[Cite as *State v. Jordan*, 2021-Ohio-4402.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio	Court of Appeals No. WD-20-082
Appellee	Trial Court No. 2020CR0021
v.	
Devon Jordan	**DECISION AND JUDGMENT**
Appellant	Decided: November 19, 2021

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
David T. Harold, Assistant Prosecuting Attorney, for appellee.

Joseph W. Westmeyer, III, for appellant.

* * * * *

OSOWIK, J.

I. Introduction

{¶ 1} Appellant, Devon Jordan, appeals the judgment of the Wood County Court of Common Pleas, sentencing him to four years of community control after he pled no

contest to one count of trafficking in hashish. Finding no error in the proceedings below, we affirm.

A. Facts and Procedural Background

{¶ 2} On February 20, 2020, appellant was indicted on one count of trafficking in hashish in violation of R.C. 2925.03(A)(2) and (C)(7)(e), a felony of the third degree, along with a specification for forfeiture of a firearm under R.C. 2941.1417(A). The sole charge contained in the indictment stemmed from a postal inspector's, Brandon Holestine, discovery of a package containing hashish and the subsequent opening of that parcel by appellant on January 8, 2019.

{¶ 3} Two weeks after he was indicted, appellant appeared before the trial court for arraignment. He entered a plea of not guilty, and the matter proceeded through pretrial discovery and motion practice.

{¶ 4} On May 8, 2020, appellant filed a motion to suppress, which he amended one week later. On May 28, 2020, the matter proceeded to a hearing on appellant's motion to suppress. At the hearing, the state called three witnesses. For its first witness, the state called Holestine. Holestine testified that he is a certified peace officer and is a member of the Toledo Task Force for the Drug Enforcement Administration.

{¶ 5} In his capacity as a peace officer and a postal inspector, Holestine was profiling pieces of mail on January 7, 2020, and noticed a flat rate box mailed from California that was addressed to a recipient in Northwood, Ohio. Holestine indicated that

flat rate boxes are commonly used by narcotics trafficking organizations to ship narcotics from California to Ohio, so he "began to look a little closer."

{¶ 6} Using an investigative tool called Clear, Holestine learned that the handwritten address label referenced a recipient that was not known to reside at the address listed on the package. Further, the sender was a business name that matched a business located in California, which Holestine found odd because most businesses use preprinted mailing labels rather than handwritten labels. Holestine also indicated that the postage was paid with cash rather than prepaid, which he also found uncharacteristic of a business. Holestine went on to testify: "based upon training and experience and conversation with other law enforcement agents, * * * we commonly see business names utilized to mask or create anonymity for the mailer of those narcotics."

{¶ 7} Based upon the foregoing observations, Holestine suspected the package contained narcotics. Consequently, he decided to detain the package and contacted another task force officer, detective Donald Widmer of the Perrysburg Township police department. Eventually, the Perrysburg Township police department sent a K-9 dog to conduct a free-air sniff of the package. The dog alerted to the package.

{¶ 8} Thereafter, Holestine drafted and submitted a search warrant seeking permission to open the package to a federal judge at the United States District Court for the Northern District of Ohio, Western Division. The search warrant was issued, and Holestine proceeded to open the package. Inside the package, Holestine found what he

described as "hash wax, which [is] marijuana with THC wax that were on sheets of paper, large sheets of wax."

{¶ 9} Upon confirmation of the narcotics inside the flat rate box, the task force decided to insert a tracking device and light sensor into the box, which would alert law enforcement if the box was opened. Holestine explained that items inserted into the box would be "very visible if the parcel is opened," noting that the tracking device was the size of a wireless computer mouse, and the light sensor was the size of an iPhone. The box was ultimately resealed so that the task force could conduct a controlled delivery of the package to the addressee identified on the label.

{¶ 10} On January 8, 2020, Holestine personally conducted the controlled delivery of the parcel containing narcotics. At the time, he approached the address in question dressed in letter carrier clothing, knocked on the door, and made contact with a female resident to whom he handed the package. Holestine then returned to the post office and other officers continued to monitor the parcel.

