IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JANUARY 1996 SESSION

FILED

February 23, 1996

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,	)
	) C.C.A. No. 01C01-9503-CR-00066
Appellant,	)
	) Davidson County
V.	)
	) Honorable Ann Lacy Johns, Judge
	)
STEVEN WOODARD,	) (State Appeal)
	)
Appellee.	)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

O P I N I O N

The appellee, Steven Woodard, was indicted for possession of a controlled substance with the intent to sell. He filed a motion to suppress arguing that the evidence was obtained by an illegal search. The trial court granted appellee's motion. The state appealed. We affirm.

At the suppression hearing, Officer Donegan testified. He stated that he and an unnamed informant had been working undercover attempting to procure drugs when the "informant observed [appellee] drive by." He stated that the informant advised him "[that's] Steve Woodard. I had seen him earlier today. He had quite a bit of crack cocaine on him." The officer radioed Officer Stackhouse for backup and then followed the appellee.

The officer testified that he followed the appellee onto the interstate. When the appellee was "getting off the loop there at Murfreesboro Road, the informant stated . . . that he was probably going to Tennessee Ridge Apartments, that he had delivered . . . cocaine in that area." The officer followed the appellee for several miles until he was stopped in front of the Tennessee Ridge Apartments for an improper lane change.[1] Officer Stackhouse made the stop.

The appellee testified. He stated that Officer Stackhouse informed him that he "had switched lanes on the interstate illegally." While Stackhouse was ticketing the appellee for the improper lane change, Donegan arrived.[2] The appellee testified that Donegan approached him and patted him down. Then officer Donegan searched the appellee's car. After searching the appellee's

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[1]"He was in the right lane, went from the right lane to the left lane, failing to give a turn signal for proper lane change."

[2]Appellee testified that Officer Donegan appeared to be alone when he arrived at the scene.

vehicle, Donegan returned to appellee and patted him down a second time. Appellee testified that:

> then [Officer Donegan] pulled me over to -- I was standing on the side of her car -- the female officer, I was standing on the side of her car. And he came over with his flashlight and asked me did I have anything under my hat. He looked under my hat. And then he asked me if I had anything in my shoe. And then he asked me if I had anything in my pants. And I said, "No." That's when he pulled me to the side and made me pull my pants down.

Officer Donegan then shined his flashlight in appellee's groin region. He observed a portion of a plastic bag protruding from appellee's underwear. The plastic bag contained crack cocaine.

The trial court concluded that the stop was not pretextual. Framing the issue as to whether probable cause existed, the trial court held:

> It appearing to the Court from these facts, and the briefs submitted by the parties, that the search was unreasonable and the evidence should be suppressed, in as much as there did not exist at the time of the search probable cause for the search.

A warrantless search of a person is presumptively unreasonable unless conducted within a recognized exception. Exceptions to the warrant requirement are: (1) search incident to arrest, (2) inventory search, and (3) search made upon exigent circumstances and probable cause. Nolan v. State, 588 S.W.2d 777, 779-81 (Tenn. Crim. App. 1979). The state carries the burden of showing that a warrantless search was conducted within an exception. State v. McClanahan, 806 S.W.2d 219, 220 (Tenn. Crim. App. 1991).

In the case sub judice, the search was neither incident to a lawful arrest nor an inventory search. Accordingly, the validity of the search rests upon the existence of both probable cause and exigent circumstances.

To demonstrate the existence of probable cause, the state must establish: (1) an adequate basis for the informant's knowledge, and (2) informant credibility. State v. Jacumin, 778 S.W.2d 430 (Tenn. 1989); Aguilar v. Texas,

378 U.S. 108 (1964); Spinelli v. United States, 393 U.S. 410 (1969). When the Aguilar-Spinelli test is applied in the context of a warrantless search, we examine the officer's testimony, concerning the confidential informant's information, to determine the existence of probable cause. State v. White, No. 03C01-9408-CR-00277 (Tenn. Crim. App. June 7, 1995).

Officer Donegan testified that the informant's past information had led to "probably twenty-five to thirty or more" arrests or convictions. This testimony sufficiently established informant credibility. We now focus on the basis of the informant's knowledge.

To demonstrate an adequate basis for the informant's knowledge, Officer Donegan's testimony must explicitly reveal the informant's basis of that knowledge. In Spinelli, the Supreme Court held that:

> In the absence of a statement detailing the manner in which the information was gathered, it is especially important that the tip describe the accused's criminal activity in sufficient detail that the magistrate may know that he is relying on something more substantial than a casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation.

393 U.S. at 416. The informant must describe the manner in which he gathered the information, or the informant must describe the criminal activity with great particularity. Earls v. State, 496 S.W.2d 464 (Tenn. 1973); State v. Smith, 477 S.W.2d 6 (Tenn. 1972); State v. Vela, 645 S.W.2d 765 (Tenn. Crim. App. 1982).

Officer Donegan testified that when the appellee drove by, the informant stated "[that's] Steve Woodard . . . earlier today [sic] [h]e had quite a bit of crack cocaine on him." On cross examination, however, the officer conceded that the informant had neither told him where he observed the appellee with crack cocaine nor where the "location of that possession was." Furthermore, the officer confessed to having no factual basis to believe appellee was in immediate possession of crack cocaine prior to the "pat down."

Q. So your intent on getting him stopped was so you could investigate him for possession of crack cocaine.

A. The intent wasn't there. He made the violation and we saw -- we stopped him for it.

Q. If you stopped him for the violation, why didn't you simply give him a traffic ticket and let him go?

A. Because he had crack cocaine on his person.

Q. How did you know that?

A. Because when I patted him down, I felt it.

Q. How did you know it before you patted him down?

A. I didn't have any factual basis for it at that time.[3]

Upon listening to the witnesses and viewing their demeanor, the trial judge resolved the apparent conflict in the officer's testimony in the appellee's favor. The suppression hearing findings of a trial judge are accorded the weight of a jury verdict. State v. Dick, 872 S.W.2d 938, 943 (Tenn. Crim. App. 1993). Therefore, the trial judge's holding is binding upon this Court if there is any evidence to support that determination. State v. Johnson, 717 S.W.2d 298, 304 (Tenn. Crim. App. 1986). We find evidence supporting the trial judge's determination that the informant's basis of knowledge was insufficiently described or corroborated to establish probable cause.

AFFIRMED

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PAUL G. SUMMERS, Judge

[3]Officer Donegan did not allege in the arrest warrant that he had any information that appellee was in possession of drugs prior to the traffic stop.

CONCUR:

_____
GARY R. WADE, Judge

_____
JOSEPH M. TIPTON, Judge