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Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001139-MR

WILLIAM STOKES — APPELLANT

v.

APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE JOHN L. ATKINS, JUDGE
ACTION NO. 14-CR-00518

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, JONES, AND VANMETER, JUDGES.

VANMETER, JUDGE: William Stokes appeals from the Christian Circuit Court's Order Denying Motion to Suppress, entered March 12, 2015. We affirm the circuit court.

BACKGROUND

William Stokes was indicted by the Christian Circuit Grand Jury on October 24, 2014 for first-degree possession of a controlled substance and possession of drug paraphernalia. The charges stem from an incident that occurred

in the early morning hours of August 9, 2014, when an obviously injured woman approached an officer outside the Hopkinsville Police Department. The woman, Charlotte Lee, stated that she had been assaulted at the Little River Motel, after other women in the room accused her of smoking the last piece of crack cocaine. Ms. Lee also informed police that she was uncertain as to whether the assault took place in Room 7 or Room 8 of the motel, as she and others in the group had been going back and forth between those rooms all night.

When police officers arrived at the Little River Motel to investigate, they first knocked on the door at Room 8. Despite knocking for ten to fifteen minutes, there was no response. The officers also did not see anyone through the window, nor did they hear any movement from within the room. The officers next went to Room 7. They saw a woman lying face down on the bed through the window, but no amount of knocking resulted in a response from inside the room. Eventually, the police decided to contact the owner of the motel, Mr. Patel, who was able to tell them that Olivia Cook was the registered tenant of Room 7, Stokes was the tenant of Room 8. The officers requested that Patel open Room 8. Officer Brent entered with the object of securing the scene, as well as to look for any other possibly injured persons within. He did not see anyone, but noticed blood on the bed and refrigerator. At that time, Officer Brent did not see any contraband inside Room 8, and he later testified that he was in the room for about ten to fifteen seconds before leaving. The officers then went to Room 7 and knocked again. Again, no one answered the door, but this time the officers could hear shuffling

noises from within the room. Patel opened the door for the police, who discovered Stokes hiding behind the door. After waking the woman on the bed, the officers learned that her name was Teresa Hodge. Cook, the registered tenant of this room, was not present.

The officers detained both Hodge and Stokes, removing them from the room to question them separately on the assault. The officers asked Stokes for consent to search Room 8. Stokes agreed and signed a written consent form to the search. Later, he testified that he gave consent because he saw that the door to his room was open, indicating that the police had already been inside. Because the officers had already been inside his room, he thought that this meant that he had no real choice in the matter. However, he also testified that the officers did not threaten him, nor did they actually tell him that he had no choice, nor did they present contraband to him as a *fait accompli* before gaining his consent to search. Upon gaining consent, the officers searched the room and discovered a plate with cocaine residue, crack pipes, razors with cocaine residue, and a push rod. Stokes admitted that these items belonged to him, and he was placed under arrest.

Prior to trial, Stokes filed a motion to suppress the evidence from Room 8 as the result of an unlawful search, arguing that his consent was the product of coercion. In a written order entered March 12, 2015, the circuit court denied the motion, stating its findings in part as follows:

> In our case, the Defendant claims that he consented to the search of his motel room because the police had already been in the room. He presented something of a "what's the use?" attitude. This sort of

> feeling does not reflect coercion. There is no evidence of any type of police misconduct in obtaining the consent and it is clear to the court that Stoke's sense of resignation does not equate to coercion. Therefore the Court determines that his consent to search was voluntary.

After a one day trial held on April 20, 2015, Stokes was found guilty of first-degree possession of a controlled substance and possession of drug paraphernalia. He was sentenced to a total of one year in prison, probated for one year. This appeal follows.

ANALYSIS

Stokes appeals the denial of his suppression motion regarding the illegal entry of his hotel room and the coercion of his consent to search that room. The Commonwealth argued in its response to the suppression motion that this case was similar to *Stevens v. Commonwealth*, 354 S.W.3d 586, 591 (Ky. App. 2011), which found that "a subsequent consent to search may dissipate the taint of a prior illegality." *Id*. (citing *Baltimore v. Commonwealth*, 119 S.W.3d 532, 540 (Ky. App. 2003)).

"Our standard of review of the trial court's denial of a suppression motion is twofold. First, the trial court's findings of fact 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) (citations omitted). In this case, the circuit court's findings of fact are borne out by testimony from the suppression hearing. Stokes argues that Officer Brent's testimony at the suppression hearing was not credible, when the officer testified

that they initially entered Room 8 to "secure the crime scene, if there was one there," and to look for other injured persons. Despite the appellant's expressed disbelief, however, an officer's testimony in open court amounts to substantial evidence. *See, e.g.*, *Payton v. Commonwealth*, 327 S.W.3d 468, 471–72 (Ky. 2010); *Chavies v. Commonwealth*, 354 S.W.3d 103, 108 (Ky. 2011); *Williams v. Commonwealth*, 364 S.W.3d 65, 68 (Ky. 2011). Therefore, the circuit court's findings of fact are supported by substantial evidence.

