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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County
Donald B. Hocker, Circuit Court Judge

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SC Court of Appeals

THE STATE,

Respondent,

vs.

JOHN WILLIAM DOBBINS,

Appellant.

Appellate Case No. 2013-002134

BRIEF OF RESPONDENT

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S.C. SUPREME COURT

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STATEMENT OF ISSUE ON APPEAL

Law enforcement officers lawfully entered Appellant's camper under exigent circumstances when they detected the odor of an active methamphetamine lab.

STATEMENT OF THE CASE

Appellant John William Dobbins, Jr., was indicted for manufacturing methamphetamine, possession with intent to distribute methamphetamine, unlawful disposal of methamphetamine waste, and two counts of possession of a controlled substance. Dobbins was tried by jury on September 9-11, 2012, before the Honorable Donald B. Hocker and found guilty as charged. Judge Hocker sentenced Dobbins to an aggregate sentence of twenty-five years imprisonment.

Dobbins appealed his conviction and sentence. Opposing counsel filed a brief pursuant to Anders v. California 386 U.S. 738 (1967). This Court then issued an order requiring the parties brief the issue herein. Respondent's brief follows.

STATEMENT OF FACTS

Deputy Devin Hodges responded to a call for an assault and battery at 3:20 a.m. on November 24, 2011. Upon arriving, Deputy Hodges interviewed the male victim who told Hodges he was assaulted by Sheila Gaynes. Gaynes told the victim when she left that she was returning to the camper where she was staying. This camper belongs to Appellant Dobbins. Deputy Hodges testified that due to the late hour, no judge was available to issue an arrest warrant, but Deputy Hodges decided to go to the camper and try to solve the case. Deputy Hodges testified he intended to arrest Gaynes. Deputy Hodges testified they arrived at Dobbins' camper roughly an hour after he originally received the call about the assault. R.

pp. 31-33.

Deputy Hodges testified in camera that one of the officers went behind the camper and immediately detected the smell of a methamphetamine lab emanating from the trailer. R. p. 34, lines 2-6. Deputy Hodges testified before the jury that he smelled the overwhelming odor of someone manufacturing methamphetamine when he approached the door. R. p. 88, lines 2-23. Deputy Hodges explained the smell is distinctive, describing the smell as “a strong chemical smell. It smells a lot like Coleman camp fuel mixed in with other chemicals. It burns your nose. . . .” R. p. 34, lines 19-22. Deputy Hodges explained he “can distinguish that smell from any other smell.” R. p. 34, lines 24-25. As Deputy Hodges explained to the jury, “Once you smell it you will never forget it.” R. p. 88, line 12.

Deputy Hodges knocked on the door, and Dobbins opened the door. When Deputy Hodges explained they were looking for Gaynes, Dobbins started to slam the door. Deputy Hodges and Officer Marlon Higginbotham entered the trailer. Deputy Hodges saw methamphetamine on the countertop in plain view. A woman, Sandy Wyatt, was asleep in the back of the camper. R. pp. 88-89.

An active methamphetamine lab in a soda bottle was in the bathroom; Deputy Hodges testified that it was in the midst of the methamphetamine manufacturing process. Another plastic bottle containing methamphetamine waste lay in a waste basket. There was Coleman camp fuel under the sink. Law enforcement found hydrogen peroxide, plastic gloves, a pipe for smoking methamphetamine, and small bags with white powdery substances, tubing like the tubing used for the methamphetamine bottle, lye, scales, a mirror with methamphetamine residue on it (the mirror acts as a smooth surface to separate methamphetamine), and a large

amount of cash. There was also a propane canister. R. pp. 90-95.

Officer Nick Moyer testified he was not at the door when Deputy Hodges entered the house – he was out behind the trailer to cutoff a potential escape route for Haynes, but Officer Moyer could smell the methamphetamine. He testified that after law enforcement swept the trailer looking for Gaynes, Dobbins was detained and then consented to have the trailer searched. R. pp. 100-102.

