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# Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

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**CR-20-0394**

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**Rodney Danyelle Hall**

**v.**

**State of Alabama**

**Appeal from Covington Circuit Court  
(CC-18-572)**

KELLUM, Judge.

The appellant, Rodney Danyelle Hall, pleaded guilty to possession of marijuana, a violation of § 13A-12-213(a)(1), Ala. Code 1975, and to

CR-20-0394

unlawful possession of more than 8 grams of a substance containing methamphetamine with the intent to distribute, a violation of § 13A-12-211, Ala. Code 1975. He was sentenced to concurrent terms of 120 months in prison on the possession charge and 130 months on the intent-to-distribute charge.

In September 2018, Hall was indicted for possession of marijuana, possession of more than 8 grams of a substance containing methamphetamine with the intent to distribute, possession and distribution of more than 28 grams of cocaine, and possession of drug paraphernalia. Hall moved to suppress the evidence seized from a search of his house because, he argued, the search was unlawful in that there were no exigent circumstances to enter without a warrant. After a suppression hearing, the circuit court denied Hall's motion to suppress. (C. 63-66.) Hall then entered into a plea agreement with the State pursuant to which he would plead guilty to the first two charges of the indictment and the remaining two charges would be nolle prossed. Before pleading guilty, Hall specifically reserved his right to appeal the circuit court's ruling denying his motion to suppress the items obtained as a

CR-20-0394

result of a search of his house. See Green v. State, 200 So. 3d 677, 679 (Ala. Crim. App. 2015) ("The only way to invoke the limited right to appeal a guilty-plea conviction and sentence is to reserve and preserve an issue or to file a motion to withdraw the guilty plea."). This appeal followed.

On appeal, Hall argues that the circuit court incorrectly applied the law to the facts of his case and erred in not granting his motion to suppress the evidence seized as a result of the warrantless search of his residence. Specifically, Hall argues that the State failed to show that there were sufficient exigent circumstances to support the search. The State asserts that the warrantless entry into Hall's house was lawful because, it says, there was probable cause and exigent circumstances to support the warrantless entry.

The evidence concerning the police's entry into Hall's house is uncontested. "In reviewing a decision of a trial court on a motion to suppress evidence, in a case in which the facts are not in dispute, we apply a de novo standard of review." State v. Otwell, 733 So. 2d 950, 952 (Ala. Crim. App. 2020). "Because the evidence presented at the suppression hearing is not in dispute, the only issue before this Court is whether the

CR-20-0394

circuit court correctly applied the law to the facts presented at the suppression hearing, and we afford no presumption in favor of the circuit court's ruling." State v. Perry, 66 So. 3d 291, 293-94 (Ala. Crim. App. 2010).

The record shows that at the suppression hearing, Deputy Nathan Frank of the Covington County Sheriff's Office testified that at the time of the search he was employed with the Andalusia Police Department and was assigned to the Covington County Drug Task Force ("the Task Force."). Deputy Frank testified that some of the agents on the Task Force received information that Hall had been selling drugs out of his residence. The Task Force conducted surveillance of the residence the day before officers approached Hall's residence. Deputy Frank testified that numerous vehicles were seen pulling up to Hall's residence and that the occupants of those vehicles were seen going inside the residence for a time before exiting. Deputy Frank testified:

"Some of the vehicles were stopped, and narcotics were recovered from some of the vehicles. I believe at least one of the vehicles, there was an arrest that was made, and narcotics were tied back to Hall's residence. The subjects that were in

the vehicles advised us that they had purchased narcotics from Rodney Hall's residence."

(R. 6.) As a result of the surveillance, he said, the Task Force decided to conduct a "knock and talk." Deputy Frank said that "a knock and talk is the least intrusive way of making contact with a person that lives at the residence and inquiring about the sale or use of drugs at a particular residence." (R. 7.) On April 5, 2018, Agent Greg Jackson with the Task Force went to Hall's residence, and Agent Jackson knocked on Hall's door at around 12:00 p.m. Hall would not open the door, so Agent Jackson communicated with Hall through the door. Deputy Frank testified that Agent Jackson advised his fellow officers that he could smell what he believed was the odor of marijuana coming from the residence. (R. 8.) Deputy Frank said that you could hear someone "moving around inside the house a good bit. At one point, [Hall] went toward the back of the house, came back and was still talking to Agent Jackson." (R. 9.) Hall told police that he did not want to talk to them. (R. 16.) Police then forcibly entered Hall's residence, detained Hall, and "conducted a search for additional persons inside the residence to make sure there was nobody

CR-20-0394

else in there that could pose a threat to us or tamper with any evidence. Myself and Agent Hudson quickly went through the rooms in the house to make sure there were no other persons inside." (R. 9.) In his walk through the house, Deputy Frank said, he observed "narcotics and a firearm" in one of the bedrooms. (R. 10.) The officers took nothing from the residence, and Agent Jackson left to obtain a search warrant. Hall was patted down and marijuana was found in one of his pockets. (R. 10.)

