

RENDERED: JUNE 24, 2005; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-001153-MR

BOBBY WAYNE RUSHING

APPELLANT

APPEAL FROM HENDERSON CIRCUIT COURT  
v. HONORABLE STEPHEN A. HAYDEN, JUDGE  
ACTION NO. 03-CR-00394

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: KNOPF, TAYLOR, AND VANMETER, JUDGES.

TAYLOR, JUDGE: Bobby Wayne Rushing brings this appeal from a June 4, 2004, judgment of the Henderson Circuit Court upon a conditional guilty plea to various drug related offenses. We affirm.

The facts are these. Officer Shane Onstott of the Henderson City Police Department was on patrol when he detected the smell of ether. He then called Officer Shannon Troutman to assist him in investigating the ether smell. Both officers testified that the ether odor emanated from the basement of a

nearby residence. Also, the officers found mason jars with a strong odor in a nearby ditch. The officers learned the basement contained an apartment that was rented to Chastity Sheridan and her boyfriend, Houston Goldsberry. Officer Onstott testified that he knocked on the basement door several times but had to leave because of the overwhelming toxic odor. Officer Troutman testified that he heard persons running inside the basement apartment and believed that they were destroying evidence. The officers further testified that they viewed the situation as extremely dangerous and considered wearing gas masks. Upon contacting the county attorney, the county attorney advised the police officers to enter the apartment, secure it, and remove the occupants therefrom.

In effectuating the county attorney's instructions, the officers again knocked on the basement apartment's door and Goldsberry answered the door. Upon entry, the officers discovered in plain view mason jars with an odor emanating therefrom and other items of drugs paraphernalia. Appellant was at the residence at the time of the search and was placed under arrest. He was subsequently indicted by the Henderson County Grand Jury upon the offenses of manufacturing methamphetamine, possession of drug paraphernalia, and tampering with physical evidence.

Appellant filed a motion to suppress all evidence derived from the warrantless search of the basement apartment. Appellant contended the warrantless search was unconstitutional and that all evidence emanating therefrom should be suppressed. The circuit court ultimately denied the motion. Thereupon, appellant entered a conditional guilty plea to the above offenses and was sentenced to a total of ten years' imprisonment. Ky. R. Civ. P. (RCr) 8.09. This appeal follows.

Appellant contends the circuit court committed error by denying his motion to suppress evidence seized from the warrantless search of the basement apartment. Upon review of a trial court's decision to deny a motion to suppress evidence, the trial court's findings of fact are deemed conclusive if supported by substantial evidence of a probative value; however, issues of law are reviewed de novo. RCr 9.78; Diehl v. Commonwealth, 673 S.W.2d 711 (Ky. 1984).

Appellant argues the warrantless entry and search of the apartment violated his right to be free from unreasonable searches and seizures as guaranteed under the Fourth Amendment to the United States Constitution and Section 10 of the Kentucky Constitution. We must disagree.

It is well-established that exigent circumstances justify a warrantless entry and search of a residence. Under the exigent circumstances exception to the warrant requirement,

a warrantless entry and search of a residence is permitted when there is a compelling need for official action and there is no time to secure a warrant. Exigent circumstances justifying a warrantless entry are those that require "swift action to prevent imminent danger to life or serious danger to property, or to forestall imminent escape of a suspect or destruction of evidence." 68 Am. Jur. 2d Searches and Seizures § 134 (2000).

In the case at hand, the officers testified that the odor of ether emanating from the residence was very strong and that they considered the situation to be dangerous. It is common-knowledge that the chemicals involved in the manufacture of methamphetamine pose significant public health and safety issues. Considering the strong smell of ether, the jars found in a nearby ditch, and the elusive behavior of the residents in the basement apartment, we think it was reasonable for the officers to have concluded that a methamphetamine lab was present in the basement apartment. Thus, we are of the opinion that the health and safety risk to the public justified immediate police entry into the basement apartment.

Accordingly, the warrantless search of the basement apartment was justified under the exigent circumstances exception to the general warrant requirement of the Fourth Amendment to the United States Constitution and Section 10 of the Kentucky Constitution. As such, the circuit court properly

denied appellant's motion to suppress evidence derived from the warrantless search of the basement apartment.

We view appellant's remaining contention as moot.

For the foregoing reasons, the judgment of the Henderson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kim Brooks Tandy  
Covington, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

Gregory C. Fuchs  
Assistant Attorney General  
Frankfort, Kentucky