[Cite as *State v. Petty*, 2020-Ohio-1001.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- BRODERICK PETTY Defendant-Appellant	JUDGES: Hon. John W. Wise, P. J. Hon. Craig R. Baldwin, J. Hon. Earle E. Wise, Jr., J. Case No. 2019 CA 0084 O P I N I O N

CHARACTER OF PROCEEDING:	Criminal Appeal from the Court of Common Pleas, Case No. 2019 CR 0002
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	March 6, 2020

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
GARY BISHOP PROSECUTING ATTORNEY JOSEPH C. SNYDER ASSISTANT PROSECUTOR 38 South Park Street Mansfield, Ohio 44902	R. JOSHUA BROWN 32 Lutz Avenue Lexington, Ohio 44904

Wise, John, P. J.

{¶1} Defendant-Appellant Broderick Petty appeals his conviction entered in the Richland County Court of Common Pleas following a no contest plea to twelve separate criminal charges.

{¶2} Appellee is the state of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶3} For purposes of this appeal, the facts and procedural history are as follows:

{¶4} In 2018, Detective Chris Rahall with Richland County Sheriff's Office and METRICH, began investigating possible drug trafficking out of a home on 75 Helen where Appellant lived. (T. at 18-19). As part of that investigation, he prepared an affidavit for a search warrant. (T. at 19). The affidavit stated that the crimes of trafficking in drugs and possession of drugs were occurring at the residence. (T. at 20). The search warrant requested a nighttime warrant utilizing a no knock entry. *Id*. The search warrant was approved by a Municipal Court judge. (T. at 22).

{¶5} The search warrant listed one date in 2016 and six dates in 2018 of when law enforcement received information regarding drugs being trafficked out of Appellant's residence. (T. at 24-25, 28).The search warrant also listed two controlled buys where Fentanyl and Heroin were purchased by a confidential informant from Appellant at the residence. (T. at 27). The search warrant also sought to search any laptops, computers, or notepads. (T. at 29). The affidavit also listed two instances where Appellant had been in possession of firearms, justifying a nighttime, no knock warrant. (T. at 30). When the search warrant was executed, Appellant was arrested. (T. at 53). For the majority of the time during the search, Appellant remained in the house. *Id*. It is common practice to hand

deliver a copy of the search warrant to the suspect if they are at the home at the time of the search warrant. (T. at 55).

{¶6} On January 28, 2019, a Richland County Grand Jury indicted Appellant in a twelve count indictment as follows:

> COUNT 1: Trafficking in Heroin, R.C. §2925.03(A)(2) & (C)(6)(f), a felony of the first degree; Forfeiture Specification, R.C. §2941.1417
>
> COUNT 2: Trafficking in Cocaine, R.C. §2925.03(A)(2) & (C)(4)(f), a felony of the first degree; Forfeiture Specification, R.C. §2941.1417
>
> COUNT 3: Aggravated Trafficking in Drugs, R.C. §2925.03(A)(2) & (C)(l)(d), a felony of the second degree; Forfeiture Specification, R.C. §2941.1417
>
> COUNT 4: Trafficking in Marijuana, R.C. §2925.03(A)(2) & (C)(3)(a), a felony of the fifth degree; Forfeiture Specification, R.C. §2941.1417
>
> COUNT 5: Possession of Heroin, §2925.11(A) & (C)(6)(d), a felony of the second degree; Forfeiture Specification, R.C. §2941.1417
>
> COUNT 6: Possession of Cocaine, §2925.11(A) & (C)(4)(d), a felony of the first degree; Forfeiture Specification, R.C. §2941.1417
>
> COUNT 7: Aggravated Possession of Drugs, §2925.11(A) & (C)(l)(c), a felony of the second degree; Forfeiture Specification, R.C. §2941.1417
>
> COUNT 8: Having Weapons While Under Disability, §2923.13(A)(3), a felony of the third degree; Forfeiture Specification, R.C. §2941.1417
>
> COUNT 9: Receiving Stolen Property, §2913.51(A), a felony of the fourth degree
>
> COUNT 10: Trafficking in a Fentanyl-Related Compound, R.C. §2925.03(A)(1) & (C)(9)(a), a felony of the fifth degree
>
> COUNT 11: Trafficking in Heroin, §2925.03(A)(1)&(C)(6)(a), a felony of the fifth degree
>
> COUNT 12: Trafficking in Fentanyl-Related Compound, R.C. §2925.03(A)(1) & (C)(9)(a), a felony of the fifth degree

{¶7} On June 17, 2019, Appellant filed a Motion to Suppress.

