REL: May 24, 2019

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

CR-17-0673

William Lewis Payton

v.

State of Alabama

Appeal from Madison Circuit Court
(CC-16-2866)

On Application for Rehearing

McCOOL, Judge.

This Court's unpublished memorandum of March 1, 2019, is withdrawn, and the following opinion is substituted therefor.

William Lewis Payton was convicted of abuse of a corpse, a violation of § 13A-11-13, Ala. Code 1975, and was sentenced,

as a habitual felony offender, see § 13A-5-9, Ala. Code 1975, to 40 years' imprisonment. Payton appealed. We affirm.

Facts and Procedural History

The relevant facts of this case are undisputed. In the early morning hours of October 16, 2015, the dismembered corpse of Tonya Amerson was discovered in a cardboard box with a "U-haul" logo behind a shopping center in Huntsville. Chris Hines, an investigator with the Huntsville Police Department who responded to the scene, testified that Amerson's "arms were cut off near the shoulder and the body was cut right above the pelvis clean in two" (R. 125), and "the body parts ... had been ... placed in garbage bags," along with "a couple of kitchen knives." (R. 126.) After identifying Amerson, Hines began "looking for the last known addresses for ... Amerson" and "came up with a couple of addresses for her." (R. 127.) Those addresses included Payton's apartment, which was the address on Amerson's driver's license, and Amerson's parents' house. In an attempt to notify Amerson's family of her death, Hines first went to Payton's apartment but received no response when he knocked on the door. Thereafter, Hines went to Amerson's parents' address and spoke with Amerson's

parents. According to Hines, during that conversation Amerson's parents told him that, one week earlier, they were "informed by [Amerson] that [Amerson] would be staying at [Payton's] apartment." (R. 12.) Amerson's parents also told Hines that "there were [three] children involved[, i.e., that Payton and Amerson had three children together,] and there were supposed to be children at [Payton's] apartment." Id. Although Hines could not recall the children's ages by the time of trial, he testified that he "kn[e]w some were quite young" and that, at that time, he had no knowledge of the children's whereabouts. (R. 18.) Thus, Hines testified:

> "At that point, I made contact with my supervisor ... and informed them that there are children involved. That we don't know where the location of the children are.
>
> "At that time we -- during our discussions, we agreed that it would probably be the safe bet to check the apartment and make sure there is nobody else injured or needing any type of medical attention inside the apartment."

(R. 13.)

At some point after that conversation, another investigator from the Huntsville Police Department attempted to locate Payton at Payton's place of employment. However, Payton was not there and "actually had a paycheck there and

had not picked it up at that time." (R. 21.) Thereafter, Hines and other police officers, including Officer Kevin Newie, reported to Payton's apartment. After "knock[ing] and announc[ing] 'Police,'" the officers forced entry into the apartment. (R. 22.) Hines did not enter Payton's apartment but remained outside the front door. As to what occurred after the officers entered the apartment, Hines testified:

> "Q. Can you describe what Officer Newie discovered?
>
> "A. Officer Newie explained that he went upstairs. He went to look under the bed to make sure nobody was under there. When he knelt down there he come up with a wet spot on his knee. He looked over and saw a wet-dry vacuum cleaner, carpet cleaner. And then he looked over to the side of the bed and noticed what appeared to be blood on the sides of the bed.
>
> "Q. What did Officer Newie do at that point?
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> "A. He came down and explained to me what he discovered. At that time, I told him to back out. We need to get a search warrant.
>
> "Q. At that time, did you obtain a search warrant?
>
> "A. I did.
>
> "Q. And pursuant to that search warrant, you did a search of the apartment which produced all of the evidence in this case?
>
> "A. That's correct."

(R. 14-15.)

After obtaining a search warrant, investigators from the Huntsville Police Department, including Hines and Lisa Hamilton, searched Payton's apartment and found, among other items, knives "very similar" to those found with Amerson's body (R. 133); an "electric reciprocating saw" that "appeared to have blood on it" (R. 133); a receipt for the reciprocating saw from a Home Depot hardware store; a cardboard box similar to the one in which Amerson's body was found; and a bloodstained blouse.[1] Hamilton also observed blood spatters in the master bedroom on the carpet, on two bed frames, and on the bedsheets; a "carpet cleaning machine" (R. 183) and a "rug shampoo bottle" (R. 185); and human tissue on the front of a refrigerator.