Officer Josh Hudson testified that he was an officer in the Opp Police Department and that he was assigned to the Task Force. He testified that Deputy Frank conducted the surveillance on Hall's house and relayed that information to his fellow agents. (R. 31.) They stopped one vehicle leaving Hall's residence and found the driver was in possession of crack cocaine; the driver advised the officers that she had obtained the cocaine from Hall's residence. (R. 31.) Other vehicles were stopped. Officer Hudson testified:

"We went to the residence. Agent Jackson knocked on the door. You could hear Hall ask who it is. We announced it was the police department, come to the door. And you could hear him moving around in the house a lot. We detected the odor of marijuana coming from the residence. Hall wouldn't come

CR-20-0394

to the door. You could hear him moving. We forcibly entered the residence and detained him."

(R. 32.) Officer Hudson said that the smell was "weird" coming from the house. (R. 50.)

Two officers detained Hall while Agent Jackson left to obtain a search warrant. That warrant was executed, and police seized six bags of marijuana; five bags of powdery substances containing cocaine; currency; digital scales; baggies; one bag of methamphetamine; loose marijuana; and various other items. (C. 35.)

When denying Hall's motion to suppress, the circuit court stated:

"Prior to the date of [Hall's] arrest, the 22nd Circuit Drug Task Force ... had received multiple reports of drug activity and/or drug sale occurring by [Hall] at [Hall's] residence located at \_\_\_\_ Avenue, Andalusia, Alabama.

"At least on April 4, 2018, [Task Force] agents conducted surveillance on [Hall's] house. Agents observed heavy traffic coming and going from the residence, each staying a very short amount of time before leaving. Officers also observed at least one vehicle pull up to the residence, a passenger exited the vehicle and entered the residence, the vehicle pulled away and apparently circled the block, then returned to pick up its passenger. The agents testified that based on their knowledge, training, and experience in illegal narcotics investigations, this type of traffic was consistent with drug sales and activity.

"As certain [Task Force] agents conducted surveillance, other [Task Force] agents were staged away from the residence. Surveilling agents relayed information to the staged agents about vehicles leaving the residence. Staged agents thereafter stopped at least two vehicles and inquired about those persons's activities at [Hall's] residence. Both interactions resulting from those stops led to admissions that the parties purchased illegal narcotics from [Hall]. At least one interaction led to an arrest.

"[Task Force] Agents decided to continue their investigation of [Hall] on April 5, 2020, by conducting a 'knock-and-talk' with [Hall] at this residence. Agents approached the front door, which would most commonly be used by the public if visiting the home. Agent Nathan Frank testified that agents often conducted knock-and talks because it was the 'least intrusive means' to defendants. Agent Josh Hudson's testimony concurred with Agent Frank in that knock-and-talk were common in [Task Force] investigations, and stated there were numerous reasons agents might not immediately obtain a warrant.

"The body camera footage shows that Agent Greg Jackson first approached the front door, knocked, and announced his presence. Agent Jackson told [Hall] he needed to speak with him. [Hall] can be heard speaking to Agent Jackson through the door, although exactly what is said is inaudible to the Court. Agent Jackson shortly thereafter announced to other agents that [Hall] was running towards the back of the house. Agent Jackson also announced that he smelled marijuana and asked other agents if they could smell it. The Court notes that certainly at the point agents began conversing with [Hall] through the door that [Hall] was abundantly aware of their investigation against him.



"Agent Josh Hudson was standing on [Hall's] front porch behind Agent Jackson. Agent Hudson approached the front door and, within a matter of seconds, confirmed with Agent Jackson that he could also smell marijuana.

"Agents Frank and Hudson each testified that they could hear movement within the home. Agent Hudson described the noise as heavy footsteps moving toward the back of the house. Both agents testified that, based on their knowledge, training, and experience, the movement inside the home was concerning because of potential officer safety concerns, and because it was consistent with potential destruction of evidence.

