IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
April 18, 2007 Session

STATE OF TENNESSEE v. RANDY LEE MEEKS AND ERNEST LONNIE SNYDER, JR.

Appeal from the Circuit Court for Coffee County
No. 34,241 Jerry Scott, Senior Judge and L. Craig Johnson, Judge

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No. M2006-01385-CCA-R3-CO - Filed July 10, 2007

This is a State appeal from an order dismissing without prejudice the indictment against the Defendants, Randy Lee Meeks and Ernest Lonnie Snyder, Jr. The Defendants were indicted with charges of manufacturing methamphetamine, possession of methamphetamine, and possession of drug paraphernalia. The issue presented for our review on appeal is whether the trial court erred in granting the motion to suppress evidence seized from the Defendants' hotel room. After a review of the record and the applicable authorities, we reverse the order of the trial court granting the Defendants' motion to suppress, vacate the order dismissing the indictment, and remand for further proceedings consistent with this opinion.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed; Remanded

DAVID H. WELLES, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and ROBERT W. WEDEMEYER, JJ., joined.

Robert E. Cooper, Attorney General and Reporter; Mark A. Fulks, Assistant Attorney General; C. Michael Layne, District Attorney General; and Felecia Walkup, Assistant District Attorney General, for the appellant, State of Tennessee.

Eric J. Burch, Manchester, Tennessee and Robert T. Carter, Tullahoma, Tennessee, for the appellees, Randy Lee Meeks and Ernest Lonnie Snyder, Jr.

OPINION

Factual Background

On April 13, 2005, a Coffee County grand jury indicted the Defendants with charges of manufacturing methamphetamine, possession of methamphetamine, and possession of drug paraphernalia. See Tenn. Code Ann. §§ 39-17-417, -418, -425. The indictment stemmed from events occurring in Room 110 of the Park Motel located in Manchester. Prior to trial, the

Defendants filed a motion to suppress, arguing that the warrantless entry into their hotel room was not justified by exigent circumstances:

> [N]o exigent circumstances existed in this case which justified the officers' decision to forego obtaining a valid search warrant in this case. The officers suspected that a meth lab was present in room #110. The Defendants were effectively trapped in the room as there was only one means of ingress and egress to the room and multiple officers present at the door. Many, if not most, of the elements necessary for the manufacture of methamphetamines are not easily disposed of in the confines of a motel room.

A hearing on the motion was held on October 10, 2005.

Officer Frank Scott Peterson of the Manchester Police Department testified that, on March 6, 2005, he "received a call from the Communications Center to call a complainant that was complaining of an odor that she didn't know what it was that was causing her to—her eyes to burn, to have a headache . . . ." He contacted the complainant, who was staying in Room 109 of the Park Motel. She wished to remain anonymous. According to Officer Peterson, her first question to him was, "What does a meth lab smell like? What does making methamphetamine smell like?" The complainant informed Officer Peterson that the odor "might be coming from the room next door to her." Officer Peterson proceeded to Room 109, and "[t]he odor was there . . . especially in the bathroom."

Manchester Police Department Officer Stuart Caldwell arrived on the scene "a few minutes after" Officer Peterson. Based upon Officer Peterson's conversation with the complainant and the odor in her room, the officers decided to knock on the door of Room 110, but they received no response. Because the doors are "very flimsy" in the hotel, "every time [they] would hit the door, the smell would get greater." The officers then heard the sound of glass breaking which, according to Officer Caldwell, "could have been associated with the destruction of evidence." Officer Caldwell also said that he heard "some noise. It appeared like someone's voice." Officer Peterson described the smell at this time as "[s]trong." Officer Peterson could not "stand directly in front of the door and knock on it" because of the intense odor.

