

RENDERED: JUNE 25, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000590-MR

JOSEPH CARPENTER

APPELLANT

v. APPEAL FROM POWELL CIRCUIT COURT
HONORABLE FRANK ALLEN FLETCHER, JUDGE
ACTION NO. 08-CR-00067-001

COMMONWEALTH OF KENTUCKY

APPELLEE

AND

NO. 2009-CA-000608-MR

VALERIE CARPENTER

APPELLANT

v. APPEAL FROM POWELL CIRCUIT COURT
HONORABLE FRANK ALLEN FLETCHER, JUDGE
ACTION NO. 08-CR-00067-002

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON AND MOORE, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

BUCKINGHAM, SENIOR JUDGE: Joseph and Valerie Carpenter appeal from their convictions and sentences in the Powell Circuit Court for crimes relating to the manufacturing of methamphetamine (meth) and child endangerment. Their convictions and sentences resulted from conditional guilty pleas that they entered following the denial of their motion to suppress evidence. We affirm.

The Carpenters are married and have two children, Randi and Joseph. Randi was an 18-year-old female at the time, and Joseph was a 14-year-old male. The Carpenter family lived in a double-wide trailer on Daniels Branch in Powell County.

The testimony at the suppression hearing before the trial court indicated that sometime around midnight on March 3, 2008, the Kentucky State Police (KSP) Post received a telephone call from a young female reporting that her parents were making meth at the residence and that she was scared for her little brother. Trooper Jay Perkins of the KSP was dispatched to investigate, and he was accompanied by Powell County Deputy Sheriff Melvin Rogers who drove a separate vehicle.

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

When the officers arrived at the trailer, the lights were out. The officers approached the trailer, walked onto the small wooden porch at the front, and knocked on the front door. Joseph Carpenter came to the door, and Trooper Perkins advised him that the officers were there on a welfare check of the children pursuant to a call to the KSP Post. When Joseph inquired as to who made the call, Trooper Perkins refused to disclose that the call apparently had come from Randi.

Trooper Perkins asked Joseph, "Would you mind if I checked on your children?" Joseph gave his consent, and the trooper entered the residence. Joseph testified that he was directed by the trooper to stay on the front porch with the deputy; but the trooper testified that he did not require Joseph to stay outside and that he was free to enter the home. Trooper Perkins further testified that upon entering the residence, he smelled an odor that seemed to be cat urine. He further testified that he had learned in his training that such a smell is consistent with the manufacturing of meth.

Trooper Perkins testified that the first room he entered was a bedroom on the left where the door was open and there was a light on. Upon entering the bedroom, the trooper observed a woman, later identified as Valerie, lying in bed with the covers pulled over her. When the trooper identified himself, the woman did not respond.

Trooper Perkins testified that he observed two closed doors in the bedroom and proceeded to open one which was a closet. He then opened the other door within the bedroom and found a bathroom with various items used in the

manufacture of meth therein. Being somewhat overcome by fumes coming from the bathroom, he withdrew and directed Valerie to get dressed and go outside. Upon exiting the bedroom, Trooper Perkins observed the children, who had been in bedrooms on the other side of the trailer.

After determining that the children were safe, the officers arrested Joseph and Valerie for manufacturing meth. The Carpenters were indicted by a grand jury and entered conditional guilty pleas to various charges following a suppression hearing and an adverse ruling by the trial court. In its order denying the Carpenters' suppression motion, the trial court stated that the warrantless search was valid due to consent to the search given by Joseph and due to the presence of exigent circumstances.

Joseph was sentenced to ten years in prison for manufacturing meth and child endangerment. Valerie was sentenced to eight years in prison for facilitation to manufacturing meth and child endangerment. Their appeals followed.²

Appellate review of a motion to suppress “is a two-step process that first reviews the factual findings of the trial court under a clearly erroneous standard. The second step reviews *de novo* the applicability of the law to the facts found.” *Welch v. Commonwealth*, 149 S.W.3d 407, 409 (Ky. 2004) (citations omitted).

² The two appeals have been combined for our ruling in this opinion.

“It is fundamental that all searches without a warrant are unreasonable unless it can be shown that they come within one of the exceptions to the rule that a search must be made pursuant to a valid warrant.” *Cook v. Commonwealth*, 826 S.W.2d 329, 331 (Ky. 1992). “Consent is one of the exceptions to the requirement for a warrant.” *Id.* “All that [is] required to establish consent [is] that the consent was voluntarily given in view of all the circumstances.” *Id.*

The Carpenters argue that Joseph’s consent to enter the residence was not voluntary “but rather was the result of implied force that was evident in Trooper Perkins’ words and actions.” The Carpenters point to the various ways that the trooper described his words during his suppression hearing testimony. The Carpenters state that the trooper testified that his words to Joseph included: “Would you mind if I checked on your children?” or “You don’t care if I go inside and check on your children?” or “I’m here to check on your children” or “I just need to check on your children” or “Can I check on your children?”

