

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

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| STATE OF OHIO | : | |
| Plaintiff-Appellee | : | C.A. CASE NO. 23800 |
| v. | : | T.C. NO. 2009CR1519 |
| MATT C. GOODWIN | : | (Criminal appeal from Common Pleas Court) |
| Defendant-Appellant | : | |

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OPINION

Rendered on the 29th day of December, 2010.

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FROELICH, J.

{¶ 1} After the Montgomery County Common Pleas Court overruled his motion to suppress, Matt Goodwin pled no contest to illegal cultivation of marijuana in an amount equal to or greater than 5,000 grams, but less than 20,000 grams (in the vicinity of a school or juvenile), a second degree felony, and possession of

criminal tools, a fifth degree felony. The trial court found him guilty and sentenced him accordingly.

{¶ 2} Goodwin appeals from his conviction, claiming that the trial court erred in denying his motion to suppress. For the following reasons, the trial court's judgment will be affirmed.

I

{¶ 3} At the suppression hearing,¹ the State presented the testimony of Dayton Police Officers Danielle Cash and Ferdinand Leal and Detective Dennis Murphy. Their testimony established the following facts.

{¶ 4} At 12:55 a.m. on May 11, 2009, Officers Cash and Leal were dispatched to 629 Corwin Street in Dayton on a report by neighbors of a possible prowler at the residence. The neighbors reported seeing two males running from the rear of the residence, that lights were on in the house, that they had not seen lights on in the house in the two weeks that they had lived next door, and that they believed that someone was breaking in. Upon arriving at the residence, Officer Cash spoke with the neighbors while Officer Leal watched the front of the house. Officer Cash learned that the neighbors had also heard rustling inside the house. The officers approached 629 Corwin as a possible burglary in progress.

{¶ 5} Officer Cash went to the front of the house while Officer Leal walked to

¹The trial court held a joint suppression hearing on Goodwin's motion to suppress and a suppression motion filed by Goodwin's co-defendant, Joseph Wendling. Although Wendling testified for purposes of his own motion, he did not testify for purposes of Goodwin's motion. Goodwin did not testify or call any witnesses on his (Goodwin's) behalf.

the rear. Once Officer Cash was standing on the porch, she heard people walking around inside and a television running. Cash proceeded to “pound” on the front door with her flashlight and call “Dayton Police” very loudly. Cash continued to knock on the door for several minutes. Although two vehicles were in the driveway, no one came to the front door.

{¶ 6} Officer Leal investigated the rear of the house. The officer shined his flashlight in the bushes and on the back door. He noticed that both the storm door and the wooden back door were ajar, and the lock appeared to be broken and recently tampered with. Officer Leal could hear someone moving around inside. Leal believed that there were suspects inside the house, and he radioed for back-up. When Officers Wombold, Bogner, and Perry arrived, Officer Wombold remained in the front of the home with Officer Cash while the other officers went to the rear to assist Officer Leal. From the rear of the residence, Officer Leal could hear Officer Cash knocking very loudly on the front door.

{¶ 7} Prior to entering the house, the officers in the rear of the house drew their weapons and asked for a Code A, which prohibited anyone else from using the radio except for them until they finished checking the house. The reason for the Code A was to ensure that no unrelated radio traffic would interfere with any emergency calls when they entered the house. Officer Leal, followed by Officer Bogner then Officer Perry, went through the back door and into a small laundry room. As soon as Officer Leal entered the home, he smelled “a strong odor of raw marijuana.” Officer Leal announced, “Dayton Police.”

{¶ 8} The door from the laundry room into the kitchen started to open, and

the officers encountered an individual, who was later identified as Goodwin. Leal told Goodwin to show his hands and asked if he lived there. Goodwin responded that he was the tenant. Officer Leal requested Goodwin to provide a form of identification; Goodwin was unable to provide identification. Officer Leal also asked Goodwin if anyone else were inside the home. At that time, a tall male later identified as Joseph Wendling came from the dining room into the kitchen. Wendling stated that he was the owner and landlord of the house. Upon request, Wendling provided the officers with identification; the identification indicated that Wendling lived on Huffman Avenue.

{¶ 9} Officer Leal stayed in the kitchen with Goodwin and Wendling while Officers Bogner and Perry searched the dining room, living room, and upstairs for additional people. From the kitchen, Officer Leal could see black plastic flower pots and, on the dining room table, a laundry basket full of dried marijuana. Officers Leal and Bogner then went into the basement to look for more suspects. The officers saw dried marijuana hanging from the ceiling and marijuana plants of various sizes. The officers found no additional suspects.

{¶ 10} Goodwin and Wendling were handcuffed and placed in separate police cruisers outside. Officer Leal informed Goodwin and Wendling of their *Miranda* rights; both declined to speak to the police. The officers contacted their supervisor, Sergeant Ponichtera, who called for detectives. The house was secured by uniformed officers. The officers did not touch any of the marijuana or collect any evidence.

