

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2013-CA-002120-MR

SHANE ROBERT GREEN

APPELLANT

v. APPEAL FROM WEBSTER CIRCUIT COURT  
HONORABLE C. RENÉ WILLIAMS, JUDGE  
ACTION NO. 13-CR-00014

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \*\* \* \*\*

BEFORE: CAPERTON, COMBS, AND VANMETER, JUDGES.

COMBS, JUDGE: Shane Green appeals an order of the Webster Circuit Court denying his motion for suppression of evidence. After our review of the record and the law, we affirm.

On January 26, 2013, Clay Police Chief Chris Evitts and Kentucky State Police troopers Cody Kromer and William Braden went to Green's home in Clay,

Kentucky. They had received numerous tips that methamphetamine was being manufactured inside the residence. The officers proceeded to Green's home intending to conduct a "knock and talk."

Upon approaching Green's home, the officers smelled the distinct chemical odor associated with active methamphetamine labs. They were on foot and detected the odor near the basement door of the house. Trooper Komer drove up the driveway approaching the front door, and he smelled the odor from inside his car. All of the officers observed that the smell became stronger as they neared the house.

Trooper Braden and Chief Evitts observed a fog flowing out of the basement door, likely indicating the "smoking out" component of the manufacturing process. They also heard voices coming from the basement and the sound of a utility vacuum in the basement. They knocked on the door, yelling "police," and the noise ceased. But there were no sounds indicating that the occupants were coming to open the door. Therefore, due to the volatile nature of active methamphetamine labs, the officers kicked in the door and entered the basement.

Almost simultaneously, Trooper Komer knocked on the front door and announced himself. After receiving no answer, he also entered the home – again, due to the known volatile nature of active methamphetamine labs. Meanwhile, Trooper Komer heard Trooper Braden and Chief Evitts going into the basement.

Upon entering the basement, Trooper Braden and Chief Evitts encountered a thick fog. Green and Easley were standing over a plate and other items which are

components of methamphetamine labs. The officers immediately detained Green and Easley and moved them outside in order to escape the dangerous fumes. After all occupants of the house were evicted, the officers opened all of the basement's windows and doors in order to air out the basement.

In the meantime, the officers spoke with Green and Easley. Green took full responsibility for the lab. He insisted that Easley was not a participant, merely an observer. In written form, Green consented to a search of the house. After waiting for the fumes to clear, the officers searched the house and discovered several objects and some white powder that were associated with the manufacture of methamphetamine.

On March 12, 2013, a grand jury indicted Green with manufacturing methamphetamine, possession of a controlled substance (methamphetamine) in the first degree, and use or possession of drug paraphernalia. On April 8, 2013, Green filed a motion to suppress the evidence which was gathered during the search of the house and the interrogation of Green. The trial court held a hearing on June 6, 2013. On October 9, 2013, the trial court denied the motion, finding that the officers had acted appropriately because exigent circumstances existed at Green's residence. Consequently, on December 10, 2013, Green entered a conditional guilty plea and was sentenced to twelve-years' incarceration. He filed this appeal the same day.

Our standard of review of a motion to suppress is twofold. We will not disturb the trial court's findings of fact if they are supported by substantial

evidence. However, we apply *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 resulting tenet is that evidence obtained in an illegal or unreasonable search is not admissible in court and may be suppressed. *Wilson v. Commonwealth*, 37 S.W.3d 745, 748 (Ky. 2001). See also *Mapp v. Ohio*, 367 U.S. 643 (1961). The standard of a review for a motion to suppress evidence is two-fold. First, Kentucky Rule of Criminal Procedure (RCr) 9.78 provides that, "If supported by substantial evidence the factual findings of the trial court shall be conclusive." The trial court's application of the law to the facts is reviewed *de novo*. *Lynn v. Commonwealth*, 257 S.W.3d 596, 598 (Ky. App. 2008).

Green contends that the troopers' entrance to his house was illegal because it exceeded the parameters of the knock-and-talk investigation that had been their initial intention. We disagree. "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). The doctrine confines police officers to the main entrance of the house; *i.e.*, they have the same right to be there as any other member of the public. *Id.* at 758.

Green correctly asserts that the officers did not confine their investigation to the limits of a knock-and-talk investigation. However, we agree with the trial court

that exigent circumstances at the residence changed the character of the investigation and justified their entrance.

The Supreme Court of the United States has held that several exigent circumstances may allow for 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 the third exception applied in this case.

Approaching Green's house, all three officers readily recognized the distinct smell of chemicals associated with active methamphetamine labs. "Plain smell" has long been accepted as the basis of 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 an exigent circumstance. *Id.* at 570; *U.S. v. Atchley*, 474 F.3d 840 (6<sup>th</sup> Cir. 2007); *Pate v. Commonwealth*, 243 S.W.3d 327 (Ky. 2007). The Sixth Circuit has succinctly held that:

In most cases, finding evidence of drugs would not establish the exigency necessary to validate a warrantless search. However . . . cases involving methamphetamine labs where other people are in the vicinity [are] an exception to the general rule due to the dangers associated with the cooking of methamphetamine and the storage of chemicals used to make methamphetamine.

*U.S. v. Atchley*, 474 F.3d 840, 851 (6<sup>th</sup> Cir. 2007) (*citing U.S. v. Layne*, 324 F.3d 464, 470-71 (6<sup>th</sup> Cir. 2003); *U.S. v. Rhiger*, 315 F.3d 1283, 1290 (10<sup>th</sup> Cir. 2003); *U.S. v. Spinelli*, 848 F.2d 26, 30 (2<sup>nd</sup> Cir. 1988)).

In this case, the officers believed that the house was unsafe for any occupant. Detective Braden is certified in the cleanup of methamphetamine labs; therefore, he has specialized knowledge regarding the dangers of an active lab. He immediately removed all occupants and opened all doors and windows in order to dissipate the fumes inside the basement. Thus, under the emergency-aid exception, the officers' entry to the house was appropriate. Green has not provided any evidence or legal precedent which persuades us otherwise.

We affirm the Webster Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Dax R. Womack  
Henderson, Kentucky

BRIEF FOR APPELLEE:

Jack Conway  
Attorney General of Kentucky

Courtney J. Hightower  
Assistant Attorney General  
Frankfort, Kentucky