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Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002480-MR
&
NO. 2004-CA-002488-MR
&
NO. 2004-CA-002489-MR

BRIAN BOTTOM and
MELISSA BOTTOM — APPELLANTS

v.

APPEALS FROM RUSSELL CIRCUIT COURT
HONORABLE VERNON MINIARD, JR., JUDGE
INDICTMENT NOS. 04-CR-00047 and 04-CR-00049

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; HUDDLESTON AND KNOPF, SENIOR JUDGES.[1]

HUDDLESTON, SENIOR JUDGE: Brian Bottom and his ex-wife, Melissa Jean Bottom, appeal from conditional guilty pleas that each entered to various drug-related felony charges. Both Brian and Melissa argue that the police lacked reasonable and articulable suspicion when they initially approached Brian's home and

[1] Senior Judges Joseph R. Huddleston and William L. Knopf sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

knocked upon his door seeking to talk to him and Melissa. Finding that reasonable and articulable suspicion was not necessary, we affirm.

On April 6, 2004, Melissa visited a farm supply store in Adair County and wandered around inside. When asked if she needed help, Melissa stated she wanted to buy dog collars. After being told that the store did not carry the items she sought, Melissa immediately grabbed two 16-ounce bottles of iodine, purchased them and left the store. The store manager found Melissa's behavior odd and, knowing that iodine is often used in the manufacture of methamphetamine, followed her out of the store and watched her leave. The manager noted the make, model and license of Melissa's car and contacted the Adair County Sheriff's Department. The sheriff's department, in turn, contacted the Kentucky State Police (KSP).

Once the information reached the KSP, Scott Hammond, a State Police detective, together with Chief Joey Hoover of the Jamestown Police Department and Chief Joe Michael Irvin of the Russell Springs Police Department, began an investigation. Since they had the license plate number of the car, the officers quickly discovered that it belonged to Melissa and Brian. Knowing where Brian lived, the officers proceeded to Brian's home and drove by it a couple of times until they spotted

Melissa's vehicle. The officers then retreated to discuss their options.

Although the officers had located Melissa's car at Brian's home, they knew that they lacked probable cause to secure a warrant to search the home. So after discussing the situation, the officers decided to undertake a so-called "knock and talk".[2] Later that evening, the officers went to Brian's home. Detective Hammond knocked, and both Brian and Melissa came to the door. Both stepped outside onto the front porch and closed the door behind them. While the detective spoke with the Bottoms, the officers noticed iodine stains on Melissa's hands and detected the chemical odors associated with a methamphetamine lab emanating from the home. The officers questioned Melissa about the iodine she had purchased and eventually asked Brian if they could search his house. Brian refused.

After Brian refused the request to search, the officers decided to seek a search warrant based on the chemical odor they had detected and the stains they had observed on Melissa's hands.

[2] A "knock and talk" is a straight-forward, non-custodial police investigative procedure. An officer approaches an individual's residence and identifies himself as an officer. The officer eventually requests permission to search the residence. *United States v. Hardeman,* 36 F. Supp 2d 770, 777 (E.D. Mich. 1999), citing *United States v. Miller,* 933 F. Supp. 501, 505 (M.D.N.C. 1996).

While two officers obtained a search warrant, two other officers stayed at Brian's home to keep Brian and Melissa from re-entering the home in order to preserve any evidence that may have been present. While the two officers remained at the scene, Brian offered to pay each officer $1,000.00 if they would allow him and Melissa to re-enter the home for fifteen minutes. The officers declined.

After obtaining a search warrant, the two officers returned and the home was searched. The police discovered drug paraphernalia, a quantity of marijuana, approximately $2,000.00 in cash and several components used in the manufacture of methamphetamine.

Following completion of the investigation, Brian was charged in an indictment with one count of manufacturing methamphetamine, a Class B felony, one count of possession of marijuana, a Class A misdemeanor, and one count of possession of drug paraphernalia, also a Class A misdemeanor. In the same indictment, Melissa was charged with one count of manufacturing methamphetamine, a Class B felony, one count of possession of marijuana, a Class A misdemeanor, and one count of possession of drug paraphernalia, second offense, a Class D felony. In a separate indictment, Brian was charged with two counts of bribery of a public servant, a Class C felony.

After being indicted, Brian and Melissa moved to suppress the evidence obtained as a result of the search of Brian's home. They argued that to conduct a "knock and talk" the officers needed, at least, reasonable and articulable suspicion that criminal activity was happening inside the home. According to Brian and Melissa, the officers lacked the requisite suspicion.

Following an evidentiary hearing, Russell Circuit Court denied the couple's suppression motion finding that the officers had the necessary reasonable and articulable suspicion to believe that criminal activity was occurring inside Brian's home. After the adverse ruling on their suppression motion, Brian and Melissa entered conditional guilty pleas to several felony counts, including manufacturing methamphetamine, and both reserved the right to appeal from the denial of their suppression motion.