{¶ 11} In addition to the search warrant authorizing the search of the parcel, Holestine secured an anticipatory search warrant permitting the search of the addressee's residence located at the address written on the label. However, Holestine stated that this search warrant was not executed, because "the parcel entered for maybe 30 seconds to a minute, * * * and the parcel was not opened in that address and it quickly exited and got back into a vehicle. So there was no need to execute * * *."

{¶ 12} Shortly after Holestine delivered the parcel, the female recipient of the parcel drove off with the parcel in hand. She made her way to a residence in Toledo, Ohio, and entered the residence with the parcel. At some point, the parcel was opened inside the Toledo residence, triggering an alert to law enforcement officers who had surrounded the residence. According to Holestine, the opening of the package constituted an exigent circumstance because the light sensor would be visible and it would create "a circumstance to where either the devices themselves, the contraband that's in that parcel * * * could be destroyed." In response to a question by the court, Holestine testified that he has witnessed times in which recipients have destroyed law enforcement devices or contraband stored within packages that are used in controlled deliveries.

{¶ 13} To prevent the unidentified opener of the parcel from destroying the narcotics upon seeing the tracking device and light sensor contained therein, officers entered the residence, discovered appellant and the unidentified female to whom Holestine had previously given the parcel, and secured the parcel. After entry was made and the location was secured, Holestine traveled to the Toledo residence. At this point, officers were awaiting a search warrant permitting them to search the residence, and Holestine indicated that no search had been conducted.

{¶ 14} On cross examination, Holestine acknowledged that he conducted no research into the business name listed as the sender of the parcel prior to summoning the K-9 unit to conduct an open-air sniff of the parcel. Further, Holestine agreed that not all businesses use preprinted mailing labels, and the mere presence of a handwritten label or

a California sender does not establish the presence of illegal contraband in the package. Additionally, Holestine admitted that he did not research the business name listed as the sender or look into whether the addressee was a tenant of the residence located at the address listed on the label prior to the dog sniff.

{¶ 15} As its second witness at the suppression hearing, the state called special agent Michael Nole of the Drug Enforcement Association. Nole's participation in this case was primarily limited to conducting surveillance during the controlled delivery and executing the search warrant that was eventually obtained after officers entered the residence in which appellant was discovered. Throughout the course of his surveillance, Nole followed the unidentified female from the point of delivery in Northwood to the final destination in Toledo.

{¶ 16} On direct examination, Nole was asked about whether he had any special concerns associated with controlled deliveries in which law enforcement devices are implanted into packages. He responded in the affirmative and explained that destruction of evidence and fleeing suspects are typical in these scenarios. Nole stated that this concern about destruction of evidence was present in this case after law enforcement was notified that the parcel containing the narcotics, tracking device, and light sensor was opened. Indeed, Nole stated that destruction of evidence was the concern that motivated officers, including himself, to enter the residence.

{¶ 17} Upon his entry into the residence, Nole secured the residence and ensured that people could not enter or exit the residence. Meanwhile, Widmer attempted to secure a search warrant. Nole, like Holestine, testified that officers did not search the residence during the 90-minute period between entering the residence and securing the search warrant.

{¶ 18} For its third and final suppression hearing witness, the state called detective Widmer. At the outset of his testimony, Widmer stated that he was the officer who prepared the affidavits used to secure the anticipatory search warrant on the Northwood address (which was never executed) as well as the search warrant for the Toledo residence. Widmer was also present for the free-air sniff that occurred prior to the parcel's delivery to the unidentified female.