"As [Hall] did not then open the door as instructed, [Task Force] agents made a decision to make forcible, warrantless entry into [Hall's] home, and did make entry by kicking in the door. Agents made contact with [Hall] inside the home and detained him. Agents then conducted a 'protective sweep' and cleared the residence for other persons. Agents Frank and Hudson each testified that the residence was only cleared for other persons at that time, looking only in places where a person could be hiding. As agents cleared the residence for officer safety, agents observed a firearm and illegal narcotics in plain view. Agents were aware [Hall] has multiple felony convictions and is prevented from possessing a firearm.

"Upon clearing the residence, agents exited the home with [Hall] and secured it such that no one could enter. Agents applied for and obtained a search warrant, which led to the discovery of the drugs that are the basis for the charges brought in this matter.

"....

"These [Task Force] agents were conducting a lawful investigation into [Hall] and his alleged drug activity. [Hall's] subsequent conduct left the agents without means to continue their investigation without making immediate entry into the home. Most assuredly, had agents left the home to obtain a warrant, drug evidence might well have been destroyed by [Hall].

"Based on all of the foregoing, the Court does hereby order ... that [Hall's] motion to suppress is hereby denied."

(C. 63-66.)

"It is well settled that warrantless entries to and searches of a residence are presumptively unreasonable and that the burden is on the government to demonstrate exigent circumstances justifying a warrantless entry and search." A.A.G. v. State, 668 So. 2d 122, 126 (Ala. Crim. App. 1995). "To justify a warrantless entry and search, the state needs to show both the existence of probable cause and exigent circumstances." Cameron v. State, 861 So. 2d 1145, 1149 (Ala. Crim. App. 2003).

Probable Cause. "Probable cause exists when the facts and circumstances known to the officer are sufficient to warrant a person of reasonable caution to conclude that contraband will likely be found in the

place to be searched." State v. Black, 987 So. 2d 1177, 1180 (Ala. Crim. App. 2006). In determining whether probable cause exists, we examine the totality of the circumstances. Illinois v. Gates, 462 U.S. 213 (1983).

"In Johnson v. United States, [333 U.S. 10 (1948)], law-enforcement officers had received information from a confidential informant that a person was smoking opium, an illegal controlled substance, in a hotel room. The law-enforcement officers, who had been sent to investigate the odor, were experienced in narcotics, recognized the odor of burning opium while they were in the hall, and determined that the odor was emanating from a certain room. The officers knocked and informed the occupant that they were law-enforcement officers. When the occupant opened the door, one of the officers stated that he wanted to discuss the opium smell in the room. The occupant denied that there was such a smell. The law-enforcement officers then arrested the occupant, searched the room, and seized opium and its smoking apparatus. Although the United States Supreme Court held that the warrantless entry and search of the room was unconstitutional because an exigent circumstance did not exist to excuse the need for a warrant, the Court did state that the odor known to the officers as the odor of burning opium could constitute probable cause for issuing a warrant, stating:

" 'At the time entry was demanded the officers were possessed of evidence which a magistrate might have found to be probable cause for issuing a warrant. We cannot sustain defendant's contention, erroneously made, on the strength of Taylor v. United States, 286 U.S. 1 [(1932)], that odors cannot be evidence sufficient to constitute probable cause grounds for any search. That decision held

only that odors alone do not authorize a search without [a] warrant. If the presence of odors is testified to before a magistrate and he finds the affiant qualified to know the odor, and it is one sufficiently distinctive to identify a forbidden substance, this Court has never held such a basis insufficient to justify issuance of a search warrant. Indeed it might very well be found to be evidence of most persuasive character.'

"333 U.S. at 13. See also Coolidge v. New Hampshire, 403 U.S. 443, 468, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971) ('Incontrovertible testimony of the senses that an incriminating object is on premises belonging to a criminal suspect may establish the fullest possible measure of probable cause.')."

State v. Clayton, 155 So. 3d 290, 296( Ala. 2014).

At the time officers approached and knocked on Hall's door, officers had conducted surveillance of the house for at least one day and had verified from two individuals leaving Hall's residence that they had purchased drugs from Hall at his residence. Officers also smelled marijuana coming from the house when they were lawfully near the front door. Certainly, the officers had sufficient probable cause to believe that there were controlled substances in Hall's residence.

Exigent Circumstances. Relying on the United State Supreme Court's decision in Taylor v. United States, 286 U.S. 1 (1932), Hall argues that "the presence of odor alone does not authorize a search without a warrant." (Hall's brief at p. 13.) The Taylor Court held: "Prohibition officers may rely on a distinctive odor as a physical fact indicative of possible crime; but its presence alone does not strip the owner of constitutional guaranties against unreasonable search." 286 U.S. at 6. Hall also argues that the State failed to show that the possible destruction of the drugs was imminent because, he says, there was no evidence indicating that the drugs were being destroyed when police knocked on Hall's door.

