

**STATE OF TENNESSEE
OFFICE OF THE
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October 15, 2008

Opinion No. 08-165

Search of Premises Quarantined Due to Methamphetamine.

QUESTIONS

1. Does either the Fourth Amendment to the United States Constitution or Article I, Section 7 of the Tennessee Constitution require law enforcement officers to obtain a search warrant to search premises that have been quarantined due to the manufacture of methamphetamine, pursuant to Tenn. Code Ann. §68-212-503?

2. If law enforcement officers have a reasonable suspicion that the quarantined premises are being occupied in violation of the quarantine, may they enter the premises without a warrant?

OPINIONS

1. Yes. Both the Fourth Amendment to the United States Constitution and Article I, Section 7 of the Tennessee Constitution require law enforcement officers to obtain a search warrant to enter premises that are under quarantine due to the presence of methamphetamine unless such warrantless entry meets one of the narrowly defined exceptions to the warrant requirement.

2. No. Law enforcement officers should obtain a search warrant to enter premises if there is probable cause to believe that the premises are being occupied in violation of the quarantine unless such warrantless entry meets one of the narrowly defined exceptions to the warrant requirement.

ANALYSIS

1. You have questioned whether the Fourth Amendment to the United States Constitution or Article I, Section 7 of the Tennessee Constitution requires law enforcement officers to obtain a search warrant prior to searching premises that have been quarantined due to the presence of a methamphetamine lab. Tenn.Code Ann. §68-212-503 provides:

(a) The purpose of the quarantine provided for in this section is to prevent exposure of any person to the hazards associated with methamphetamine and the chemicals associated with the manufacture of methamphetamine.

(b) Any property, or any structure or room in any structure on any property wherein the manufacture of a controlled substance listed in § 39-17-408(d)(2) is occurring or has occurred, may be quarantined by the local law enforcement agency where such property is located. The law enforcement agency which quarantines the property shall be responsible for posting signs indicating that the property has been quarantined and, to the extent they can be reasonably identified, for notifying all parties having any right, title or interest in the quarantined property, including any lienholders.

(d) It is prohibited for any person to inhabit quarantined property, to offer such property to the public for temporary or indefinite habitation, or to remove any signs or notices of the quarantine. Any person who willfully violates this subsection (d) commits a Class B misdemeanor.

Upon discovery of a clandestine methamphetamine lab, local law enforcement officers ordinarily first secure the site and, if applicable, take into custody any individuals believed to be engaged in criminal conduct and seize any illegal substances. Depending upon the circumstances at the site, law enforcement officers may remove or arrange to remove from the site bulk chemicals, manufacturing-related items, and other paraphernalia. Thereafter, law enforcement officers may implement a quarantine through the posting of appropriate signs at the site, the recording of a deed notice reflecting the quarantine, and the providing of notice of the quarantine to interested parties. Tenn. Code Ann. §§ 68-212-503(b), 68-212-507. The law enforcement officers must also transmit certain information pertaining to the quarantine to the Tennessee Department of Environment and Conservation ("TDEC"), which maintains the information for public access. Tenn. Code Ann. §68-212-509.

Tenn. Code Ann. §68-212-503(c) provides:

(1) Any person who has an interest in property quarantined pursuant to this section may file a petition in the general sessions, criminal, circuit or chancery court of the county in which the property is located. Such a petition shall be for the purpose of requesting that the court order the quarantine of such property be lifted for one (1) of the following reasons:

- (A) That the property was wrongfully quarantined; or
- (B) That the property has been properly cleaned, all hazardous materials removed and that it is now safe for human use but the law enforcement agency who imposed the quarantine refuses to lift it.

(2) The court shall take such proof as it deems necessary to rule upon a petition filed pursuant to this section and, after hearing such proof, may grant the petition and lift the quarantine or deny the petition and keep the quarantine in place.