Officer Marlon Higginbotham testified that Deputy Hodges asked him to assist in apprehending Haynes who they were looking for at the camper. The camper was a twenty-six to twenty-eight foot long trailer with only one bathroom. Officer Higginbotham testified Dobbins first opened the door, then shut it when they told him they were looking for Gaynes. Officers entered the trailer “for everyone’s safety.” Methamphetamine lay in plain view in several places. They found an active methamphetamine lab in the bathroom. They subsequently found \$2,000 in cash in the trailer. R. pp. 104-108.

Sergeant Matthew Veal was qualified as an expert witness and is a Methamphetamine Technician with the Laurens County Sheriff’s Office. He processed the materials in the trailer. Sergeant Veal noted that materials associated with the manufacture of methamphetamine pose serious threats. He noted that lithium strips are used in the manufacturing process. The lithium strips are dangerous because they are water reactive. R. pp. 117-119. Sergeant Veal warned of the dangers associated with the kind of active methamphetamine lab known as a “one pot,” testifying as follows:

The lithium strips, the solvent from the Coleman fuel, which is also flammable. If you mix the lithium and you put water with it, it ignites – it makes a fire. And once that Coleman

fuel ignited it could be a bomb, so to speak. And we don't want our officers picking that stuff up as in possible adding water to it or – or making another chemical reaction to make that stuff explode.

R. p. 120, lines 3-11.

Sergeant Veal testified that he wears a Hazmat-type suit, a respirator (because the chemicals give off a smell), and gloves, while carefully dismantling the methamphetamine lab and removing materials to make sure they do not cause additional chemical reactions. R. pp. 120-121. Sergeant Veal immediately smelled the methamphetamine lab upon arriving at the scene. He described the odor as “an ungodly smell” similar to ammonia. R. pp. 121-122.

Sergeant Veal found a coffee grinder, which he explained is used to grind ephedrine or pseudoephedrine pills. R. p. 122. He also found scales and pill bottles with controlled substances inside. Sergeant Veal described a twenty-ounce bottle with a tube sticking out, noting the pink matter inside that would be the filler from ephedrine pills. The pills are broken down with lye and ammonia nitrate. He noted a black ball inside the bottle which was the remnant of a lithium strip. Lithium strips come from lithium batteries. R. pp. 127-130.

Sergeant Veal explained how the two bottles recovered from inside the camper would be used in the manufacturing process:

The first one is your one pot here. You put all your chemicals such as your – our pseudoephedrine, your lye, your lithium, your ammonia nitrate, your ephedrine, in this bottle. And after it conducts its chemical reaction you would take what they call the top layer off of it and you would put it in some type of other container. Then you would take your other 20 ounce bottle with your tube coming out of it. Your HCL generator. And you would take that – the end of that tube and

stick it down into that liquid state and it would conduct another chemical reaction into turning it back into a powdered form.

R. p. 130, line 225 – p. 131, line 7.

State's Exhibit No 16 showed heated propane cylinders used as a torch to "dry out the dope." The methamphetamine is dried from a paste to a powder. R. p. 131, lines 9-15. Sergeant Veal also identified Piranha Lye, another ingredient for the one pot, in one of the exhibits. R. pp. 132-133. The gloves law enforcement found were for the manufacturer's hands to protect them from the chemical reactions incurred in the manufacturing process. R. p. 134. The peroxide found is commonly used to clean "the dope" to take out any yellow, brown, or red tint and make the methamphetamine whiter for aesthetic purposes. R. p. 134. During redirect examination, Sergeant Veal explained the bottle of methamphetamine byproduct, the HCL generator, found in the waste basket was dangerous because the fumes from the HCL generator or the lithium coming in contact with water may cause a fire. R. pp. 173-174.

Howard Childs testified he rented the lot where the camper was located to Dobbins. He testified a porch was built onto the camper. He was unaware of the condition of the tires on the trailer. He testified the camper was on the lot about a year and was not moved. R. pp. 177-179.

Law enforcement recovered approximately 2.5 ounces of methamphetamine from the camper, as well as pill bottles of oxycodone and acetaminophen pills. R. pp. 196-209.

ARGUMENT

Law enforcement officers lawfully entered Appellant's camper under exigent circumstances when they detected the odor of an active methamphetamine lab.

