

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001730-MR

STEVEN HOLLON

APPELLANT

v. APPEAL FROM WOLFE CIRCUIT COURT
HONORABLE FRANK ALLEN FLETCHER, JUDGE
ACTION NO. 04-CR-00043

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE AND VANMETER, JUDGES; HENRY,¹ SENIOR JUDGE.

ACREE, JUDGE: Steven Hollon appeals from a judgment of the Wolfe Circuit Court convicting him of cultivating marijuana upon his conditional plea of guilty. Hollon had filed a motion to suppress the evidence against him claiming officers only became aware of the presence of illicit drugs after conducting a warrantless

¹ Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute 21.580.

search of his home in response to 911 calls from a distressed woman in the area. We have carefully considered the evidence and the arguments, and we conclude that the trial court acted properly in denying his suppression motion.

On the day Hollon's property was searched, dispatchers at a Kentucky State Police post received four separate 911 calls within a short time. The caller, a woman, did not give very much information and was screaming in apparent distress. Dispatchers were able to gather information that the caller was in a vehicle on a gravel road near Sandy Ridge Lane in Wolfe County. She stated that the road was named "something Alexander" and that she was near the last house on the road. Dispatchers contacted Trooper Brent Rawlins to investigate.

Since Trooper Rawlins was somewhat new to the area, he asked Sheriff Rocky Dunn for help in determining the location of the female caller. Sheriff Dunn accompanied the trooper to Clay Alexander Road, which the sheriff deemed to be the likely location to which the woman referred. There were four houses in the area; Hollon's home was at the end of the road. Two of the homes clearly did not appear to be occupied when the officers approached. A woman with children answered the door at another home. She appeared to be in no distress, but suggested to Sheriff Dunn that he check the Hollon place since the residents there frequently argued.

At the Hollon residence, officers found two men outside working on a truck. One of the men immediately went behind a small outbuilding, apparently

desiring to avoid the officers. Hollon remained outside and spoke with the officers denying them permission to search his property without a warrant. Nevertheless, Trooper Rawlins proceeded to search the house and surrounding buildings limiting his search to locations where a distressed woman might be found. Inside the house, he saw marijuana in plain view and detected a strong odor of marijuana. Based on these observations, Trooper Rawlins obtained a warrant to search for illegal drugs. Execution of the warrant revealed a sophisticated marijuana cultivation operation and 325 marijuana plants.

Hollon was indicted for cultivating marijuana. He filed a motion to suppress the evidence collected during the search, arguing that the warrant was only obtained after officers conducted an improper warrantless search of his residence. The trial court held a hearing and issued an order upholding the validity of the search based on the officers' belief that they might find the 911 caller in the home. Hollon entered a conditional guilty plea and was sentenced to serve three years. This appeal followed.

On appeal, Hollon argues that the Commonwealth failed to overcome the presumption that the warrantless search of his home and other buildings was unreasonable. When reviewing the trial court's denial of a motion to suppress, we look to see whether its findings of fact are supported by substantial evidence. If so, then they are conclusive. *Commonwealth v. Neal*, 84 S.W.3d 920, 923 (Ky.App. 2002). In the case at hand, emergency response operators had received four calls from a woman who was unable to provide information other than her general

location. According to dispatchers, the caller was screaming and appeared to be in considerable distress.

At the suppression hearing, Trooper Rawlins testified that police believed the caller could be injured or even dying. Acting on the information obtained from the distressed caller, Trooper Rawlins' investigation led him to Hollon's home which was located at the end of the road – a description that fit that given by the distressed caller. Rawlins further testified to the other facts set forth above. Additionally, Hollon's own statements to the officers led them to suspect that he and his girlfriend had been fighting, but he denied that she was on the property, telling them that she had gone to the store. Hollon then refused to give the officers permission to look for her in the house or other buildings.

In its order denying the suppression motion, the trial court concluded that the officers' search for a woman in distress had not been a pretext to search Hollon's property for a marijuana growing operation. The trial court noted that officers investigated each residence on Clay Alexander Road and there was no evidence that Hollon's residence was singled out. Further, Trooper Rawlins limited his warrantless search of the house to locations where a person could be concealed. Despite smelling the odor of marijuana and seeing the marijuana stems in plain view in Hollon's home, the officers did not extend their search beyond the purpose of finding the distressed caller until after they obtained a search warrant. Only upon conducting a search pursuant to that warrant did they find 325 marijuana plants, growing lights, scales, hemostats, heaters, guns, and other

evidence in Hollon's home. Since Trooper Rawlins was lawfully present in the home when he smelled and saw marijuana, the trial court concluded that the search warrant was not the product of an unreasonable search. On appeal, this Court must conduct a *de novo* review of the trial court's application of the law to the facts. *Neal*, 84 S.W.3d at 923.

