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Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-000988-MR

JAMES WOOLFOLK — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE ERNESTO SCORSONE, JUDGE
ACTION NO. 18-CR-00520

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CALDWELL, DIXON, AND L. THOMPSON, JUDGES.

DIXON, JUDGE: James Woolfolk appeals from the orders denying his motion to suppress, judgment on conditional guilty plea, and final judgment and sentence entered by the Fayette Circuit Court on December 18, 2018, April 18, 2019, and June 27, 2019, respectively. Following review of the record, briefs, and law, we affirm.

FACTS AND PROCEDURAL BACKGROUND

On March 28, 2018, at approximately 12:18 a.m., Officer Jesse Mascoe of the Lexington Metro Police Department was in downtown Lexington when he observed Woolfolk drop off a passenger at a suspected drug house. Officer Mascoe attempted to run Woolfolk's license plate, while behind him at a stoplight, but the plate was not illuminated. Officer Mascoe activated his lights, but Woolfolk did not immediately pull over. He did eventually pull over after Officer Mascoe activated his siren.

When Officer Mascoe approached the vehicle, Woolfolk had rolled the window down a few inches. Officer Mascoe instructed Woolfolk to roll the window down—presumably further—and asked him why he didn't pull over. Officer Mascoe detected the smell of marijuana coming from the vehicle and observed Woolfolk acting nervously. He ordered Woolfolk out of the car; again, Woolfolk did not immediately comply. Another officer approached, and Woolfolk was removed from the vehicle. The car was still in drive, so Officer Mascoe entered the vehicle to shift it into park. He informed Woolfolk he smelled marijuana in the vehicle and asked if Woolfolk had any in his possession. Woolfolk moved his hands, and Officer Mascoe instructed him to stop reaching. Woolfolk stated he was trying to give the officer the marijuana he had in his jacket pocket, which the officers then retrieved. After multiple warnings to stop reaching,

and what Officer Mascoe perceived as Woolfolk's failure to comply, Woolfolk was placed under arrest and his hands cuffed behind his back. Once safety concerns were resolved, Officer Mascoe advised Woolfolk that he had been pulled over for failure to illuminate his license plate. The officers then searched Woolfolk and his vehicle. During the pat-down of Woolfolk, he was instructed by Officer Mascoe to spread his legs but refused. The search ultimately revealed two bags of cash, totaling nearly one thousand dollars, mostly in twenty-dollar-bills, digital scales with white residue, two cellular phones, and white residue on the front seats of the car. When Officer Mascoe ran Woolfolk's information, he discovered an outstanding warrant for his arrest.

Woolfolk's handcuffs were removed and his hands cuffed in front of his body prior to being placed in the back seat of Officer Mascoe's patrol car. Over ten minutes after Officer Mascoe began transporting Woolfolk to the detention facility, he observed Woolfolk moving around a lot and turned on the interior car light. Shortly thereafter, he told Woolfolk there was too much movement and that it was making him nervous. Woolfolk offered to put his hands on the interior cabin compartment divider, and Officer Mascoe agreed. Woolfolk's hands remained on the compartment divider until they arrived at the detention center, at which time Officer Mascoe instructed him to remove his hands so he

could unbuckle Woolfolk. Both the traffic stop and the transport to the detention center were recorded on Officer Mascoe's bodycam.

At the detention facility, Officer Mascoe filled out a strip search request form, indicating:

> SUBJECT WAS OBSERVED IN VEHICLE WITH INDICATORS OF TRAFFICKING NARCOTICS. UPON CONTACT, HE WAS UNCOOPERATIVE AND KEPT ATTEMPTING TO REACH FOR HIS BACK WAIST LINE, VERY NERVOUS AND [MOVING] IN BACK OF CRUISER, MAY HAVE SOMETHING CONCEALED.

The request was approved by Lieutenant Maulana Trowell, and the strip search was conducted in a private area by Officer Kenneth Henson who discovered two bags in Woolfolk's underwear: one containing a white powder substance and the other containing a white rock-like substance. These substances tested positive for heroin and cocaine.

