

D.P. Marshall Jr.
December 5, 2007

DIVISION III

CACR07-347

5 December 2007

JOHN ABRAHAM STEPHENS,

APPELLANT

AN APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[CR-94-900A]

v.

STATE OF ARKANSAS,

THE HONORABLE JAMES ROBERT
MARSCHESKI, CIRCUIT JUDGE

APPELLEE

AFFIRMED

In 1995, John Abraham Stephens pleaded *nolo contendere* to several drug offenses. The circuit court sentenced him to fifteen years in prison, with twelve and one half years of that sentence suspended. One condition of Stephens's suspended sentence was that he not violate any law. In 2006, the circuit court revoked his suspended sentence based on his possession of methamphetamine and drug paraphernalia. The court sentenced Stephens to eighteen months in prison. Stephens appeals, arguing that a warrantless entry, a search, and a seizure of evidence from his home violated his constitutional rights.

Stephens's alleged drug possession occurred on 12 October 2006. A neighbor called police about a domestic disturbance at Stephens's home. The neighbor reported that Stephens was standing over his wife with a crowbar. When the police arrived, Mrs. Stephens was leaving in her automobile. The officers went to the door, announced their presence, and received no response. One of the officers explained at the revocation hearing that, because they saw playground equipment outside the residence, they feared there might be other victims—especially children—inside. The officers called out but no one responded from inside. They then entered the home without a warrant and handcuffed Stephens, who they found sitting in the living room. They found the crowbar under a couch cushion and saw illegal drugs and drug paraphernalia on the mantle.

Mrs. Stephens was stopped by another officer, and she told him that she and her husband were arguing over the contents of a safe, which was located in the bedroom closet. The officers continued to search the trailer—with Mrs. Stephens's consent—and found more drugs and drug paraphernalia in the bedroom. One of the officers then asked Mr. Stephens "if he would have let [them] have consent to search the house earlier . . ." Mr. Stephens said he would not and the police stopped their search. They returned to the house later that morning with a warrant, removed the safe, opened it, and found more drugs. Tests revealed the drugs to be methamphetamine.

Stephens argues that the officers' warrantless entry, search, and seizure of evidence from his residence were unlawful and that the evidence should have been suppressed at the revocation hearing. We disagree. The exclusionary rule does not apply strictly in a revocation proceeding. *Dabney v. State*, 278 Ark. 375, 377, 646 S.W.2d 4, 5 (1983). Our supreme court has explained that "the exclusion of illegally obtained evidence from a prosecution of the new offense should ordinarily be a sufficient deterrent to unlawful police activity." *Ibid*. The exclusionary rule would apply, however, if Stephens could prove a lack of good faith by the officers. *Harris v. State*, 270 Ark. 634, 638, 606 S.W.2d 93, 95 (Ark. App. 1980). Here, Stephens does not allege, and the record does not show, that the officers acted in bad faith when they entered and searched his home. Thus the circuit court committed no error in refusing to suppress any of the evidence seized from Stephens's residence.

Affirmed.

PITTMAN, C.J., and GRIFFEN, J., agree.