"[A] warrantless search or seizure is presumed unreasonable, and evidence discovered as a result thereof is subject to suppression unless the State demonstrates that the search or seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement." *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997); *State v. Carter*, 160 S.W.3d 526, 531 (Tenn. 2005). One exception extends to warrantless searches that are supported by probable cause and exigent circumstances. See *State v. Bartram*, 925 S.W.2d 227, 230 n.2 (Tenn. 1996). Exigent circumstances exist if the delay necessary to procure a search warrant would endanger life, or if there is a danger of imminent destruction or removal of evidence. *State v. McMahan*, 650 S.W.2d 383, 387 (Tenn. Crim. App. 1983). "If the circumstances of a challenged search and seizure come within one of the recognized exceptions to the warrant requirement, the fruits of that search and seizure are not subject to operation of the exclusionary rule and may be properly admitted into evidence." *State v. Shaw*, 603 S.W.2d 741, 742-43 (Tenn. Crim. App. 1980)

It is well established in Tennessee that the odor of an illegal substance, either alone or in conjunction with other facts and circumstances, can provide sufficient probable cause, depending on the situation, for either a warrantless search or the issuance of a search warrant. See *Hart v. State*, 568 S.W.2d 295, 296 (Tenn. Crim. App. 1978) (holding search of vehicle justified because marijuana odor coming from vehicle established probable cause); *State v. Hughes*, 544 S.W.2d 99, 101 (Tenn. 1976) (holding the odor of marijuana coming from a vehicle constituted probable cause that the vehicle contained contraband marijuana); *Hicks v. State*, 534 S.W.2d 872, 873-74 (Tenn. Crim. App. 1975) (holding that the smell of marijuana from the defendant's car established probable cause for an officer to search the vehicle); *State v. Bradley Lonsinger*, No. M2003-03101-CCA-R3-CD, 2005 WL 49569 (Tenn. Crim. App. Jan. 5, 2005) (no Rule 11 app. filed) (determining that strong "chemical smell" from defendant's trailer justified issuance of search warrant) (copy attached); *State v. Paul Anthony Wright*, No. W2001-02574-CCA-R3-CD, 2003 WL 1860526, at *9-10 (Tenn. Crim. App. Apr. 7, 2003) (no Rule 11 app. filed) (holding that search warrant affidavit reciting, *inter alia*, the distinct odors associated with the manufacture of methamphetamine was sufficient to establish probable cause for the issuance of a search warrant of defendant's home) (copy attached); *State v. Danny Davidson*, No. W2001- 00118-CCA-R3-CD, 2002 WL 1482720, at *1 (Tenn. Crim. App. Feb. 26, 2002) (perm. app. denied July 8, 2002) (determining that evidence was sufficient where valid search warrant of a home was issued based on an officer's recognition of a "strong chemical odor" as "that from a possible methamphetamine lab") (copy attached). Thus, an illegal drug's distinct odor alone may establish probable cause for a search.

Furthermore, the distinct odor of methamphetamine may furnish exigent circumstances for an immediate, warrantless search. The United States District Court for the Eastern District of Tennessee recently upheld a warrantless search of a hotel room where the officer noticed smoke coming out of the room's window air conditioner and the "strong unmistakable odor of methamphetamine" outside the defendant's room. *United States v. Larry L. Denson*, No. 1:05 CR 088, 2006 WL 270287, at *1 (E.D. Tenn. Feb. 2, 2006) (app. dismissed June 22, 2007). In *Denson*, the court found probable cause based upon the officer's "smelling the unmistakable odor of methamphetamine and his training to recognize the smell, along with visible smoke and fumes emanating from the room, and the finding of methamphetamine and coffee filters on defendant's

person." *Id.* at *3. The court also concluded that exigent circumstances existed justifying the warrantless search of the room:

The dangers of methamphetamine are well-established. As noted by the Sixth Circuit and addressed by the House of Representatives, methamphetamine: "poses serious dangers to both human life and to the environment . . . these chemicals and substances are utilized in a manufacturing process that is unstable, volatile, and highly combustible. Even small amounts of these chemicals, when mixed improperly, can cause explosions and fires." *United States v. Layne*, 324 F.3d 464, 468-49 (6th Cir. 2003) (quoting H.R. Rep. 106-878, pt.1 at *22 (Sept. 21, 2000)); *see also U.S. v. Dick*, 173 F.Supp.2d 765, 769 (E.D.Tenn.2001).

