IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
April 22, 2009 Session

# STATE OF TENNESSEE v. TERESA G. WATERS

**Direct Appeal from the Criminal Court for Fentress County**
**No. 9224 Shayne Sexton, Judge**

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**No. M2008-01262-CCA-R3-CD - Filed August 21, 2009**

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After the trial court denied her suppression motion, the Defendant, Teresa G. Waters, pled guilty to multiple felonies and misdemeanors involving the possession of controlled substances, reserving several certified questions of law pursuant to Tenn. R. Crim. P. 37(b)(2). On appeal, the Defendant contests the validity of the search warrant used to find the controlled substances in the Defendant's residence. After a thorough review of the record and the applicable law, we affirm the trial court's judgment.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

Billy P. Sams, Oak Ridge, Tennessee, for the Appellant, Teresa G. Waters.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Clarence E. Lutz, Assistant Attorney General; William Paul Phillips, District Attorney General; John W. Galloway, Jr., Assistant District Attorney General, for the Appellee, State of Tennessee.

## OPINION
## I. Background

In January 2007, a Fentress County grand jury indicted the Defendant on a total of eleven counts: count one, felonious possession of 13.9 grams of methamphetamine, a Schedule II controlled substance; count two, felonious possession of 129 tablets of methadone, a Schedule II controlled substance; count three, felonious possession of 163 tablets of oxycodone, a Schedule II controlled substance; count four, felonious possession of 12 tablets of dihydrocodeinone, a Schedule III controlled substance; count five, felonious possession of 190 tablets of alprazolam, a Schedule IV controlled substance; count six, possession of marijuana; count seven, attempt to destroy and conceal evidence; count eight, bribing a civil servant; count nine, theft of property valued at more than

$1000; and counts ten and eleven, theft of property valued at less than $500.

## II. Suppression Hearing

The Defendant moved to suppress the evidence seized during a search of her residence. The trial court subsequently held a hearing where the following evidence was presented: Sheriff Chuck Cravens of Fentress County testified that, on Sunday, December 17, 2006, he executed a search warrant for the Defendant's residence. He recounted that a young man named Brent Hall was brought to the police station by his father, Danny Hall, and that Brent Hall issued a statement to the Sheriff.[1] Then, both Brent Hall and the Sheriff swore to Magistrate Randy Wright about certain events involving the Defendant.[2] Accordingly, Magistrate Wright issued a search warrant for the Defendant's house.

Once Sheriff Cravens obtained the search warrant, which was after 9 p.m. on Sunday, he and Detective Ronald Whited went to the Defendant's residence to execute the warrant. The Defendant lived in a building that was previously a beauty shop, and Sheriff Cravens recalled that the front door was equipped with a security camera. The front entrance had both a storm door and a solid door. Sheriff Cravens recalled, "I announced that it was the Sheriff's Department and we had a search warrant." He elaborated, "I announced it loudly. I hollered it." He said he knocked on the door, but no one came to answer. At that point, Detective Whited pried open the storm door, and the Sheriff continued to yell "Sheriff's Department, search warrant." Sheriff Cravens said that, even after they had the storm door open, no one came to the door, so they beat on the solid door and forced it open.

Sheriff Cravens then testified that upon entering the house, he saw Jackie Ogden, one of the residents of the house, in front of the bathroom door. The officers asked Ogden where the Defendant was, and she did not respond. Sheriff Cravens then saw that the bathroom door was open a few inches, so he pushed the door open further, and he saw the Defendant on her hands and knees on the bathroom floor "putting stuff in the commode." He asked her to come out of the bathroom, but she refused. As he backed out of the bathroom, his shoulder hit the bathroom door, and it came off its hinges. The door fell on the Defendant, and Sheriff Cravens fell on top of the door. Sheriff Cravens said that while he and Detective Whited gained control of the Defendant, she was commanding Ogden to flush the commode. Sheriff Cravens told Ogden not to move. Upon inspecting the commode, Sheriff Cravens removed pills wrapped in cellophane wrappers. He said he removed "several" pills, including methadone, morphine, and Xanax. He also found pills in a lock box in the bathroom.