Regardless of the exact words used by Trooper Perkins when he asked Joseph if he minded for the trooper to enter to check on the children, Joseph told him that he did not mind. “Whether consent is the result of express or implied coercion is a question of fact, and thus, we must defer to the trial court’s finding if it is supported by substantial evidence.” *Krause v. Commonwealth*, 206 S.W.3d 922, 924 (Ky. 2006) (citation omitted). We conclude that there was substantial

evidence for the trial court to find that there was a voluntary consent, not one resulting from express or implied coercion.³

The Carpenters further argue that Trooper Perkins exceeded the limits of the search that he had been authorized to make. “Even when a search is authorized by consent, the scope of the search is limited by the terms of its authorization.” *Farmer v. Commonwealth*, 169 S.W.3d 50, 52 (Ky. App. 2005). “The standard for measuring the scope of a suspect’s consent under the Fourth Amendment is that of “objective reasonableness” – what would the typical reasonable person have understood by the exchange between the officer and the suspect?” *Id.* (quoting *Florida v. Jimeno*, 500 U.S. 248, 251, 111 S.Ct. 1801, 1804, 114 L.Ed.2d 297, 302 (1991)).

The Carpenters assert that Joseph gave the trooper consent only to check on the children and that the trooper exceeded that authority by opening closed doors in a bedroom that the officer knew was not the bedroom of either child. In addressing this argument, the trial court held as follows:

It certainly seemed reasonable for Trooper Perkins to examine the doors leading from the master bedroom in the search of the home, which resulted in finding chemicals consistent with meth manufacturing in “plain view.” Trooper Perkins did not know the layout of the mobile home when entering. It is doubtful that a police officer will know what lies behind a door without

³ The Carpenters state that the trial court found only that Joseph had given consent but that it made no finding as to whether such consent was voluntary. While it is true that the court made no specific finding in this regard, we note that the court discussed the necessity that consents to search must be freely and voluntarily given and that they may not be obtained through coercion. Furthermore, the Carpenters did not move the trial court for additional findings in this regard. *See Farmer, infra.*

opening same. The door could lead to a bathroom or adjoining bedroom. However, unless there is a window in the door, the door must be opened to ascertain the type of room. Mere conjecture or speculation as to what lies behind said door will not suffice, when the safety of minor children is in question. In searching for occupants of said mobile home, if the officer was opening drawers, examining purses or searching clothing pockets, these actions would be impermissible and would exceed said scope.

We believe this reasoning is sound, and we decline to hold that the trial court erred in concluding that the trooper did not exceed the scope of his authorized search.

The Carpenters also contend that Joseph was physically prevented from limiting or revoking his consent because he was not permitted to accompany Trooper Perkins into the trailer during the search. We do not see where this issue was raised before the trial court. At any rate, the trial court did not address it in its order, and the Carpenters are deemed to have waived it. *Farmer*, 169 S.W.3d at 53.

The final argument raised by the Carpenters in connection with the consent issue is Valerie's argument that any consent given by Joseph was not valid as to her. This issue was not raised before the trial court, but Valerie urges us to address it as palpable. Kentucky Rules of Criminal Procedure (RCr) 10.26. Pursuant to *Commonwealth v. Sebastian*, 500 S.W.2d 417, 419 (Ky. 1973), however, one spouse's voluntary consent to a search of a home makes the fruits of the search admissible as to the other spouse except where the objecting spouse did not have access to the particular room or container. Here, as the evidence was

discovered in the bathroom adjoining the master bedroom where Valerie slept, the evidence was admissible against her as well.

The Carpenters' other argument is that the trial court erred in also ruling that the warrantless search was valid based on exigent circumstances. "Another exception to the warrant requirement arises when, considering the totality of the circumstances, an officer reasonably believes that an immediate search or seizure is necessary in order to avoid a 'risk of danger to police or others.'" *Pate v. Commonwealth*, 243 S.W.3d 327, 331 (Ky. 2007). Further, the U.S. Supreme Court stated in *Mincey v. Arizona*, 437 U.S. 385, 392, 98 S.Ct. 2408, 2413, 57 L.Ed.2d 290 (1978), as follows:

We do not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. [Footnotes omitted.]

See also Hughes v. Commonwealth, 87 S.W.3d 850, 851-52 (Ky. 2002) (where warrantless entry was justified when officer had reasonable belief that victim might be in need of emergency assistance).

The trial court herein stated as follows:

Considering the totality of the circumstances, it would seem reasonable that the Officer should immediately enter the home because of the safety of the children, one being a minor child. This was not a case wherein a third party or anonymous caller had called on a neighbor, or even a neighbor or third party witnessing suspicious behavior at the mobile home. The call was by the children inside the home, apparently whom [sic] feared

for their safety. The chemicals used to cook Meth and the toxic components and by-products resulting from it's [sic] manufacture produce toxic fumes, vapors and spills; and a child living in a Meth lab may inhale or swallow toxic substances or inhale the second hand smoke of adults whom [sic] are using Meth. Likewise, parents under the influence of Meth are not in a competent mental or physical state to oversee minor children.

Because of the young age of the children in the home, the Officer had no viable alternative except to enter the home under emergency circumstances.

We again conclude that the reasoning of the trial court was sound, and we agree that there were exigent circumstances that allowed the officers to enter the residence without a warrant to check on the safety of the children.

The judgments and order of the Powell Circuit Court are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT,
JOSEPH CARPENTER:

Kathleen K. Schmidt
Department of Public Advocacy
Frankfort, Kentucky

BRIEFS FOR APPELLANT,
VALERIE CARPENTER:

Shelly R. Fears
Department of Pubic Advocacy
Frankfort, Kentucky

BRIEFS FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Michael J. Marsch
Assistant Attorney General
Frankfort, Kentucky