{¶ 19} Widmer testified that he was involved in the decision to enter into the Toledo residence after the parcel was opened. According to Widmer, this decision was made in advance of the parcel arriving at the Northwood residence. Regarding the reason for this decision, Widmer echoed the statements made by Holestine and Nole and stated that

> the light sensor as well as the GPS device are very visible once the package is opened. And they would know at that point that something is not right, that law enforcement is involved, and that there would be destruction. And we based that belief on our history of doing these. And the previous ones that we've done where we have had attempted destruction, as we're even

making entry, attempted destruction of both our tools, our devices, as well as the evidence and other evidence that may be in the residence of somebody who is trafficking in drugs.

{¶ 20} Upon his entry into the Toledo residence, Widmer discovered a female and appellant inside. He then cleared the residence, sweeping the entire property for any other individuals in order to protect officer safety. Widmer was careful to note that this protective sweep of the residence was limited to a search for people, not evidence. While clearing the residence, Widmer noticed the opened parcel sitting in plain view on the kitchen table, and he observed other items consistent with drug trafficking in the kitchen as well, including items used to package, sort, and weigh narcotics. Widmer also detected an odor of marijuana emanating from the residence.

{¶ 21} Immediately after completing the protective sweep, Widmer departed to obtain a search warrant that would permit a search of the residence for evidence. After a search warrant was issued out of Lucas County, officers searched the residence. Eventually, Widmer advised appellant of his *Miranda* rights. After initially refusing to speak with Widmer, appellant agreed answer questions and a conversation ensued. No testimony was elicited as to what statements were made at this time.

{¶ 22} At the conclusion of the hearing, the trial court took the matter under advisement. Both at the hearing and in his amended motion to suppress, appellant argued that Holestine lacked reasonable suspicion to detain the parcel for the period of time it took to obtain a dog for a canine sniff. Without such reasonable suspicion, appellant

argued that the canine sniff, and the search warrant obtained based upon the results thereof, were subject to exclusion as fruits of the poisonous tree. He also argued that law enforcement's warrantless entrance of the Toledo residence on January 8, 2019, was not justified under any of the exceptions to the Fourth Amendment's warrant requirement and thus violated his constitutional rights. As such, appellant sought to suppress the evidence that was discovered by law enforcement as well as statements he made to law enforcement officers after they made entry into his residence.

{¶ 23} In its memorandum in opposition to appellant's motion to suppress, the state argued that Holestine had reasonable suspicion to believe the parcel contained contraband based upon its location of origin, the mismatch between the name of the addressee and the address to which the package was mailed, and the fact that the return addressee was a legitimate California business but the labels on the package were handwritten and the postage was paid in cash. Further, the state argued that the subsequent warrantless entry into appellant's residence was permitted under the exigent circumstances exception to the Fourth Amendment warrant requirement, because entry was needed to prevent the possible destruction of evidence following appellant's opening of the package and likely discovery of the tracking device and light sensor that was placed therein by the Holestine.

{¶ 24} Upon consideration of the foregoing testimony and arguments, the trial court issued its decision denying appellant's motion to suppress on September 1, 2020. In its decision, the trial court found that appellant lacked standing to challenge

Holestine's search of the parcel, because the parcel was not addressed to him, was not delivered to his home, and he failed to demonstrate any claim to the package. Alternatively, the trial court found that the search of the parcel was valid under the Fourth Amendment because Holestine possessed reasonable suspicion to justify conducting a canine sniff. Regarding its reasonable suspicion determination the court stated:

> In this case the package was from a known source state (California) for drugs, the parcel was in a flat rate box (known to be preferred by drug traffickers), paid for with cash (common with drug traffickers), mailed from a different postal zip code than the return address (a significant clue for drug trafficking), addresses were written by hand and not electronically printed (significant as parcels from businesses are usually electronically printed), and did not require a signature for delivery. All of these, taken together, raised suspicion for Inspector Holestine. These factors were more than enough to remove the package from the stream of postal delivery to subject the parcel to a line-up presentation to a drug-detecting canine. * * * Once the package was removed from the stream of postal delivery and a drug-detecting canine alerted to the presence of illegal drugs in the suspect parcel, there was sufficient probable cause for the search warrant that was issued by the United States District Court.