Officers Caldwell and Peterson had also called Corporal Ronny Gray of the Manchester Police Department. While they were knocking on the door of Room 110, Corporal Gray arrived. Corporal Gray described the chemical odor upon arrival as "very strong." Based upon the "severity" of the odor, Corporal Gray went to the hotel manager and retrieved a key to Room 110. The officers unlocked the door, which opened only slightly because it was chained. "[D]irectly inside the door[,]" Officer Peterson observed "a bottle of peroxide and another bottle that had some unidentified liquids . . . ." Also according to Officer Peterson, upon opening the door, he noticed "a large cloud of smoke that come [sic] out around the open door. . . . It was a chemical cloud." Officer Peterson described the scene as "[v]ery bad, . . . very dangerous . . . to [him] and anybody that gets around that."

The officers were still "hollering," announcing themselves as police officers and demanding the occupants to come to the door. Officer Caldwell then forced the door the remainder of the way open. Officer Peterson relayed the following observations after the door was opened:

> There were two subjects in the room. The one standing in the bathroom had his hand behind his back, one laying on the bed. Of course, as we're going in, we're hollering and screaming. The one subject that was in the bathroom that had his hand behind his back, hollering to get his hands up, get his hands up. . . .
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> . . . .
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> When you walk in the door, there's a hot plate on the floor of the motel glowing red. We're hollering. We're trying to get this guy, the subject was in the bathroom, to show us his hands so we could get him out. It took a couple of seconds. The subject that was lying on the bed was still just laying there like nothing was going on.

The officers secured the subject in the bathroom, later determined to be Defendant Snyder, and quickly exited the room due to the fumes. The fire department, which had been called by Corporal Gray subsequent to his arrival on the scene, was now at the hotel. Officer Caldwell and Corporal Gray "suited up in air suits and went in and got" the unconscious Defendant Meeks from the room. At some point, the officers also unplugged the hot plate inside the room.

After the situation was defused, Investigator Joseph Sipe obtained a search warrant for the room. They searched the room and discovered many substances, items, and paraphernalia commonly used in the process of manufacturing methamphetamine and also found the actual completed product of methamphetamine. The items discovered indicating the making of methamphetamine included a hydrogen chloride gas generator, plastic tubing, bottles containing iodine crystals and muriatic acid, mason jars with separating liquids, a plastic funnel, a plastic container containing ephedrine, a gallon jug full of iodine, a roll of duct tape, scales, a Pyrex dish with scrapes on it, a roll of aluminum foil, a package of disposable latex gloves, a Pepsi bottle containing an unknown liquid, a Coke bottle, and a hot plate. They also found the sink "stopped up" with broken glass and "full of chemicals . . . ."

According to Officer Peterson, the occupants of the adjoining rooms were in "harm's way" because of the dangerous "mixing of chemicals" that caused the "chemical cloud in the air . . . ." Officer Peterson described the situation as "very volatile . . . ." Officer Caldwell testified that the mixing of these chemicals was "very, very flammable and explosive, corrosive." Officer Caldwell described the dangers to the occupants: "They faced inhaling toxic chemicals. They risked the danger of an explosion and fire. It could be fatal." The occupants of the adjoining rooms were evacuated following the removal of the Defendants from their hotel room. According to Officer Caldwell, it was "poor judgment" not to "have evacuated them first . . . ." Moreover, Officer Caldwell testified that, in his expert opinion, this methamphetamine laboratory created "a very

serious danger[,]" and this labatory was "more dangerous" than usual. He also noted that a "haz-mat" team was called.

Defendant Meeks "never had any consciousness inside of the room" and only "[v]ery little" once removed from the hotel room. An ambulance transported Defendant Meeks to the hospital, where he "spent a long time in intensive care." Defendant Snyder was also taken to the hospital.

Investigator Sipe interviewed the Defendants following the incident. Defendant Meeks indicated that he was staying at the hotel with his wife and son and that he had gone to Defendant Snyder's room to purchase methamphetamine before he passed out on the bed. Defendant Snyder stated to Investigator Sipe that he had registered under the name of Stephen Barker in Room 110 and that he was "attempting to make some stuff."

