[Cite as *State v. Channell*, 2010-Ohio-6566.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	
RONALD CHANNELL	:	Case No. 10-CA-48
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Case No. 2009CR00481
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	December 30, 2010

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
CHRISTOPHER A. REAMER 20 South Second Street Fourth Floor Newark, OH 43055	PAUL E. MORRISON 3055 Cleveland Avenue Columbus, OH 43224

Farmer, J.

{¶1} On September 18, 2009, detectives with the Central Ohio Drug Enforcement Task Force conducted a controlled "buy" of methamphetamine from appellant, Ronald Channel, using a confidential informant. The informant gave appellant pseudoephedrine pills in exchange for the methamphetamine. The buy occurred at appellant's apartment with others present.

{¶2} Following the transaction, the informant told the detectives the packaging for the pseudoephedrine pills was probably being destroyed. The detectives verified the packaging was destroyed after observing appellant throw trash away in a parking lot dumpster and drive away.

{¶3} Based upon the information received, appellant's vehicle was stopped and appellant was transported back to his apartment. While this was occurring, the task force executed a warrantless search of appellant's apartment to secure the premises. After appellant's return, a search warrant was executed and a search of appellant's apartment was conducted.

{¶4} On September 25, 2009, the Licking County Grand Jury indicted appellant on one count of illegal assembly or possession of chemicals for the manufacturing of drugs in violation of R.C. 2925.041, one count of aggravated trafficking in drugs in violation of R.C. 2925.03, and one count of aggravated possession of drugs in violation of R.C. 2925.11.

{¶5} On December 21, 2009, appellant filed a motion to suppress, claiming an illegal stop and search and illegal warrantless entry into his apartment. Hearings were

held on January 5, and February 10, 2010. By judgment entry filed March 29, 2010, the trial court denied the motion.

{¶6} On April 8, 2010, appellant pled no contest to the charges. By judgment entry filed same date, the trial court found appellant guilty, and sentenced him to an aggregate term of four years in prison.

{¶7} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

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{¶8} "THE TRIAL COURT ERRED BY DENYING DEFENDANT'S MOTION TO SUPPRESS THEREBY VIOLATING DEFENDANT'S RIGHTS UNDER THE FOURTH AND FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE I, SECTION 14 OF THE OHIO CONSTITUTION AGAINST UNREASONABLE SEARCHES AND SEIZURES."

I

{¶9} Appellant claims the trial court erred in denying his motion to suppress. We disagree.

{¶10} There are three methods of challenging on appeal a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether said findings of fact are against the manifest weight of the evidence. *State v. Fanning* (1982), 1 Ohio St.3d 19; *State v. Klein* (1991), 73 Ohio App.3d 485; *State v. Guysinger* (1993), 86 Ohio App.3d 592. Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an

appellate court can reverse the trial court for committing an error of law. *State v. Williams* (1993), 86 Ohio App.3d 37. Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry* (1994), 95 Ohio App.3d 93; *State v. Claytor* (1993), 85 Ohio App.3d 623; *Guysinger*. As the United States Supreme Court held in *Ornelas v. U.S.* (1996), 116 S.Ct. 1657, 1663, "…as a general matter determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal."

{¶11} Appellant argues the trial court erred in determining that exigent circumstances existed to justify the warrantless entrance into his apartment. As explained by our brethren from the Second District:

{¶12} "The Fourth Amendment protects individuals from an unreasonable search in their homes. See *Katz v. United States* (1967), 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576; *State v. White* (2008), 175 Ohio App.3d 302, 2008-Ohio-657, 886 N.E.2d 904. The sanctity of the home extends to any area where one has a legitimate and reasonable expectation of privacy, including a motel room. *State v. Norris* (Nov. 5, 1999), Montgomery App. No. 17689, 1999 WL 1000034 at *2-3. Police may not enter one's home to perform a search or to seize items without a warrant, absent consent or exigent circumstances. *Payton v. New York* (1980), 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639. The United States Supreme Court has held that an exigent circumstance

is (1) an emergency situation that arises when a person in the home is in need of 'immediate aid' or there is a life-threatening situation, or (2) a 'hot pursuit.' *Mincey v. Arizona* (1978), 437 U.S. 385, 392-393, 98 S.Ct. 2408, 57 L.Ed.2d 290; *State v. Bowe* (1988), 52 Ohio App.3d 112, 113, 557 N.E.2d 139. 'The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal.' Id. at 392, 98 S.Ct. 2408, 57 L.Ed.2d 290. An important factor in determining whether exigent circumstances exists is the gravity of the underlying offense. *Welsh v. Wisconsin* (1984), 466 U.S. 740, 753, 104 S.Ct. 2091, 80 L.Ed.2d 732." *State v. Keith,* Montgomery App. No. 22354, 2008-Ohio-4326, ¶7.

{¶13} Generally, the search warrant requirement is exercised when the "delay associated with securing a warrant would result in endangering police officers or other individuals or would result in the concealment or loss of evidence." Katz, Ohio Arrest, Search and Seizure (2009 Ed.) 187, Section 9.1. The reason for the warrantless search in this case was the "concealment or loss of evidence" exception.

