

United States Court of Appeals
For the Eighth Circuit

No. 22-1042

United States of America

Plaintiff - Appellee

v.

Kenneth Dean Becker

Defendant - Appellant

Appeal from United States District Court
for the District of Nebraska - Omaha

Submitted: December 12, 2022

Filed: December 27, 2022

[Unpublished]

Before LOKEN, MELLOY, and KOBES, Circuit Judges.

PER CURIAM.

Kenneth Dean Becker entered a conditional guilty plea for conspiracy to distribute and possession with intent to distribute methamphetamine. He reserved the

right to appeal the denial of a motion to suppress. We affirm the judgment of the district court.¹

Officers executed a search warrant at Becker's residence. Becker argues there was a lack of probable cause, officers violated procedural requirements under Nebraska law, and statements he made after the arrest were fruits of a poisonous tree. We review factual findings on the denial of motion to suppress for clear error and legal conclusions de novo. United States v. Thurmond, 782 F.3d 1042, 1044 (8th Cir. 2015).

Probable cause for the search warrant existed. A cooperating witness told police that drug activity was occurring at a residence in Omaha. Investigators monitored a controlled buy between the cooperating witness and an individual at the residence. The evidence from the monitoring of the controlled buy demonstrated "a fair probability that contraband or evidence of a crime" was in the residence. Id. Although the affidavit did not specify the cooperating witness's background, the buy was recorded with video and audio making the credibility issue largely immaterial.

Next, even if a technical violation of Nebraska law occurred when signing the warrant that is not a basis for suppressing the evidence. United States v. Howard, 532 F.3d 755, 760 (8th Cir. 2008) (the Fourth Amendment, not state law, determines the admissibility of a search offered in a federal prosecution).²

We affirm the judgment of the district court.

¹The Honorable Joseph F. Bataillon, United States District Judge for the District of Nebraska.

²The pro se motion to amend the record is denied on the same grounds.