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Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001057-MR

GARTH MCWILLIAMS — APPELLANT

v.

APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE RODNEY BURRESS, JUDGE
ACTION NO. 07-CR-00087

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: LAMBERT, MOORE, AND VANMETER, JUDGES.

LAMBERT, JUDGE: Garth McWilliams appeals from the Bullitt Circuit Court's denial of his Kentucky Rules of Criminal Procedure (RCr) 11.42 motion to vacate his conviction. He asserts that his counsel was ineffective in failing to litigate a particular issue in a motion to suppress. We have carefully considered the record

and the parties' arguments, and finding no error or abuse of discretion in the ruling, we affirm.

In April 2007, the Bullitt County grand jury returned a seven-count indictment against McWilliams, in which he was charged with Manufacturing Methamphetamine While in Possession of a Firearm pursuant to Kentucky Revised Statutes (KRS) 218A.1432; Possession of Drug Paraphernalia, First Offense, While in Possession of a Firearm pursuant to KRS 218A.500; first-degree Possession of a Controlled Substance While in Possession of a Firearm pursuant to KRS 218A.1415; first-degree Wanton Endangerment pursuant to KRS 508.060; Possession of a Destructive/Booby Trap Device pursuant to KRS 237.040; Resisting Arrest pursuant to KRS 520.090; and for being a Persistent Felony Offender in the second degree pursuant to KRS 532.080.

The charges arose from events that occurred on March 14, 2007, when officers from the Bullitt County Drug Task Force and the Bullitt County Sheriff's Department went to McWilliams' residence on Happy Hollow Road to serve an arrest warrant on him for flagrant non-support. McWilliams resisted when the officers tried to arrest him, and the officers had to use physical force to arrest him. The officers also saw, in plain view, a "pill soak" and other ingredients to manufacture methamphetamine in his residence. They found a "lab" in the trailer along with paraphernalia and a "box lab" in an outbuilding. The officers also found a trip wire to a grenade in the outbuilding as well as a hidden hole in the floor containing guns, ammunition, and explosive devices, including a live

grenade. At that point, the officers called in the ATF and the Kentucky State Police Bomb Squad.

Detective Ken Waters of the Bullitt County Drug Task Force left the scene to obtain a search warrant, and he completed an affidavit for a search warrant, stating:[1]

> WHILE EXICUTING AN ARREST WARRANT ON GARTH McWILLIAMS AT 1091 HAPPY HOLLOW ROAD, MR. McWILLIAMS ATTEMPTED TO RUN TO TRAILER WHEN OFFICERS APPROACHED, BUT WAS APPREHENDED. MR. McWILLIAMS ADVISED THAT SOMEONE ELSE MIGHT BE IN THE AREA, SO THE FRONT DOOR OF THE TRAILER WAS STANDING OPEN. OFFICERS CLEARED FOR SAFTY ONLY. OFFICERS OBSERVED IN PLAIN VIEW IN THE KITCHEN AREA JARS WITH RESIDUE AND A JAR WITH A LIQUID WITH SEPERATION AND A PINK RESIDUE FLOATING ON TOP. ALSO IN PLAIN VIEW OFFICERS OBSERVED A COOLOER WITH A TUBE COMING FROM IT LEADING TO A JAR. THERE WAS VARIOUS "COLEMAN" FUIL CANISTERS LAYING AROUND. AFTER CLEARING FOR OFFICERS SAFETY, OFFICERS LEFT THE AREA TO OBTAIN SEARCH WARRANT.

After obtaining the search warrant, the officers searched for and seized components of a meth lab, controlled substances, drug paraphernalia, a night vision scope, a trip wire attached to a grenade, various firearms including a loaded shotgun and handgun, ammunition, a footlocker containing weapons, and green ammunition cans containing ammunition, weapons, suspected explosives, a live grenade, and blasting cap powders.

[1] Spelling and grammatical errors in original.

