Circuit Court for Washington County
Case No. 21-K-15-051966

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 91

September Term, 2017

ROBERT LEE WRIGHT

v.

STATE OF MARYLAND

Nazarian,
Shaw Geter,
Davis, Arrie W.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Davis, J.

Filed: December 13, 2017

Appellant, Robert Lee Wright, was tried and convicted in the Circuit Court for Washington County (Long, J.) of possession with intent to distribute cocaine and illegal possession of a firearm, pursuant to a not guilty agreed statement of facts. The court imposed concurrent sentences of ten years for each count. Appellant filed the instant appeal from the convictions and sentences, positing the following question for our review:

Did the court err in denying appellant's Motion to Suppress?

FACTS AND LEGAL PROCEEDINGS

By charging document filed in the Circuit Court for Washington County, the State charged Appellant with possession with intent to distribute cocaine, possession of a firearm in relation to a drug trafficking crime, possession of a firearm by one with a felony conviction, illegal possession of a firearm, and related counts. Following a not guilty agreed statement of facts on February 23, 2017, Appellant was convicted of possession with intent to distribute cocaine and illegal possession of a firearm; the State nolle prossed the remaining counts.

At the hearing on the motion to suppress, Agent Ben Jones of the Washington County Narcotics Task Force ("NTF") testified that members of the U.S. Marshals Service notified his office, on October 27, 2015, that Appellant was wanted on a federal parole warrant and that he was travelling in Hagerstown in a gray Mitsubishi Lancer with Georgia license plates. Armed with the information that Appellant was staying with his girlfriend at a Motel 6 on Massey Boulevard, the Marshals provided the NTF with Appellant's picture

and asked that NTF agents perform surveillance at the Motel 6.

At the Marshals' request, Jones responded to the Motel 6 at approximately 11:45 a.m. and conducted surveillance from a parking lot across the street. When Agent Jones saw two people, including a person he suspected to be Appellant, enter a Mitsubishi Lancer and drive away, he radioed this information to other officers, who stopped the Lancer in front of the Motel 6 office. The driver was identified as Nykeemah Minnis. The vehicle and motel room were registered in her name. Appellant was the male passenger.

Jones testified that Appellant was then taken into custody without incident by Agent Mills of the NTF. Appellant was handcuffed and searched and police discovered four cell phones and $827.00 in cash. Appellant was then seated in the rear seat of a patrol vehicle. Neither Appellant nor the driver, Minnis, gave officers permission to enter the motel room. While Jones stayed with Appellant, Agent Mills entered Appellant's motel room.

Mills returned from searching the motel room and told Agent Jones that he had found a gun holster. Agent Jones testified that then he read Appellant his Miranda rights and Appellant stated he was willing to speak to Agent Jones. Jones testified that both he, and Agent Mills asked Appellant about the holster or a gun, to which Appellant responded that "anything in the room that was found in the room that was illegal was his" including a gun and "28 or 29 rocks" of "crack cocaine" "in a long black bag inside the room." Agent Jones testified that "[t]he questions I asked him were in reference to the gun and the cocaine and if anything illegal was in the room."

Agent Jay Mills testified that he stopped the Mitsubishi Lancer and that Appellant

and Nykeemah Minnis were the occupants. Agent Mills opened the passenger's side door and ordered Appellant onto the ground, where the agent placed him in handcuffs. Minnis told Agent Mills that Appellant's 17-year-old son and small child were in the motel room. Mills asked Minnis for permission to search the hotel room, which she refused. Agent Mills told her that he would soon receive a search warrant to conduct a search. Mills believed that he would have a search warrant for the motel room based on Appellant's "criminal history of being involved in drugs" from nine years prior, his parole violation warrant for drugs, and that, "[u]pon his arrest, he was in possession of over eight hundred dollars" and "had four cell phones on his person."

Agent Mills then knocked on the motel room door and Appellant's son looked out the window, then opened the door. Mills told him that he would be securing the room for a search warrant and Mills then entered the room. Mills walked through the bedroom and into the bathroom to ensure that no one was hiding there. Mills performed a search in the interest of "officer safety'" because, in his experience of having "been to that hotel probably over a hundred times," he has "found many people in the bathroom at that motel hiding."

