

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 108533
 v. :
 :
 JOHNIE LLOYD McCORMICK, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: March 12, 2020

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-17-623848-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Andrew T. Gatti, Assistant Prosecuting
Attorney, *for appellee*.

Russell S. Bensing, *for appellant*.

SEAN C. GALLAGHER, P.J.:

{¶ 1} Appellant Johnie Lloyd McCormick appeals his conviction for
aggravated robbery. Upon review, we affirm.

Background

{¶ 2} On December 19, 2017, appellant was indicted on one count of aggravated robbery, a felony of the third degree. The charges stemmed from the robbery of a 7-Eleven store in Lakewood.

{¶ 3} Although appellant initially entered a guilty plea, the trial court subsequently granted his motion to withdraw plea. Thereafter, appellant filed a motion to suppress that was denied by the trial court.

{¶ 4} The case proceeded to a jury trial. The 7-Eleven store clerk, who was working the graveyard shift on November 26, 2017, testified to the details of the robbery and positively identified appellant as the assailant at trial. During the robbery, the suspect pulled out a knife and demanded money from the register. The suspect's face was painted. The witness testified that he recognized the voice of the assailant as that of appellant, who was in the store the night before and a conversation occurred regarding appellant's drinking soda without paying for it.

{¶ 5} A detective who investigated the robbery obtained the store's surveillance video from the time of the robbery and from the day before when the suspect also had been to the store. The surveillance video of the robbery showed the suspect's face was painted blue and he was wearing a blue jacket, black pants, a black hat, and gloves with white tips. The detective also obtained surveillance video from the city of Lakewood that captured the suspect running away from the 7-Eleven store and heading in the direction of Madison Avenue.

{¶ 6} The detective printed a picture of the suspect and posted a flier. Several days later, an anonymous caller contacted the police and identified the suspect. The detective testified that the informant provided the name and date of birth of the suspect. The detective obtained an image from the suspect's driver's license and believed it was the same person shown in the surveillance video. The anonymous caller also informed the detective of a location where appellant would be on that day and provided a description of what appellant would be wearing. The detective went to that location, observed a person matching the description provided, and arrested appellant.

{¶ 7} Appellant provided the detective with his address on Madison Avenue in Lakewood. The detective went to appellant's apartment building to get a description of the building for the search warrant. The detective obtained a search warrant for appellant's apartment. The police seized from the apartment items of clothing, a dark knit hat, and black gloves with white tips similar to what was worn by the suspect in the surveillance video. The detective obtained call data from appellant's cell phone provider and obtained GPS location information.

{¶ 8} The trial court denied appellant's Crim.R. 29 motion for acquittal. The jury returned a guilty verdict. The trial court sentenced appellant to a prison term of four years. Appellant timely appealed.

Law and Analysis

{¶ 9} Appellant raises three assignments of error for our review. Under his first assignment of error, appellant claims the trial court erred in denying his motion

to suppress evidence. Appellant claims that the sole basis for the search warrant was an anonymous tip, that the anonymous informant provided no information indicating that any evidence regarding the robbery would be on the premises, and that the affidavit in support of the search warrant provided no corroboration for the anonymous informant's statements.

{¶ 10} “Appellate review of a motion to suppress presents a mixed question of law and fact.” *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. With regard to factual determinations, “[a]n appellate court must accept the trial court’s findings of fact if they are supported by competent, credible evidence.” *State v. Hawkins*, Slip Opinion No. 2019-Ohio-4210, ¶ 16, citing *State v. Fanning*, 1 Ohio St.3d 19, 20, 437 N.E.2d 583 (1982). “But the appellate court must decide the legal questions independently, without deference to the trial court’s decision.” *Id.*, citing *Burnside* at ¶ 8.

{¶ 11} “For a search warrant to issue, the evidence must be sufficient for the magistrate to conclude that there is a fair probability that evidence of a crime will be found in a particular place. The reviewing court then must ensure that the magistrate had a substantial basis for concluding that probable cause existed.” *State v. Castagnola*, 145 Ohio St.3d 1, 2015-Ohio-1565, 46 N.E.3d 638, ¶ 35, citing *State v. George*, 45 Ohio St.3d 325, 329, 544 N.E.2d 640 (1989), citing *Illinois v. Gates*, 462 U.S. 213, 238-239, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). “[M]agistrates may make reasonable inferences when deciding whether probable cause exists to issue a warrant.” *Castagnola* at ¶ 41.

{¶ 12} The affidavit in support of the search warrant provided a description of the premises to be searched for the following evidence connected to the robbery incident:

Any and all clothing observed worn during the aggravated robbery, to include a blue jacket with an emblem along the left chest, dark colored knit hat, dark colored pants, blue face paint or blue paint, large kitchen knife, dark colored gloves, empty or full coin rolls, miscellaneous coin and/or any and all other evidence tending to establish violation of the criminal laws of the State of Ohio, to wit: R.C. 2911.01 and 2913.02.