Following his indictment, McWilliams, represented by attorney C. Fred Partin, filed a motion to suppress the evidence seized and taken from his residence by the officers, arguing that his Fourth Amendment rights were violated when the search was conducted without a warrant and in the absence of exigent circumstances, that it violated his reasonable expectation of privacy, and that it was conducted without his consent. McWilliams stated that the officers arrived at 3:45 p.m., to serve an arrest warrant on him for flagrant non-support, but they did not have a search warrant. McWilliams was outside of his trailer when the officers arrived. After he was secured and placed into custody and into the police vehicle, the officers conducted a warrantless search of the premises and outbuildings under the guise of "clearing for safety." Based upon their observations, the officers left to apply for a search warrant, which they later obtained. McWilliams denied in his motion that he ever told the officers that anyone else was present. He argued that the officers were not entitled to perform a protective sweep under the circumstances of his case because the arrest took place outside of his residence, as opposed to inside as the United States Supreme Court addressed in *Maryland v. Buie*, 494 U.S. 325, 110 S.Ct. 1093, 108 L.Ed.2d 276 (1990). He also argued that the officers did not have a specific, reasonable belief or articulable facts that would warrant a protective sweep, as he was already in custody and Detective Waters' statement that "someone else might be in the area" in the affidavit did not present exigent circumstances justifying a warrantless entry.

The circuit court held a hearing on the motion to suppress. At the beginning of the hearing, attorney Partin indicated that the issues to be addressed included whether the fruits of the search must be excluded due to the officers' pre-textual search after McWilliams was already in custody; whether there was a basis for their belief that anyone else was present or that they had any reason to believe that this person, if present, would have posed a danger to them; or whether it was impossible for the officers to observe what they did without having entered into the structures.

Deputy John Fowler of the Bullitt County Sheriff's Office testified first for the Commonwealth. Because the warrant listed McWilliams as armed and dangerous, Deputy Fowler chose to take extra officers from the Bullitt County Drug Task Force with him as an extra precaution in serving the arrest warrant. Once they arrived, the officers secured McWilliams against a vehicle, took him in custody, and placed him in a cruiser. At that point, McWilliams told Deputy Fowler that there might be other people in the area. Deputy Fowler exited the cruiser and informed the other officers what McWilliams had told him. They went into tactical mode and searched the area to ensure their safety. Deputy Fowler and another officer went to the garage, where they saw a booby trap. They exited the garage, and Deputy Fowler was directed to take McWilliams to headquarters. He left the scene with McWilliams four to five minutes after he saw the booby trap. On cross-examination, he admitted that he had no information about McWilliams other than that he could be armed and dangerous, information he learned from a

box checked on the arrest warrant, and he had no knowledge that other dangerous individuals might be present when they went to the location. No one was found in the garage, and he was not aware that anyone was found in another location. When asked if he had any specific facts that his safety was in jeopardy in any way after the arrest and securing of McWilliams, Deputy Fowler stated that he did not.

Major Larry Ethington with the Bullitt County Drug Task Force testified next. He was the commanding officer at the scene. He knew of McWilliams prior to serving the warrant and stated that the department had received numerous complaints about the residence, including that McWilliams had been selling methamphetamine. Witnesses also reported that McWilliams had weapons and protected the property with booby traps. Major Ethington went with the others to serve the warrants because he knew of McWilliams' reputation. He described the area and McWilliams' arrest in detail. He and another officer went to the garage to see if anyone was there; they put their head in to look, then backed out. When other officers reported that they saw a pill soak in the trailer, Major Ethington told them to get a search warrant. Another officer reported the officers might have missed people that were possibly on site. They searched the trailer for safety; other officers then found the trip wire in the garage. Major Ethington had everyone leave the scene and directed Detective Waters to obtain a search warrant. He also called in the ATF. On cross-examination, Major Ethington again admitted that he was familiar with McWilliams, although he had never seen him at the sheriff's office, and that he was aware that there may have been some drug activity

at his location and had tried to send in informants. He had been informed that weapons and explosive devices might be there. When he learned the warrant had been lodged, McWilliams' arrest became urgent to him. He took McWilliams' statement that they had "possibly missed people" as a threat to his safety, due to the presence of a meth lab and his knowledge that McWilliams had weapons on the property, even though McWilliams was in custody. However, no one else was found.