Inside the room, Mills saw a black holster beside the TV on the dresser. Mills then rejoined Agent Jones, who administered a *Miranda*[1] warning to Appellant. Agent Mills testified that he asked Appellant "about the holster that was in the room at which time Appellant said that there was a gun in the room and he also said that there was crack cocaine

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

in the room."

Agent Ben Jones submitted a search warrant affidavit and application to the District Court for Washington County. In that affidavit, Jones wrote, in material part:

> While securing the room Agent Mills observed, in plain view, a small black holster with a snap for a handgun on top of the TV stand inside of the room . . . .
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> . . . Agent Mills asked if there was anything illegal in the hotel room and Wright stated that anything that was found in the room belonged to him. Wright added that there was some crack cocaine, about 28 or 29 rocks. Agent Mills then advised Wright that he had observed the holster and Wright stated that the gun was also in the room. Agent Jones asked Wright where the crack and gun were specifically and he stated that he had a long black bag in the room and that everything was inside of it.

The warrant was issued and, according to Agent Jones, the police ultimately recovered approximately 27 rocks of crack cocaine in a pill bottle in a black bag during a search warrant of the motel room.

In ruling on Appellant's Motion to Suppress, the court noted a "discrepancy" in the search warrant, authored by Agent Jones, and Agent Mill's testimony. The court noted that, in the warrant application, Agent Jones states that Agent Mills asks Appellant if there is anything illegal in the motel room and Appellant responds that there were drugs in the room. Afterward, Agent Mills relays information about observing the gun holster. However, according to Agent Mills' testimony, Agent Mills told Appellant about the observed gun holster first and then Appellant divulged the presence of drugs in the motel room. The court reasoned:

> So because there was a question regarding the sequence of the information obtained from the defendant, I don't know if the statement about the empty holster came first.

> If not, then certainly probable cause existed to obtain a search warrant and the issuing magistrate probably granted the request for the search warrant. But if the information elicited from Mr. Wright occurred as a result of Agent Mills' comment, then I had to look a little further and I found the question to then be what is the effect of the application if the language regarding the gun and the drugs and the empty holster is removed from the application.

The Court ultimately held that the warrantless search of Appellant's motel room was permitted because, as a parolee, Appellant was subject to the lower reasonable suspicion standard and that the totality of the circumstances supported a reasonable suspicion that contraband was in the motel room. The motion was denied.

Appellant was eventually convicted of possession with intent to distribute cocaine and illegal possession of a firearm. The instant appeal followed.

DISCUSSION

Central to the issue in this appeal is Appellant's status as a parolee. Both Appellant and the State agree that Appellant was subject to the reasonable suspicion standard for Fourth Amendment purposes, not the probable cause standard. Where the parties diverge is whether there was reasonable suspicion.

Appellant contends that Agent Mills did not have permission or reasonable suspicion to enter the hotel room, thereby rendering the subsequent search illegal. Appellant asserts that this illegal search tainted the interrogation. Appellant further contends that the motions court erred under either of its alternative holdings and reversal is required.

The State responds that the court correctly denied the motion because Appellant's

Fourth Amendment rights were not violated. The State asserts that Appellant's criminal history and "his arrest in violation of parole with over $800 in cash and four cellphones on his person" constituted reasonable suspicion. The State argues that the NTF agents went above and beyond applying for a search warrant because there was a reasonable suspicion that Appellant was committing or had recently committed criminal activity in the motel room, in violation of his parole.

The Fourth Amendment to the United States Constitution, made applicable to the States *via* the Fourteenth Amendment, protects against "unreasonable searches and seizures." U.S. CONST., amend. IV. "The Fourth Amendment's protections extend only to those items and places in which the individual claiming the protection has a legitimate expectation of privacy." *Wallace v. State*, 373 Md. 69, 79 (2003) (citations omitted).

"Searches of the home conducted without a warrant are presumptively unreasonable for 'the Fourth Amendment has drawn a firm line at the entrance to the house[.]'" *Williams v. State*, 372 Md. 386, 402 (2002) (quoting *Payton v. New York*, 445 U.S. 573, 586 (1980)). "A motel room can be protected by the Fourth Amendment as much as a home or an office." *Id*. (citations omitted). These searches are "prohibited by the Fourth Amendment, absent probable cause and exigent circumstances." *Id.* (quoting *Welsh v. Wisconsin*, 466 U.S. 740, 749 (1984)). "The government has the burden of overcoming that presumption." *Grant v. State*, 449 Md. 1, 17 (2016) (citing *Southern v. State*, 371 Md. 93, 105 (2002)).