Officer Peterson testified that he was "acquainted with some of the processes involved with the manufacture of methamphetamine[.]" Officer Peterson stated that, in his experience, the odor "sticks out in [his] mind in terms of recognizing a possible meth lab[.]" He said that "there [was] no mistaking" the "presence of an odor consistent with the manufacture of methamphetamine." Officer Caldwell testified that he was trained in "cases involving manufacture of methamphetamine[.]" According to Officer Caldwell, he approached Room 110, and "there was a very, very strong odor, which [he] knew to be associated with the manufacture of methamphetamine, coming from the cracks of the door." Corporal Gray also testified that he had received "training concerning cases involving methamphetamine[.]"

On November 9, 2005, the trial court, by written order, granted the Defendants' motion to suppress the evidence seized from their hotel room, finding that the State had not established that exigent circumstances justified the warrantless entry into the Defendants' hotel room. The trial court concluded that the officers were not in "hot pursuit" of a fleeing suspect and that the Defendants did not present an immediate threat to public safety. Regarding the possible destruction of evidence, the trial court relied on State v. Carter, 160 S.W.3d 526 (Tenn. 2005), and concluded that the officers created the exigent circumstances by knocking on the hotel room door and announcing their presence. The trial court further concluded that the warrant likewise failed "because illegally obtained information was presented to the magistrate" and, thus, suppressed the evidence. It is from this determination that the State appeals.

ANALYSIS

At the outset, we must note the unusual procedural posture of this appeal. The State initially sought and, on February 28, 2006, received permission from the trial court to appeal the suppression order under Tennessee Rule of Appellate Procedure 9. The State, however, did not file an application for appeal under Rule 9 within 30 days, as required, apparently believing that appeal under Rule 3 of the Tennessee Rules of Appellate Procedure was the better practice.

Nonetheless, the State did not then file a Rule 3 appeal from the order of suppression, requesting waiver of a timely notice of appeal. Instead, on May 19, 2006, the trial court entered an order dismissing the indictment without prejudice. The order reads as follows:

> Upon Motion of the District Attorney General to withdraw the Request for Appeal under Rule 9, and upon agreement of counsel for the Defendants, and upon the entire record in this cause, this Court finds that the suppression of the evidence gathered in this case from room 110 of the Park . . . Motel does present irreparable harm to the State's case in chief and is dispositive to the case.

The State then filed its notice of appeal from this order. We note that the order dismissing the indictment was entered by consent of the parties. It is the order granting the motion to suppress, not the order dismissing the indictment, with which the State takes issue.

The trial court, in the dismissal order, was apparently attempting to make the order a final order appealable pursuant to Rule 3, thereby permitting the State to appeal the granting of the motion to suppress. However, such was not necessary to permit an appeal of the order of suppression. Rule 3 provides for the availability of an appeal as of right by the State in criminal actions:

> In criminal actions an appeal as of right by the state lies only from an order or judgment entered by a trial court from which an appeal lies to the Supreme Court or Court of Criminal Appeals: (1) the substantive effect of which results in dismissing an indictment, information, or complaint; (2) setting aside a verdict of guilty and entering a judgment of acquittal; (3) arresting judgment; (4) granting or refusing to revoke probation; or (5) remanding a child to the juvenile court. The state may also appeal as of right from a final judgment in a habeas corpus, extradition, or post-conviction proceeding.

Tenn. R. App. P. 3(c). The only limitation placed upon the State's right to appeal is that it may not appeal a judgment of acquittal. Tenn. R. App. P. 3, Advisory Commission Notes. In addition, appeals as of right for the State lie only in those circumstances specified in subdivision (c). Id.

We conclude that the order of suppression was, in fact, dispositive and, thus, the order had the substantive effect of dismissing the indictment against the Defendants. Therefore, we conclude that this is a suitable case for a State appeal as of right under Tennessee Rule of Appellate Procedure 3(c) and will treat and consider the case as such. The order of suppression was an appealable order under Rule 3, and a notice of appeal should have been filed directly from that order. In order to address the merits of the motion to suppress decision, we waive any procedural deficiencies in the interests of justice, including the timely filing of notice of appeal. See Tenn. R. App. P. 4(a); see, e.g., State v. Kirk Williams, No. E2004-01452-CCA-R3-CD, 2005 WL 762601, at *2 (Tenn. Crim. App., Knoxville, Apr. 5, 2005) (citing State v. Brown, 898 S.W.2d 749 (Tenn. Crim. App. 1994); State v. Stephen Udzinski, Jr., No. 01C01-9212-CC-00380, 1993 WL 473308 (Tenn. Crim. App., Nashville, Nov. 18, 1993)), rev'd on other grounds, 185 S.W.3d 311 (Tenn. 2006).

