer to conclude that the search was supported by probable cause. *Hampton v. State*, 90 Ark. App. 174, 204 S.W.3d 572 (2005).

It is true that the time when the offense was committed must either be mentioned in the affidavit for a search warrant or be susceptible of being inferred from the information in the affidavit, *e.g.*, by the use of the words "now" or "recently," the use of the present tense, or a statement that the issuance of the warrant is urgent. *Herrington v. State*, 287 Ark. 228, 697 S.W.2d 899 (1985). However, under the good-faith exception, we look to the four corners of the affidavit to determine if we can establish with certainty the time during which the criminal activity was observed; if the time can be inferred in this manner, then the police officer's objective good-faith reliance on the magistrate's assessment will cure the omission unless the affidavit is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable, or the warrant is so facially deficient that the executing officers cannot reasonably presume it to be valid. *George v. State*, 358 Ark. 269, 189 S.W.3d 28 (2004). Here, the affidavit said that officers received information that appellant had in the past few months been dealing large quantities of drugs from his home, and that a search of his trash bags on the day that the warrant was issued established his address at that residence and revealed numerous specified items of packaging material known to be associated with the sale and transport of drugs in large quantities, including a package made of brown tape and plastic wrap consistent with the size and shape of one kilogram of cocaine. The affidavit further said that the inside of this packaging contained a heavy white-powder residue that field-tested positive for cocaine. We hold that this affidavit was not so lacking in indicia of probable cause

as to render official belief in its existence entirely unreasonable and that the trial judge did not err in refusing to suppress the evidence obtained in the search.

Finally, appellant argues that the evidence recovered from his vehicle should have been suppressed because he was illegally detained following the search of his person pursuant to the warrant and that the drugs were discovered during this asserted period of illegal detention. The warrant authorized a search of appellant's person and his residence. When police officers arrived to execute the warrant they observed appellant get into his vehicle and drive away from the residence. The vehicle was stopped, appellant was searched, his cell phone was confiscated, and he was handcuffed. Immediately after appellant was handcuffed, one of the police officers indicated that he had observed cocaine in plain view inside appellant's vehicle. The entire sequence of events, from the commencement of the stop to the discovery of the cocaine in appellant's vehicle, took seventy-six seconds.

We think that the officers properly detained appellant following the search of his person. His residence had not yet been searched, as authorized by the warrant, and the officers were thus justified in detaining appellant as long as reasonably necessary to complete that search. Although the general rule is that every arrest, and every seizure having the essential attributes of a formal arrest, is unreasonable unless it is supported by probable cause, there is an exception for limited intrusions that may be justified by special law-enforcement interests. *Michigan v. Summers*, 452 U.S. 692 (1981). This exception is not confined to the momentary, on-the-street detention accompanied by a frisk for weapons involved in *Terry v. Ohio*, 392

U.S. 1 (1968); the *Summers* Court held that the exception included detention of a person during a search of his house for contraband pursuant to a warrant. In so holding, the Supreme Court reasoned that such detention forwarded the legitimate law-enforcement interests of preventing flight, minimizing risk of harm to the officers and destruction of evidence, and facilitating the orderly completion of the search. *Michigan v. Summers*, *supra*. All of these considerations are applicable to the situation presented in the case at bar.

Affirmed.

ROBBINS and GRUBER, JJ., agree.