"The burden is on the State to prove sufficient exigent circumstances to overcome the presumption of unreasonableness which attaches to all warrantless home entries." McCammon v. State, 499 So. 2d 811, 815 (Ala. Crim. App. 1986).

" '[N]o exigency is created simply because there is probable cause to believe that a serious crime has been committed.' Welsh [v. Wisconsin], 466 U.S. [740] at 753, 104 S.Ct. [2091] at 2099 [(1984)]; Mincey [v. Arizona], 437 U.S. [385] at 393, 98 S.Ct. [2408] at 2414 [(1978)]. [T]he mere presence of narcotics,

without more, is not such an exigent circumstance as would permit entry into private premises without a proper warrant.' People v. Lee, 83 A.D.2d 311, 444 N.Y.S.2d 100, 102–103 (1981), cert. denied, 460 U.S. 1044, 103 S.Ct. 1443, 75 L.Ed.2d 798 (1983). See also People v. Ouellette, 78 Ill.2d 511, 36 Ill. Dec. 666, 669–70, 401 N.E.2d 507, 510–11 (1979). 'The presence of contraband without more does not give rise to exigent circumstances.' United States v. Torres, 705 F.2d 1287, 1297 (11th Cir. 1983)." "

Williams v. State, 995 So. 2d 915, 918 (Ala. Crim. App. 2003), citing Youtz v. State, 494 So. 2d 189, 193 (Ala. Crim. App. 1986) (emphasis added).

"The exigent circumstances exception is 'particularly compelling in narcotics cases' because courts recognize that drugs can be easily and quickly destroyed. United States v. Santa, 236 F.3d 662, 669 (11th Cir. 2000). However, the presence of contraband alone does not give rise to exigent circumstances. Id.; see also United States v. Lynch, 934 F.2d 1226, 1232 (11th Cir. 1991)."

Hardigree v. Lofton, 992 F.3d 1216, 1224-25 (11th Cir. 2021).

The odor of a controlled substance is typically not sufficient, by itself, to establish exigent circumstance to enter a residence without a warrant. However, this Court has held that the odor associated with the manufacture of methamphetamine is sufficient to establish exigent circumstances. "Jurisdictions that have tackled the issue have held that the dangers posed by an operating methamphetamine lab are sufficient

CR-20-0394

to constitute an exigent circumstance for purposes of conducting a warrantless search of a residence." Williams, 995 So. 2d at 920. Though methamphetamine was found in Hall's residence there was no evidence that that substance had been manufactured in Hall's residence.

The State argues that exigent circumstances were present in this case because, it says, police had reason to believe that any drugs or contraband would be destroyed if they left the residence to secure a search warrant. Whether exigent circumstance are present is an "objective" test. Brigham City, Utah v. Stuart, 547 U.S. 398, 403 (2006).

As stated above, Hall argues that there was no evidence indicating that he was attempting to destroy any drugs; therefore, the exigent circumstance of the destruction of evidence was not present in this case. However, "[t]he agents did not need to be certain that the drug evidence was being destroyed in order for exigent circumstances to exist." State v. Vegas, 400 Mont.75, 79, 463 P.3d 455, 458 (2020). "The officers were not required to wait to hear evidence of disposal because the purpose of the exigent circumstances exception is to prevent the loss of evidence."

United States v. Reed, 318 App'x 774, 777 (11th Cir. 2009)(not reported in the Federal Reporter).

"While it is true that police officers must 'demonstrate a sufficient basis for an officer to believe that somebody in the residence will likely destroy evidence,' United States v. Beck, 662 F.2d 527, 530 (8th Cir. 1981), they need not, however, wait until the evidence is in the process of being destroyed before entering the residence. United States v. Blake, 484 F.2d 50, 55 (8th Cir. 1973), cert. denied, 417 U.S. 949, 94 S.Ct. 3076, 41 L.Ed.2d 669 (1974)."

United States v. Clement, 854 F.2d 1116, 1119 (8th Cir. 1988).

