

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-000416-MR

JAMES EDWARD MARTIN

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES D. ISHMAEL, JR., JUDGE
ACTION NO. 14-CR-00271-004

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: D. LAMBERT, MAZE AND VANMETER, JUDGES.

D. LAMBERT, JUDGE: The Fayette Circuit Court denied James Martin's motion to suppress incriminating evidence found by the police while conducting a warrantless search of Martin's person. Martin entered a guilty plea conditioned on his ability to appeal the denial. Martin now brings that appeal. After finding no error, we affirm the circuit court.

I. BACKGROUND

In December 2013, the Lexington Police Department received information regarding an ongoing heroin-trafficking operation at 246 Willard Street, Apartment 10 in Lexington, Kentucky. An individual named “Bri,” later identified as Alison Briann Bratcher, was described as the dealer.

On January 10, 2014, police detectives arranged a controlled heroin buy using a confidential informant. The informant entered Apartment 10, and Bri supplied the informant with heroin. Surveillance revealed that an individual named Donald Burton was also in Apartment 10 at the time Bri sold the informant heroin.

On January 23, 2014, the detectives coordinated a second controlled buy at Apartment 10. Using the same confidential informant, the detectives learned from Bri that she had some “good China white” available for \$175 a gram and that this whiter version of heroin had come from some “friends from Detroit” who were staying with her. The confidential informant arrived at Apartment 10 and was greeted by Bri outside. After conversing, Bri went back inside Apartment 10 and returned with a gram of the “good China white.” The informant paid Bri with two marked \$100 bills and received the heroin.

The detectives obtained a warrant to search Apartment 10 on the same day as the second controlled buy. When a host of Lexington police officers executed the warrant and searched Apartment 10, they found 18 grams of heroin in the

kitchen. The police officers also found three men in Apartment 10 and detained them. One of the men was Martin.

Upon finding the heroin in the kitchen, all three men were arrested for trafficking in a controlled substance in the first degree. Either immediately before or immediately following Martin's arrest, Detective Kevin Duane searched Martin and found \$1,440 in cash in his pocket. The two marked \$100 bills from the controlled buy were among the confiscated \$1,440. Martin did not have any heroin on his person nor did he have any drugs within his immediate reach.

Martin was subsequently indicted for trafficking heroin. He filed a motion to suppress the money found on him arguing the cash was seized as the result of an unlawful search. At the suppression hearing, the arresting detectives testified they were unsure whether Martin consented to the search or whether the seized cash was found after an initial pat down. The circuit court nevertheless denied Martin's motion to suppress after concluding Martin was properly searched pursuant to a lawful arrest. Shortly thereafter, Martin entered a conditional guilty plea in exchange for a ten-year prison sentence. The circuit court accepted the plea and sentenced Martin to ten-years' imprisonment. The circuit court also ordered Martin to pay \$155 in court costs, which Martin challenged as improper. This appeal followed.

II. STANDARD OF REVIEW

When presented with a trial court's denial of a motion to suppress, an appellate court reviews factual findings for clear error and legal conclusions *de novo*. *Jackson v. Commonwealth*, 187 S.W.3d 300, 305 (Ky. 2006).

III. DISCUSSION

On appeal, Martin argues the search conducted by Detective Kevin Duane that resulted in the discovery of the marked \$100 bills was unlawful. According to Martin, the detective did not have probable cause to arrest him based on the evidence, and thus the warrantless search of his person violated his rights under Amendment IV of the United States Constitution. For the following reasons, we disagree with this argument and rule the circuit court properly denied Martin's suppression motion.

The Fourth Amendment to the United States Constitution and Section 10 of the Kentucky Constitution both guarantee the fundamental right of people to be secure in their persons from unreasonable searches and seizures. *Commonwealth v. Wood*, 14 S.W.3d 557, 558 (Ky. App. 1999). "All searches without a valid search warrant are unreasonable unless shown to be within one of the exceptions to the rule that a search must rest upon a valid warrant." *Gallman v. Commonwealth*, 578 S.W.2d 47, 48 (Ky. 1979). A well-known exception to the warrant requirement is a search incident to a lawful arrest. *Rainey v. Commonwealth*, 197 S.W.3d 89, 92 (Ky. 2006). Under this exception, "an officer is permitted to search the person arrested and the area within the arrestee's immediate control." *McCloud v. Commonwealth*, 286 S.W.3d 780, 785 (Ky.

2009). Importantly, the arrest must have been valid, *i.e.*, the officer must have either “observe[d] the arrestee commit a felony or misdemeanor in the officer's presence” or had probable cause to believe the arrestee committed a felony. *Id.* (citing Kentucky Revised Statutes (KRS) 431.005; *Maryland v. Pringle*, 540 U.S. 366, 370, 124 S.Ct. 795, 157 L.Ed.2d 769 (2003)). An officer has probable cause for arrest when he reasonably believes that the arrestee “has committed, is committing, or is about to commit an offense.” *Baltimore v. Commonwealth*, 119 S.W.3d 532, 538-39 (Ky. App. 2003). Moreover, “[a] warrantless search preceding an arrest is a valid search incident to arrest as long as a legitimate basis existed before the search and the arrest followed shortly after the search.” *Id.* at 541.

Here, detectives had a reasonable belief that Martin was trafficking in heroin when they arrested him. As the circuit court observed, the detectives were aware that a confidential informant had bought heroin from Bri in Apartment 10 on two occasions—the second of which had occurred mere hours before the search and involved the sale of a type of heroin that had been supplied by multiple individuals said to be staying at Apartment 10. Furthermore, it is undisputed that when the detectives searched Apartment 10, they found 18 grams of heroin in the kitchen and found Martin with two other men in the living room. The detectives thus had probable cause to believe Martin and company were the suppliers of the “good China white” and thereby engaged in the felony offense of trafficking in heroin.

Hence, Martin's arrest was lawful and the marked \$100 bills found contemporaneous with the arrest were discovered pursuant to a lawful search.

As for the \$155 in court costs levied against Martin, our Supreme Court's recent decision in *Spicer v. Commonwealth*, 442 S.W.3d 26, 36 (Ky. 2014), provides the relevant law:

The assessment of court costs in a judgment fixing sentencing is illegal *only* if it orders a person adjudged to be "poor" to pay costs. Thus, while an appellate court may reverse court costs on appeal to rectify an illegal sentence, we will not go so far as to remand a facially-valid sentence to determine if there was in fact error. If a trial judge was not asked at sentencing to determine the defendant's poverty status and did not otherwise presume the defendant to be an indigent or poor person before imposing court costs, then there is no error to correct on appeal. This is because there is no affront to justice when we affirm the assessment of court costs upon a defendant whose status was not determined. It is only when the defendant's poverty status has been established, and court costs assessed contrary to that status, that we have a genuine "sentencing error" to correct on appeal.

Here, as in *Spicer*, the circuit court did not determine Martin was "poor" as defined in KRS 23A.205, nor did it presume Martin to be either an indigent person or a poor person by declining to impose felony fines. On the contrary, the record shows the circuit court imposed \$155 in court costs despite an assertion from Martin's counsel that he was poor. Accordingly, there was no reversible sentencing error, and the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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