The presumptive unreasonableness of a warrantless search of a home is subject to

> limited and narrow exceptions. *** Exigent circumstances exist when a substantial risk of harm to the law enforcement officials involved, to the law enforcement process itself, or to others would arise if the police were to delay until a warrant could be issued.

Williams, 372 Md. at 402 (citations omitted).

Although the Fourth Amendment generally requires probable cause for a search or seizure, the standard is different for parolees. Parolees are on "conditional release from prison," which is "akin to imprisonment" and, therefore, their expectation of privacy is lesser than "an average citizen's absolute liberty." *Feaster v. State*, 206 Md. App. 202, 220 (2012) (quoting *Samson v. California*, 547 U.S. 848, 850 (2006)). Instead of the probable cause standard for search warrants, a "*Terry*[2]-level" standard of "reasonable suspicion" is utilized in examining the constitutionality of a search or seizure involving a parolee. *Id.* at 220–21.

In order for a search or seizure of a parolee to be constitutional, an officer must have a reasonable suspicion that a parolee

> is engaged in criminal activity [or that] there is enough likelihood that criminal conduct is occurring that an intrusion on the [parolee's] significantly diminished privacy interests is reasonable. The same circumstances that lead us to conclude that reasonable suspicion is constitutionally sufficient also render a warrant requirement unnecessary.

Id. at 216 (quoting *Knights*, 534 U.S. at 121).

A Fourth Amendment violation is usually the grounds for a motion to suppress the evidence that was obtained *via* the violation. *Grant*, 449 Md. at 30 (citing *Mapp v. Ohio*,

[2] *Terry v. Ohio*, 392 U.S. 1 (1968).

367 U.S. 643, 655 (1961)); MD. RULE 4–252(a)(3).

Recently, in *Grant, supra*, we reiterated the "well-established standard of review for motions to suppress" as follows:

> Our review of a circuit court's denial of a motion to suppress evidence under the Fourth Amendment, ordinarily, is limited to the information contained in the record of the suppression hearing and not the record of the trial. When there is a denial of a motion to suppress, we are further limited to considering facts in the light most favorable to the State as the prevailing party on the motion. Even so, we review legal questions *de novo*, and where, as here, a party has raised a constitutional challenge to a search or seizure, we must make an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case. We will not disturb the [circuit] court's factual findings unless they are clearly erroneous.

Id. at 14–15 (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)).

In the instant case, in denying Appellant's Motion to Suppress, the motions court found the following:

> In this case, the Court was made aware that a federal parole retake warrant existed. The defendant was on parole for a conviction for a prior drug offense or offenses. The existence of a viable warrant was not significantly contested at the time of the hearing and no information was introduced at the hearing which outlined any conditions of the release of Mr. Wright's agreement regarding the scope of searches or by whom the search should be conducted. Which puts it at a little different posture than either *Knights* or the *Samson* cases.
>
> ***
>
> I looked at the rationale contained in the *Feaster* case, which upheld a warrantless search and I had to answer the question does the—does Mr. Wright's parole status, his possession of eight hundred and twenty-seven dollars and four cell phones arise to the level of reasonable suspicion to believe that contraband is in the room? Looking at the totality of the circumstances, I find that reasonable suspicion did exist because of the substantial cash, the numerous cell phones, which are certainly items used, implements used in the drug trade, as well as his parole status and I find that the search was justified.

We agree with the ruling of the motion's court. On the date in question, Appellant was wanted on a federal parole warrant. When he was taken into custody by the NTF, four cell phones and $827 cash was discovered on his person. The cell phones and cash, in addition to Appellant's criminal history, provided the police with reasonable suspicion that Appellant was actively engaged in criminal activity, *i.e*., drug trafficking, or that there was a likelihood that such criminal activity was occurring, rendering a subsequent search constitutional.

Appellant and the State both argue the merits, *vel non*, of whether the exigent circumstances warrant exception for an officer to secure a location for a search warrant. We are persuaded that the case *sub judice* is resolved based on the holding in *Feaster, supra*.

Accordingly, we hold that the court's denial of Appellant's Motion to Suppress was proper.

JUDGMENTS OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.