On June 21, 2016, a Madison County grand jury returned an indictment charging Payton with the abuse of Amerson's corpse. Before trial, Payton filed a motion to suppress "any and all evidence that was obtained from [his] apartment as a result of ... an illegal search and seizure." (R. 10.) The trial court held a hearing on Payton's motion and heard testimony from

[1]Through video surveillance obtained from the Home Depot store, Hamilton was able to confirm that Payton had purchased the saw.

Hines, who testified to the facts giving rise to the warrantless entry of Payton's apartment. As to the motivation for the warrantless entry, Hines testified that, "when you find a deceased person, you are concerned about other family members that are unaccounted for at that time." (R. 16.) Hines also testified that, at the time of the warrantless entry into Payton's apartment, he had no reason to believe a crime had been committed in the apartment and that the sole motive for entering the apartment was "not anything other than concern for the people that were unaccounted for." (R. 19.) The trial court denied Payton's motion to suppress, and the case proceeded to trial.

Because Payton does not challenge the sufficiency of the evidence supporting his conviction, we only briefly set forth the evidence admitted at trial. In short, the trial court admitted into evidence either photographs of the items seized from Payton's apartment during the search or the items themselves. Specifically, the trial court admitted into evidence the reciprocating saw seized from Payton's apartment, and expert testimony established that the dismemberment of Amerson's corpse was consistent with the use of that type of

saw. In addition, Lillie Harper, a forensic-biology section chief with the Alabama Department of Forensic Sciences, conducted forensic testing on swabs taken from the reciprocating saw and the bloodstained blouse and created a report, which was admitted into evidence, in which she concluded, "[w]ith a high degree of confidence," that Amerson was "the source of the genetic traits detected in" those swabs. (C. 278.) After the jury convicted Payton, Payton filed a motion for a new trial in which he argued that "any, and all, of the evidence obtained directly or indirectly was a result of an illegal search and/or seizure ... in that they were conducted without search warrants, and without probable cause." (C. 69-70.) The trial court denied Payton's motion, and Payton subsequently filed a timely notice of appeal.

Standard of Review

> "It is well settled that '[i]n reviewing a decision of a trial court on a motion to suppress evidence, in a case in which the facts are not in dispute, we apply a de novo standard of review.' State v. Otwell, 733 So. 2d 950, 952 (Ala. Crim. App. 1999). See also State v. Hill, 690 So. 2d 1201 (Ala. 1996); Tuohy v. State, 776 So. 2d 896 (Ala. Crim. App. 1999); and Barnes v. State, 704 So. 2d 487 (Ala. Crim. App. 1997). ... The facts surrounding the search of [Payton's apartment] -- which is the only issue before this Court -- are undisputed.

> Therefore, the proper standard of review in this case is de novo."

State v. Gargus, 855 So. 2d 587, 590 (Ala. Crim. App. 2003)

Discussion

On appeal, Payton argues that the trial court erred by denying his motion to suppress the evidence seized during the search of his apartment and by admitting evidence that, he says, was seized pursuant to an illegal entry of his apartment.

> "It is a '"basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable."' Groh v. Ramirez, 540 U.S. 551, 559, 124 S. Ct. 1284, 157 L. Ed. 2d 1068 (2004) (quoting Payton v. New York, 445 U.S. 573, 586, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980); some internal quotation marks omitted). Nevertheless, because the ultimate touchstone of the Fourth Amendment is 'reasonableness,' the warrant requirement is subject to certain exceptions."

Brigham City, Utah v. Stuart, 547 U.S. 398, 403 (2006).

In Russell v. State, 261 So. 3d 397 (Ala. Crim. App. 2015) (judgment vacated on other grounds by Russell v. State, 580 U.S. ___, 137 S. Ct. 158 (2016)), this Court discussed the "emergency-aid exception" to the Fourth Amendment's warrant requirement:

> "'[O]fficers may conduct a warrantless search if they believe that their lives or the lives of others

are at risk.' A.A.G. v. State, 668 So. 2d 122, 128 (Ala. Crim. App. 1995).

> "'One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury. "'The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.'" [Mincey v. Arizona, 437 U.S. 385] at 392 [(1978)] (quoting Wayne v. United States, 318 F.2d 205, 212 (C.A.D.C. 1963) (Burger, J.)); see also [Michigan v.] Tyler, [436 U.S. 499] at 509 [(1978)]. Accordingly, law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury. Mincey, supra, at 392; see also Georgia v. Randolph, [547 U.S. 103] at 118 [(2006)] ("[I]t would be silly to suggest that the police would commit a tort by entering ... to determine whether violence (or threat of violence) has just occurred or is about to (or soon will) occur").'