{¶ 11} Shortly after 2:00 a.m., Detectives Dennis Murphy and Kevin Bollinger

responded to 629 Corwin Street. Detective Murphy was briefed on the situation. After confirming with Goodwin that he had been read his *Miranda* rights, Murphy asked if Goodwin would agree to talk; Goodwin declined to speak with the detective. Detective Murphy then approached Wendling, who agreed to speak with the detective and made statements. Afterward, Detective Murphy prepared an affidavit for a search warrant. The detective obtained a search warrant at 4:00 a.m. Detective Murphy returned to the residence and executed the warrant. He recovered dried marijuana, marijuana plants, suspected cocaine, grow lamps, a digital scale, cash, and other items from the house.

{¶ 12} Goodwin subsequently moved to suppress any statements by Goodwin and any evidence obtained as a result of Goodwin's arrest or the execution of the search warrant. Goodwin claimed that the police had unlawfully entered his residence without a warrant and without probable cause, conducted an unlawful search, and unlawfully seized property. He argued that, because the officers' initial activity was unlawful, all evidence flowing from that activity must also be suppressed as fruit of the poisonous tree. After a hearing on the motion, Goodwin filed a supplemental brief, which identified two issues: (1) whether the facts and circumstances justified the officers' warrantless entry into his home, and (2) assuming that the entry was lawful, whether the officers went beyond the exceptions to the warrant requirement in conducting a "full search" of his home.

{¶ 13} On October 20, 2009, the trial court overruled Goodwin's motion to suppress. The court found that "the combination of the information conveyed to the police by the neighbors, the failure of Wendling and Goodwin [to] answer the

door when the police knocked and announced themselves, the broken door lock and the failure of the defendants to produce identification that connected them to the residence constituted exigent circumstances that permitted the search of the residence for additional persons.” The trial court further found that the search warrant was proper and based on the probable cause and that Goodwin’s arrest was based on probable cause. Because there was no testimony that Goodwin had made statements, the court overruled that portion of Goodwin’s motion as moot.

{¶ 14} Goodwin subsequently pled no contest to illegal cultivation of marijuana and possession of criminal tools. After a pre-sentence investigation, the court sentenced him to community control for up to five years, suspended his driver’s license for six months, and imposed a fine of \$520.

{¶ 15} Goodwin appeals from his conviction, raising one assignment of error.

II

{¶ 16} Goodwin’s sole assignment of error states:

{¶ 17} “THE TRIAL COURT ERRED IN FINDING THE WARRANTLESS ENTRY INTO APPELLANT’S HOME WAS JUSTIFIED UNDER THE DOCTRINE OF ‘EXIGENT CIRCUMSTANCES.’”

{¶ 18} In his assignment of error, Goodwin claims that the trial court erred in finding that the officers’ entry into his home was justified under the exigent circumstances exception to the warrant requirement and, further, that the officers’ search of his entire home “went well beyond the scope of any immediate authority.”

Goodwin does not dispute any other portion of the trial court’s ruling on his suppression motion.

{¶ 19} In addressing a motion to suppress, the trial court assumes the role of the trier of fact. *State v. Morgan*, Montgomery App. No. 18985, 2002-Ohio-268, citing *State v. Curry* (1994), 95 Ohio App.3d 93, 96. The court must determine the credibility of the witnesses and weigh the evidence presented at the hearing. *Id.* In reviewing the trial court's ruling, an appellate court must accept the findings of fact made by the trial court if they are supported by competent, credible evidence. *Id.* However, "the reviewing court must independently determine, as a matter of law, whether the facts meet the appropriate legal standard." *Id.*

{¶ 20} The Fourth Amendment to the United States Constitution prohibits warrantless searches and seizures, rendering them per se unreasonable unless an exception applies. *Katz v. United States* (1967), 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576; *State v. Cosby*, 177 Ohio App.3d 670, 2008-Ohio-3862, ¶16. Exigent circumstances are a well-established exception to the Fourth Amendment's warrant requirement. *State v. Andrews*, 177 Ohio App.3d 593, 2008-Ohio-3993, ¶23; *State v. Berry*, 167 Ohio App.3d 206, 2006-Ohio-3035, ¶12.

{¶ 21} "Generally, the exigent-circumstances exception to the Fourth Amendment's warrant requirement can apply when the delay associated with obtaining a warrant would result in endangering police officers or other individuals, or would result in concealment or destruction of evidence." *State v. Johnson*, Montgomery App. No. 23616, 2010-Ohio-1790, ¶14. Accordingly, the exigent or emergency circumstances exception justifies an officer's warrantless entry into a building when such entry "is necessary to protect or preserve life, to prevent physical harm to persons or property, or to prevent the concealment or destruction

of evidence, or when someone inside poses a danger to the police officer's safety.”