Sheriff Cravens recounted that the police arrested the Defendant and that they subsequently

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[1] We will refer to Brent and Danny Hall by their full names for the sake of clarity.

[2] In his direct testimony, Sheriff Cravens did not reveal what he and Brent Hall swore to Magistrate Wright. The text of the affidavit of both Sheriff Cravens and Brent Hall is included in our summary of Magistrate Wright's testimony.

searched the house. The Defendant's father was present while the officers completed the search and created an inventory of the items confiscated.

On cross-examination, Sheriff Cravens testified that he met Brent Hall at the jail on December 17, 2006. He interviewed Brent Hall that evening for about thirty to forty-five minutes, and Sheriff Cravens said that Brent Hall was sober. After speaking with Brent Hall, Sheriff Cravens called General Galloway and requested a search warrant. Magistrate Wright came to the jail and signed the search warrant after hearing Sheriff Cravens and Brent Hall's sworn statements. Sheriff Cravens did not remember Magistrate Wright asking any questions during the five minutes he was there to consider the warrant. Once the warrant was issued, about seven or eight officers went to the Defendant's house. Sheriff Cravens said he was looking for the items Danny Hall had reported stolen.

Concerning the execution of the search warrant, Sheriff Cravens testified that the Defendant and her parents knew that he had a search warrant. He recounted, "I showed [the search warrant] to [the Defendant]. I told her that – when I gained entry to the house that I was there with a search warrant." Moreover, he remembered that once they "got [the Defendant] under control, [he] showed her the search warrant." Sheriff Cravens also testified that Detective Whited left a copy of the search warrant at the Defendant's house and that he knew the Defendant was given a copy of the warrant while in jail.

Sheriff Cravens testified that Danny Hall filed an incident report of stolen knives and other items a few weeks prior to the date the search warrant was issued. After filing the report, Danny Hall had set up a camera, which filmed his son, Brent, stealing the items. Brent Hall, in fact, admitted to Sheriff Cravens that he traded some of his dad's possessions at the Defendant's house. The Sheriff verified that Brent Hall swore in an affidavit that he went to the Defendant's house on December 16, 2006, with the intent to purchase Oxycontin tablets. Sheriff Cravens said that he did not think he relied on Brent Hall for a previous search warrant. No charges were filed against Brent Hall for the theft of his father's items.

Detective Whited testfied that he helped execute the search warrant. He recalled, "We stopped at the edge of the road . . . walked to the door, and the Sheriff announced 'Sheriff's Department' there as he knocked on the door. And no one was coming . . . so I made three attempts before I could even get [the latched storm] door open." Detective Whited said he believed Sheriff Cravens said he had a search warrant. Because no one was coming to the door, Sheriff Cravens then hit the solid door with a battering ram. Once they were inside the house, Detective Whited saw Ogden standing in the back corner near the closed bathroom door. When he got to the bathroom, he saw the Defendant kneeling by the commode and "dropping medicines and things inside the commode." Detective Whited completed an inventory of the items of the house that the police confiscated. He also said that he gave the Defendant a copy of the search warrant and the inventory of the items the police removed from the Defendant's house when she was in jail. He added that someone also took a copy of the search warrant to her house.

On cross-examination, Detective Whited said that he did not hear anyone ask Sheriff Cravens to produce the search warrant. Additionally, Detective Whited explained that the officers had to restrain the Defendant in order to take her to the police station.

