RENDERED: JANUARY 9, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001260-MR

DENNIS SAYLOR — APPELLANT

v.

APPEAL FROM MADISON CIRCUIT COURT
HONORABLE WILLIAM G. CLOUSE, JR., JUDGE
ACTION NO. 12-CR-00256

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CAPERTON,[1] LAMBERT AND TAYLOR, JUDGES.

CAPERTON, JUDGE: The Appellant, Dennis Saylor, appeals the January 4, 2013, findings of fact and law entered by the Madison Circuit Court following his conditional guilty plea to manufacturing methamphetamine, first offense, and two

[1] Judge Caperton authored this opinion prior to Judge Debra Lambert being sworn in on January 5, 2015, as Judge of Division 1, Third Appellate District. Release of this opinion was delayed by administrative handling.

counts of possession of controlled substances in the first degree. His negotiated sentence was twelve years, inclusive of all charges. Saylor's plea was conditioned upon his right to appeal the trial court's ruling on his motion to suppress evidence obtained as a result of a search of his vehicle. On appeal, Saylor argues that the court erred in denying his motion to suppress because the warrantless search of his vehicle could not be justified as a search incident to arrest, nor did it fall under any exception to the warrant requirement. Upon review of the record, the arguments of the parties, and the applicable law, we affirm.

On June 14, 2012, Officer McQuire conducted a traffic stop of Saylor's vehicle. Saylor's eyes were "extremely bloodshot," and an odor of alcohol was emanating either from Saylor or from his vehicle. Saylor stepped out of the vehicle at the request of Officer McGuire and consented to a pat-down of his person.[2] Officer McQuire demonstrated his pat-down technique on cross-examination below and testified that every time he asks someone to exit a vehicle he performs a pat-down for safety.[3] During the course of his pat-down of Saylor,

[2] While Saylor asserts that the pat-down was limited only to a search for weapons, the Commonwealth states that this assertion is not borne out by the record. The Commonwealth states that Officer McQuire asked Saylor if he could perform a pat-down, and that no limitation was placed on the extent of the pat-down by either party.

[3] We note upon review of this evidence that a pat-down for weapons is not a mere formality emanating from a stop, but that the officer must have a reasonable suspicion that the suspect is armed and dangerous. There are three types of interaction between police and citizens: consensual encounters, temporary detentions generally referred to as *Terry* stops, and arrests." *Baltimore v. Commonwealth,* 119 S.W.3d 532, 537 (citing *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)). "Police officers are free to approach anyone in public areas for any reason." *Commonwealth v. Banks,* 68 S.W.3d 347, 350 (Ky. 2001). In general, a warrant is required for searches and seizures. However, brief investigatory stops and limited pat-down searches of suspects have been continuously recognized as an exception to the warrant requirement. *Terry,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889. More specific to the case at hand, "[w]hen an officer is justified in believing that the individual whose suspicious behavior he is

Officer McQuire discovered what he believed to be narcotics packaging materials in Saylor's left front pocket based upon his experience as a narcotics detective. Officer McQuire retrieved the item and asked Saylor to identify it. Saylor responded, "It's meth." Officer McQuire testified that the substance was damp to the touch, leading him to believe that it had been manufactured within an hour of the traffic stop. Officer McQuire then arrested Saylor and placed him in his police cruiser.

Officer McQuire next approached Saylor's co-defendant, Steven Knuckles. Knuckles had been in the passenger seat of the truck and had been observed by another officer during the stop. Knuckles was asked to exit the vehicle. He did so and consented to a pat-down. A straw with residue was located inside of Knuckles's pocket. Knuckles advised Officer McQuire that he did not use meth but instead "did pills." Knuckles further acknowledged that the residue was from crushed pills and he was arrested for possession of drug paraphernalia.