On appeal, Brian and Melissa argue, as they did below, that for officers to use the "knock and talk" investigative procedure, they must have a reasonable and articulable suspicion that criminal activity is afoot. In other words, before the officers could have approached Brian's home, they had to have had some reasonable and articulable suspicion that criminal activity was taking place inside the home. According to Brian and Melissa, because the officers lacked such reasonable and

articulable suspicion, the circuit court erred when it denied their suppression motion.

When we review suppression issues, we engage in a two-part analysis. First, we examine the circuit court's findings of fact. If the factual findings are supported by substantial evidence, then we defer to them as conclusive. Second, we review *de novo* the court's application of the law to the facts.[3]

In this case, the facts are not in dispute. Since the facts are conclusive, we turn to the circuit court's application of the law to the facts. We have found little caselaw in this Commonwealth addressing the "knock and talk" procedure; however, the federal courts have addressed the procedure and have found that it is a reasonable investigative tool for officers to use in an attempt to gain an individual's consent to search that individual's residence.[4] In *United States v. Cormier*,[5] the United States Court of Appeals for the Ninth Circuit had this to say about the "knock and talk" procedure used by police:

> Cormier also raises the question of whether reasonable suspicion or probable cause is necessary to justify a "knock and talk" by police. The Fourth Amendment protection against unreasonable searches and seizures is not limited to one's home, but also extends to such places as hotel or motel

[3] *Commonwealth v. Neal,* 84 S.W.3d 920, 923 (Ky. App. 2002).

[4] *United States v. Jones,* 239 F.3d 716, 720 (5th Cir. 2001). *See also United States v. Tobin,* 923 F.2d 1596, 1511 (11th Cir. 1991), and *United States v. Chambers,* 395 F.3d 563, 568 (6th Cir. 2005).

[5] 220 F.3d 1103 (9th Cir. 2000).

rooms. (Citation omitted.) Because Cormier had a reasonable expectation of privacy in his motel room, the question is whether he voluntarily opened the door or, alternatively, whether there were coercive circumstances that turned an ordinary consensual encounter into one requiring objective suspicion. *See Davis v. United States*, 327 F.2d 301, 303-304 (9th Cir. 1964); see also *United States v. Jerez*, 108 F.3d 684, 691-92 (7th Cir. 1997) (recognizing that a "knock and talk" is ordinarily consensual unless coercive circumstances such as unreasonable persistence by the officers turn it into an investigatory stop); *United States v. Kim*, 27 F.3d 947, 951 (3d Cir. 1994)(finding in an almost identical case that a polite knock on the door without accompanying coercive circumstances does not create a nonconsensual encounter).

This court stated the general rule regarding "knock and talk" encounters almost forty years ago in the following passage:

Absent express orders from the person in possession against any possible trespass, there is no rule of private or public conduct which makes it illegal per se, or a condemned invasion of the person's right of privacy, for anyone openly and peaceably, at high noon, to walk up the steps and knock on the front door of any man's "castle" with honest intent of asking questions of the occupant there of whether the questioner be a pollster, a salesman, or an officer of the law.

Davis, 327 F.2d at 303. That view has now become a firmly-rooted notion in Fourth Amendment jurisprudence. *See Jerez*, 108 F.3d at 691; *United States v. Taylor,* 90 F.3d 903, 909 (4th Cir.1996); *United States v. Roberts,* 747 F. 2d 537, 543 (9th Cir. 1984. The facts of this case fall under the general rule of *Davis.* Here, Peters knocked

> on the door for only a short period spanning seconds. In addition, Peters never announced that she was a police officer while knocking nor did she ever compel Cormier to open the door under the badge of authority. Because there was no police demand to open the door, *see United States v. Winsor,* 846 F.2d 1569, 1573 n. 3 (9th Cir.1988) (en banc), and Peters was not unreasonably persistent in her attempt to obtain access to Cormier's motel room, *see Jerez*, 108 F.3d at 691-92, there is no evidence to indicate that the encounter was anything than consensual. Therefore, no suspicion needed to be shown in order to justify the "knock and talk." *See Florida v. Bostick,* 501 U.S. 429, 434, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991).[6]

In this case, the encounter between the officers and the Bottoms was consensual, that is, Brian and Melissa responded to the knock on the door absent any police coercion and engaged in conversation with the officers. Since there was nothing outside Brian's home to suggest that visitors were not free to approach it and since the encounter with Brian and Melissa was non-coercive, the officers did not need a reasonable and articulable suspicion to conduct the "knock and talk".

Although the circuit court denied Brian's and Melissa's suppression motion for the wrong reason, it came to the correct conclusion. It is well settled that a lower court's decision will be upheld if it reached the correct conclusion, even if for the wrong reason.[7] Since Russell Circuit Court came

[6] *Id*. at 1108-1109.

[7] *Jarvis v. Commonwealth,* 960 S.W.2d 466, 469 (Ky. 1998).

to the correct conclusion, we affirm its denial of Brian and Melissa's motion to suppress and we affirm the judgments.

ALL CONCUR.

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