Magistrate Wright, a Judicial Commissioner of Fentress County, testified that he met with Sheriff Cravens at the jail on December 17, 2006, and that he issued a search warrant for the Defendant's house. Magistrate Wright related that both Brent Hall and Sheriff Cravens spoke with him and swore to the truth of their statements. In the supporting written affidavit attached to the search warrant, Magistrate Wright summarized what Brent Hall and Sheriff Cravens told him:

> On 16 December 2006, Brent Hall, the son of Dan[n]y Hall, took the above items to the above location where he traded them to Teresa Waters for [O]xycontin tablets, which are Schedule II controlled substances. Brent Hall took the said property from his father, Danny Hall, without his permission. Waters told Brent Hall that she was going today to pick up a load of 40 mg [O]xycontin tablets. Hall has been to the above location on several previous [occasions] and has seen marijuana, methamphetamine, methadone, and morphine. Hall has obtained [O]xycontin from Waters on numerous [occasions] in the recent past. Waters keeps the drugs in a locked chest. Brent Hall took the knives and money from Danny Hall's residence.
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> Teresa Waters was convicted on 9-9-2002 in the Criminal Court for Fentress County of the offense of felonious possession of Schedule II controlled substances (methamphetamine) with the intent to sell. This was case #8328.
>
> Affiant, Sheriff Chuck Cravens has personally interviewed Brent Hall and his father, Danny Hall. He also knows based on his experience and training that persons who sell drugs normally keep records and other documents pertaining to the sale of controlled substances.
>
> Waters and a girlfriend, Jackie, live at the above location.

Magistrate Wright then issued the search warrant, and he kept one copy of it for his own records. He also stated that in the past he has denied arrest warrants but not any search warrants.

On cross-examination, Magistrate Wright testified that the county commissioner appointed him the judicial magistrate in September 2006. He believed that his duties included issuing search warrants, and he stated he had issued twelve search warrants. Magistrate Wright acknowledged that, if he received any education on probable cause, he would have received it twenty-five years ago. He said he does not have a physical office, but he does keep copies of the warrants he issues in his briefcase. Magistrate Wright acknowledged that he did not use the *Jacumin* or *Melson* tests when

he issued the search warrant.[3]

The Defendant testified that she was arrested the evening of Sunday, December 17, 2006. She said that the following Tuesday morning, while still in jail, she was given a copy of the search warrant and an inventory of the items the officers took from her house. The Defendant stated that she asked the officers for a search warrant when they came into her house but that they did not give her one. She testified that she did not receive a copy of the search warrant until Tuesday, December 19, 2006.

Bobby Waters, the Defendant's father, testified that he owned the house in which the Defendant lived. He stated that he saw the officers pull up to the house in the evening of Sunday, December 17, 2006, and that when he went to the house to investigate, Detective Whited told him that he could not approach the scene. Waters said that he then saw the officers "dragging [the Defendant] across the parking lot," where they subsequently put her into a patrol car. Waters noticed that the Defendant's foot was bleeding, and she told him that her back hurt. Waters stated that he was not given a search warrant. On cross-examination, Waters said that the Defendant and Ogden lived together in the house. Waters then stated that he did not ask the Sheriff whether he had a search warrant.

After hearing this evidence, the trial court found that the officers properly attained and executed the search warrant for the Defendant's house and that the evidence gained from that search was admissible. The Defendant pled guilty to all eleven counts, and she was sentenced to serve an effective sentence of eight years. Pursuant to Rule 37(b)(2) of the Tennessee Rules of Criminal Procedure, the Defendant reserved her right to appeal four certified questions of law. It is from those judgments that the Defendant now appeals.

## III. Analysis

On appeal, the Petitioner claims that the trial court erred when it admitted the evidence seized during the December 17, 2006, search of her house. More specifically, she claims: (1) Brent Hall was a criminal informant, and as a result, his statement did not provide probable cause for the issuance fo the search warrant; (2) Magistrate Wright failed to comply with the requirements of Rule 41(d) of the Tennessee Rules of Criminal Procedure; (3) the officers executing the warrant violated the "knock and announce" rule; and (4) the Defendant was not given a copy of the search warrant at the time of the search.

### A. Certified Question of Law

[3] *See State v. Jacumin*, 778 S.W.2d 430 (Tenn. 1989) and *State v. Melson*, 638 S.W.2d 342 (Tenn. 1982). The two-part test to determine whether an informant has provided probable cause for a search warrant was adopted in these two cases. The Magistrate's testimony did not include any more information about the test than name references. We discuss the two-part test adopted by the Tennessee Supreme Court in *Jacumin* in detail in the analysis portion of this opinion.

