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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001871-MR

MICHAEL KEITH WARRINER — APPELLANT

v.

APPEAL FROM ADAIR CIRCUIT COURT
HONORABLE DOUGLAS M. GEORGE, SPECIAL JUDGE
ACTION NO. 11-CR-00082

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, CHIEF JUDGE; COMBS AND TAYLOR, JUDGES.

COMBS, JUDGE: Michael Warriner appeals from the order of the Adair Circuit Court which denied his motion to suppress evidence obtained from a search of his home. After reviewing the record and applicable law, we affirm.

On June 17, 2011, Mark Curry reported seeing a suspicious two-liter bottle in his yard. He believed that it was likely a one-step methamphetamine lab in which the ingredients are mixed together in a container -- commonly two-liter

bottles. See *Drug Control: State Approaches Taken to Control Access to Key Methamphetamine Ingredient Show Varied Impact on Domestic Drug Labs*, United States Government Accountability Office Report to Congressional Requesters, January 2013. Kentucky State Police (KSP) Troopers Nick Davis and Ryan Wolking responded. The troopers determined that the bottle was likely the by-product of a methamphetamine lab, and they contacted an officer who specializes in clean-up of methamphetamine labs. Curry told the troopers that he suspected that Michael Keith Warriner had placed the two-liter bottle in his yard. While Curry's yard was being cleaned up, Troopers Wolking and Davis drove to Warriner's residence, which was about fifteen minutes away.

Upon arriving at Warriner's residence, the troopers immediately detected a strong, pungent odor that they recognized to be chemicals associated with the manufacture of methamphetamine. Trooper Davis reached the front porch first and saw a two-liter bottle that was consistent with a one-step methamphetamine lab. As the troopers approached, they saw a person peek out of the front door and retreat back into the house. Consistent with their KSP training, the troopers positioned themselves outside the house in a manner that allowed them to observe all doors of the home.

Because of the strong odor, the troopers cleared all outbuildings and vehicles on the property for safety purposes. They reported the suspected lab to their KSP Post, and Trooper Kenny Perkins arrived. Trooper Perkins spoke with Warriner and the other occupant of the house through an open window. Through the same

window, Trooper Wolking observed items[1] on a table that were either associated with the manufacture of methamphetamine or commonly used as paraphernalia. Trooper Perkins persuaded Warriner and his companion to exit the house through a side door. Trooper Wolking then left the property in order to obtain a search warrant. When he returned with the warrant, the troopers searched the house and retrieved nearly all the ingredients necessary for manufacturing methamphetamine.

On July 26, 2011, a grand jury indicted Warriner for manufacture of methamphetamine, possession of a controlled substance, and possession of drug paraphernalia. On March 9, 2012, Warriner filed a motion to suppress the evidence seized from his residence. The court conducted a hearing on the motion on April 17, 2012. On May 29, 2012, the court entered its order denying the motion. Subsequently, Warriner entered a conditional guilty plea to the manufacture of methamphetamine, first-degree possession of a controlled substance, and possession of drug paraphernalia. In exchange, he received a sentence of ten-years' incarceration. According to the terms of the plea, this appeal follows.

Warriner argues that the evidence should have been suppressed because the troopers illegally obtained the evidence used to execute the search warrant. We disagree. Our standard of review of a motion to suppress is dual in nature. We will not disturb the trial court's findings of fact if they are supported

[1] Warriner states in his brief that the troopers "posted up" (stood on an object below the window) in order to see inside. This claim, however, is unsupported by the record.

by substantial evidence. However, we apply a *de novo* review to the trial court's legal conclusions. *Commonwealth v. Marr*, 250 S.W.3d 624, 626 (Ky. 2008).

The Fourth Amendment of the United States Constitution and Section 10 of Kentucky's Constitution provide protection against unreasonable searches and seizures. A basic tenet of both provisions is that evidence obtained in an illegal or unreasonable search is not admissible in court. *Wilson v. Commonwealth*, 37 S.W.3d 745, 748 (Ky. 2001). *See also Mapp v. Ohio*, 367 U.S. 643 (1961). The Fourth Amendment of the U.S. Constitution mandates that "no Warrants shall issue, but upon probable cause[.]" Similarly, Section 10 of the Kentucky Constitution provides that "no warrant shall issue to search any place . . . without describing them as nearly as may be, nor without probable cause supported by oath or affirmation."