(Emphasis sic.)

{¶ 13} The affidavit set forth a number of facts upon which the detective had reasonable cause to believe the above evidence would be found inside the suspect's apartment. Specifically, the affidavit included details of the robbery and information obtained from the 7-Eleven store clerk and the store's surveillance video. The detective averred that the 7-Eleven employee who was working at the time of the robbery was positive that the person who committed the robbery was the same customer who regularly comes in during the night. The affidavit included a description of the suspect as "a white male between 5'7" and 5'8" tall, wearing blue face paint, having a dark colored knit hat on his head, a blue jacket * * *, dark pants and dark colored gloves." The affidavit also indicated that the suspect had "a large kitchen knife" and was able to reach into the cash register and grab "a roll of change." These items were the same items believed to be located in appellant's apartment. The affidavit also referred to surveillance video obtained from the city of Lakewood that

showed the suspect running and heading toward Madison Avenue, which is where appellant's apartment was located.

{¶ 14} In addition to the above details, the detective averred that a confidential source had contacted the police, identified the suspect from the flier that was prepared, and provided a location of where the suspect could be found and a description of what the suspect was wearing. Although the detective averred that the confidential source had provided the suspect's address, the detective also averred that appellant was arrested and provided his current address.

{¶ 15} Our review reflects that the information obtained from the informant was not the sole basis for the search warrant. The affidavit set forth details of the robbery, included a description of what the suspect was wearing at the time of the crime, and provided information obtained from the store's clerk and the surveillance video. Although the anonymous caller may have provided information concerning the identity and location of appellant that aided with the arrest, other facts were set forth to support a probable-cause finding for the search warrant. All of the facts taken together created a reasonable inference that evidence of the crime would be found in appellant's apartment. Moreover, the evidence was sufficient for the magistrate to conclude that there was a fair probability that evidence of a crime would be found in the particular place to be searched.

{¶ 16} Appellant views the search for clothing or artifacts related exclusively to appellant as an expansive search beyond what should be permitted. At oral argument, counsel for appellant analogized that simply because a person is arrested

with drugs in a car would not automatically create probable cause to search that person's residence. His view is misplaced. The items specified in the search warrant were tied directly to the robbery. There was a fair probability those items would be located in appellant's residence. The recovery of such items would strengthen the case based on the identification of appellant as the actual robber.

{¶ 17} Upon our review, we find that the magistrate had a substantial basis for concluding that probable cause existed to issue the search warrant. Therefore, we uphold the denial of appellant's motion to suppress. Appellant's first assignment of error is overruled.

{¶ 18} Under his second assignment of error, appellant claims the trial court erred in permitting the state to introduce statements made by an anonymous informant to the police. Appellant argues that the detective in the case was permitted to testify as to what he was told by the anonymous caller and that no exception to the hearsay rule would apply to permit the testimony.

{¶ 19} Appellant acknowledges that he did not object to the testimony presented and that the review is for plain error. Under Crim.R. 52(B), "plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." "Plain error exists only if 'but for the error, the outcome of the trial clearly would have been otherwise,' and is applied 'under exceptional circumstances and only to prevent a manifest miscarriage of justice.'" *State v. Harrison*, 122 Ohio St.3d 512, 2009-Ohio-3547, 912 N.E.2d 1106, & 61, quoting *State v. Long*, 53 Ohio St.2d 91, 97, 372 N.E.2d 804 (1978).

{¶ 20} Contrary to appellant’s argument, the record does not reflect that the anonymous caller’s information was the major evidence linking appellant to the robbery. Rather, the eyewitness testimony from the store’s clerk and the surveillance video, coupled with the evidence found at appellant’s apartment, was the primary evidence in this case. We find no plain error occurred. Appellant’s second assignment of error is overruled.

{¶ 21} Under his third assignment of error, appellant claims he was denied effective assistance of counsel. “Reversal of a conviction for ineffective assistance of counsel requires that the defendant show, first, that counsel’s performance was deficient and second, that the deficient performance prejudiced the defendant so as to deprive the defendant of a fair trial.” *State v. Ford*, Slip Opinion No. 2019-Ohio-4539, ¶ 391, citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

{¶ 22} Appellant argues that defense counsel failed to object to the detective’s testimony as to what the anonymous caller told him, and that this provided the link connecting appellant to the robbery. As discussed above, there was ample evidence linking appellant to the robbery in this case. Appellant has not demonstrated that counsel’s performance was deficient, or that he was prejudiced as a result. Accordingly, we overrule the third assignment of error.

{¶ 23} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
EILEEN A. GALLAGHER, J., CONCUR