Because this appeal comes before us as a certified question of law, pursuant to Rule 37(b) of the Tennessee Rules of Criminal Procedure, we must first determine whether the questions presented are dispositive. An appeal lies from any judgement of conviction upon a plea of guilty if the defendant entered into a plea agreement under Rule 11(a)(3) but explicitly reserved with the consent of the State and the court the right to appeal a certified question of law that is dispositive of the case. Tenn. R. Crim. Proc. 37(b)(2); *see State v. Preston*, 759 S.W.2d 647, 650 (Tenn. 1988). Further, the following are prerequisites for an appellate court's consideration of the merits of a question of law certified pursuant to Rule 37(b)(2):

> (i) The judgment of conviction, or other document to which such judgment refers that is filed before the notice of appeal, contains a statement of the certified question of law reserved by the defendant for appellate review;
>
> (ii) The question of law is stated in the judgment or document so as to identify clearly the scope and limits of the legal issue reserved;
>
> (iii) The judgment or document reflects that the certified question was expressly reserved with the consent of the state and the trial judge; and
>
> (iv) The judgment or document reflects that the defendant, the state, and the trial judge are of the opinion that the certified question is dispositive of the case . . . .

Tenn. R. Crim. P. 37(b)(2)(A)(i)-(iv).

The Defendant's issues on appeal all meet these requirements. She pled guilty, and the first page of the judgment forms stated:

> Pursuant to Rule 37 of the Tennessee Rules of Criminal Procedure the defendant explicitly reserves the right to appeal the certified question of law as contained in the attachment to the defendant's plea agreement with the consent of the State and this Court; and all the parties and the Court are of the opinion that the certified question is dispositive of the case. The said defendant's statement of the certified question is incorporated by reference herein.

We agree that the questions attached to the Defendant's plea agreement are dispositive of the case. According to Rule 41 of the Tennessee Rules of Criminal Procedure, if the search warrant was issued without probable cause, the magistrate failed to comply with record-keeping requirements, the officers violated the "knock and announce" rule, or the defendant was not given a copy of the search warrant at the time of the search of her house, then any evidence gathered from the search could be excluded. We conclude that the issues the Defendant raises on appeal through her certified questions of law are properly before this Court.

## B. Search Warrant's Issuance and Execution

In general, the Defendant challenges the trial court's finding that the search warrant executed at her house on December 17, 2006, was legally issued and executed. According to *State v. Odom*, "a trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." 928 S.W.2d 18, 23 (Tenn. 1996). Additionally, the prevailing party in the trial court is "entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." *Id.* Furthermore, "[q]uestions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." *Id.* Despite the deference to the trial court for factual issues, this Court reviews the trial court's application of the law to the facts de novo, without any deference to the trial court's determinations. *State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001).

### 1. Warrant's Issuance

#### a. Brent Hall's Affidavit Supporting the Search Warrant

The Defendant first contends that, because Brent Hall was a criminal informant and because Magistrate Wright admittedly did not apply the *Jacumin* test, Brent Hall's statements were not reliable and could not have given the Magistrate probable cause to issue the search warrant. The State counters that, because Brent Hall delivered his sworn statement to Magistrate Wright in person, the Magistrate was able to make a credibility finding. Furthermore, the State argues, Sheriff Cravens corroborated Brent Hall's statement. As such, the State posits, the Magistrate properly decided that there was probable cause that the Defendant received stolen property in exchange for drugs, and thus probable cause to issue the search warrant.

We began our analysis with the Fourth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, which provides that citizens have a right in their homes against unreasonable searches and seizures by the government:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, will not be violated, and no warrants will issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV; *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). Similarly, Article I, Section 7 of the Tennessee Constitution provides that:

> [T]he people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offences are not

> particularly described and supported by evidence, are dangerous to liberty and not to be granted.