This Court recognizes that an exigent circumstance cannot be created by police conduct. In Kentucky v. King, 563 U.S. 452 (2011), the United States Supreme Court held that an officer knocking on a door did not create an exigent circumstance:

"When law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do. And whether the person who knocks on the door and requests the opportunity to speak is a police officer or a private citizen, the occupant has no obligation to open the door or to speak. Cf. Florida v. Royer, 460 U.S. 491, 497–498, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983) ('[H]e may decline to listen to the questions at all and may go on his way'). When the police knock on a door but the occupants choose not to respond or to speak, 'the investigation will have reached a conspicuously low point,' and the occupants 'will have the kind of warning that even the most elaborate security system



cannot provide.' [United States v. Chambers, 395 F.3d [563] at 577 [(6th Cir. 2005)] (Sutton, J., dissenting). And even if an occupant chooses to open the door and speak with the officers, the occupant need not allow the officers to enter the premises and may refuse to answer any questions at any time."

Kentucky v. King, 563 U.S. at 469-70.

In discussing the holding in King, the Massachusetts Supreme Court stated:

"In [Kentucky v. King, 563 U.S. [452] at 462, 131 S.Ct. 1849 [(2011)], the Supreme Court held that where 'the police did not create the exigency by engaging or threatening to engage in conduct that violates the Fourth Amendment, warrantless entry to prevent the destruction of evidence is reasonable and thus allowed.' In an eight-to-one decision, the Court concluded that as long as 'the police do not gain entry to premises by means of an actual or threatened violation of the Fourth Amendment,' they may knock on a suspect's door and announce their presence, and the exigent circumstances rule may still apply. Id. at 469, 131 S.Ct. 1849. See Commonwealth v. Gentle, 80 Mass. App. Ct. 243, 249, 952 N.E.2d 426 (2011)."

Commonwealth v. Alexis, 481 Mass. 91, 98, 112 N.E.3d 796, 802 (2018).

In a similar fact situation, the Virginia Supreme Court in Evans v. Commonwealth, 290 Va. 277, 776 S.E.2d 760 (2015), held:

"It is true, as [the appellant] contends, that a mere knock by police on the door of a suspect's residence, by itself, does not constitute exigent circumstances. This unremarkable point,

however, presupposes the absence of other facts -- like those present in this case:

"• a cloud of heavy and extremely strong marijuana odors, some of which blew 'like a gust of wind,' past police officers and [the defendant's] mother through an open doorway;

"• a suspiciously volunteered denial ('Ain't nobody smoking weed in here') by [the defendant's] nervous and shaking mother in the face of the obvious fact that police officers smelled marijuana odors blowing through the doorway;

"• a door slammed by [the defendant's] mother in the face of police officers in response to their further inquiries;

"• sounds of unspecified movement inside the apartment after the door was slammed shut; and

"• a conspicuously delayed response by anyone in the apartment to additional knocks on the door by the investigating officers.

"... both probable cause and exigent circumstance justified the warrantless entry by the police officers into [the defendant's] apartment to thwart the objectively reasonable possibility that evidence would be destroyed, discarded, or hidden if they did not take immediate action."

290 Va. at 290-91, 776 S.E.2d at 766-67.

Additionally, the United State Court of Appeals for the Fifth Circuit in United States v. Aguirre, 664 F.3d 606 (5th Cir. 2011), held sufficient exigent circumstances were present in the following situation:

"The facts of this case resemble those in [United States v.] Newman, [472 F.3d 233 (5th Cir. 2006),] in which we concluded that police officers' warrantless entry into a home was justified by the exigent circumstances and probable cause. The officers there knew that a drug dealer frequented the residence. When they approached the residence they saw suspicious movement behind the curtains, they received no verbal response to their knock, and they observed a resident attempting to flee the premises. While none of these factors alone would necessarily have established that the officers could enter the residence, we concluded that their entry was proper under the totality of the circumstances. The information known to the officers was sufficient to create probable cause that drugs would be found inside. Furthermore, law enforcement officers are aware that there is a high probability that persons in the possession of drugs will attempt to destroy them if they know that the police is at the door. This connection and the noises heard inside of the home created an exigent circumstance."

United States v. Aguirre, 664 F.3d at 612.

Here, the Task Force verified that Hall had been selling drugs from his residence; officers smelled marijuana emanating from the house when they lawfully approached the front door; Hall refused to open the door after police knocked, identified themselves, and asked him to step outside;

CR-20-0394

and officers heard running and movement in the back of the house. Considered together, these facts were sufficient to establish exigent circumstances.

Accordingly, we find that there was sufficient probable cause and exigent circumstances to support the warrantless entry into Hall's house and the subsequent seizure of the drugs discovered in that house. For these reasons, the judgment of the circuit court denying Hall's motion to suppress the evidence seized as a result of the search is due to be affirmed.

**AFFIRMED.**

Windom, P.J., and McCool, Cole, and Minor, JJ., concur.