

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-000306-MR

DOUGLAS SCOTT MCBRIDE

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HON. KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 15-CR-00498

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: J. LAMBERT, SMALLWOOD, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Douglas Scott McBride appeals from the Fayette Circuit Court's judgment and sentence of conviction entered February 10, 2016, upon McBride's *Alford* plea, subsequent to the circuit court's order entered November 6, 2015, denying his motion to suppress. We affirm.

On April 1, 2015, a group of officers, including Wayne Terry of the Lexington Police Department's U.S. Marshals Task Force, went to apprehend

McBride at his residence because he had charges pending in other states. The officers explained their presence to the homeowner, who gave them consent to enter and directed them towards the bedroom of a tenant he knew as “Scotty McBrady.” The officers immediately spotted McBride inside his bedroom through an open door. The officers arrested McBride, and Terry observed eighteen marijuana plants in the room. Terry then contacted Danny Page, of the Lexington Police Department’s Narcotics Enforcement Unit.

When Detective Page arrived, he noticed a plastic bag containing numerous pills in an open closet in McBride’s room. Adjacent were large, clear, heat-sealed bags, but Page could not see their contents because they were partially obscured from his vision. However, he testified that based on his experience, heat-sealed bags are indicative of narcotic trafficking and he would thus consider the bags to be drug paraphernalia. Page did observe one entire bag on the floor of the closet that was later determined to hold 620 Flexeril¹ pills. The other bags that Page could see only portions of were seized and later determined to contain 491 Ritalin² pills, 97 Xanax³ pills and 106 additional Flexeril pills. The police also

¹ Flexeril “is indicated as an adjunct to rest and physical therapy for relief of muscle spasm associated with acute, painful musculoskeletal conditions.”
https://www.accessdata.fda.gov/drugsatfda_docs/label/2003/017821s0451bl.pdf, at page 3 (last visited July 20, 2018).

² Ritalin “is a central nervous system stimulant prescription medicine. It is used for the treatment of Attention-Deficit Hyperactivity Disorder (ADHD).”

found another bag of hidden pills, but the trial court granted McBride's motion to suppress that evidence.

McBride was indicted for, *inter alia*, trafficking in a controlled substance and cultivation of marijuana (five or more plants). The trial court denied McBride's motion to suppress the pills contained in the partially obscured bags under the plain view doctrine. Pursuant to his conditional *Alford*⁴ plea to an amended charge of second-degree possession of a controlled substance and cultivation of marijuana (five or more plants), McBride was sentenced to a total of one year of imprisonment.

McBride's sole argument is that the trial court should have suppressed the evidence in the partially visible bags. McBride takes no issue with the seizure of the marijuana plants or the bag containing 620 Flexeril pills.

As an appellate court, we review the circuit court's decision upon a motion to suppress evidence initially to determine whether the trial court's findings of fact are supported by substantial evidence. *Commonwealth v. Neal*, 84 S.W.3d

<https://www.fda.gov/downloads/Drugs/DrugSafety/UCM089090.pdf>, at page 1 (emphasis omitted) (last visited July 20, 2018).

³ Xanax is "indicated for the management of anxiety disorder . . . or the short-term relief of symptoms of anxiety."
https://www.accessdata.fda.gov/drugsatfda_docs/label/2011/018276s044,021434s0061bl.pdf, at page 4 (last visited July 20, 2018).

⁴ So named because of *North Carolina v. Alford*, 400 U.S. 25 (1970), an *Alford* plea is "[a] guilty plea that a defendant enters as part of a plea bargain without admitting guilt." *Alford Plea*, BLACK'S LAW DICTIONARY (10th 2014).

920, 923 (Ky. App. 2002). In this case, the material facts are undisputed.

Consequently, we conduct a *de novo* review of the circuit court's application of the law to the facts. *Id.*

“The plain-view exception to the warrant requirement applies when [1] the object seized is plainly visible, [2] the officer is lawfully in a position to view the object, and [3] the incriminating nature of the object is immediately apparent.” *Kerr v. Commonwealth*, 400 S.W.3d 250, 266 (Ky. 2013) (citation omitted). To determine whether those three requirements have been met looks to whether the officer contemporaneously has probable cause to believe that the evidence is contraband considering the totality of the circumstances.

Commonwealth v. Jones, 217 S.W.3d 190, 196 (Ky. 2006).

Detective Page saw in plain view, eighteen marijuana plants in McBride's room and one clear plastic bag containing numerous pills in the closet, along with the partially obscured bags. Based on his experience as a police officer, this evidence alone was clearly indicia of illegal drug activity and thus Detective Page was justified in believing the partially obscured bags were also illegal drug contraband which was immediately apparent to him. Based on this observation under the circumstances of the case, the probability that incriminating evidence was involved is all that is required to establish probable cause. *Dunn v. Commonwealth*, 689 S.W.2d 23 (Ky. App. 1984).

For the foregoing reasons, the judgment and final sentence of imprisonment of Fayette Circuit Court are affirmed.

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