The substance of this appeal is the State's complaint that the trial court committed error by granting the Defendants' motion to suppress the evidence recovered from their hotel room. Specifically, the State contends that, "[a]t the time of the warrantless entry, the officers had probable cause to believe that a meth lab was being operated in the motel room and that the defendants posed an immediate threat to the officers, the public, and themselves." The Defendants, relying on State v. Carter, 160 S.W.3d 526, contend that the warrantless entry into their hotel room was unconstitutional because there were no "exigent circumstances." The Defendants further argue that the warrant was issued in reliance upon information gleaned from the initial illegal entry. Accordingly, they argue that none of the evidence seized from the hotel room would be admissible at trial.

When reviewing a trial court's ruling on a motion to suppress, "[q]uestions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). Findings of fact made by a trial court in ruling on a motion to suppress are binding upon this court unless the evidence preponderates against the findings. See id. However, "[t]he application of the law to the facts found by the trial court . . . is a question of law which this court reviews de novo." State v. Yeargan, 958 S.W.2d 626, 629 (Tenn. 1997).

The Fourth Amendment to the Constitution of the United States, made applicable to the states by the Fourteenth Amendment, provides as follows:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated. No warrant shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to the searched and the person or things to be seized.

Article 1, section 7 of the Constitution of Tennessee also guarantees that the people shall be free from unreasonable searches and seizures.

Under both the federal and state constitutions, warrantless searches are presumed unreasonable, and evidence obtained from such a seizure should be suppressed unless the State demonstrates by a preponderance of the evidence that the search or seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement. See Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971); Yeargan, 958 S.W.2d at 629. The main exceptions to the requirement for a search warrant are: (1) consent to search; (2) a search incident to a lawful arrest; (3) probable cause to search with exigent circumstances; (4) in hot pursuit; (5) a stop and frisk situation; and (6) plain view. See State v. Bartram, 925 S.W.2d 227 (Tenn. 1996); see also Taylor v. State, 551 S.W.2d 331, 334 (Tenn. Crim. App. 1976). "If the circumstances of a challenged search and seizure come within one of the recognized exceptions, the fruits of that search and seizure are not subject to operation of the exclusionary rule and may be properly admitted into evidence." State v. Shaw, 603 S.W.2d 741, 742-43 (Tenn. Crim. App. 1980).

The mere existence of exigent circumstances does not necessarily validate a warrantless search. Yeargan, 958 S.W.2d at 635 (Reid, J., concurring in results) (quoting Bartram, 925 S.W.2d at 229-30). There must be a showing by those asserting the exception that the exigencies of the situation rendered the search imperative. Id. The burden is on those seeking the exception to show the need. Id.

We begin by noting that the trial court's and the Defendants' reliance on State v. Carter is misplaced. See 160 S.W.3d 526. Carter involved the warrantless entry into a private residence, not a hotel room. Id. at 529-30. In Carter, sheriff's deputies entered the defendants' residence without a warrant based upon an informant's tip and the deputies' recognition of the smell of anhydrous ammonia and ether. Id. The defendants were detained, a search warrant was obtained, and the deputies discovered marijuana, methamphetamine, and items used to manufacture methamphetamine. Our supreme court concluded that the entry was unlawful because the deputies created the exigent circumstances—possible destruction of evidence—by approaching the defendants' residence and alerting the defendants to the presence of the deputies. Id. at 532. The Carter Court then went on to "examine the effect of this illegality on the admissibility of the evidence subsequently seized from the defendant's residence." Id. The court concluded that the "unlawful entry and detention did not taint the evidence seized pursuant to the search warrant." Id. at 533. The court next considered "whether the affidavit supporting the issuance of the warrant under which the evidence was seized established probable cause to search the defendants' residence." Id. The court specifically stated that, in making this determination, it "need not decide whether the smell of these substances, standing alone, established probable cause. Rather, the affidavit in this case contains not only the observations of Deputy Meggs, the affiant, but also information from a confidential informant." Id. at 534. The court concluded that the "information provided in the affidavit [was] sufficient to establish probable cause for the issuance of a search warrant." Id.