The Fourth Amendment to the United States Constitution does guarantee the right to be free from unreasonable searches. Consequently, the Kentucky Supreme Court has held that law enforcement officers may not enter an individual's home without a warrant unless there are exigent circumstances present. *Commonwealth v. McManus*, 107 S.W.3d 175, 177 (Ky. 2003)(citation omitted). Hollon, citing *Payton v. New York*, 445 U.S. 537, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980), argues that exigent circumstances are limited to three situations: (1) officers in pursuit of a fleeing suspect, (2) a suspect who poses an immediate danger to officers or to the public, and (3) where immediate action is necessary to prevent the destruction of vital evidence or the escape of a known criminal. Hollon is mistaken.

The Kentucky Supreme Court previously recognized an exception to the search warrant requirement when officers reasonably believe that someone inside a home is in need of immediate assistance. *Todd v. Commonwealth*, 716 S.W.2d 242, 248 (Ky. 1986). In *Todd*, an ambulance driver was called to the home of the Todd's elderly invalid aunt. Todd's mother, an older lady, experienced injuries the emergency worker believed suspicious. When Todd was questioned

about his aunt, Todd replied that she was in her bedroom. Todd's mother was soon transported to a hospital by ambulance. Later the same day, the ambulance driver attempted unsuccessfully to contact Todd to advise him where his mother had been taken. He then called police and reported his concern for Todd's aunt, based on the suspected abuse of his mother, the failure of anyone at the home to answer the phone, and a foul odor the ambulance driver noticed during the emergency call at the home.

Police investigated, but no one answered the door. They looked through the bedroom window and did not see Todd's aunt in her bed as Todd had reported. Based on their concerns for this invalid lady, police forced their way into the home where they found her beaten body at the foot of the basement steps. Todd challenged the warrantless entry both in the trial court and on appeal. The Kentucky Supreme Court held that "no serious challenge could have been raised against the emergency exigent circumstances at the time[.]" *Todd*, 716 S.W.2d at 247.

Warrantless searches have been upheld in other circumstances: a caller reporting that his elderly neighbor, who lived alone, had not been seen in some time and had left the door of his vehicle open overnight, *Gillum v. Commonwealth*, 925 S.W.2d 189 (Ky. App. 1995); police following a trail of blood from a murder scene to a nearby home, *Mills v. Commonwealth*, 996 S.W.2d 473 (Ky. 1999); and police responding to a call about a loud party who observed a fight going on in the kitchen through an open door, *Brigham City, Utah v. Stewart*, 547

U.S. 398, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006). We believe the facts with which we are presented fall comfortably within the context of these cases.

Hollon points out that, after the officers obtained and were executing the warrant, his own and his guest's girlfriends returned. The two women told police that they had seen a crying female walking down the road when they were on their way to the store. She appeared very upset and her hair was in disarray. They stopped to offer assistance, but the distressed woman declined. The girlfriends identified her as a known user of methamphetamines and stated that she appeared to be under the influence. The woman was eventually located and she admitted calling 911 and arguing with her boyfriend, but denied any physical altercation. However, all of these facts arose subsequent to the issuance of the warrant and therefore have no bearing on the officers' reasonable belief, at the time of the warrantless search, that they might locate a woman in need of assistance in Hollon's home.

Since the trial court correctly found that Trooper Rawlins and Sheriff Dunn were searching for a woman they believed to be in danger, not a marijuana cultivation operation, their warrantless search of Hollon's home was permissible. Upon personally smelling an odor of marijuana and seeing marijuana stems, Trooper Rawlins had probable cause to obtain a search warrant. And, he did so before carrying out any searches not designed to find a concealed and distressed woman. Consequently, the trial court properly denied Hollon's request to suppress the evidence against him.

The judgment of the Wolfe Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Barbara Elliott
Barbourville, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Heather M. Fryman
Assistant Attorney General
Frankfort, Kentucky