Tenn. Const. art. I, § 7. "[A] search warrant shall be issued only on the basis of an affidavit, sworn before a 'neutral and detached' magistrate, which establishes probable cause of its issuance." *State v. Stevens*, 989 S.W.2d 290, 293 (Tenn. 1999) (citing *State v. Jacumin*, 778 S.W.2d 430 (Tenn. 1989) and *State v. Moon*, 841 S.W.2d 336, 338 (Tenn. Crim. App. 1992)). The Tennessee Supreme Court has stated that "probable cause requires, generally, reasonable grounds for suspicion, supported by circumstances indicative of an illegal act." *Stevens*, 989 S.W.2d at 293.

When a court reviews an affidavit for probable cause, the court must first determine whether the informant was a citizen informant, a criminal informant, or neither. *Williams*, 193 S.W.3d at 507. A citizen informant is a citizen or bystander who "acts with an intent to aid the police in law enforcement because of his concern for society or for his own safety." *Id.*; *Stevens*, 989 S.W.2d at 294 (quoting *State v. Smith*, 867 S.W.2d 343, 347 (Tenn. Crim. App. 1993)). Additionally, a citizen informant "does not expect any gain or concession in exchange for his information." *Id.* The information provided by the citizen informant is presumed reliable. *Id.* at 293. In contrast, a criminal informant is someone from the criminal milieu, or, in other words, a "citizen with ties to the criminal community." *Williams*, 193 S.W.3d at 507; *Melson*, 638 S.W.2d at 355; *State v. Marcus Richards*, No. M2006-02179-CCA-R3-CD, 2008 WL 343150, at *3 (Tenn. Crim. App., at Nashville, Feb. 6, 2008), *perm. app. granted* (Tenn. Aug. 25, 2008). Often, a criminal informant is described as a citizen who supplies information to the police "in exchange for some concession, payment, or simply out of revenge against the subject." *Stevens*, 989 S.W.2d at 294. Since the criminal informant might have a "motive to exaggerate, falsify, or distort the fact to serve [personal] ends," the information must be examined by a magistrate under a two-part analysis: (1) the affidavit must show the basis for the informant's knowledge; and (2) the affidavit must show the reliability of the informant or the information ("*Jacumin* test"). *Id.* at 293-94 (citing *State v. Cauley*, 863 S.W.2d 411, 417 (Tenn. 1993)); *Jacumin*, 778 S.W.2d at 436 (adopting the tests enunciated in *Aguilar v. Texas*, 378 U.S.108 (1964) and *Spinelli v. U.S.*, 393 U.S. 410 (1969)); *Williams*, 193 S.W.3d at 507 (quoting *State v. Marcus*, 660 N.W.2d 837, 842 (2003)). If the informant is neither clearly a citizen informant nor clearly a criminal informant, then "absent 'additional particularized information in the affidavit' to bolster or corroborate that the information was supplied by a concerned citizen informant, the affidavit must satisfy the two-pronged 'basis of information' and 'reliability' test for information supplied by a criminal informant. *State v. Siliski*, 238 S.W.3d 338, 367 (Tenn. Crim. App., 2007) (quoting *Williams*, 193 S.W.3d at 507-08).

After considering the testimony and the issues, the trial court found that the search warrant was supported by probable cause:

> The search warrant affidavit established probable cause to search for the items named in the search warrant as the reliability of the informant and his information was sufficiently supported even though he was not a citizen informant as (a) the informant was named in the search warrant; (b) the information he provided was

against his penal interest and was directly related to the criminal activity on the part of the defendant[]; (c) the information was detailed as to the type and location of the drugs in the residence; (d) the informant personally appeared before the Magistrate and swore to the information contained in the affidavit; and (e) the defendant, Ms. Waters, had a criminal conviction in September 2002 for the felonious possession of a Schedule II Controlled Substance.

In this case, the affiant, Brent Hall, had been caught on videotape by his father stealing his father's property. His father then took him to the police station, where Brent Hall admitted to Sheriff Cravens and to the Magistrate that he stole the items to trade them with the Defendant for controlled substances. The affiant had ties to the criminal community, and he was from the criminal milieu. *See Williams*, 193 S.W.3d at 507; *see also Melson*, 638 S.W.2d at 355.