State v. Sharpe, 174 Ohio App.3d 498, 2008-Ohio-267, ¶48, citations omitted. “The key issue is whether the officers ‘had reasonable grounds to believe that some kind of emergency existed * * *. The officer must be able to point to specific and articulable facts, which, taken with rational inferences from those facts, reasonably warrant intrusion into protected areas.’ ” *State v. Prater*, Clark App. No. 06-CA-89, 2008-Ohio-6730, ¶21, quoting *State v. White*, 175 Ohio App.3d 302, 2008-Ohio-657, ¶17. The police “bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches or arrests.” *Welsh v. Wisconsin* (1984), 466 U.S. 740, 750, 104 S.Ct. 2091, 80 L.Ed.2d 732.

{¶ 22} We have recognized that, “[w]hen police reasonably believe that a burglary is in progress or has occurred at a particular structure, an immediate warrantless entry undertaken to investigate and protect that property and assist any victims inside who may be in danger or in need of immediate aid has been upheld by the courts as a reasonable search.” *State v. Overholser* (July 25, 1997), Clark App. No. 96-CA-73, citing Lafave, Search and Seizure, Section 6.6(a) and (b). See, e.g., *State v. McKinley*, Montgomery App. No. 21668, 2007-Ohio-3705, ¶14; *State v. Wilson*, Clinton App. No. CA2006-03-008, 2007-Ohio-353 (citing cases).

{¶ 23} In arguing that exigent circumstances did not exist in his case, Goodwin emphasizes that the neighbors reported seeing two men running away from, not toward, 629 Corwin Street and that Wendling had testified that he heard knocking, but no announcement that the police were at the door. Goodwin further notes that the officers had no indication that anyone inside the residence was in

distress.

{¶ 24} Upon review of the totality of the circumstances, we find ample support for the conclusion that exigent circumstances justified the officers' entry into 629 Corwin Street. Officers Leal and Cash had responded to a report of prowlers at the residence. Upon arrival at the scene, the neighbors reiterated that there were currently lights on at 629 Corwin Street when they had not seen lights on in the house in the two weeks that they had lived next door; the neighbors reported seeing two men running from the residence and hearing rustling inside the house. Upon approaching the house, the officers heard the sounds of a television and of people moving inside the residence, the back and screen door were open, the lock for the rear door appeared to have been recently tampered with, and no one had answered the front door despite Officer Cash's "very loud" knocking with her flashlight for approximately ten minutes and the fact that two vehicles were parked in the driveway. Based on this evidence, the officers had reasonable grounds to believe that at least some of the burglary suspects were presently inside the 629 Corwin Street residence and that the officers' entry into the home was necessary to prevent physical harm to the residents' persons and/or property. Thus, the trial court properly found that, due to exigent circumstances, the officers lawfully entered the residence at 629 Corwin Street.

{¶ 25} Next, Goodwin argues that the officers' search of his entire residence was unlawful. He states: "The State submitted no evidence to suggest that the police heard any signs of distress, struggle, or even the presence of other individuals in that home. The police made no attempts to validate what they were

being told before conducting a full blown search without a warrant of the entire home. This is simply unacceptable and well beyond the scope of any authority that might have given rise for the police to enter that home.”

{¶ 26} “[A]ny entry based upon exigent circumstances is ‘strictly circumscribed by the exigencies which justif[ied] its initiation.’ ” *State v. Brewster*, 157 Ohio App.3d 342, 2004-Ohio-2722, ¶32, quoting *State v. Applegate*, 68 Ohio St.3d 348, 350, 1994-Ohio-356, in turn quoting *Terry v. Ohio* (1968), 392 U.S. 1, 26, 88 S.Ct. 1868, 20 L.Ed.2d 889. In other words, “[t]he warrantless entry and search must be limited in duration and scope to the purpose justifying that intrusion, including only that which is necessary to alleviate the emergency and the dangers associated therewith.” *McKinley* at ¶15, citing *Mincey v. Arizona* (1978), 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290.

{¶ 27} Here, the officers entered 629 Corwin Street with information that two individuals had been seen running from the rear of the residence and that a burglary appeared to be in progress inside the house. The officers encountered Goodwin in the kitchen and, soon after, Wendling. Although Goodwin claimed to be the tenant, he did not provide identification to substantiate his identity or that claim; Wendling claimed to be the landlord for the residence, but his identification established that he lived elsewhere. Based on the totality of the circumstances, including their contact with Goodwin and Wendling, the officers were justified in continuing to investigate the situation as a burglary and in searching Goodwin’s home for additional suspects or for victims.

{¶ 28} Goodwin’s assignment of error is overruled.

III

{¶ 29} The trial court's judgment will be affirmed.

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BROGAN, J. and GRADY, J., concur.

Copies mailed to:

Kirsten A. Brandt
Anthony Comunale
Hon. Barbara P. Gorman

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