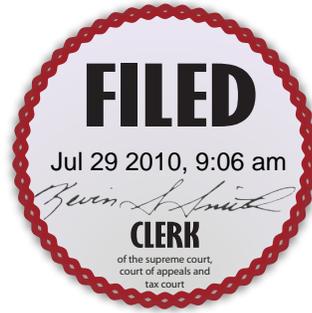


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**IN THE
COURT OF APPEALS OF INDIANA**

JOE L. KNUCKLES,)
)
Appellant-Defendant,)
)
vs.) No. 20A05-1002-CR-57
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable George W. Biddlecome, Judge
Cause No. 20D03-0705-FB-24

July 29, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Joe Knuckles appeals his conviction for Class B felony dealing in methamphetamine. We affirm.

Issue

Knuckles raises one issue, which we restate as whether the trial court properly admitted evidence seized from his home during the execution of a search warrant.

Facts

On the afternoon of March 23, 2007, Karen Ferguson heard tapping on the front door of her home in Elkhart County. Ferguson answered the door to see her neighbor, Knuckles, wearing only his underwear and mumbling. Knuckles's skin was burned and peeling off. Ferguson instructed someone to call 911. Officer Brandon Denesuk of the Elkhart County Sheriff's Department arrived at the scene and saw Knuckles lying on Ferguson's floor with burns on his face, stomach, and legs and his skin peeling. Knuckles was screaming loudly and talking incoherently.

After Knuckles received medical treatment, Ferguson explained to Officer Denesuk that Knuckles lived in the mobile home next door and that at one point he had a roommate. As Officer Denesuk approached Knuckles's mobile home, he observed that some of the windows were blown out. Officer Denesuk knew that firefighters were on the scene and entered approximately five feet into the mobile home, where he spoke with the firefighters. Officer Denesuk asked whether the fire was still active and whether anyone else was inside. The firefighters informed Officer Denesuk that the fire was no

longer active and that no one else was inside. Officer Denesuk also inquired whether there was evidence of criminal activity in the mobile home. The firefighters indicated there was. Officer Denesuk then exited the mobile home with the firefighters and noticed the odor of ammonia, which is commonly associated with the manufacturing of methamphetamine.

This information was used to obtain a search warrant. During a subsequent search of the mobile home, police officers discovered lithium batteries, battery remnants, Sudafed blister packs, an electric scale, a coffee grinder, ammonium sulfate, plastic tubing, camp fuel, drain opener, a funnel, a glass jar, a straw, a pipe, and a baggy containing a white powdery substance later determined to be methamphetamine. Because of smoke damage on the bathroom mirror and a melted shower curtain, police officers concluded that the fire started in the bathroom.

On May 11, 2007, the State charged Knuckles with Class B felony dealing in methamphetamine and Class D felony possession of precursors. The Class D felony charge was eventually dismissed. Prior to trial, Knuckles moved to suppress the evidence obtained during the execution of the search warrant based on Officer Denesuk's initial entry into Knuckles's mobile home and smelling of ammonia after he exited. Following a hearing, the trial court denied Knuckles's motion to suppress. A jury found Knuckles guilty of Class B felony dealing in methamphetamine. Knuckles now appeals.

Analysis

Knuckles argues that the trial court improperly admitted evidence obtained during the execution of the search warrant because Officer Denesuk's initial entry into the

mobile home violated his constitutional rights. Knuckles concedes that the firefighters had a right to enter the mobile home; he contends, however, that Officer Denesuk improperly entered the mobile home to acquire information. Specifically, he argues, “It can hardly be supposed that a single patrolman could add useful manpower to the investigation of whether or not anyone was present in a small trailer . . . already occupied by 3-5 firemen in full gear.” Appellant’s Br. p. 12.

“Our standard of review of rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by trial objection: we do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court’s ruling.” Jackson v. State, 890 N.E.2d 11, 15 (Ind. Ct. App. 2008). We must also consider the uncontested evidence favorable to the defendant. Id.

First, we must determine whether Knuckles conceded that Officer Denesuk properly entered Knuckles’s mobile home. At the conclusion of the suppression hearing, the following exchange took place between defense counsel and the trial court:

The Court: You don’t dispute that the fire personnel had a right to be there, do you?