Since Brent Hall was a criminal informant, the Magistrate needed to determine the basis and reliability of the information Hall presented. *Stevens*, 989 S.W.2d at 293-94. Although the Magistrate acknowledged that he did not know the *Jacumin* test by name, there was sufficient probable cause to support the issuance of the search warrant. Brent Hall spoke against his own interest by divulging that he had stolen property from his father and exchanged that property for drugs at the Defendant's house. Brent Hall said that he had done this several times and that when he was at the Defendant's house, he saw several types of drugs. Sheriff Cravens's statement that the Defendant has a previous conviction for possession of a Schedule II controlled substance with the intent to sell corroborated Brent Hall's claim that the Defendant was selling drugs from her house. Additionally, since Brent Hall spoke directly with Magistrate Wright, the Magistrate could make a credibility determination about Hall and the information he provided. We conclude that the affidavit used to support the search warrant showed the basis for the informant's knowledge and the Magistrate was able to verify the reliability of the informant and the information. *See Jacumin*, 778 S.W.2d at 436. Consequently, the Magistrate had probable cause to authorize the search warrant. The Defendant is not entitled to relief on this issue.

**b. Record-Keeping Requirement under Rule 41(d)**

The Defendant next alleges that the evidence seized from the search should be suppressed because the Magistrate did not comply with the record-keeping rule, as prescribed in the Tennessee Rules of Criminal Procedure. Specifically, the Defendant objects to the Magistrate storing his copy of the search warrant in his briefcase and not in an office.

Rule 41(d) of the Tennessee Rules of Criminal Procedure requires the magistrate who signs a search warrant to keep a copy of that warrant: "The magistrate shall prepare an original and two exact copies of each search warrant. The magistrate shall keep one copy as a part of his or her official records."

After considering this issue, the trial court succinctly stated, "The issuing magistrate properly retained an exact copy of the search warrant."

The issue on appeal is whether storing copies of search warrants in a briefcase amounts to "keep[ing] one copy as part of his . . . official records." The Rules of Criminal Procedure do not require a magistrate to keep copies of search warrants in any specific manner. Rather, as this Court has discussed in the past, the purpose of this Rule is to "protect[] against any post-issuance alteration of the original warrant" and to "give[] the judge control to insure that the warrant is executed and returned to the magistrate in a timely manner." *State v. Brewer*, 989 S.W.2d 349, 353 (Tenn. Crim. App. 1997) (citing *State v. Gambrel*, 783 S.W.2d 191, 192 (Tenn. Crim. App. 1989)). In our view, a briefcase is adequate to store a magistrate's copy of a search warrant. We agree with the trial court's finding, and we conclude that the Defendant is not entitled to relief on this issue.

### 2. Search Warrant's Execution

#### a. "Knock and Announce" Compliance

The Defendant claims that the officer executing the warrant for the search of her home did not wait a sufficient amount of time before entering her home. The State disagrees, claiming that the Defendant had plenty of time to open the door. Additionally, the State argues that the officers were acting appropriately because the Defendant had contraband that was in danger of being destroyed.

Rules 41(e)(2) of the Tennessee Rules of Criminal Procedure prescribes how an officer is to execute a search warrant:

> If, after notice of his or her authority and purpose, a law enforcement officer is not granted admittance . . . the peace officer with a search warrant may break open any door or window of a building or vehicle, or any part thereof, described to be searched in the warrant to the extent that it is reasonably necessary to execute the warrant and does not unnecessarily damage the property.

In sum, an officer who is to execute a search warrant "must give: (1) notice of his authority; and (2) the purpose of his presence at the structure to be searched." *State v. Perry*, 178 S.W.3d 739, 745 (Tenn. Crim. App., 2005) (citing *State v. Lee*, 836 S.W.2d 126, 128 (Tenn. Crim. App. 1991) and *State v. Fletcher*, 789 S.W.2d 565, 566 (Tenn. Crim. App. 1990)). These requirements may be met by a "knock and announce" procedure, where the officer knocks on the door and announces that he has a search warrant to search the house. *Wilson v. Arkansas*, 514 U.S. 927, 933-34 (1995).