With regard to conclusions of law, the circuit court alluded to *Stevens* for the proposition that subsequent consent may dissipate the taint of a previously illegal entry. "The admissibility of the challenged evidence involves a two-part test: (1) whether the consent was voluntary and (2) whether the consent was an independent act of free will." *Stevens*, 354 S.W.3d at 591 (quoting *Baltimore,* 119 S.W.3d at 540). While the circuit court did not explicitly apply the test from *Stevens* and *Baltimore*, we believe that the circuit court nonetheless reached the correct result. "In instances where a trial court is correct in its ruling, an appellate court, which has *de novo* review on questions of law, can affirm, even though it may cite other legal reasons than those stated by the trial court." *Fischer v. Fischer*, 348 S.W.3d 582, 589 (Ky. 2011).

The first prong of the test from *Stevens* and *Baltimore* asks us to determine the voluntariness of Stokes' consent. Even if one were to grant that the initial entry by police into Room 8 was improper, we find that Stokes' consent was nonetheless voluntary. "The question of voluntariness is to be determined by an

objective evaluation of police conduct and not by the defendant's subjective perception of reality." *Cook v. Commonwealth*, 826 S.W.2d 329, 331-32 (Ky. 1992) (citing *Colorado v. Connelly*, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986)). "Precedent demands that courts consider whether a person consented to a search from the objective perspective of a reasonable officer, not from the subjective perception of the person searched." *Payton v. Commonwealth*, 327 S.W.3d 468, 472 (Ky. 2010) (footnoted citations omitted). Stokes admitted on the stand that the officers did not threaten him in any way, nor did they tell him that he had no choice in the matter. Furthermore, they were prudent enough to ask Stokes to sign a written consent form granting permission to search the room. The only reason given by Stokes for his consent was, in the words of the circuit court, a "sense of resignation." That epitomizes the "subjective perception" that we were warned against in *Cook* and *Payton*. An objective determination of this situation indicates that the consent was voluntary.

Similarly, the second part of the test asks us to determine whether Stokes' consent was truly an independent act of his free will. After some consideration, we believe that it was an independent act. "Factors relevant to whether consent was an independent act of free will include: (1) the temporal proximity of the illegal conduct and the consent; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the initial misconduct." *Stevens*, 354 S.W.3d at 591 (quoting *Baltimore*, 119 S.W.3d at 541 n.34).

The temporal proximity factor means that a "substantial period of time supports attenuation more than consent obtained in close proximity to the initial violation." *Id*. While the *Stevens* court found that three hours in that case was sufficient to allow attenuation between the illegality and the consent, it is uncertain how much time passed in the case *sub judice* between the initial entry into Room 8 and Stokes' consent. The timeline indicates that police secured Room 8, then knocked at Room 7, had Patel open the door, found Stokes behind the door, awakened Hodge, detained Stokes and Hodge, escorted them from the room to the police cruiser outside, and questioned Stokes about the assault. Only at that point did police request consent to search Room 8. While the passage of time here is not as lengthy as in *Stevens*, it does not appear to be perfectly contemporaneous with the illegality either. This factor, then, may be said to not weigh strongly either for or against attenuation.

The second factor, intervening circumstances, seems to be a flexible consideration of the environment in which the consent took place:

> As for the presence of intervening circumstances, we note that [Appellant] was not present when the initial search was conducted; she arrived after the officers had already searched, and she did not see them look in any of the buildings. Furthermore, [Appellant] expressed a desire to cooperate with the officers. Nothing indicates that the officers threatened her, arrested her, or threatened to arrest or charge her with any crimes. The record indicates that [Appellant] had sufficient time to consider her decision to sign the consent form and that she had time to confer with her husband prior to signing the form.

Stevens, 354 S.W.3d at 591. Many of these same factors apply here. While Stokes did notice that the door to his room was open, he was not present in the room when the initial intrusion occurred, nor did he see the officers enter. Stokes was not handcuffed or under arrest at the time, and he admits that the officers did not threaten him. Finally, as in *Stevens*, Stokes signed a consent form agreeing to the search. This factor weighs heavily in favor of attenuation.

Finally, the third factor asks us to consider "the purpose and flagrancy of the initial misconduct." *Id*. (quoting *Baltimore*, 119 S.W.3d at 541 n.34). The circuit court specifically found that there was no "flagrantly inappropriate conduct" on the part of the police officers. We agree. While the entry by the police into Room 8 of the motel may have been procedurally flawed, it was not flagrantly inappropriate. The victim of the assault, Charlotte Lee, explicitly told police that the crime may have occurred in Room 7 or Room 8, and that she could not remember because *the group had been back and forth between those rooms all night*. There was clearly reason to believe that there may be evidence of the assault, other potential victims in that room, potential witnesses, or possible perpetrators of the crime. Nevertheless, the police knocked on the door, had Patel open the door, did a brief sweep of the room lasting only ten to fifteen seconds, and then left. There was no actual search at that time, nor was there any attempt to use results from the sweep in order to threaten Stokes into giving consent. This factor weighs in favor of attenuation.

Based on these factors, we find that Stokes' consent was both voluntary and a truly independent act of free will under the test provided by *Stevens* and *Baltimore*. "Taken together, these factors indicate that [Appellant's] consent was the product of [his] free will and was not obtained by improper exploitation of the initial illegality." *Stevens*, 354 S.W.3d at 592. We agree with the circuit court that suppression of the evidence is not warranted in this case.

CONCLUSION

For the foregoing reasons, we affirm the Christian Circuit Court's Order Denying Motion to Suppress entered March 12, 2015.

ALL CONCUR.

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