{¶ 25} Concerning the entry of the Toledo residence, the trial court found that Holestine's placement of the tracking device and light sensor inside the package created

the exigency regarding the potential for destruction of evidence. The court also found that the state presented no evidence to establish that the hashish was likely to be destroyed. Furthermore, the court concluded that the destruction of the evidence would have been immaterial given the fact that the state had already established the presence of 558.03 gross grams of hashish inside the parcel pursuant to the canine sniff. For these reasons, the trial court rejected the state's argument that exigent circumstances permitted the warrantless entry.

{¶ 26} Nonetheless, the trial court deemed the search warrant permitting the search of the residence valid. In doing so, the trial court excised paragraphs 11 through 13 of Widmer's search warrant affidavit, which referenced the observations Widmer made while inside the Toledo residence. This excised portion of the affidavit reads:

> 11. * * * Members of the DEA Toledo Resident Office made entry into the residence of 1303 Myrtle Street Toledo, OH 43605 in order to prevent the destruction of the 558.03 gross grams of hashish.
>
> 12. Once inside the residence members of the DEA Toledo Resident Office located a black male subject, identified as Devon JORDAN in close proximity to the open parcel.
>
> 13. When your Affiant entered 1303 Myrtle Street Toledo, OH 43605 he could smell what he recognized, based on his years of experience and training, as the odor of raw marijuana. Your Affiant also observed items consistent with the packaging and sale of illegal drugs in plain view.

The court characterized these excluded statements from Widmer as "only a small part of the entire search warrant," and found probable cause to search the residence even after excising the statements.

{¶ 27} In finding probable cause, the court relied upon Holestine's search of the parcel pursuant to the federal search warrant, which revealed the presence of hashish inside the parcel, as well as Widmer's statement that the light sensor was triggered inside the Toledo residence, meaning that the package was opened.

{¶ 28} Because the trial court upheld the validity of the federal search warrant, it denied appellant's motion to suppress evidence obtained from the execution of the search warrant. However, the trial court granted appellant's motion insofar as it concerned the suppression of evidence that appellant was sitting inside the residence next to the parcel when officers entered the residence prior to the issuance of the federal warrant.

{¶ 29} Four weeks after the trial court issued its decision on appellant's motion to suppress, appellant appeared for a change of plea hearing at which he entered a plea of no contest to the sole charge contained in the indictment. Appellant was subsequently sentenced to four years of community control, and has since filed a timely notice of appeal.

B. Assignments of Error

{¶ 30} On appeal, appellant assigns the following errors for our review:

1. The trial court erred in upholding the search warrant since reasonable suspicion was not present to search the parcel.

2. The trial court erred in upholding this search as no exception to the warrant requirement was present.

II. Analysis

{¶ 31} In his first assignment of error, appellant argues that the trial court erred in concluding that reasonable suspicion supported the canine sniff of the parcel. In his second assignment of error, appellant contends that the trial court erred in upholding the search warrant authorizing the search of his residence. In each of his assignments of error, appellant challenges the propriety of the trial court's denial of his motion to suppress.

{¶ 32} Our review of the trial court's denial of appellant's motion to suppress "presents a mixed question of law and fact." *State v. Wesson*, 137 Ohio St.3d 309, 2013-Ohio-4575, 999 N.E.2d 557, ¶ 40, quoting *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. We must accept the trial court's factual findings if they are supported by competent credible evidence, and "independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." *Wesson* at ¶ 40, quoting *Burnside* at ¶ 8.

A. Reasonable Suspicion for Detention of the Parcel

{¶ 33} The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend IV. "It has long been held that first-class mail such as letters and sealed packages subject to letter postage * * * is free from inspection by postal

authorities, except in the manner provided by the Fourth Amendment." *United States v. Van Leeuwen*, 397 U.S. 249, 251, 90 S.Ct. 1029, 25 L.Ed.2d 282 (1970).