Detective Ken Hardin Sr. was the next witness to testify. He is the Bullitt County Drug Task Force Director. He arrived at the scene after McWilliams had been removed from the location. He had been at the location a week prior to March 14, 2007, when he and other officers attempted to serve the flagrant non-support warrant. No one was there at the time. Detective Hardin had been to the location another time to serve an arrest warrant issued in Jefferson County.

Detective Waters was the last witness to testify for the Commonwealth. As a member of the Bullitt County Drug Task Force, he was present at the scene of McWilliams' arrest. He described looking into the door of the trailer, which he said was open, and seeing the pill soak after McWilliams had been taken into custody. Detective Waters testified he was checking to see if anyone was inside. He said he was curious about why McWilliams was on the way to the trailer; he did not know whether McWilliams was going to get a weapon or alert someone else that the officers were there. When he learned that he might

have missed people, he went back into the trailer to look for "bodies." He was directed to get a search warrant based upon his observation of the pill soak.

McWilliams testified on his own behalf. He denied telling the officers that anyone else was present; upon being asked, he told them he had just gotten there and he did not know. McWilliams also testified that the trailer door had been locked and that Detective Waters had shoved the door open with his shoulder. The officers never asked for consent to search before or after his arrest, and he never provided his consent to do so. McWilliams' girlfriend, Lauren Lucas, was the last witness to testify. She took photographs of the scene the day after the arrest and search, and she testified that the door prop in the trailer was broken and that the lock to the front door was broken.

Following the hearing, the circuit court denied McWilliams' motion to suppress by order entered January 9, 2008. In the order, the court considered the question of whether the officer was justified in entering McWilliams' premises without a search warrant under the "protective sweep" or "safety check" exception to the warrant requirement. Based upon the officer's receipt of information from McWilliams that other individuals may be in the area, the officer was justified in ordering a protective sweep of the area. The court reasoned that "the arrest warrant was being served in a remote area which was cluttered with multiple locations where someone could hide and undertake aggressive behavior compromising the safety of the officers and the Defendant before they could safely vacate the area

where the arrest warrant was being served." This would constitute "a serious and demonstrable potential for danger."

As a result of the ruling on the motion to suppress, McWilliams moved to enter a guilty plea to the charges against him, with the charge of manufacturing methamphetamine being amended to criminal attempt to manufacture methamphetamine while in possession of a firearm. The Commonwealth recommended a total sentence of thirty-five years' imprisonment. The circuit court accepted McWilliams' unconditional plea and entered a final judgment of imprisonment on May 20, 2008, sentencing him as follows: 1) twenty years on the amended felony charge of criminal attempt to manufacturing methamphetamine while in possession of a firearm; 2) five years on the felony charge of possession of drug paraphernalia while in possession of a firearm; 3) five years on the felony charge of possession of a controlled substance while in possession of a firearm; 4) five years on the felony charge of wanton endangerment; 5) five years on the felony charge of possession of a destructive/booby trap device; 6) twelve months on the misdemeanor charge of resisting arrest; and 7) enhanced his sentences on the five-year sentences under counts 2, 4, and 5 to ten years pursuant to his PFO II conviction. The sentences in counts 1, 2, 4, and 6 were to run concurrently for a total of twenty years, while the sentences in counts 3 and 5 were to run consecutively to each other and the other concurrent sentences, for a total of thirty-five years' imprisonment. The thirty-five-year sentence was ordered to be served concurrently with the sentence

imposed in indictment No. 07-CR-00081, for which McWilliams received a five-year sentence for flagrant non-support.

In September 2008, McWilliams filed a *pro se* RCr 11.42 motion to vacate his conviction, for a full evidentiary hearing, for appointment of counsel, and for leave to supplement his RCr 11.42 motion. In his motion, McWilliams argued that his counsel was ineffective for failing to appeal the suppression ruling, or preserve his ability to appeal the suppression ruling, and that the Commonwealth violated his constitutional rights by using evidence against him that was illegally obtained during the search of his home. He also argued that his guilty plea was involuntary. McWilliams went on to argue against the suppression ruling, contending that his arrest was a pretext to allow police to search his home and obtain evidence. Furthermore, the officers did not have grounds for a protective sweep because he had been arrested and placed into custody outside of his residence, and they did not have any reasonable belief or articulable facts to warrant a protective sweep. His statement in response to the officer's asking him if anyone else was there, "I don't know, I just got here," was not enough to give police the suggestion that dangerous third parties were in the area.

