

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

NO. 2005-CA-001536-MR

KEVIN RAY WILSON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE THOMAS L. CLARK, JUDGE  
ACTION NO. 04-CR-00808

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: MILLER,<sup>1</sup> SPECIAL JUDGE; MINTON<sup>2</sup> AND SCHRODER, JUDGES.

MILLER, SPECIAL JUDGE: Kevin Ray Wilson brings this appeal after having entered a conditional guilty plea<sup>3</sup> in Fayette Circuit Court on May 4, 2005. We affirm.

Wilson was indicted on June 29, 2004, on two counts of Second Degree Robbery.<sup>4</sup> He was also charged as being a

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<sup>1</sup> Retired Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

<sup>2</sup> Judge John D. Minton, Jr. concurred in this opinion prior to his resignation effective July 25, 2006, to accept appointment to the Kentucky Supreme Court. Release of the opinion was delayed by administrative handling.

<sup>3</sup> Kentucky Rules of Criminal Procedure (RCr) 8.09.

<sup>4</sup> Kentucky Revised Statute (KRS) 515.030.

Persistent Felony Offender First Degree (PFO).<sup>5</sup> Wilson brought this appeal after having been denied a motion to suppress evidence entered on December 16, 2004.<sup>6</sup>

Bank One on Euclid Avenue in Lexington, Kentucky was robbed on April 19, 2004, by a person described as a white male. The police were alerted and furnished with a description of the robber. Shortly afterwards, detectives learned that a man fitting the description had entered the nearby Chevy Chase Inn and ordered alcoholic drinks. After paying \$50 for the drinks, the man summoned a taxi. The police contacted the taxi company, and it was learned that the suspect was dropped off in an area where a number of motels were located. Following additional investigation, the police suspected the man had taken refuge in The Knight's Inn. The officers decided to knock on the doors of said motel after being furnished with a picture of the suspect taken by the bank surveillance camera. Fortuitously, the suspect was discovered in the first room approached, Room 231.

The testimony is contradictory with respect to what occurred after the police initially knocked on the door of Room 231. Wilson testified that the door was "busted" down by police. In support of his testimony, he offered several photographs depicting damage to the door. The trial court made

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<sup>5</sup> KRS 532.080.

<sup>6</sup> Wilson sought to exclude evidence obtained surrounding his arrest.

the following finding of fact: "The damage evidenced by the photos is not consistent with breaking down the door but more consistent with damage one might expect from a much less than four star accommodations (sic)." The court accepted the Commonwealth's version of the facts, and found that the door was voluntarily opened by one, Bruce Dawson, who was inside the room with Wilson.

The trial court also found that the police had probable cause to enter the motel room at this juncture, because the appellant was clearly observed by the detectives and they had reason to believe he had committed the robbery at Bank One. Further, the court found that exigent circumstances existed largely because of the possibility of evidence being destroyed before a warrant could be obtained.<sup>7</sup>

The standard of review for suppression issues is set forth in RCr 9.78. We must first determine whether the trial court's findings of fact are supported by substantial evidence. Commonwealth v. Neal, 84 S.W.3d 920 (Ky.App. 2002). If they are, then they are conclusive. Based on those findings, we must then conduct a *de novo* review of the trial court's application of law to determine whether its decision is correct. Id.;

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<sup>7</sup> Testimony by the police detectives indicates they had heard what appeared to be a toilet flushing and hurried movement inside the motel room as the officers knocked on the door.

Adcock v. Commonwealth, 967 S.W.2d 6 (Ky. 1998); Commonwealth v. Opell, 3 S.W.3d 747 (Ky.App. 1999).

Wilson first contends that the trial court erred in its finding of fact that the police did not "bust" down the door of the motel room occupied by Wilson. Appellant asserts, *inter alia*, that the testimony given by the police detectives is suspect, and that the damage inflicted on the motel room door is consistent with someone breaking in, and therefore the trial court erroneously found otherwise. We disagree.

Three Lexington Police Detectives testified that the door was not "busted" in, but rather voluntarily opened by Dawson after extensive knocking. Dawson corroborated the police officer's testimony. The damage to the door was found by the trial court to be consistent with wear and tear of "this type of motel." The trial court's conclusion that the door was voluntarily opened by Dawson, and not broken in, is supported by substantial evidence, and thus is conclusive. RCr. 9.78.

Appellant next contends that the police had no legal authority to enter the motel room even after the door was voluntarily opened and Wilson was observed inside.

The general rule is that a warrantless entry into a home is unreasonable, and therefore unconstitutional, unless one of the exceptions to the warrant requirement is invoked. One of the exceptions to the rule is the existence of exigent

circumstances. See, Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). Absent probable cause and the existence of exigent circumstances, the police may not conduct warrantless entries into a suspect's home to make a felony arrest. Id. Exigent circumstances include situations where a suspect is in "hot pursuit", an immediate threat is posed to the officers or the public, or when a possibility exists that evidence will be destroyed. See, Taylor v. Commonwealth, 577 S.W.2d. 46 (Ky.App. 1979).

Kentucky courts, adopting the rule in Stoner v. California, 376 U.S. 483, 84 S.Ct. 889, 11 L.Ed.2d 856 (1964), have held that occupants of hotel and motel rooms are entitled to the same protections against unreasonable searches and seizures. See Commonwealth v. Johnson, 777 S.W.2d 876 (Ky. 1989) and Commonwealth v. McManus, 107 S.W.3d 175 (Ky. 2003). In the matter at hand, the trial court unequivocally found that exigent circumstances existed (in particular an immediate threat to the safety of officers at the scene and the possible destruction of evidence). The trial court stated:

At the time the police officers clearly observed the Defendant in the open motel room they had probable cause to believe he had committed the robbery . . . . The police had reason to believed (sic) that he may be armed and dangerous and **for officers safety had the right to enter the motel room for the safety of the officers and other civilians within the vicinity.** Taylor v.

Commonwealth, Ky.App., 577 S.W.2d 46 (1979).  
Further, **the Court finds there was the  
exigent circumstance of preventing the  
destruction of evidence** of the crime in as  
much the officer testified they had already  
heard movement and the toilet flushing upon  
their initial knocking on the door.  
Commonwealth v. McManus, Ky., 107 S.W.3d 175  
(2003) (emphasis added).

Several police detectives testified to facts supporting the  
trial court's conclusion that exigent circumstances were  
present. In particular, the officers testified that they feared  
an immediate threat to their safety and that they were concerned  
that Wilson may attempt to destroy evidence linking him to the  
robbery of Bank One, i.e., U.S. currency. These circumstances,  
in our view, authorized the warrantless entry.

For the foregoing reasons the judgment of the Fayette  
Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Herbert T. West  
Lexington, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

David W. Barr  
Assistant Attorney General  
Frankfort, Kentucky