{¶ 34} However, first class mail is "not beyond the reach of all inspection." *Id*. at 252. "[O]nly reasonable suspicion, and not probable cause, is necessary in order to briefly detain a package for further investigation, such as examination by a drug-sniffing dog." *United States v. Robinson*, 390 F.3d 853, 870 (6th Cir.2004). Moreover, a postal inspector may detain the package prior to establishing probable cause for issuance of a search warrant "for the time necessary to obtain a drug detection canine or otherwise conduct an investigation" without violating the Fourth Amendment. *U.S. v. Banks*, 3 F.3d 399, 403 (11th Cir.1993).

{¶ 35} At the outset, we must consider the threshold issue of standing. In its decision denying appellant's motion to suppress, the trial court found that appellant lacks standing to challenge Holestine's brief detention of the parcel while awaiting the drug detection canine. Appellant does not address the issue of standing in his brief.

{¶ 36} In order to establish standing, appellant must demonstrate that he had a subjective expectation of privacy in the parcel, and that society is willing to recognize that expectation as legitimate. *California v. Ciraolo*, 476 U.S. 207, 211 (1986). Notably, the United States Court of Appeals for the Sixth Circuit has found that a defendant asserting a subjective expectation of privacy in a package must show that he either sent the package or that the package was addressed to him. *See United States v. Ligon*, --- Fed.Appx. ----, 2021 WL 2472354, *5 (6th Cir.2021) (concluding that the defendant

"could not have had any subjective expectation of privacy in the packages because he did not send them and they were not addressed to him personally").

{¶ 37} Here, the parcel was not sent by appellant, and appellant was not listed as the addressee. Therefore, like the defendant in *Ligon*, appellant lacked standing to challenge Holestine's detention of the parcel. Appellant's lack of standing is fatal to his argument regarding Holestine's detention of the parcel.

{¶ 38} Further, we find that appellant's argument fails on the merits because Holestine had reasonable suspicion to detain the parcel. During the suppression hearing, Holestine identified several factors that caused him to suspect that the parcel contained contraband. First, Holestine testified that flat rate boxes like the one used to ship the parcel in this case are commonly used by narcotics trafficking organizations to ship narcotics. Second, Holestine noticed that the parcel was coming from California, a state known to be a source of packages containing contraband. Third, Holestine found the handwritten address label and the postage paid in cash suspicious since the sender was listed as a business and a business customarily uses printed labels and prepaid postage. Fourth, Holestine determined that the addressee did not reside at the address listed on the package.

{¶ 39} In *State v. Paul*, 2d Dist. Montgomery No. 17662, 2000 WL 125962 (Feb. 4, 2000), the Second District considered factors similar to those at issue here (suspicious packaging, an incomplete return address, and misspellings on the address label) and stated: "The confluence of all these factors in a single package when evaluated by a

postal inspector with substantial experience in narcotics investigations provided reasonable suspicion that the Express Mail package may contain contraband and justified the investigatory detention." *Id.* at *3. Likewise, we find that the factors identified by Holestine, a trained and experienced postal inspector, were sufficient to give rise to reasonable suspicion and permit Holestine to detain the parcel for a brief period of time in order to secure a drug detecting canine.

{¶ 40} Because we find that appellant lacked standing to challenge Holestine's detainment of the parcel, and in light of our conclusion that Holestine had reasonable suspicion to do so, we find appellant's first assignment of error not well-taken.

B. Search of the Residence

{¶ 41} In his second assignment of error, appellant argues that the search of his residence was unlawful under the Fourth Amendment because it was not justified by any exception to the warrant requirement.

{¶ 42} We note that the trial court agreed with appellant insofar as it found that the officers' initial entry into the residence was unlawful because police created the exigent circumstances the state attempted to rely upon to justify the warrantless entry. Nonetheless, the trial court found that the subsequent search of the residence was lawful because it was performed in accordance with a search warrant that was properly issued based upon probable cause. The court determined that probable cause existed even without the tainted information in Widmer's warrant affidavit.