The circuit court appointed counsel for McWilliams, who filed a supplement to McWilliams' *pro se* RCr 11.42 motion in January 2011. In the supplemental motion, McWilliams argued that while trial counsel properly argued that officers did not have articulable facts under which to believe others were present, trial counsel failed to address the second prong of the *Maryland v. Buie*

test; namely, whether the protective sweep lasted too long and went beyond the time it took to complete the arrest and leave the premises. He argued that trial counsel performed deficiently in failing to know the law relevant to this issue and that he would have prevailed had this argument been presented during the suppression hearing. McWilliams also argued that his counsel performed deficiently in failing to adequately investigate the scene of his arrest, in particular where the pill soak container was located in the trailer, and then adequately cross-examine the officers about its location and whether it could be seen from outside of the trailer. In a follow-up memorandum, McWilliams also argued that because the protective sweep was invalid and could not have formed the basis for a valid search warrant, any items seized as a result must be suppressed pursuant to the fruit of the poisonous tree doctrine.

The court scheduled an evidentiary hearing for December 7, 2011, at which time McWilliams' trial counsel testified. Attorney Partin testified that he had been practicing law for forty-seven years and that McWilliams was a client of his in 2007 for the Bullitt Circuit Court charges that were the subject of this case, as well as for the flagrant non-support charge under a separate indictment. The issues litigated included whether the officers had a reasonable and articulable suspicion to conduct a protective sweep. He recounted the testimony of the officers related to the protective sweep, indicating that they testified they did so to secure their safety based upon McWilliams' statement that there may be other people in the area. At the suppression ruling, McWilliams maintained that he

never made such a statement to the officers. Attorney Partin recounted his investigations leading up to the suppression hearing as well as his research related to the protective sweep issue. He recalled researching various cases, such as *Maryland v. Buie* and its progeny, including *United States v. Calhoun*, 49 F.3d 231 (6th Cir. 1995), which discussed the difference between an arrest occurring outside a residence as opposed to inside one. He related the test imposed in *Maryland v. Buie* regarding protective sweeps, which addressed an in-home arrest and whether officers could conduct a sweep if they had an articulable belief that an individual imposing a danger to the officers was present. The test of reasonableness was not to be tested by the location alone, but there must be some articulable reason for the officers to conduct the search. Regarding the duration of the sweep, the search must generally cease when the defendant is in custody and under arrest. Attorney Partin testified that he did not believe an appeal of the suppression ruling would have been successful on appeal in conjunction with the evidence that would have been used against McWilliams at trial. Therefore, he recommended that McWilliams enter into a plea agreement, if possible, to a lesser sentence. He stated that the second prong of *Maryland v. Buie* was raised during the hearing, and it was considered by the circuit court in its order denying the motion to suppress. When the hearing resumed in March 2012, the court heard testimony from Detective Waters and Detective Hardin related to the events that had transpired.

On May 25, 2012, the circuit court entered a written order denying McWilliams' motion for RCr 11.42 relief. On the protective sweep argument, the

court found that the sweep "was contemporaneous with the arrest and that it was in the immediate vicinity of the arrest." Therefore, the court declined to reconsider its prior ruling in the order denying the motion to suppress. The court went on to find no merit in McWilliams' other arguments related to the location of the pill soak, his decision to plead guilty, and his attorney's preparation for trial. Furthermore, the court recognized that McWilliams never moved to vacate his plea. This appeal now follows.

On appeal, McWilliams confines his argument to whether his trial counsel was ineffective in failing to litigate the second prong of the *Maryland v. Buie* test; namely; whether the protective sweep exceeded the scope permitted by the applicable case law. The Commonwealth disputes this argument and argues that the circuit court properly denied the motion to vacate.