Officer McQuire then searched the vehicle which Saylor had been driving. The search uncovered another coffee filter containing methamphetamine residue, a tablet that was later identified as methadone, a small metal cylinder containing approximately eight milligrams of methamphetamine, a plastic bag with

---

investigating at close range is armed and presently dangerous to the officer or to others," the officer may conduct a pat-down search "to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm." *Terry,* 392 U.S. at 24, 88 S.Ct. at 1881. Such a search is strictly limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby. *Commonwealth v. Crowder*, 884 S.W.2d 649 (Ky. 1994), citing *Terry, supra.* While we understand the officer's concern for safety, a pat down cannot be conducted without consent or reasonable suspicion and, thus, could not be performed at "every stop," for safety.

residue, needle-nosed pliers with blackened tips, a package of lithium batteries, and a stun gun. Officer McGuire also stated that either Saylor or Knuckles had dropped another baggie of methamphetamine in a Pepsi can located in the truck. Officer McQuire used a knife to cut the top off of the can and discovered that part of the methamphetamine had already dissolved into the Pepsi.

When this matter came before the trial court during the December 11, 2012, suppression hearing, the court suppressed the coffee filter found in Saylor's pocket but found that his bloodshot eyes, the smell of alcohol, and the items found on Knuckles in conjunction with the statements that Knuckles made to police, established sufficient cause to search the vehicle. Accordingly, the court held that the items found in the car were admissible at trial.

As noted, Saylor entered a conditional guilty plea below, for which he was sentenced to twelve years inclusive of all charges. Saylor reserved his right to appeal the ruling on the suppression of evidence in the vehicle, and this appeal followed.

On appeal, Saylor argues that the warrantless search of his vehicle could not be justified by the Commonwealth as a search incident to arrest or under another exception to the warrant requirement. Saylor argues that beyond the coffee filter in his pocket, which the court suppressed, the officers had no other reasonable basis to believe that further evidence of crime was located inside the vehicle. Thus, Saylor argues that the search was per se unreasonable, and urges this Court to reverse. The Commonwealth disagrees, and argues that ample

evidence existed to give the officers a reasonable belief that further evidence of crime would be discovered upon searching the vehicle.

Prior to reviewing the arguments of the parties, we note that in reviewing a trial court's denial of a motion to suppress, we employ a two-tiered standard. We review the court's factual findings for clear error, but we review under the *de novo* standard the court's application of the law to those facts. *McCloud v. Commonwealth*, 286 S.W.3d 780 (Ky. 2009).

While Saylor argues that the court misapplied the law below based upon his assertion that the officers had no cause to believe that the truck might contain evidence of a crime, we disagree. A review of the record below indicates that Officer McQuire testified that he smelled alcohol emanating either from Saylor or from the vehicle. Further, it is undisputed that Knuckles, a passenger in the vehicle, consented to a search of his person during which time evidence of illegal drugs, i.e., crushed pills in a straw, were discovered. Certainly, the presence of crushed pill residue in a pocket would indicate the likelihood of narcotic in a pill form because the pill was whole at some point. And if residue of a crushed pill in a straw is found on the person of an occupant of the vehicle, there is reason to believe that the vehicle might contain an uncrushed pill.

Thus, we are in agreement with the Commonwealth that the officers had ample reason to believe that evidence of illegal pills would be found inside Saylor's truck. Our law is clear that an officer may search a vehicle incident to arrest when a reasonable belief exists that evidence relevant to the crime of arrest

may be found in the vehicle. *Arizona v. Gant*, 129 S.Ct. 1710, 556 U.S. 332, 173 L.Ed.2d 485 (2009). We find that the officers could reasonably believe that a search of the vehicle would reveal evidence of crime. Accordingly, we believe that the court appropriately denied Saylor's motion to suppress the search of the vehicle, and we affirm.

Wherefore, for the foregoing reason, we hereby affirm the January 4, 2013, findings of fact and law entered by the Madison Circuit Court, the Honorable William Clouse, presiding.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jeffrey H. Hoover
Jamestown, Kentucky

ORAL ARGUMENT FOR APPELLANT:

Jeffrey H. Hoover
Jamestown, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky
Julie Scott Jernigan
Assistant Attorney General
Frankfort, Kentucky

ORAL ARGUMENT FOR APPELLEE:

Robert Long
Frankfort, Kentucky