

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000659-MR

TRACY MCCLAIN

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A. C. MCKAY CHAUVIN, JUDGE
ACTION NO. 09-CR-002663

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KELLER, TAYLOR, AND VANMETER, JUDGES.

TAYLOR, JUDGE: Tracy McClain brings this appeal from a March 15, 2011, judgment of the Jefferson Circuit Court sentencing McClain to five-years' imprisonment upon a conditional guilty plea. We affirm.

McClain was indicted upon two counts of trafficking in a controlled substance, second degree, and tampering with physical evidence. Subsequently, McClain filed a motion to suppress evidence seized from her residence during a

warrantless intrusion by police. Following an evidentiary hearing, the circuit court denied the motion to suppress. Eventually, the Commonwealth and McClain reached a plea agreement. Pursuant to the plea agreement, McClain entered a conditional guilty plea to trafficking in a controlled substance in the second degree, trafficking in a controlled substance in the third degree, and tampering with physical evidence. Kentucky Rules of Criminal Procedure (RCr) 8.09. She reserved the right to appeal the circuit court's denial of her motion to suppress. Ultimately, McClain was sentenced to a total of five-years' imprisonment. This appeal follows.

McClain's sole argument is that the circuit court erred by denying her motion to suppress evidence seized from a warrantless entry into her residence. In attacking the constitutionality of the warrantless search upon her residence, McClain particularly argues that police officers lacked probable cause and that no exigent circumstances existed to justify the warrantless entry. As found by the circuit court, the facts surrounding the search are as follows:

On February 26, 2008[,] detectives with the Louisville Metropolitan Police Department (LMPD) set up surveillance of a residence located at 740 South Shelby Street (the "house"). The surveillance was prompted by anonymous complaints of drugs being sold from there. The officers watched as several people went in and out of the house for short periods of time. Detective Jonathan Mattingly and Detective Nick Presley stopped a car being driven by one such person, Mr. Danny Thomas, shortly after he left the house. Mr. Thomas consented to being searched. Det. Mattingly found thirty (30) Zanax [sic] pills and a small amount of

Marijuana in Mr. Thomas' car. Mr. Thomas told the officers that he had bought the pills at the house.

The officers, having resumed their surveillance, saw two (2) men pull up in front of the house in a Red 2006 Pontiac Grand Prix. The driver, later identified as Defendant Woody Cabbil, went inside the residence. The passenger got into another car and drove away. Mr. Cabbil returned to the Grand Prix and drove off whereupon the officers followed and ultimately stopped him for driving ten (10) miles over the posted speed limit. Mr. Cabbil consented to both a search of his person and the car. The officers recovered a bag containing eleven (11) pills and \$4,536 in cash in Mr. Cabbil's pockets as well as bottles of suspected Codeine cough syrup in the car. Mr. Cabbil acknowledged that he had just left the house and that his girlfriend lived there.

The officers returned to the house. Det. Mattingly approached the front porch and Det. Presley positioned himself at a side window. Det. Mattingly knocked on the exterior front door (which included glass panes fitted with mini-blinds). His knock was answered by Defendant Tracy McClain, who opened an interior opaque door and spoke with him through the exterior door. Det. Mattingly told her that "Woody" had sent him there to buy some pills. Ms. McClain replied that she needed to speak with "Woody" first. She walked back into the house and out of Det. Mattingly's sight. When she returned to the door Det. Mattingly identified himself as a police officer and told Ms. McClain that he needed to speak to her. Ms. McClain responded by telling him in no uncertain terms (i.e. ". . . you") that she did not choose to speak with him and then slammed the interior door shut. Det. Mattingly could still see her through the glass in the door. He watched Ms. McClain run towards the back of the house and an unknown male run up the front stairs. He then saw Ms. McClain run from the back of the house and up the front stairs as well. Det. Presley was likewise able to see inside the house from the side window. He saw Ms. McClain

slam the front door, run towards the back of the house (empty-handed) and then run back to the front of the house and upstairs carrying a shoebox.

Based on what they had seen, and under the totality of the circumstances, the officers believed that Ms. McClain was attempting to destroy evidence. Accordingly, they entered the house by breaking through the front door. As they entered the house, they heard a toilet flushing upstairs. Det. Presley ran upstairs where he found Ms. McClain in the bathroom. The toilet was still running and one (1) pill was floating in the basin. The shoebox he had seen Ms. McClain carry upstairs was empty.