Dobbins contends his Fourth Amendment rights were violated by the warrantless search of his camper. However, upon approaching Dobbins' camper in an attempt to find Gaynes, a suspect in a crime, law enforcement detected the odor of an active methamphetamine lab. This created an exigent circumstance requiring immediate action due to the danger methamphetamine production creates and the inherent mobility of the camper. There was also a realistic danger Dobbins would destroy evidence after he realized law enforcement was at his door. Accordingly, the trial court did not err in denying the motion for suppression.

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV.¹

Deputy Hodges did not implicate a Fourth Amendment concern by merely knocking on Dobbins' door. Kentucky v. King, 131 S. Ct. 1849, 1862 (2011) (“When law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do.”); State v. Wright, 391 S.C. 436, 444, 706 S.E.2d 324, 328 (2011) (finding a law enforcement officer may lawfully go to a person's home and door to interview that

¹ Dobbins does not raise an issue under the South Carolina Constitution. However, even under the state constitution, law enforcement did not indiscriminately or arbitrarily approach the house, but instead had at least a reasonable suspicion they would find Gaines at the residence, who they had probable cause to believe had freshly committed a crime. They went to the camper in an attempt to complete their investigation of the offense. See generally State v. Counts, 413 S.C. 153, 172, 776 S.E.2d 59, 70 (2015).

person); see also Florida v. Jardines, 133 S. Ct. 1409, 1417, n. 4 (2013) (“[I]t is not a Fourth Amendment search to approach the home in order to speak with the occupant, *because all are invited to do that.*” (emphasis in original)).

Dobbins does not seem to suggest law enforcement’s appearance at the camper to investigate a freshly committed assault was improper. See United States v. Christmas, 222 F.3d 141, 145 (4th Cir. 2000) (noting a “community might quickly succumb to a sense of helplessness if police were prevented from responding to the face to face pleas of neighborhood residents for assistance.”). “A voluntary response to a knock at the front door of a dwelling does not generally implicate the Fourth Amendment, and thus an officer generally does not need probable cause or reasonable suspicion to justify knocking on the door and then making verbal inquiry.” United States v. Cephas, 254 F.3d 488, 493 (4th Cir. 2001).

In Cephas, a police officer received an anonymous tip that Cephas was smoking marijuana with a fourteen year old in his apartment. The officer investigated and found Cephas’ apartment and knocked on the apartment door. When Cephas opened the door, the officer smelled marijuana from the apartment. Cephas tried to close the door on the officer, but the officer forced his way inside and found a gathering of people and a marijuana roach in an ashtray. Id. at 490-91.

Reversing the district court’s suppression of evidence, the Fourth Circuit found that “[w]hen Cephas opened his apartment door without knowing who was on the other side, he voluntarily exposed to the public any odors and such a view as one standing at the door could perceive.” Id. at 494.

Exigent circumstances – probable cause to believe an active methamphetamine lab was inside the camper – resulted in a proper warrantless entry into Dobbins’ camper. “Warrantless entries into a residence are presumptively unreasonable.” Cephas at 494. However, an exception to the warrant requirement may occur based on exigent circumstances. Id. “Warrants are generally required to search a person’s home or his person unless the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” Brigham City, Utah v. Stuart, 126 S.Ct. 1943 (2006) (citations and internal quotation marks omitted).

The odor of an active methamphetamine lab creates the exigent circumstances justifying an immediate warrantless entry in the home. “Jurisdictions that have tackled the issue have held that the dangers posed by an operating methamphetamine lab are sufficient to constitute an exigent circumstance for purposes of conducting a warrantless search of a residence.” Williams v. State, 995 So.2d 915, 920 (Ala. Crim. App. 2008).

Methamphetamine manufacturing and the ingredients used in the manufacture of methamphetamine creates the risk of explosion, fire, noxious gas emissions, and injurious chemical reactions that constitutes an exigency. In United States v. Layne, 324 F.3d 464, 468–69 (6th Cir.2003), the Court of Appeals noted methamphetamine production ““poses serious dangers to both human life and to the environment ... [and] 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.”” Id. (quoting H.R. Rep. 106–878, pt. 1 at 22 (September 21, 2000)).

