IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

SEPTEMBER 1996 SESSION

ERIC RUSSELL WILSON,	*	C.C.A. # 01C01-9512-CR-00413
Appellant,	*	DAVIDSON COUNTY
VS.	*	Hon. Ann Lacy Johns, Judge
STATE OF TENNESSEE,	*	(Post-Conviction)
Appellee.	*	

For Appellant:

Anthony A. Adgent
and
Lionel R. Barrett, Jr.
Attorneys at Law
Washington Square Two
Suite 417
222 Second Avenue North
Nashville, TN 37201

For Appellee:

Charles W. Burson
Attorney General & Reporter

Michael J. Fahey, II
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0493

Roger D. Moore
Assistant District Attorney General
Washington Square, Suite 500
222 Second Avenue North
Nashville, TN 37201-1649

OPINION FILED:_____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The petitioner, Eric R. Wilson, appeals the trial court's denial of his petition for post-conviction relief. The single issue presented for review is whether the petitioner was denied the effective assistance of counsel at trial.

We affirm the judgment of the trial court.

On October 10, 1990, the petitioner was convicted of robbery and aggravated rape. The trial court imposed Range I, concurrent sentences of three and eighteen years, respectively. On March 19, 1992, this court affirmed the convictions. State v. Eric Russell Wilson, No. 01C01-9108-CR-00230 (Tenn. Crim. App., at Nashville, March 19, 1992). The supreme court denied an application for permission to appeal on June 22, 1992.

This court's opinion on direct appeal summarized the facts which led to the convictions:

> The undisputed evidence in this case, given by the victim, showed the appellant assaulted the young woman near a business in the city of Nashville at approximately 10:30 p.m. on October 10, 1989. He held a knife to her throat, forced her to commit fellatio upon him, and then vaginally penetrated her. The appellant took several of the woman's personal effects, one of which was found on his person when he was arrested.

Id., slip op. at 1-2.

Shortly after the assault, the victim provided police with a description of her assailant. The petitioner, who was arrested only a short distance from the crime scene, met that description. While attempting to verify the identity of the petitioner, police found a credit card in his wallet which belonged to the victim.

In this petition for post-conviction relief, the petitioner complained that his trial counsel had been ineffective for having failed to file a motion to suppress the credit card evidence. The petitioner contended that the warrantless search of his wallet violated the state and federal constitutions.

The trial court found that there was no legitimate basis to support the filing of a motion to suppress. It concluded that trial counsel had competently and effectively performed his professional responsibilities.

In order for the petitioner to be granted relief on grounds of ineffective counsel, he must establish that the advice given or the services rendered were not within the range of competence demanded of attorneys in criminal cases and that, but for his counsel's deficient performance, the result of his trial would have been different. Strickland v. Washington, 466 U.S. 668, 693 (1984); Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). The burden is on the petitioner to show that the evidence preponderates against the findings of the trial judge. Clenny v. State, 576 S.W.2d 12, 14 (Tenn. Crim. App. 1978), cert. denied, 441 U.S. 947 (1979). Otherwise, the findings of fact by the trial court are conclusive on appeal. Graves v. State, 512 S.W.2d 603, 604 (Tenn. Crim. App. 1973).

Generally, a warrantless search is per se unreasonable. Coolidge v. New Hampshire, 403 U.S. 443, 450 (1971); State v. Bartram, 925 S.W.2d 227, 229-30 (1996). See U.S. Const. Amend. IV.; Tenn. Const. Art. I, § 7. The burden is on the state to show that the search or seizure was reasonable. State v. Crabtree, 655 S.W.2d 173, 178 (Tenn. Crim. App. 1983).

An officer may, however, make a lawful arrest without a warrant when a felony has been committed and the officer has reasonable cause to believe that the person arrested has committed the crime. Wadley v. State, 634 S.W.2d 658, 663 (Tenn. Crim. App. 1982), perm. to app. denied; Tenn. Code Ann. § 40-7-103(3). Absolute assurance of guilt is not necessary. Grey v. State, 542 S.W.2d 102, 104 (Tenn. Crim. App. 1976). Reasonable or probable cause has been defined as that which would justify a reasonable person to believe that a suspect is guilty of a felony. Davis v. State, 453 S.W.2d 438, 440 (1970). Mere suspicion is not enough. West v. State, 221 Tenn. 178, 425 S.W.2d 602, 606 (1968).

Here, the officers who made the arrest had an accurate description of the assailant. The petitioner, who matched that description, was found near the crime scene only a short while after the attack. When the petitioner refused to identify himself, police looked in his wallet for identification and then found the credit card.

In 1975, our supreme court adopted the following standard on the issue of reasonable probable cause for arrest:

> In dealing with probable cause, one deals with probabilities. These are not technical; they are factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.

State v. Jefferson, 529 S.W.2d 674, 689 (Tenn. 1975).

Once there has been a lawful arrest, an officer can conduct a search. United States v. Robinson, 414 U.S. 218 (1973); State v. Banner, 685 S.W.2d 298, 300-01 (Tenn. Crim. App. 1984); State v. McMahan, 650 S.W.2d 383, 386 (Tenn. Crim. App. 1983), perm. to app. denied. The trial court determined that the arrest was lawful. Our scope of review is limited. The trial judge's findings of fact are

conclusive on appeal unless the evidence preponderates otherwise. State v. Tate, 615 S.W.2d 161, 162 (Tenn. Crim. App. 1981), perm to app. denied. Certainly, the evidence does not preponderate against the trial court's conclusion that the officers had reasonable cause, under our statutory language, and probable cause, under either the federal or state constitutional language, to make the arrest. Because a motion to suppress would have been unsuccessful, the petitioner has suffered no prejudice; that is, the evidence of the credit card would have been admissible at trial even if the motion had been made.

Accordingly, the judgment is affirmed.

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Gary R. Wade, Judge

CONCUR:

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Paul G. Summers, Judge

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L. T. Lafferty, Special Judge