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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-000160-MR

KARLTEN RATON-OMAR STIGALL — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE PAMELA R. GOODWINE, JUDGE
ACTION NO. 15-CR-00603-002

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KRAMER, CHIEF JUDGE; JOHNSON AND NICKELL, JUDGES.

NICKELL, JUDGE: Karlten Raton-Omar Stigall appeals from the Fayette Circuit Court's Final Judgment and Sentence of Imprisonment entered on January 12, 2016. The judgment was rendered following Stigall's conditional guilty plea in which he reserved the right to appeal the trial court's denial of his suppression motion. Following a careful review, we affirm.

Stigall was released from prison on parole and signed his supervised conditions as part of his case management plan on April 21, 2015. Pertinent to this appeal, the conditions of parole included an acknowledgement by Stigall that he was subject to warrantless searches of his person and home if an officer had reasonable suspicion of criminal activity or parole violation. He visited with his parole officer on the morning of April 23. That same evening, four members of the Probation and Parole Gang Task Force, accompanied by two uniformed LMPD officers went to Stigall's apartment building for a home visit. Stigall's basement apartment was the ninth home the task force visited that night.

Parole Officer James Copher knocked on Stigall's door and announced he was from "Probation and Parole." Having received no response to the repeated knocks, the team was preparing to leave when shuffling noises were heard inside the apartment prompting a renewed announcement of the officers' presence. In response, the volume on a television set inside the apartment was significantly increased and officers observed a person looking through the door's peep hole. The person inquired who was knocking. Officer Copher again identified himself, showing his badge and protective vest emblazoned with the word "Corrections." The person inside stepped away from the door and more shuffling was heard.

While Officer Copher was at the door, Officer Brandon Kennedy—one of the uniformed LMPD officers—walked around the exterior of the building in search of other points of ingress and egress for Stigall's apartment. Officer

Kennedy located a window covered by a sheer curtain through which he could see Stigall's front door, couch, dining room table and hallway leading to the back of the apartment. The interior of the apartment was illuminated by the television set. Officer Kennedy observed an individual stealthily approach the table, retrieve an unidentified item and "sprint" down the hallway. He relayed this information to the officers inside the building who then initiated a forced entry into the apartment. Inside, Stigall was found to have heroin, cocaine, marijuana and digital scales on his person. A second individual was located in the residence who also had illicit drugs and paraphernalia in his possession. Both were arrested and charged with multiple criminal offenses.

Stigall moved the trial court to suppress the evidence seized. He contended the task force's warrantless search and forced entry exceeded the scope of his consent to searches under his parole conditions. Stigall also alleged the officers violated his legitimate expectation of privacy in his home and its curtilage. Further, he argued even if he was properly subject to search in this instance, no exigent circumstances existed warranting a forced entry.

Following a hearing, the trial court denied Stigall's suppression motion upon concluding no violation of his rights had occurred. Thereafter, Stigall entered a guilty plea conditioned on his right to appeal the adverse suppression ruling. He was sentenced to one year imprisonment. This appeal followed.

The standard of a review of a trial court's denial of a motion to suppress is twofold: "[f]irst, the trial court's findings of facts are conclusive if they

are supported by substantial evidence; and second, the trial court's legal conclusions are reviewed *de novo*." *Milam v. Commonwealth*, 483 S.W.3d 347, 349 (Ky. 2015) (citing *Commonwealth v. Marr*, 250 S.W.3d 624, 626 (Ky. 2008); RCr 9.78[1]).

The Fourth Amendment to the U.S. Constitution and Section 10 of the Kentucky Constitution protect citizens from unreasonable searches and seizures by the government. "A search conducted without a warrant is presumed to violate the Fourth Amendment of the United States Constitution unless it satisfies the criteria of certain exceptions." *Hall v. Commonwealth*, 438 S.W.3d 387, 390 (Ky. App. 2014) (citation omitted).

Stigall was on parole at the time officers conducted the search. "Parole is defined as the conditional release of a prisoner from imprisonment before the full sentence has been served." *Lackey v. Commonwealth*, 468 S.W.3d 348, 353 (Ky. 2015). "[P]arolees have fewer expectations of privacy than probationers, because parole is more akin to imprisonment than probation is to imprisonment." *Samson v. California*, 547 U.S. 843, 850, 126 S.Ct. 2193, 2198, 165 L.Ed.2d 250 (2006). "Parolees, upon their release, enter into a contract allowing their residence to be searched at any time, even absent reasonable suspicion." *Kirby v. Lexington Theological Seminary*, 426 S.W.3d 597, 616-17 (Ky. 2014). For this reason, "[t]he Fourth Amendment presents no impediment

[1] Kentucky Rule of Criminal Procedure (RCr) 9.78 was repealed effective January 1, 2015, and reformulated as RCr 8.27. The standard of review of pretrial suppression motions remains unchanged. *Maloney v. Commonwealth*, 489 S.W.3d 235, 237 (Ky. 2016).

against a warrantless and suspicionless search of a person on parole." *Bratcher v. Commonwealth*, 424 S.W.3d 411, 415 (Ky. 2014). This rule necessarily extends to property under the control of the parolee. *Id*.

It is undisputed the trial court's factual findings are supported by substantial evidence and are therefore conclusive. The sole challenge presented is that the trial court's legal reasoning was unsound and the seized evidence should have been suppressed. However, on the strength of *Bratcher*, the warrantless search of Stigall—a parolee—was presumptively valid and not contrary to the protections established by the Fourth Amendment. We have carefully reviewed the record and the law relevant to the present challenge and discern no error. Contrary to Stigall's assertions, the officers had reasonable suspicion to conduct a warrantless search, did not violate his reasonable expectation of privacy nor improperly invade the curtilage of his residence. Furthermore, the existence of exigent circumstances—or the lack thereof—was not a part of the trial court's reasoning. The trial court's legal analysis was sound and based on prevailing binding precedent. There was no error.

Finally, Stigall encourages us to reexamine and part ways with the logic set forth by our Supreme Court in *Bratcher*. He attempts to bolster and support his position by citing to and relying on an unpublished and non-binding opinion of a federal trial court.[2] This Court is bound to follow the law as stated by

[2] Stigall contends the decision upon which he relies was issued by "the Sixth Circuit," seemingly implying the United States Court of Appeals for the Sixth Circuit. However, a review of the cited case reveals it is a memorandum opinion and order from a United States District Court, strongly suggesting *Bratcher* is wrong, but recognizing "federal courts are generally bound by

our Supreme Court. *See Kindred Healthcare, Inc. v. Henson*, 481 S.W.3d 825, 829 (Ky. App. 2014) ("As an intermediate appellate court, this Court is bound by published decisions of the Kentucky Supreme Court. SCR 1.030(8)(a). The Court of Appeals cannot overrule the established precedent set by the Supreme Court[.]"). Thus, we decline Stigall's invitation to reexamine binding precedent and announce a rule contrary thereto.

For the foregoing reasons, the judgment of the Fayette Circuit Court is AFFIRMED.

ALL CONCUR.

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the Kentucky Supreme Court's interpretation of Kentucky law." *Jones v. Lafferty*, 173 F.Supp.3d 493, 500 (E.D.Ky. 2016) (citing *Griffin v. Wisconsin*, 483 U.S. 868, 875, 107 S.Ct. 3164, 3169, 97 L.Ed.2d 709 (1987)).