On May 7, 2018, Woolfolk was indicted for trafficking in a controlled substance, first degree (heroin),[1] promoting contraband, first degree,[2] possession of marijuana,[3] rear license not illuminated,[4] and persistent felony offender, second

[1] Kentucky Revised Statutes (KRS) 218A.1412, a Class C felony.

[2] KRS 520.050, a Class D felony.

[3] KRS 218A.1422, a Class B misdemeanor.

[4] KRS 186.170, a violation.

degree.[5] Woolfolk moved the court to suppress all evidence obtained as a result of the traffic stop and subsequent strip search. A suppression hearing was held on Woolfolk's motion, at which Officer Mascoe, Officer Henson, and Lt. Trowell testified. Officer Henson acknowledged that during intake, there are opportunities for an inmate to place items in an amnesty box or to dispose of items in the restroom before being transported to their bunk. Officer Henson and Lt. Trowell also conceded there was a possibility Woolfolk could have bonded out before his inmate intake was complete. However, because Woolfolk was brought in with at least one drug-related offense, the Fayette Detention facility's written procedures required a strip search prior to being transported to his bunk, even absent Officer Mascoe's request for the search. The court ultimately denied Woolfolk's suppression motion, finding that the strip search and the discovery of concealed drugs were inevitable.

On April 12, 2019, Woolfolk entered a conditional guilty plea, and six days later the court entered its judgment on the conditional plea. On June 27, 2019, the court entered its final judgment and sentence, and this appeal followed.

[5] KRS 532.080, a Class B felony.

STANDARD OF REVIEW

The standard for appellate review of trial court rulings on pretrial motions to suppress evidence is well-settled. Pursuant to RCr[6] 8.27,

> [w]e apply the same two-step process adopted in *Adcock v. Commonwealth*, 967 S.W.2d 6, 8 (Ky. 1998). First, we review the trial court's findings of fact, which are deemed to be conclusive, if they are supported by substantial evidence. Next, we review *de novo* the trial court's application of the law to the facts to determine whether its decision is correct as a matter of law.

Maloney v. Commonwealth, 489 S.W.3d 235, 237 (Ky. 2016). Substantial evidence is defined as "that which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person." *Bowling v. Natural Resources and Envtl. Protection Cabinet*, 891 S.W.2d 406, 409 (Ky. App. 1994) (citation omitted).

INEVITABLE DISCOVERY

On appeal, Woolfolk apparently argues his strip search at the detention facility violated his Fourth Amendment right against unreasonable search and seizure. Woolfolk does not specifically argue the jail search was violative of

[6] Rules of Criminal Procedure.

his constitutional rights but, rather, bypasses that claim to focus on an exception to the exclusionary rule for Fourth Amendment violations.[7]

Contrary to the trial court's approach, we must first determine what the Fourth Amendment requires.

> The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." This provision means that "*each* person has the right to be secure against unreasonable searches and seizures in *his own* person, house, papers, and effects." *Minnesota v. Carter*, 525 U.S. 83, 92, 119 S.Ct. 469, 142 L.Ed.2d 373 (1998) (Scalia, J., concurring, joined by Thomas, J.). The exclusionary rule, the rule that "evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of the illegal search and seizure," was judicially created to safeguard that right. *United States v. Calandra*, 414 U.S. 338, 347-48, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974). The rule excludes both the "primary evidence obtained as a direct result of an illegal search or seizure" and "evidence later discovered and found to be derivative of an illegality," commonly referred to as the "fruit of the poisonous tree." *Segura v. United States*, 468 U.S. 796, 804, 104 S.Ct. 3380, 82 L.Ed.2d 599 (1984) (citations omitted).

Warick v. Commonwealth, 592 S.W.3d 276, 280-81 (Ky. 2019), *reh'g denied* (Feb. 20, 2020) (citations omitted).

[7] In fairness to Woolfolk, the trial court also appears to have failed to make a determination that a Fourth Amendment violation occurred.

Only after a determination that a Fourth Amendment violation has occurred does a court move on to determine whether an exception applies.