Warriner's claim is that Trooper Wolking saw the items of paraphernalia inside the house because he impermissibly looked through a side window. We disagree. Troopers Wolking and Davis went to Warriner's residence in order to conduct a "knock and talk" investigation.

> The knock and talk procedure involves law enforcement officers approaching a home for the purpose of obtaining information about a crime that has been committed, a pending investigation, or matters of public welfare.

Quintana v. Commonwealth, 276 S.W.3d 753, 756 (Ky. 2008). This doctrine confines police officers to the main entrance of the house; *i.e.,* they have the same right to be there as would any member of the public. *Id*. at 758.

Warriner argues that when the troopers left his front porch and went to the side of the house, they exceeded the boundary permitted by the principles of knock and talk. However, as the Commonwealth correctly points out, our analysis is not that simple. The Commonwealth contends that the troopers acted properly in light of exigent circumstances at the scene, and we agree.

The Supreme Court of the United States has identified several exigent circumstances that justify the entry of law enforcement into a home without a warrant: rendering emergency aid; hot pursuit of a fleeing suspect; preventing destruction of evidence. *Kentucky v. King*, 131 S.Ct. 1849, 1856-57, 179 L.Ed. 865 (2011). We are persuaded that at least two of the circumstances apply in this case that would have justified a warrantless entry. However, we note that the troopers exercised an abundance of caution in obtaining a warrant even though the exigent circumstances might have rendered their precaution unnecessary.

When Troopers Wolking and Davis exited their cars, they immediately recognized the distinct smell of chemicals[2] associated with active methamphetamine labs. "Plain smell" has long been accepted as a justification for conducting searches without warrants when it is indicative of exigent circumstances. *Bishop v. Commonwealth*, 237 S.W.3d 567 (Ky. App. 2007). An active methamphetamine lab is dangerous to those in proximity to it, and courts have consistently held that an active methamphetamine lab is indeed an exigent circumstance. *Id*. at 570; *U.S. v. Atchley*, 474 F.3d 840 (6th Cir. 2007); *Pate v.*

[2] Warriner claims that Trooper Wolking testified that he did not know what the smell was. Trooper Wolking actually testified that he did not know exactly **which chemical** he smelled but knew that it was the odor of one of the chemicals used for producing methamphetamine.

Commonwealth, 243 S.W.3d 327 (Ky. 2007). Again, it would have been permissible for the troopers to enter the house on that basis alone. Therefore, the officers' merely speaking with Warriner and looking through an open window were wholly appropriate.

Although the two-liter bottle and the smell of chemicals constituted probable cause for a warrant, we note that Trooper Wolking also testified that when the officers arrived, they saw someone peek out the door and retreat back into the house. Therefore, the doctrine of exigent circumstances permitted them to position themselves around the house so that the front and back entrances would be visible in order to prevent the possible flight of a suspect. *See Brigham City, Utah v. Stuart*, 547 U.S. 398, 126 S.Ct. 1943, 164 L.Ed. 650 (2006).

We recall that cases involving Fourth Amendment questions turn on what is reasonable in view of the particular facts. *Id*. at 403. In this case, Troopers Wolking and Davis went to Warriner's residence to conduct a knock-and-talk investigation. When they smelled the chemicals and observed a two-liter bottle consistent with a one-step methamphetamine lab, the circumstances of knock and talk evolved into a situation of exigent circumstances. The bottle and the odor indicated potential danger to the officers and to occupants of the residence. Thus, it was reasonable for the officers to proceed to areas of the house other than the front porch. They properly considered the danger posed by the production of methamphetamine as well as the possibility that someone might flee the house from a back entrance. Additionally, because it would have been permissible to

enter the house on the spot, it was not unreasonable for them to look through an open window.

We conclude that the trial court did not err when it denied Warriner's motion to suppress evidence. We affirm the Adair Circuit Court.

ALL CONCUR.

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