Mr. Zook: No, I don’t.

The Court: You don’t dispute that the officer had a right to investigate whether another person was in this trailer who may be injured.

Mr. Zook: No, I don’t.

The Court: He had a right to enter the trailer in furtherance of that investigation. Correct?

Mr. Zook. I believe so.

The Court: Pardon?

Mr. Zook: I believe he did. I believe he had a right, at least, to ask.

The Court: Well, the only person to ask was the fire personnel. He asked your client and your client was incoherent.

Mr. Zook: Right. He asked the fire personnel and they said, no.

* * * * *

The Court: I understood the officer to say that after he went inside and made inquiry of fire personnel, he stepped outside and then stepped to north 2 or 3 feet in order that fire personnel might exit the residence unimpeded. Do you think your client has a reasonable expectation of privacy, 2 or 3 feet away from the front door of this residence/business on the exterior?

Mr. Zook: If it is 2 or 3 feet away from the front door, your Honor, I agree.

The Court: That's the only evidence.

Mr. Zook: That's different that [sic] we expected.

The Court: Pardon?

Mr. Zook: That's different evidence than we expected to hear. . . .

Tr. pp. 99-100, 103-04.

The State argues that because trial counsel conceded that Officer Denesuk had a legitimate right to enter the mobile home and was in a lawful position when he smelled the ammonia, the admission of the evidence was invited error. This argument is better

characterized as judicial estoppel than invited error. Specifically, “[j]udicial estoppel prevents a party from assuming a position in a legal proceeding inconsistent with one previously asserted.” Brightman v. State, 758 N.E.2d 41, 48 (Ind. 2001) (alteration in original) (citation omitted). “The doctrine seeks to ‘protect the integrity of the judicial process rather than to protect litigants from allegedly improper conduct by their adversaries.’” Id. (citation omitted). To the extent that Knuckles agreed that Officer Denesuk was lawfully permitted to enter the mobile home and was in a place he was lawfully entitled to be when he smelled the ammonia at the suppression hearing, he arguably is estopped from now arguing to the contrary. But see, Smith v. State, 765 N.E.2d 578, 582 (Ind. 2002) (“[J]udicial estoppel in this state has been applied only in civil cases, and neither this Court nor the Court of Appeals has applied the doctrine against the State in a criminal case. A few criminal cases have noted the claim that judicial estoppel precluded the State from asserting a particular contention, but in each case the elements of estoppel were found wanting.”).

In the event that Knuckles is not estopped from raising this issue, he has not established a violation of his constitutional rights. Both the Fourth Amendment to the United States Constitution and Article 1, Section 11, of the Indiana Constitution protect citizens from unreasonable searches and seizures. Holder v. State, 847 N.E.2d 930, 935 (Ind. 2006). Although the language of the Indiana Constitution parallels the United States Constitution, the Indiana Constitution has “unique vitality.” Id. Thus, where a defendant raises claims based on each provision, we engage in an independent examination of the Fourth Amendment and Article 1, Section 11. Id.

“Searches performed by government officials without warrants are per se unreasonable under the Fourth Amendment, subject to a few specifically established and well-delineated exceptions.” Id. (quotations omitted). “A search without a warrant requires the State to prove an exception to the warrant requirement applicable at the time of the search.” Id. “The warrant requirement becomes inapplicable where the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” Id. at 936-37 (quotations omitted). “Among the exigencies that may properly excuse the warrant requirement are threats to the lives and safety of officers and others and the imminent destruction of evidence.” Id. at 937.

When Officer Denesuk arrived at the scene in the middle of the afternoon, Knuckles was in his neighbor’s home, wearing only underwear. Knuckles was incoherent, screaming, and suffering from burns that caused his skin to peel. Ferguson informed Officer Denesuk that she was unsure whether Knuckles still had a roommate. Officer Denesuk then went to Knuckles’s mobile home and, as he approached, he noticed some of the windows were blown out and firefighters were inside. Officer Denesuk entered approximately five feet into the living room where he spoke with the firefighters. After confirming from firefighters that there was no longer an active fire, that no one else was inside, and that there was evidence of criminal activity inside, Officer Denesuk exited the mobile home. While he was outside, Officer Denesuk smelled ammonia.