The "knock and announce" procedures are unnecessary where exigent circumstances exist before or during a search. *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997); *State v. Henning*, 975 S.W.2d 290, 299-300 (Tenn. 1998). For example, when an officer observes actions or sounds "indicative of the destruction of evidence [such as] running, scuffling, or toilet flushing," the police may be able to enter a dwelling without knocking. *Fletcher*, 789 S.W.2d at 566 (citing *Keith v. State*, 542 S.W.2d 839, 841 (Tenn. Crim. App. 1976)); *Henning*, 975 S.W.2d 299-300.

This Court has held that Tennessee Rule of Criminal Procedure 41(g), which requires exclusion of unconstitutionally seized evidence, required suppression of evidence seized in violation of "knock and announce" procedures. *State v. Curtis*, 964 S.W.2d 604, 609 (Tenn. Crim. App. 1997); *see* Tenn. R. Crim. P. 41(g)(1). We note, however, that the United States Supreme Court recently held that the United States Constitution does not require exclusion of material seized in violation of "knock and announce" procedures. *Hudson v. Michigan*, 547 U.S. 586, 599 (2006). Because we conclude in this case that the law enforcement personnel complied with the "knock and announce" requirements of Tennessee Rule of Criminal Procedure 41, it is not necessary for us to address *Hudson*'s effect upon the admissibility of evidence seized in violation of "knock and announce" procedures.

The trial court found that "[t]he officers serving the search warrant gave the defendant[] adequate notice of the search warrant before making forcible entry of the residence and that such entry was further necessitated by evidence of exigent circumstances."

In this case, we conclude that the trial court appropriately denied the Defendant relief on this issue. The officers knocked on the door and announced that they had a search warrant. They noticed surveillance equipment was set up to see who was at the door. The police then spent time prying open the storm door while continuing to announce their presence. Still no one answered the door. The police then forced their way into the house by ramming open the solid door. The Defendant had adequate time to respond to the police officer's clearly announced arrival. Given our holding, any analysis on whether exigent circumstances existed is unnecessary. The Defendant is not entitled to relief on this issue.

**b. Service of Warrant upon the Defendant**

Finally, the Defendant claims that she was not given a copy of the search warrant at the time of the search, which is required by Rule 41 of the Tennessee Rules of Criminal Procedure. The State counters that this is an issue of credibility, because the officers testified that they did give the Defendant a copy of the search warrant, and that this Court is bound by the trial court's credibility findings.

Rule 41(e)(4) of the Tennessee Rules of Criminal Procedure directs that the officer who executes a search warrant "shall: (A) give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property; or (B) shall leave the copy and receipt at a place from which the property was taken." If the police officer fails to leave a copy of the warrant with the person on who the search warrant was served, then the evidence gathered during the seizure may be excluded from trial. Tenn. R. Crim. P. 41(g)(6).

The trial court found that "[t]he [D]efendant was properly and timely served with a copy of the search warrant and a receipt for the items seized."

Our review of the evidence shows that Sheriff Cravens showed the Defendant the search warrant when he entered her house to conduct the search. Then, a police officer left a search warrant at her house when the officers were finished searching. Additionally, the Defendant received a copy of the search warrant and the inventory while she was in jail. The Defendant has not presented any proof that preponderates against the trial court's finding that she was given a copy of the search warrant in a timely fashion. *Odom*, 928 S.W.2d at 23. As such, the Defendant is not entitled to relief on this issue.

## III. Conclusion

After a thorough review of the record and the applicable law, we conclude that the trial court properly found that the search warrant was issued and executed lawfully and that the evidence seized from the Defendant's house was admissible. As such, we affirm the trial court's judgment.

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ROBERT W. WEDEMEYER, JUDGE