{¶14} Our analysis centers upon three issues. First, did exigent circumstances exist? Secondly, was the search warrant's affidavit based upon any evidence observed in plain view during the police entry and presence? And thirdly, was any evidence seized used in the prosecution of the case?

{¶15} In its findings of fact and conclusions of law filed April 8, 2010, the trial court concluded the following:

{¶16} "The Court reviewed the affidavit and search warrant issued and concludes that the affidavit under the totality of the circumstances contained sufficient probable cause for the search of apartment 31 and defendants Diggins and VanAllen.

The Court finds no evidence that the affidavit or warrant were tainted by evidence related to the warrantless entry. No search was conducted prior to the execution of the warrant and therefore the physical evidence seized pursuant to the search warrant had an independent source unrelated to laws enforcement's warrantless entry into apartment 31. Further, the daytime warrant was signed during daytime hours and the search itself started in the daytime hours. Law enforcement officers acted reasonably in finishing the physical search within an hour even though some part of the search occurred during nighttime hours."

{¶17} During the plea colloquy, the evidence of the offenses with which appellant was charged was summarized as follows:

{¶18} "THE COURT: Mr. Waltz, would you please present the facts of the State's case against the Defendant?

{¶19} "MR. WALTZ: Yes, Your Honor. On September 18th 2009 a confidential informant working under the direction of the Central Ohio Drug Enforcement Task Force arranged a sale of methamphetamine from the Defendant. Specifically, the confidential informant traded numerous boxes of Sudafed pills containing Pseudoephedrine in exchange for .61 grams of methamphetamine from the Defendant. The Defendant was receiving these pills from the CI and had also bought numerous other pills on multiple occasions between June 1st, 2009 and September 18, 2009 for the purpose of manufacturing methamphetamine.

{¶20} "The sale of methamphetamine, as well as the assembly of the chemicals necessary for the manufacture of it all occurred within the vicinity of a juvenile at the

residence on Executive Drive that the Defendant was at in Newark, Licking County, Ohio.

{¶21} "After the sale the police executed a search warrant on the Defendant's residence and found inside a small amount of methamphetamine belonging to the Defendant.

{¶22} "As it relates to the other Pseudoephedrine pill purchases, according to records at various Licking County pharmacies the Defendant purchased Pseudoephedrine approximately eight separate times in approximately two months preceding (sic) September 18th." April 8, 2010 T. at 9-10.

{¶23} The affidavit for the search warrant did not include any references to any drugs or drug paraphernalia observed under "plain view" upon the entry of the police into the apartment. We therefore conclude no evidence obtained by the warrantless entry was used in either the prosecution of appellant's case or in the affidavit to obtain the search warrant.

{¶24} As noted, the only item seized during the execution of the search warrant was a "small amount of meth." This evidence was included in the statement of evidence during the no contest plea hearing, and was actually seized during the pat-down of the co-defendant. The exigent circumstances center upon the detectives' observations of appellant disposing of trash immediately after the confidential informant sale, and the statement by the informant to the police that appellant was probably throwing away the pill boxes as was his general procedure. January 5, 2010 T. at 17, 29. The evidence revealed the items thrown away included the pill boxes that were used in the sale. Id. at 19.

{¶25} The informant told the detectives that appellant was getting ready to leave his apartment. Id. at 20. The detectives observed appellant leave and drive away. A traffic stop was initiated and appellant was returned to his apartment. The detectives believed if someone had observed the stop of appellant, they might have tipped off the remaining persons in the apartment. Id. at 22, 24. Upon this belief, detectives entered the apartment to secure it pending the issuance of a warrant.

{¶26} Detective Doug Bline testified upon entry to appellant's apartment, he observed a white bag with pseudoephedrine boxes and some drug paraphernalia (foil). A small amount of methamphetamine was found on an occupant in the apartment.

{¶27} The items seized were of little use in the prosecution of appellant's case. The exigent circumstances articulated by the police were sufficient to justify their entry for the protection of possible evidence. There were sufficient facts to establish that the items sold by the informant would be taken from the premises and it was likely the evidence from the sale would be destroyed. Also, given the stop of appellant in a high drug crime area, there was a reasonable belief that a tip could be made back to the apartment thereby causing further destruction of evidence.

{¶28} We conclude the test as outlined in *Keith,* supra, has been satisfied. Upon review, we find the trial court did not err in denying appellant's motion to suppress.

{¶29} The judgment of the Court of Common Pleas of Licking County, Ohio is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.

_s/ Sheila G. Farmer_____

_s/ William B. Hoffman_____

_s/ John W. Wise_____

JUDGES

SGF/sg 1119

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
RONALD CHANNELL	:	
Defendant-Appellant	:	CASE NO. 10-CA-48

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Licking County, Ohio is affirmed. Costs to appellant.

_s/ Sheila G. Farmer_____

_s/ William B. Hoffman_____

_s/ John W. Wise____

JUDGES