"Brigham City, Utah v. Stuart, 547 U.S. 398, 403, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006). The United States Supreme Court has referred to this as the 'emergency aid exception' to the warrant requirement. See Michigan v. Fisher, 558 U.S. 45, 47, 130 S. Ct. 546, 175 L. Ed. 2d 410 (2009).

"The United States Court of Appeals for the Eleventh Circuit has stated:

> "'Following the reasoning of the Supreme Court, numerous federal and state courts have upheld warrantless emergency entries and searches based on endangerment to life. See, e.g., United States v.

Hughes, 993 F.2d 1313 (7th Cir. 1993) (report of woman and child in danger in crack house); United States v. Gillenwaters, 890 F.2d 679 (4th Cir. 1989) (stabbing victim); United States v. Martin, 781 F.2d 671 (9th Cir. 1985) (explosion in apartment); Mann v. Cannon, 731 F.2d 54 (1st Cir. 1984) (open access to controlled substances by children); United States v. Riccio, 726 F.2d 638 (10th Cir. 1984) (medical aid to defendant shot by police); United States v. Jones, 635 F.2d 1357 (8th Cir. 1980) (report of gunshots); United States v. Barone, 330 F.2d 543 (2d Cir. 1964) (screams in the night); United States v. Searle, 974 F. Supp. 1433 (M.D. Fla. 1997) (report of gunshots); United States v. Herndon, 390 F. Supp. 1017 (S.D. Fla. 1975) (report of gunshots); United States v. Hogue, 283 F. Supp. 846 (N.D. Ga. 1968) (report of dead body); Johnson v. State, 386 So. 2d 302 (Fla. App. 1980) (report of dead body); State v. Carlson, 548 N.W.2d 138 (Iowa 1996) (missing person); State v. Butler, 676 S.W.2d 809 (Mo. 1984) (en banc) (gunshot victim); State v. Mackins, 47 N.C. App. 168, 266 S.E.2d 694 (1980) (gunshots); State v. Max, 263 N.W.2d 685 (S.D. 1978) (gunshots).

"'Although this Court has not directly addressed emergency searches based on endangerment to life, we have on at least two occasions generally endorsed the validity of such searches. See United States v. Brand, 556 F.2d 1312 (5th Cir. 1977) (noting defendant's concession that police officer who assisted ambulance attendants with medical emergency legally entered home); United States v. Green, 474 F.2d 1385 (5th Cir. 1973) (indicating deputy fire marshal could validly search

> apartment to determine cause of fire where ascertaining cause was necessary to assure fire was completely extinguished). Furthermore, upholding warrantless searches in such situations is consistent with our jurisprudence concerning the exigent circumstances exception.
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> "'Based on the foregoing, we conclude emergency situations involving endangerment to life fall squarely within the exigent circumstances exception. It is difficult to imagine a scenario in which immediate police action is more justified than when a human life hangs in the balance. Although the Fourth Amendment protects the sanctity of the home, its proscription against warrantless searches must give way to the sanctity of human life. When the police reasonably believe an emergency exists which calls for an immediate response to protect citizens from imminent danger, their actions are no less constitutional merely because the exigency arises on the wooden doorsteps of a home rather than marble stairs of a public forum.'

"United States v. Holloway, 290 F.3d 1331, 1337 (11th Cir. 2002).

"The Alabama Supreme Court has recognized this exception to the warrant requirement.

> "'The United States Supreme Court has held that "'[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.'" Mincey v. Arizona, 437 U.S. 385, 392–93, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978) (quoting Wayne v. United States, 318 F.2d

> 205, 212 (D.C. Cir. 1963)). For example, law-enforcement officers can enter a residence without a warrant to render emergency assistance to an injured person or to protect a person from immediate injury. Mincey, 437 U.S. at 392, 98 S. Ct. 2408. Moreover, the state of mind of the law-enforcement officer is immaterial "as long as the circumstances, viewed objectively, justify [the officer's] action." Scott v. United States, 436 U.S. 128, 138, 98 S. Ct. 1717, 56 L. Ed. 2d 168 (1978).'

"State v. Clayton, 155 So. 3d 290, 298 (Ala. 2014).

"In State v. Clayton, the Alabama Supreme Court adopted a three-pronged test when evaluating whether a warrantless entry of a home is lawful based on an officer's belief that an occupant's life is in danger.