We conclude that this Court's recent opinion of State v. James Castile, No. M2004-02572-CCA-R3-CD, 2006 WL 1816371 (Tenn. Crim. App., Nashville, June 28, 2006), is persuasive under the facts of this case. In Castile, a Ramada hotel front desk clerk called the police to report a chemical smell coming from one of the rooms. 2006 WL 1816371, at *1. The defendant refused to consent to the officers' searching his room but, after obtaining a search warrant, officers discovered numerous items and substances associated with the manufacturing of methamphetamine and some actual methamphetamine. Id. at *2-5. The defendant argued that the trial court erred by denying his motion to suppress the evidence seized from his hotel room pursuant to the search warrant. Id. at *6. Probable cause for the warrant was based on the detection of the odor of ether coming from the defendant's room, the defendant's criminal impersonation, and the discovery of several receipts for purchases of precursors of methamphetamine production in the defendant's wallet. Id. This Court concluded that denial of the motion to suppress was proper, reasoning as follows:

> It is well-established in Tennessee that the odor of an illegal substance, either alone or in conjunction with other facts and circumstances, can provide sufficient

probable cause, depending on the situation, for either a warrantless search or the issuance of a search warrant. See Hart v. State, 568 S.W.2d 295, 296 (Tenn. Crim. App. 1978) (holding that "officers' search of the vehicle was proper, based upon the independent probable cause ground of the marijuana odor" coming from the vehicle); State v. Hughes, 544 S.W.2d 99, 101 (Tenn. 1976) (holding that the odor of marijuana emanating from a vehicle constituted probable cause for a police officer to believe that the vehicle contained contraband marijuana); Hicks v. State, 534 S.W.2d 872, 873-74 (Tenn. Crim. App. 1975) (stating that "[t]he principal question presented here is whether or not the smell of marijuana emanating from the defendant's car furnished probable cause to enable an officer, who had stopped the vehicle for a traffic offense, to search the vehicle. We hold that it did."); State v. Bradley Lonsinger, No. M2003-03101-CCA-R3-CD, 2005 WL 49569 (Tenn. Crim. App., at Nashville, Jan. 5, 2005) (determining that strong "chemical smell" emanating from defendant's trailer observed while officer were serving "papers" on defendant justified issuance of search warrant); State v. Paul Anthony Wright, No. W2001-02574-CCA-R3-CD, 2003 WL 1860526, at *9-10 (Tenn. Crim. App., at Jackson, Apr. 7, 2003) (holding that a search warrant affidavit reciting, inter alia, the affiant's experience, training, and observation of both "the distinct odors associated with the manufactor [sic] of methamphetamine" and other items associated with such a manufacturing operation near the defendant's house and in his vehicle was sufficient to establish probable cause for the issuance of a search warrant of defendant's home); State v. Danny Davidson, No. W2001-00118-CCA-R3-CD, 2002 WL 1482720, at *1 (Tenn. Crim. App., at Jackson, Feb. 26, 2002) (determining that evidence was sufficient where valid search warrant of a home was issued based on an officer's recognition of a "strong chemical odor" as "that from a possible methamphetamine lab"), perm. app. denied, (Tenn. July 8, 2002).