Knuckles argues, “by the time the officer arrived at Knuckles’ residence the exigencies that might have justified Denesuk’s entry had all been removed by the

firemen.” Appellant’s Br. p. 13. There is no evidence, however, that Officer Denesuk knew the exigencies had been removed when he initially entered the mobile home. After verifying that the fire was under control, no one else was inside, and there was evidence of criminal activity inside, Officer Denesuk left the mobile home and obtained a search warrant. Officer Denesuk did not himself look for evidence of criminal activity at that time. Under these circumstances, Officer Denesuk’s warrantless entry was justified by exigent circumstances. See Holder, 847 N.E.2d at 940 (holding that an objectively reasonable belief in the immediate need to protect public from death or serious bodily injury that might occur during the manufacturing of methamphetamine was an exigent circumstance justifying the immediate warrantless entry into defendant’s home). Knuckles has not established that Officer Denesuk’s initial entry into the mobile home or the subsequent smelling of ammonia outside violated his Fourth Amendment rights.

Our investigation under Article 1, Section 11, of the Indiana Constitution places the burden on the State to demonstrate that each relevant intrusion was reasonable in light of the totality of the circumstances. Id. The reasonableness of a search or seizure turns on the balance of: “1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen’s ordinary activities, and 3) the extent of law enforcement needs.” Litchfield v. State, 824 N.E.2d 356, 361 (Ind. 2005).

Regarding the degree of concern, Officer Denesuk entered Knuckles's mobile home after responding to a 911 call from Ferguson.¹ As we have already discussed, Knuckles was lying on Ferguson's living room floor incoherent, screaming, and suffering from burns. Ferguson was not sure whether Knuckles still had a roommate. As Officer Denesuk approached Knuckles's mobile home, he observed that some of the windows had been blown out and firefighters were on the scene. The degree of concern here was high.

As for the degree of the intrusion, we acknowledge that a police officer's entry into one's home should not be taken lightly. Nevertheless, Officer Denesuk only walked five feet into Knuckles's living room, where he spoke with firefighters who had already been inside. Upon learning that the scene was secure, Officer Denesuk exited Knuckles's mobile home. After exiting the mobile home, Officer Denesuk smelled ammonia.² The degree of the intrusion was appropriate under these circumstances.

Finally, regarding the extent of law enforcement needs, Knuckles argues:

[Officer Denesuk] was aware that firefighters were inside the residence. Obviously the situation was under control. He did not have a legitimate need as a law enforcement officer to enter the premises, and place himself in the position where he smelled the ammonia, the odor which was key to the affidavit

¹ The State argues that a Litchfield analysis is of limited utility in this case because Officer Denesuk did not enter the mobile home based on his suspicion that a criminal violation had occurred but did so to ensure the welfare of another possible victim. Although the State is correct regarding Officer Denesuk's motives for entering the mobile home, we believe the Litchfield framework is relevant in our consideration of the degree of concern for another possible victim.

² Knuckles points to Officer Denesuk's suppression hearing testimony in which he answered affirmatively that he told another officer he smelled ammonia "permeating the residence." Tr. p. 78. Officer Denesuk clarified, however, that he did not smell ammonia inside, he smelled it outside. He stated that the inside of the mobile home "smelled like there was a fire." Id. at 79.

for search warrant. His curiosity is understandable but not justifiable.

Appellant's Br. p. 15. At the time Officer Denesuk entered the mobile home, however, it was not clear whether someone else was inside or whether the firefighters were aware that there might have been someone else inside. It was reasonable for Officer Denesuk to confer with firefighters after learning from Ferguson that Knuckles may have had a roommate. Knuckles has not established that his Indiana constitutional rights were violated by Officer Denesuk's initial entry into his mobile home or the smelling of ammonia outside of the mobile home.

Conclusion

The trial court did not abuse its discretion when it admitted evidence associated with Knuckle's manufacturing of methamphetamine during the jury trial. We affirm.

Affirmed.

BAILEY, J., and MAY, J., concur.