> "'In United States v. Rhiger, 315 F.3d 1283, 1288 (10th Cir. 2003), the United States Court of Appeals for the Tenth Circuit noted that it had, in an earlier decision, determined that the
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> > "'"basic aspects of the 'exigent circumstances' exception [with regard to the manufacturing of methamphetamine] are that (1) law enforcement officers must have reasonable grounds to believe that there is immediate need to protect their lives or others or their property or that of others, (2) the search must not be motivated by an intent to arrest and seize the evidence, and (3) there must be some reasonable basis, approaching probable cause

> to associate an emergency with the area or place to be searched."
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> "'(Quoting United States v. Wicks, 995 F.2d 964, 970 (10th Cir. 1993).) See also People v. Doll, 21 N.Y.3d 665, 998 N.E.2d 384, 975 N.Y.S.2d 721 (2013).'
>
> "155 So. 3d at 301. '"The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency."' Mincey v. Arizona, 437 U.S. 385, 392, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978), quoting Wayne v. United States, 115 U.S. App. D.C. 234, 241, 318 F.2d 205, 212 (1963). See also State v. Matthews, 665 N.W.2d 28, 34 (N.D. 2003) ('A 911 call reporting an emergency can be enough to support a warrantless search under the exigent circumstances exception, particularly when the caller identifies himself or herself.'); United States v. Quezada, 448 F.3d 1005, 1007 (8th Cir. 2006) ('A police officer may enter a residence without a warrant as a community caretaker where the officer has a reasonable belief that an emergency exists requiring his or her attention.')."

Russell, 261 So. 3d at 414-16. See also Michigan v. Fisher, 558 U.S. 45, 47 (2009) (noting that the emergency-aid exception "requires only 'an objectively reasonable basis for believing' that 'a person within [the house] is in need of immediate aid'" (citations omitted)).

In this case, we begin our analysis with the second prong of the three-pronged test established in State v. Clayton, 155 So. 3d 290 (Ala. 2014), which requires that the warrantless

search of Payton's apartment not have been motivated by an intent to seize evidence. 155 So. 3d at 301. Regarding the motivation for searching Payton's apartment, Hines testified that, because he did not know where Payton and Amerson's children were, he thought that it "would probably be the safe bet to check the apartment and make sure there is nobody else injured or needing any type of medical attention inside the apartment"; that, "when you find a deceased person, you are concerned about other family members that are unaccounted for at that time"; and that the warrantless entry into Payton's apartment was not motivated by "anything other than concern for the people that were unaccounted for," which, at the time, included Payton himself. Thus, the undisputed evidence indicates that the sole motive for searching Payton's apartment was to ensure the safety of Payton and Payton and Amerson's children and to provide emergency aid if necessary; there is no evidence to the contrary that would support the conclusion that the police were motivated to search Payton's apartment by a desire to seize evidence. Accordingly, the second prong of the Clayton test was satisfied.

To satisfy the first and third prongs of the Clayton test, the police must have had an objectively reasonable basis upon which to believe that there was an immediate need to protect or preserve life, and there must have been an objectively reasonable basis approaching probable cause upon which to associate that emergency with Payton's apartment. 155 So. 3d at 301. Here, the police had discovered Amerson's dismembered corpse, and one of Amerson's two last known addresses, as well as the address on her driver's license, was that of Payton's apartment. Within hours of the discovery of Amerson's corpse, Amerson's parents told Hines that, one week earlier, Amerson had informed them that she would be staying at Payton's apartment. Amerson's parents also informed Hines that Payton and Amerson had three children together and that the children were "supposed to be ... at [Payton's] apartment." However, Hines had been to Payton's apartment before speaking with Amerson's parents but had received no answer when he knocked on the door, and another investigator had been to Payton's place of employment, but Payton was not there and had not picked up his paycheck. Given the facts that someone had brutally dismembered Amerson's corpse and had

dumped the remains in a cardboard box; that the last-known whereabouts of Amerson and Payton and Amerson's children, some of whom were "quite young," were Payton's apartment; that no one responded to Hines's knock on the door of the apartment; and that Payton was not at work and had not picked up his paycheck, the police had a "reasonable basis, approaching probable cause," Russell, 261 So. 3d at 416, upon which to believe that Payton and/or Payton and Amerson's children could be in Payton's apartment and could be in need of emergency assistance.[2] Thus, the first and third prongs of the Clayton test were also satisfied, and, as a result, the warrantless entry of Payton's apartment was justified under the emergency-aid exception to the Fourth Amendment's warrant requirement. As the United States Court of Appeals for the Eleventh Circuit noted in United States v. Holloway, 290 F.3d 1331 (11th Cir. 2002): "Although the Fourth Amendment protects the sanctity of the home, its proscription against warrantless searches must