Id.

Similarly, in *State v. James Castile*, the Court of Criminal Appeals concluded that a warrantless search of Castile's hotel room was justified "based upon the smell of methamphetamine alone . . . based upon the exigent circumstances created by the dangers associated with methamphetamine production." *Castile*, No. M2004-02572-CCA-R3-CD, 2006 WL 1816371, at *8 (Tenn. Crim. App. June 28, 2006) (no Rule 11 app. filed) (copy attached). In *Castile*, officers responded to a report of the smell of ether coming from a hotel room. The officers approached Castile's hotel room and knocked on his door. Before Castile opened the door, the officers could smell a strong odor of methamphetamine coming from inside. When Castile walked outside to speak with the officers, the officers conducted a pat-down search, discovered evidence of methamphetamine production, and secured a search warrant. In rejecting Castile's motion to suppress, the intermediate court concluded that the officers "would have been justified in searching the room without a warrant based on the dangerous exigent circumstances presented by an active methamphetamine laboratory." *Id.*

Most recently in *State v. Randy Lee Meeks*, —S.W.3d—, 2008 WL 4007429 (Tenn. 2008), the Tennessee Supreme Court held that methamphetamine labs are highly dangerous, and a warrantless search of a motel room that contained an active methamphetamine lab was justified. *Slip op.* at 11. In *Meeks*, the officers responded to the Park Motel based upon a report that motel guests were suffering from an odor that appeared to be coming from an adjacent room. The caller reported that the odor caused her and her mother to have burning eyes and headaches. When the officers met with the caller in her room, they discovered that the odor, particularly in the bathroom area, was instantly recognizable and unmistakable as that produced during the manufacturing of methamphetamine. The officers ultimately concluded that methamphetamine manufacturing created dangerous fumes and a risk of explosion, and they agreed that they should enter the room next door because of the immediate dangers posed. *Id.* at 2. In upholding the warrantless search, the Supreme Court held that under the undisputed facts of this case, exigent circumstances existed justifying the warrantless entry. Accordingly, the entry was not an unreasonable search under either the Fourth

Amendment to the United States Constitution or Article I, Section 7 of the Constitution of Tennessee. *Id.* at 12.

Thus, based on the holding in *Meeks and Snyder*, if law enforcement officers have probable cause to believe that an active meth lab is being operated inside the quarantined premises, the exigencies of that circumstance would permit a warrantless entry and search. If, on the other hand, the meth lab has been disassembled, and the exigencies of an active meth lab no longer exist, officers would need to obtain a search warrant prior to re-entering and searching the quarantined area.

2. You have also questioned whether law enforcement officers may enter quarantined premises without a warrant if they have a reasonable suspicion that the premises are being occupied in violation of the quarantine. While willful habitation of the quarantined area is a misdemeanor offense under Tenn. Code Ann. §68-212-503(d), even if the officers have probable cause to believe that the quarantined area is being occupied, unless some exigency exists, the officers would still need a warrant prior to entering and searching the premises. See *Michigan v. Tyler*, 436 U.S. 499, 511, 98 S.Ct. 1942, 1951 (1978)(evidence of arson discovered in the course of an investigation [of a fire] is admissible at trial, but if the investigating officials find probable cause to believe that arson has occurred and require further access to gather evidence for a possible prosecution, they may obtain a warrant only upon a traditional showing of probable cause applicable to searches for evidence of a crime); *Michigan v. Clifford*, 464 U.S. 287, 104 S.Ct. 641 (an administrative search in the case of a recent fire does not give fire officials license to roam freely through the fire victim's private residence).

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