The applicable standard of review in RCr 11.42 post-conviction actions is as follows: Generally, in order to establish a claim for ineffective assistance of counsel, a movant must meet the requirements of a two-prong test by proving that: 1) counsel's performance was deficient and 2) the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *accord Gall v. Commonwealth*, 702 S.W.2d 37 (Ky. 1985), *cert. denied*, 478 U.S. 1010, 106 S.Ct. 3311, 92 L.Ed.2d 724 (1986). Pursuant to *Strickland*, the standard for attorney performance is reasonable, effective assistance. The movant must show that his counsel's representation fell below an objective standard of reasonableness and bears the burden of proof. In doing so,

the movant must overcome a strong presumption that counsel's performance was adequate. *Jordan v. Commonwealth*, 445 S.W.2d 878, 879 (Ky. 1969); *McKinney v. Commonwealth*, 445 S.W.2d 874, 878 (Ky. 1969). If an evidentiary hearing is held, the reviewing court must determine whether the lower court acted erroneously in finding that the defendant below received effective assistance of counsel. *Ivey v. Commonwealth*, 655 S.W.2d 506, 509 (Ky. App. 1983).

The Supreme Court of Kentucky revisited the law addressing RCr 11.42 proceedings in *Haight v. Commonwealth*, 41 S.W.3d 436 (Ky. 2001) (*overruled on other grounds by Leonard v. Commonwealth*, 279 S.W.3d 151 (Ky. 2009)), noting that "[s]uch a motion is limited to the issues that were not and could not be raised on direct appeal." *Haight*, 41 S.W.3d at 441. The Court went on to state:

> In considering ineffective assistance, the reviewing court must focus on the totality of evidence before the judge or jury and assess the overall performance of counsel throughout the case in order to determine whether the identified acts or omissions overcome the presumption that counsel rendered reasonable professional assistance. *See Morrow; Kimmelman v. Morrison,* 477 U.S. 365, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986).
>
> A defendant is not guaranteed errorless counsel, or counsel judged ineffective by hindsight, but counsel likely to render and rendering reasonably effective assistance.

Id. at 441-42.

The United States Supreme Court has articulated the prejudice standard applicable in an ineffective assistance claim when defense counsel fails to raise a suppression issue:

> Where defense counsel's failure to litigate a Fourth Amendment claim competently is the principal allegation of ineffectiveness, the defendant must also prove that his Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice.

Kimmelman v. Morrison, 477 U.S. 365, 375, 106 S.Ct. 2574, 2583, 91 L.Ed.2d 305 (1986).

In *Maryland v. Buie*, the United States Supreme Court addressed the Fourth Amendment's bar against unreasonable searches and seizures. Generally, "a search of the house or office is generally not reasonable without a warrant issued on probable cause." *Maryland v. Buie*, 494 U.S. at 331, 110 S.Ct. at 1097. The Supreme Court went on to address the "protective sweep" exception to the warrant requirement:

> We also hold that as an incident to the arrest the officers could, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched. Beyond that, however, we hold that there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene. This is no more and no less than was required in *Terry* and *Long*, and as in those cases, we think this balance is the proper one.

> We should emphasize that such a protective sweep, aimed at protecting the arresting officers, if justified by the circumstances, is nevertheless not a full search of the premises, but may extend only to a cursory inspection of those spaces where a person may be found. The sweep lasts no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises.

Id., 494 U.S. at 334-36, 110 S.Ct. at 1098-99 (footnotes omitted). In *Maryland v. Buie*, the defendant was arrested inside of his residence.

Four years earlier, this Court addressed the protective sweep exception to the warrant requirement in *Commonwealth v. Elliott*, 714 S.W.2d 494, 495-96 (Ky. App. 1986), recognizing that this type of search had "been upheld in several courts in circumstances in which the police officers have reasonable grounds to believe that they may be in danger from areas not in the immediate vicinity of a defendant." The Court noted that "there must be a 'serious and demonstrable potentiality for danger.'" *Id*. at 496, citing *U.S. v. Morgan*, 743 F.2d 1158, 1163 (6th Cir. 1984). Furthermore, "[t]he burden is on the government to prove that officers had probable cause to believe a serious threat of danger existed." *Id*. citing *U.S. v. Kolodziej*, 706 F.2d 590, 597 (5th Cir. 1983).