[2]Payton was eventually located at his mother's residence. Payton and Amerson's oldest child "was ... in high school," and their younger children were "staying with an aunt." (R. 133.) However, the standard for the emergency-aid exception is not whether an emergency actually exists; rather, it is whether there is an "'objectively reasonable basis for believing'" that an emergency exists. Fisher, 558 U.S. at 47 (quoting Brigham City, 547 U.S. at 406 (emphasis added)).

give way to the sanctity of human life."[3] Id. at 1337.

Payton argues, however, that Hines failed to exercise "due diligence" in attempting to ascertain the whereabouts of Payton and Amerson's children before the police made the warrantless entry into Payton's apartment. (Payton's brief, at 16.) According to Payton, Hines should have "exhaust[ed] the obvious avenues of locating the children," id., "such as a phone call to Payton's next-of-kin and/or a phone call to the zoned schools," id. at 17, before the police entered Payton's apartment. However, Payton misses the point of the emergency-aid exception, which allows the police to make a warrantless entry of a home when they "'reasonably believe an emergency exists which calls for an immediate response to protect citizens from imminent danger.'" Russell, 261 So. 3d at 415 (quoting Holloway, 290 F.3d at 1337 (emphasis added)). Thus, where the police have an objectively reasonable basis upon which to believe that an emergency requiring an immediate

[3]Payton makes a cursory argument that the evidence Newie discovered during the initial entry into Payton's apartment could not provide probable cause for the subsequently obtained search warrant. That argument, however, is based on Payton's contention that the warrantless entry into his apartment was illegal. Thus, because we have determined that the warrantless entry did not violate the Fourth Amendment, this argument lacks merit.

response exists inside a home, the emergency-aid exception allows them to enter the home without first engaging in the kind of time-consuming inquiries Payton suggests should have been conducted in this case before entering his apartment. To conclude otherwise would negate the very purpose of the emergency-aid exception and could potentially result in wasting costly time in a case where "'a human life [might be] hang[ing] in the balance.'" Id. See, e.g., Commonwealth v. Entwistle, 463 Mass. 205, 215, 973 N.E.2d 115, 124 (2012) (noting, in a case in which the police made a warrantless entry into the defendant's home based on "an objectively reasonable basis to fear for the health and safety of" the defendant, his wife, and their nine-month-old infant, that, "[a]lthough the passage of time might have clarified whether the family was at risk, the police were not required to wait, especially where, if the adults were injured, time might have been of the essence in saving the baby from death or serious injury"). As noted, in this case the police had an objectively reasonable basis upon which to believe that Payton and/or Payton and Amerson's children could be in Payton's apartment and in need of emergency assistance. Thus, the

police were not required to confirm that Payton and the children were actually safe in any number of other potential locations before making a warrantless entry into Payton's apartment.[4]

Conclusion

Because the warrantless entry of Payton's apartment was justified under the emergency-aid exception to the warrant requirement of the Fourth Amendment, the trial court did not err in denying Payton's motion to suppress the evidence obtained from his apartment. Accordingly, the judgment of the trial court is affirmed.

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[4]Payton also argues that the warrantless entry into his apartment was illegal because, he says, Hines "authorized the entry of Payton's home without any reason to believe that there was an ongoing criminal act occurring." (Payton's brief, at 14-15.) However, the emergency-aid exception exists to allow police to render emergency assistance, not to investigate criminal activity. See Commonwealth v. Tuschall, 476 Mass. 581, 585, 71 N.E.3d 445, 449 (2017) ("The emergency aid exception does not require that police have probable cause that a crime has been committed, because the purpose of the entry is to prevent harm stemming from a dangerous condition, not to investigate criminal activity."). Thus, the fact that Hines did not believe a crime was being committed in Payton's apartment at the time of the warrantless entry is of no significance in determining whether the emergency-aid exception is applicable. Rather, as noted, the dispositive question is whether it was objectively reasonable for the police to believe that occupants of Payton's apartment were in need of emergency assistance.

APPLICATION FOR REHEARING OVERRULED; MEMORANDUM OF MARCH 1, 2019, WITHDRAWN; OPINION SUBSTITUTED; AFFIRMED.

Windom, P.J., and Kellum, Cole, and Minor, JJ., concur.