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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-001564-MR

RICKY BARRETT, JR.

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE MARTIN J. SHEEHAN, JUDGE
ACTION NO. 12-CR-00300

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, LAMBERT AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Ricky Barrett, Jr. appeals from a conditional guilty plea to first-degree possession of a controlled substance. He argues the trial court erred by failing to suppress evidence obtained during the search of a residence in connection with the execution of an arrest warrant. We affirm.

On March 12, 2012, Covington Police dispatched officers to a residence to execute multiple arrest warrants upon Barrett based on an anonymous tip he was present at the residence. Dispatch also informed the officers Barrett was listed as the owner of the residence and that the last police contact with Barrett occurred at the residence. Upon arriving at the residence, officers conducted a sweep of the outside premises and heard voices and glasses clinking inside the house.

Officer Edwards knocked on the front door announcing himself as Covington Police and the voices ceased. Officer Edwards knocked again and then used his flashlight to knock louder causing the door to open. The officers again identified themselves as police and stated they were entering the residence. There was no response. After the police entered, Officer Isaacs conducted a safety sweep of the downstairs while Officer Edwards positioned himself at the base of the stairs. Officer Edwards again announced their presence and Barrett's stepmother, Deborah Barrett, came down the stairs. Deborah Barrett stated she was the owner of the residence and that Ricky Barrett was upstairs hiding in a closet. Officer Edwards detained Deborah Barrett while Officer Isaacs and Officer Christian went upstairs to locate and arrest Ricky Barrett.

The officers found a closet in the hallway at the top of the stairs. Officer Christian positioned himself outside the closet while Officer Isaacs performed a protective sweep of the upstairs rooms. While sweeping the upstairs rooms, Officer Isaacs observed syringes and paraphernalia associated with heroin

use. Officer Christian discovered Barrett hiding in the hallway closet. Once Barrett was discovered, Officer Isaacs ceased sweeping the rooms and returned to assist Officer Christian with the arrest. After Barrett was placed in custody, Officer Isaacs secured the paraphernalia. Deborah Barrett informed the officers that the room where the evidence was found belonged to Ricky Barrett.

Barrett was indicted on one count of first-degree possession of a controlled substance. Following a hearing, the Kenton Circuit Court denied a motion to suppress the evidence obtained pursuant to the execution of the arrest warrant. Barrett entered a conditional guilty plea and received a sentence of eighteen months' imprisonment. This appeal followed.

Barrett first argues the initial entry into the residence was unlawful because the police did not have a search warrant. We disagree.

On appellate review, the trial court's findings of fact on a motion to suppress are conclusive if they are supported by substantial evidence. *Drake v. Commonwealth*, 222 S.W.3d 254, 256 (Ky.App. 2007). However, the trial court's legal conclusions are reviewed *de novo*. *Id.* “[F]or Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.” *Payton v. New York*, 445 U.S. 573, 603, 100 S.Ct. 1371, 1388, 63 L.Ed.2d 639 (1980). A “reasonable belief is established by looking at common sense factors and evaluating the totality of the circumstances.” *United States v. Pruitt*, 458 F.3d 477, 482 (6th Cir. 2006).

It is undisputed the officers possessed multiple valid arrest warrants for Barrett. The officers arrived at the residence based on an anonymous tip that Barrett was present there. The officers believed Barrett was the owner of the residence at the time they arrived. Although it was later established Barrett's father, Ricky Barrett, Sr., owned the residence, Barrett did, in fact, reside there. The residence was on file as the last location of police contact with Barrett. The officers heard voices inside the residence and the voices ceased when the officers announced themselves. These factual findings are supported by substantial evidence and establish a reasonable belief by the officers that Barrett was in the residence when they entered. Therefore, under *Payton, supra*, we conclude the officers lawfully entered the residence to execute the arrest warrants.

Barrett next argues the sweep of the upstairs where the heroin was found was unlawful. We disagree.

“[L]aw enforcement officers may conduct a protective sweep for their own safety.” *Guzman v. Commonwealth*, 375 S.W.3d 805, 807 (Ky. 2012). “A ‘protective sweep’ is a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding.” *Maryland v. Buie*, 494 U.S. 325, 327, 110 S.Ct. 1093, 108 L.Ed.2d 276 (1990). Our Supreme Court set forth the law regarding protective sweeps as follows:

So when police make a valid arrest, they may conduct a protective sweep of areas adjoining the place of arrest from which an attack may be made even without probable cause or reasonable suspicion of the presence of dangerous individuals. Police may also conduct a broader protective sweep of areas not adjoining the place of arrest if supported by 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.

Kerr v. Commonwealth, 400 S.W.3d 250, 267 (Ky. 2013).

Deborah Barrett told the officers Barrett was upstairs hiding in a closet but did not identify the particular closet. When the officers went upstairs to search for Barrett, Officer Christian positioned himself outside the hallway closet door. Before opening the door, Officer Isaacs conducted a protective sweep of the rooms adjoining the hallway for safety purposes. Officer Isaacs was within eyesight of the hallway closet at all times during the protective sweep. The heroin and paraphernalia were found in plain view on a dresser and television stand in Barrett's bedroom adjoining the hallway. Officer Isaacs ended the protective sweep when Barrett was discovered by Officer Christian. Because the officers were in the process of making a valid arrest, we conclude they were permitted to conduct a protective sweep of the rooms adjoining where Barrett was found.

Accordingly, the judgment of the Kenton Circuit Court is affirmed.

ALL CONCUR.

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