{¶ 43} Under the Fourth Amendment to the United States Constitution, "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." In order to determine whether a search warrant was supported by probable cause, a reviewing court must examine the totality of the circumstances. *Illinois v. Gates*, 462 U.S. 213, 238, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). "[T]he duty of a reviewing court is simply to ensure that the magistrate had a 'substantial basis for * * * conclud[ing]' that probable cause existed." *Id*. at 238-239, quoting *Jones v. United States*, 362 U.S. 257, 271, 80 S.Ct. 725, 4 L.Ed.2d 697 (1960). The magistrate, in making a determination concerning probable cause, must determine whether "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Id.* at 238.

{¶ 44} "A search warrant issued after a magistrate or judge has independently determined that probable cause to search exists will enjoy a presumption of validity." *State v. Lask*, 4th Dist. Adams No. 20CA1117, 2021-Ohio-1888, ¶ 19, citing *State v. Parks*, 4th Dist. Ross No. 1306, 1987 WL 16567 (Sept. 3, 1987), *4 and *Franks v. Delaware*, 438 U.S. 154, 171, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). Therefore, "[t]he burden of initially establishing whether a search or seizure was authorized by a warrant is on the party challenging the legality of the search or seizure." *Xenia v. Wallace*, 37 Ohio St.3d 216, 218, 524 N.E.2d 889 (1988), citing *United States v. de la Fuente*, 548 F.2d 528, 534 (5th Cir. 1977).

{¶ 45} Here, appellant argues that the search warrant authorizing the search of his residence was tainted by Widmer's reference to the information learned during law enforcement's warrantless initial entry into the residence. According to appellant, officers' forced entry into the residence invalidated the search warrant that followed because "[i]t is not possible to un-ring the bell in this circumstance, and the hasty actions of law enforcement cannot be reversed." Without explaining how or why the trial court erred in finding that probable cause existed after excising the offending statements from Widmer's affidavit, appellant insists that the exclusionary rule should apply here because "the warrantless entry was illegal" and "all events after the illegal act should be excluded." We disagree.

{¶ 46} "The exclusionary rule prohibits introduction into evidence of tangible materials seized during an unlawful search." *Murray v. United States*, 487 U.S. 533, 536, 108 S.Ct. 2529, 101 L.Ed.2d 472 (1988), citing *Weeks v. United States*, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652 (1914). "However, the exclusionary rule does not apply when police properly execute a legal warrant issued by a detached magistrate and supported by probable cause." *State v. Quinn*, 12th Dist. Butler No. CA2011-06-116, 2012-Ohio-3123, ¶ 20, citing *State v. George*, 45 Ohio St.3d 325, 544 N.E.2d 640 (1989).

{¶ 47} In this case, the trial court determined that the search warrant authorizing law enforcement officers to search the residence was supported by probable cause even after excluding the information contained in paragraphs 11 through 13, which reference the officers' observations after the warrantless entry into the residence. Upon our review,

we agree with the trial court's probable cause determination. Indeed, the remainder of Widmer's affidavit references the investigative work that was completed prior to the entry into the residence. This work included testing the contents of the parcel to verify the substance as hashish. Moreover, the affidavit indicated that "a sensor that was placed inside the parcel indicated that the parcel was open" after it entered the residence. Based upon this information alone, we find that there was a fair probability that contraband or evidence of a crime would be found in the residence. As such, the magistrate had a substantial basis for finding probable cause even without Widmer's reference to the observations made by officers while inside the residence.

{¶ 48} Since the search of appellant's residence was supported by a valid search warrant, the exclusionary rule does not apply. *Id.* Consequently, we find no merit to appellant's argument that the evidence obtained from his residence should be excluded, and his second assignment of error is not well-taken.

III. Conclusion

{¶ 49} In light of the foregoing, the judgment of the Wood County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellant under App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Christine E. Mayle, J. _____
CONCUR. JUDGE