When reviewing a ruling upon a motion to suppress, the circuit court's findings of fact are upheld if supported by substantial evidence of a probative value. RCr 9.78; *Diehl v. Com.*, 673 S.W.2d 711 (Ky. 1984). We review issues of law *de novo*.

Under the Fourteenth Amendment to the United States Constitution and Section 10 of the Kentucky Constitution, citizens of this Commonwealth are secure in their persons, homes, and belongings against unreasonable searches and seizures by government officials. *Kentucky v. King*, ____ U.S. ____, 131 S. Ct. 1849, 179 L. Ed. 2d 865 (Ky. 2011). Generally, a search of a residence may only be accomplished by first securing a warrant based upon probable cause to believe that evidence of a crime will be seized therein. *Payton v. New York*, 445 U.S. 573, 100 S. Ct. 1371 (1980). Indeed, “[i]t is a basic principle of Fourth Amendment law . . . that searches and seizures inside a home without a warrant are presumptively unreasonable.” *Kentucky v. King*, ____ U.S. ____, 131 S. Ct. 1849, 1856, 179

L. Ed. 2d 865 (Ky. 2011)(citations omitted). There are, however, exceptions to this general principle; one such exception is recognized in exigent circumstances. *Id.* Under the exigent circumstances exception, police may conduct a warrantless entry into a person's residence if probable cause exists to believe that evidence or contraband will be destroyed before a warrant can be obtained. *Id.* To determine if exigent circumstances exist justifying the warrantless entry, the court must view the totality of the circumstances at the time police gain entry into the home. *Id.*

In the case at hand, the evidence established that the Louisville Metropolitan Police Department (LMPD) was surveilling McClain's residence for possible drug activity. The LMPD reported seeing several individuals entering and leaving the residence. One such individual, Danny Thomas, was stopped after leaving the residence and consented to a search, which netted some 30 Xanax pills and marijuana. Thomas informed LMPD that he purchased the Xanax at McClain's residence. Another individual, Woody Cabbil, also consented to a search of his person and car after leaving the residence. LMPD seized some 11 pills and \$4,536 in cash from Cabill.

Thereafter, LMPD returned to McClain's residence and knocked on the front door. McClain answered the door, and the LMPD officer told McClain that Woody had sent him to buy drugs. McClain then stated that she needed to speak with Woody. At this time, the LMPD officer identified himself and told McClain he needed to speak with her. McClain declined to do so and shut the door. The LMPD officers asserted that they then watched McClain run to the back

of the residence, retrieve a shoebox, and then run upstairs to the second floor carrying the shoebox. According to LMPD officers, they believed McClain was in the process of destroying evidence and entered the residence without a warrant by breaking through the front door.

Based upon the above facts, it is clear that the LMPD possessed probable cause to believe that McClain was selling illegal drugs at the residence. *See Dunn v. Com.*, 689 S.W.2d 23 (Ky. App. 1985). The contraband seized from both Thomas and Cabbil coupled with Thomas admitting to purchasing illegal drugs at the residence were more than sufficient to constitute probable cause that drug trafficking was occurring at the residence. *See id.* However, the more vexing issue is whether exigent circumstances existed justifying the warrantless entry into McClain's residence.

It must be acknowledged that the relevant facts are undisputed. LMPD officers directly observed McClain run to the rear of the residence, retrieve a box, and then run up stairs to the residence's second floor. Additionally, at this time, the LMPD officers possessed probable cause to believe that drug trafficking was taking place at the residence.

Considering the circumstances herein, we believe that exigent circumstances existed justifying the officers' warrantless entry into the house. *See King*, _____ U.S. _____. It was objectively reasonable for the officers to believe that McClain possessed illegal drugs and was in the process of destroying said drugs when they observed her. *See id.* Moreover, if the officers waited to secure a

search warrant, it was reasonable for the officers to believe that the illegal drugs would have been long destroyed. *See id.*

In sum, we conclude that probable cause existed to believe that McClain was in the process of destroying drugs, thus justifying the warrantless intrusion by the LMPD under the exigent circumstances exception to the warrant requirement. Consequently, the circuit court properly denied McClain's motion to suppress evidence seized from her residence.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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