> "Despite its broad deterrent purpose [against police misconduct], the exclusionary rule has never been interpreted to proscribe the use of illegally seized evidence in all proceedings or against all persons." *Calandra*, 414 U.S. at 348, 94 S.Ct. 613. Three exceptions to the rule "involve the causal relationship between the unconstitutional act and the discovery of evidence." *Utah v. Strieff*, [136 U.S. 2056], 136 S. Ct. 2056, 2061, 195 L.Ed.2d 400 (2016). These exceptions are the independent source doctrine, the inevitable discovery doctrine, and the attenuation doctrine. *Id.* at 2061. . . . The inevitable discovery doctrine "allows for the admission of evidence that would have been discovered even without the unconstitutional source." *Id.* (citing *Nix v. Williams*, 467 U.S. 431, 443-44, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984)).

Warick, 592 S.W.3d at 281.

Woolfolk contends the trial court clearly erred in denying his suppression motion because the witnesses established three possible ways the contraband would not inevitably have been discovered: had Woolfolk put it in the amnesty box, flushed it, or been bonded out. However, the exclusionary rules to searches and seizures without a warrant—such as inevitable discovery—apply only if a search and/or seizure is unreasonable. Herein, Woolfolk failed to show that the strip search was unreasonable.

"The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a

balancing of the need for the particular search against the invasion of personal rights that the search entails." *Bell v. Wolfish*, 441 U.S. 520, 559, 99 S.Ct. 1861, 1884, 60 L.Ed.2d 447 (1979).

> To make the determination of reasonableness, we consider the factors recommended by the United States Supreme Court in the case of *Bell v. Wolfish*, [*supra*,] using them to balance the need for the particular search versus the personal rights that the search entails. 441 U.S. 520, 559, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979). These factors include: (1) the scope of the particular intrusion; (2) the manner in which the search is conducted; (3) the justification for initiating the search; and (4) the place in which it is conducted. *Id*.

Commonwealth v. Marshall, 319 S.W.3d 352, 362 (Ky. 2010). As noted in Bell,

> A detention facility is a unique place fraught with serious security dangers. Smuggling of money, drugs, weapons, and other contraband is all too common an occurrence. And inmate attempts to secrete these items into the facility by concealing them in body cavities are documented in this record, App. 71-76, and in other cases. *E.g., Ferraro v. United States*, 590 F.2d 335 (CA6 1978); *United States v. Park*, 521 F.2d 1381, 1382 (CA9 1975).

Bell, 441 U.S. at 559, 99 S.Ct. at 1885.

After considering the factors enunciated in *Marshall* and applying them to the specific circumstances surrounding this strip search, we conclude such was reasonable. Here, the search was conducted after finding illegal drugs on Woolfolk's person and in his vehicle. It was conducted in an enclosed private area at the detention facility where Woolfolk passed his garments to Officer Henson for

inspection. It was not conducted in a public setting. Therefore, neither the scope, manner, nor place of the strip search was unreasonable. Concerning the justification for the search, "[s]trip searches, especially of individuals who have hidden contraband in the manner [here], are necessary to preserve evidence, to prevent infiltration of contraband into detainment centers and, sometimes, for officers[']safety." *Marshall*, 319 S.W.3d at 364. Moreover, it was the facility's policy for incoming inmates who were arrested on drug-related offenses to be subject to strip search, regardless of Officer Mascoe's request. As noted in *Marshall*, this policy is reasonable and necessary to prevent infiltration of contraband into the detention facility. Therefore, we hold the justification for the strip search was reasonable. Consequently, Woolfolk's claims that the drugs found through the strip search would not have been inevitably discovered are moot. It is well-settled that an appellate court may affirm a lower court for any reason supported by the record. *Kentucky Farm Bureau Mutual Ins. Co. v. Gray*, 814 S.W.2d 928, 930 (Ky. App. 1991). For these reasons, the trial court did not err in denying Woolfolk's motion to suppress.

CONCLUSION

Therefore, and for the foregoing reasons, the orders entered by the Fayette Circuit Court are AFFIRMED.

ALL CONCUR.

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