Further, a recent federal case from the Eastern District of Tennessee upheld a warrantless search of a hotel room where the officer noticed smoke coming out of the room's window air conditioner and the "strong unmistakable odor of methamphetamine" outside the defendant's room. U.S. v. Denson, No. 1:05 CR 088, 2006 WL 270287, at *1 (E.D. Tenn. Feb. 2, 2006). In so doing, the court reviewed the requirements for a warrantless search under exigent circumstances. The court determined that probable cause existed based on the officer's "smelling the unmistakable odor of methamphetamine and his training to recognize the smell, along with visible smoke and fumes emanating from the room, and the finding of methamphetamine and coffee filters on defendant's person." Id. at *3. After determining that probable cause existed to believe that methamphetamine was illegally being processed in the defendant's room, the court went on to find that exigent circumstances existed justifying the warrantless search of the room. Id. The court commented:

> The dangers of methamphetamine are well-established. As noted by the Sixth Circuit and addressed by the House of Representatives, methamphetamine: "poses serious dangers to both human life and to the environment . . . these chemicals and substances are utilized in a manufacturing process that is unstable, volatile, and highly combustible. Even small amounts of these chemicals, when mixed improperly, can cause explosions and fires." United States v. Layne, 324 F.3d 464, 468-49 (6th Cir. 2003) (quoting H.R. Rep. 106-878, pt.1 at *22 (Sept. 21, 2000)); see also U.S. v. Dick, 173 F. Supp. 2d 765, 769 (E.D. Tenn. 2001).
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> Id.

Castile, 2006 WL 1816371, at *7-8. The Castile Court further opined that

> the officers could have justified a warrantless search of the room based on the smell of methamphetamines alone without the seizure of the wallet and discovery of the receipts for precursors based on the exigent circumstances created by the dangers associated with methamphetamine production. . . . While the officers procured a search warrant for the hotel room prior to their search which resulted in the discovery of a multitude of items used in the production of methamphetamine and some actual methamphetamine, we conclude that they would have been justified in searching the room without a warrant based on the dangerous exigent circumstances presented by an active methamphetamine laboratory.

Id. at *8.

In accordance with the reasoning of Castile, we conclude that a warrantless search of the Defendants' hotel room was proper. Our review of the record convinces us that the Defendants' actions did indeed present an immediate threat to public safety. An occupant of the hotel called the authorities complaining of a smell that she suspected was associated with the manufacture of methamphetamine, possibly coming from the room next door. Officer Caldwell arrived on the scene, spoke with the complainant, and detected the odor coming from Room 110. Officer Peterson described the smell as "[s]trong[,]" and Corporal Gray noted a "very strong" odor emanating from the room. When the door was opened, a "chemical cloud" came out of the room. "Air suits" were required before Officer Caldwell and Coroporal Gray could reenter the room to remove the unconscious Defendant Meeks from the room. According to Officer Caldwell, the situation was "[v]ery, very dangerous[,]" and this laboratory was "more dangerous" than usual. The occupants of the adjoining rooms were evacuated following entry into Room 110. Officer Caldwell described the dangers to the occupants: "They faced inhaling toxic chemicals. They risked the danger of an explosion and fire. It could be fatal." A "haz-mat" team was called to the scene. Both of the Defendants were taken to the hospital, and Defendant Meeks was hospitalized for several days following this incident. Furthermore, the officers involved were experienced with cases involving

the manufacturing of methamphetamine. Therefore, we conclude that probable cause to search was present and accompanied by exigent circumstances—the dangers associated with the active production of methamphetamine in a hotel room.

The Defendants attempt to distinguish the case based upon the fact that the officers did not evacuate any occupants of the hotel prior to entering Room 110. Officer Caldwell admitted that not evacuating the occupants of the hotel was a mistake; he testified, "Now looking back on it, we should have evacuated [the occupants of Rooms 109 and 111] first, but that was poor judgment." We decline to distinguish this case from Castile on the officer's admitted mistake in not evacuating occupants of the hotel.

Because we conclude that the initial entry into the hotel room was necessary based upon the immediate threat to the public, the subsequent search pursuant to the warrant that included the officers observations while inside the hotel room was likewise valid. We conclude that the trial court erred by granting the motion to suppress. The judgment of the trial court granting the Defendants' motion to suppress is reversed. For the purposes of clarity on remand, we also vacate the order of dismissal.

CONCLUSION

Based upon the foregoing reasoning and authorities, we reverse the trial court's decision to suppress the evidence seized from the Defendants' hotel room and vacate the order dismissing the indictment. This case is remanded for further proceedings consistent with this opinion.

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DAVID H. WELLES, JUDGE