{¶8} On July 9, 2019, a hearing was held on Appellant's motion.

{¶9} On July 15, 2019, the trial court overruled Appellant's motion.

{¶10} On August 8, 2019, Appellant entered a plea of no contest on all counts in exchange for another case being dismissed and receiving an agreed upon sentence of twenty-five years.

{¶11} Appellant now appeals, assigning the following error for review:

ASSIGNMENT OF ERROR

{¶12} "I. THE TRIAL COURT ERRED IN FAILING TO SUPPRESS THE EVIDENCE SEIZED FROM APPELLANT'S RESIDENCE. SAID WARRANT WAS OBTAINED AND SERVED WITHOUT ADHERING TO THE REQUIREMENTS OF CRIMINAL RULE 41."

I.

{¶13} In his sole assignment of error, Appellant argues that the trial court erred in denying his motion to suppress evidence. We disagree.

{¶14} There are three methods of challenging on appeal a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether said findings of fact are against the manifest weight of the evidence. *State v. Fanning*, 1 Ohio St.3d 19, 437 N.E.2d 583 (1982); State v. Klein, 73 Ohio App.3d 486, 597 N.E.2d 1141 (4th Dist.1991); *State v. Guysinger*, 86 Ohio App.3d 592, 621 N.E.2d 726 (4th Dist.1993). Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. *State v. Williams*, 86 Ohio App.3d 37, 619 N.E.2d

1141 (4th Dist.1993). Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry*, 95 Ohio App.3d 93, 641 N.E.2d 1172 (8th Dist.1994); *State v. Claytor,* 85 Ohio App.3d 623, 620 N.E.2d 906 (4th Dist.1993); *Guysinger*. As the United States Supreme Court held in *Ornelas v. U.S.*, 517 U.S. 690, 116 S.Ct. 1657, 1663, 134 L.Ed.2d 911 (1996), "... as a general matter determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal."

{¶15} Here, Appellant argues the State of Ohio violated Crim.R. 41(D)(1) by failing to present Appellant with a copy of the search warrant in this matter. Crim. R. 41 provides, in pertinent part:

> **Crim.R. 41 Search and seizure**
>
> ***
>
> **(D) Execution and Return of the Warrant.**
>
> (1) *Search Warrant*. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the

> presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant. Property seized under a warrant shall be kept for use as evidence by the court which issued the warrant or by the law enforcement agency which executed the warrant.

{¶16} At the suppression hearing, Detective Rahall testified that it was standard practice when executing a search warrant to give a copy of the warrant to the defendant if the defendant is present on the scene and if not, to leave the warrant at the residence. (T. at 55). He stated that he could not recall if Appellant in this instance was given a copy of the warrant or if it was left at his house. *Id*.

{¶17} Generally, the Exclusionary Rule will be applied to exclude evidence only where there has been a denial of a constitutional right. Evidence is not excluded because of the violation of a statute or procedural rule. *Kettering v. Hollen* (1980), 64 Ohio St.2d 232, 416 N.E.2d 598; *State v. Droste (1998), 83 Ohio St.3d 36, 697 N.E.2d 620,* syllabus.

{¶18} No constitutional right is implicated by the failure to provide a copy of a valid search warrant to the owner of property searched. Evidence seized under a lawful warrant is not subject to exclusion merely because of the failure to follow the procedural requirements of Crim.R. 41(D). State v. Ulrich (1987), 41 Ohio App.3d 384, 536 N.E.2d

17. Therefore, even if this case involved a violation of Crim.R. 41(D), the evidence seized under a valid warrant was not subject to suppression.

{¶19} Further, the primary thrust of Appellant's claims below was that he was not personally given a copy of the warrants. Crim.R. 41(D) provides an option to the officer who executes a search warrant: either to give a copy of the warrant and a receipt for property taken to the person from whom or from whose premises the property was taken, or to leave a copy and receipt at the place from which the property was taken. The rule does not express a preference between the options.

{¶20} Additionally, during the hearing on the motion to suppress, no testimony was presented by Appellant in support of his argument that he was not provided with a copy of the warrant.

{¶21} For the reasons set forth above, Appellant's sole assignment of error is without merit and is overruled.

{¶22} The judgment of the Court of Common Pleas, Richland County, Ohio, is affirmed.

By: Wise, John, P. J.
Baldwin, J., and
Wise, Earle, J., concur.

JWW/d 0226
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