The Iowa Supreme Court found “[t]he volatile nature of the dangers created by methamphetamine labs can be exigent circumstances justifying an immediate limited search of premises harboring such a lab.” State v. Simmons, 714 N.W.2d 264, 273 (Iowa 2006). Likewise, the Eighth Circuit found the volatile nature of methamphetamine labs present exigent circumstances justifying an immediate limited search after officers smelled an odor associated with methamphetamine production. Kleinholz v. United States, 339 F.3d 674, 676-77 (8th Cir. 2003). The Tenth Circuit found the strong odor of methamphetamine production emanating from a residence and the agent’s awareness of the inherent dangers of an active methamphetamine lab contributed to the reasonable grounds for law enforcement to immediately enter the home to protect the public. United States v. Rhiger, 315 F.3d 1283, 1289-90 (10th Cir. 2003). The Ninth Circuit opined “faced with a potential disaster in the form of an ether explosion and fire . . . exigent circumstances existed because . . . a reasonable person could have believed that immediate entry was necessary to safeguard public safety . . .” United States v. Wilson, 865 F.2d 215, 217 (9th Cir. 1989). “The potential hazards of methamphetamine manufacture are well documented, and numerous cases have upheld limited warrantless searches by police officers who had probable cause to believe they had uncovered an ongoing methamphetamine manufacturing operation.” United States v. Walsh, 299 F.3d 729, 734 (8th Cir. 2002). The Ninth Circuit found the odor that law enforcement associated with methamphetamine production emanating from an apartment constituted an exigent circumstance allowing entry under the emergency exception to the warrant requirement, which is invoked when law enforcement’s assistance is immediately needed to protect life or property. United States v. Cervantes, 219 F.3d 882 (9th Cir. 2000).

Note the United States Supreme Court in Stuart abrogated the Cervantes' test for the emergency exception because it relied on a subjective analysis of the officers' actions. Stuart noted the inquiry should be on objective basis, noting subjective motivations of police officers are irrelevant. Stuart, at 404-05 ("An action is reasonable under the Fourth Amendment, regardless of the individual officer's state of mind, as long as the circumstance, viewed *objectively*, justifies the action." (citations and internal quotations omitted, emphasis in the original)).

Further, Dobbins shut the door immediately when he realized law enforcement was present at the door. Any delay ran the risk of evidence being destroyed, creating a further exigency. United States v. Santana, 427 U.S. 38, 42 (1976) (noting that once the suspect saw police and fled inside the house, there was a realistic expectation that any delay could result in the destruction of evidence).

Adding to the exigency of the situation is the inherently mobile nature of the camper.² See California v. Carney, 471 U.S. 386, 393 (1985) (finding that motor home possessed some attributes of a home, nonetheless the motor home was readily mobile and therefore laid within the scope of the exception in Carroll v. United States, 267 U.S. 132 (1925) (inherent mobility of automobile constitutes an exigency for a warrantless search)).

Once inside the camper, law enforcement saw methamphetamine in plain view and a protective sweep of the camper revealed a batch of methamphetamine in the midst of production. Dobbins does not challenge the efficacy of his consent to search the trailer that came after the seizure of the items in plain view.

² See State's Exhibit No. 1 (mobile home).

“When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm the trial judge’s ruling if there is any evidence to support the ruling.” State v. Weaver, 374 S.C. 313, 649 S.E.2d 479 (2007). In the instant case, the evidence demonstrates Deputy Hodge’s objective basis for the warrantless search based on the exigency created by his detection of odors that Deputy Hodges associated with an active methamphetamine lab. Accordingly, the trial court did not err in denying Dobbins’ motion to dismiss.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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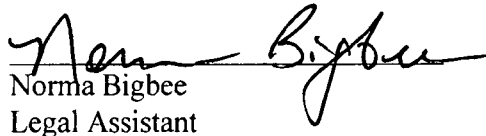
Appellant.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Benjamin J. Tripp, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, PO Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 4th day of November, 2015.


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Legal Assistant

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