Following the United States Supreme Court's decision in *Maryland v. Buie*, the Sixth Circuit Court of Appeals addressed that holding. In *Calhoun*, 49 F.3d at 236 n.3, the Sixth Circuit Court of Appeals considered a warrantless search of the defendant's apartment after she was arrested outside:

> Because Calhoun was arrested outside her apartment, a warrantless search of the apartment could be justified only if the officers had a specific, reasonable basis for believing either that they were in danger from persons inside, as analyzed in *Buie*, or that evidence might be destroyed, as analyzed in *Vale v. Louisiana*, 399 U.S. 30, 33–34, 90 S.Ct. 1969, 1971, 26 L.Ed.2d 409 (1970).

The following year, in *United States v. Colbert*, 76 F.3d 773, 776-77 (6th Cir. 1996), the same Court extensively addressed the holding in *Maryland v. Buie*, recognizing that the Supreme Court had included two holdings: one for a search during an arrest inside of a home, and another for a search "more pervasive in scope" when the officer believes an individual posing a danger to those on the scene is in the area.

> We believe that, in some circumstances, an arrest taking place just outside a home may pose an equally serious threat to the arresting officers. In our view, the fact that the arrest takes place outside rather than inside the home affects only the inquiry into whether the officers have a reasonable articulable suspicion that a protective sweep is necessary by reason of a safety threat.

Colbert, 76 F.3d at 776-77, citing *United States v. Henry*, 48 F.3d 1282, 1284 (D.C.Cir. 1995). Finally, in *United States v. Archibald*, 589 F.3d 289, 298-99 (6th Cir. 2009), the Court further explained the holding in *Colbert*, stating:

> [I]n *United States v. Colbert*, 76 F.3d 773, 777 (6th Cir. 1996), we held that a defendant's own dangerousness is not relevant in "determining whether the arresting officers reasonably believed that someone else inside the house might pose a danger to them[,]" as those facts reflected only the dangerousness of the arrested individual, not others. [Footnote omitted.]

The Supreme Court of Kentucky only recently adopted the *Maryland v. Buie* holding in *Guzman v. Commonwealth*, 375 S.W.3d 805, 807-08 (Ky. 2012), stating that this Court had previously recognized the "protective sweep" or "safety check" exception in *Elliott*, *supra*.

In the present case, our first consideration is whether McWilliams' trial counsel's performance was deficient related to whether he raised the second prong of the *Maryland v. Buie* test in the motion to suppress. Based upon the totality of the circumstances as set forth in the record and argued in the parties' briefs, we must agree with the Commonwealth that attorney Partin raised this issue sufficiently to withstand an ineffective assistance of counsel claim. Certainly, the motion to suppress focused heavily on the first prong of the *Maryland v. Buie* test; namely, whether the officers had a reasonable and articulable suspicion to conduct a protective sweep based upon the alleged statement McWilliams made that he did not know if anyone else was present because he had just arrived. However, this argument was made in conjunction with the fact that McWilliams had been taken into custody before the protective sweep had started, which brought into question whether the officers' protective sweep was justified and beyond the scope authorized by *Maryland v. Buie* and its progeny. Attorney Partin also argued that rather than conducting a protective sweep, the officers could have secured the area without entering into any of the buildings and left the premises, which he described as a more prudent option to protect the officers from harm. This was sufficient to overcome a claim for ineffective assistance of counsel in this regard.

Furthermore, McWilliams could not establish the prejudice prong of the *Strickland* test because his argument would not have been successful. The exigency did not arise until McWilliams was being put into custody when he mentioned that he did not know if anyone else was present. At that point, the officers had a reasonable and articulable reason to be concerned for their safety, as the circuit court found, particularly based upon the remote location in a wooded area with several buildings where an individual might be hiding. The sweep lasted only a few minutes, enough for the officers to ensure their safety. Accordingly, the circuit court properly denied McWilliams' RCr 11.42 motion to vacate.

Based upon this holding, we need not address the Commonwealth's inevitable discovery argument or McWilliams' citation to *Florida v. Jardines*, 569 U.S. __, 133 S.Ct. 1409, 185 L. Ed. 2d 495 (2013).

For the foregoing reasons, the order of the Bullitt Circuit Court is affirmed.

ALL CONCUR.

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