

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE)	C.R. No. 0604013367
vs.)	
)	
JAMES E. GREER,)	
)	
Defendant.)	

Submitted December 1, 2006
Decided February 6, 2007

Lynn Jones, Esquire, Deputy Attorney General.
Vincent Vickers, Esquire, counsel for Defendant.

DECISION AND ORDER ON DEFENDANT’S MOTION TO SUPPRESS

The Defendant is charged with several traffic violations including Failure to Show Proof of Insurance in violation of 21 *Del. C.* § 2118(m), Failure to Have Registration in Possession in violation of 21 *Del. C.* § 2108, Driving at an Unreasonable Speed in violation of 21 *Del. C.* § 4168 (a), and Driving a Vehicle Under the Influence of Alcohol and or Drugs in violation of 21 *Del. C.* § 4177(a). Defendant moved to suppress evidence obtained subsequent to and as a result of his arrest. After hearing oral arguments, the Court grants the motion to suppress, for the following reasons.

FINDINGS OF FACT

On April 19, 2006 at about 2:11 a.m., the arresting State Trooper, traveling on Huff Road near Sand Hill Road, observed a silver Pontiac about 10 to 20 car

lengths in front of him. The vehicle was driving down the middle of the unmarked "back road," and then he observed its tail lights run off the road onto the shoulder about three times. Now intently observing the vehicle, the officer noticed it weave on the road several more times over the next mile. The officer then increased his speed to pull close to the vehicle to obtain the tag number, but as he closed in on the vehicle, it sped up at a "high rate of speed," causing the officer to increase his speed to 70 m.p.h. to try to catch up. The officer activated his equipment, and then saw the tail lights of the vehicle disappear ahead. As he approached the "tee" intersection at which the road ended, he noticed the tail lights to his right in a driveway of a private residence.

The officer pulled into the driveway. While his headlights were shining in the direction of the other vehicle and the front door of the residence, he observed a male exit the vehicle, and walk up the front steps of the residence to the door. The officer testified he exited his vehicle announced that he was a trooper and that he wanted to speak with him. At that point the male turned toward the officer, then turned back, opened the door and entered the house "as if he hadn't heard me," and locked the door. The officer banged repeatedly and loudly on the front door for 15 to 30 seconds. A woman later identified as the defendant's mother, Sally Johnson, came to the door and opened it. The officer told the woman he needed to speak to the man that just entered the house. The officer testified that he asked "Can I see him?" The woman opened the residence door and the officer entered the home, walked down a hallway to a closed bedroom

door, opened the door without knocking, and found the defendant seated on a bed. He told the defendant he smelled alcohol on him, and that he was under arrest for suspicion of driving under the influence of alcohol. The officer handcuffed the defendant, removed him from his home, and transported him to the Troop for processing and administration of the intoxilyzer test.

DISCUSSION

The Defendant claims his warrantless arrest violated his constitutional rights and all resulting evidence should be suppressed. The State contends the warrantless seizure was proper because the officer was given permission to enter the home by another occupant of the home, Defendant's mother. Alternatively, the State claims that the doctrine of "exigent circumstances" should be recognized in this instance because the officer was in hot pursuit of a fleeing driver suspected of driving under the influence of alcohol.

A warrantless arrest within the home, especially in the evening, for Title 21 traffic violations raises the issue of whether such an arrest violates the Fourth Amendment of the United States Constitution.¹ The Fourth Amendment, made applicable to the States by the Fourteenth Amendment, prohibits police from making a warrantless, nonconsensual entry into a person's home for purposes of search or seizure unless the State can establish that that the exigent

¹ *State v. Rizzo*, 634 A.2d 392, 402 (Del. Super. 1993); see also *Singleton v. Voshell*, 1993 WL 54438, *3 (Del. Super.).

circumstances of the situation made the warrantless entry imperative.² The plain language of the Fourth Amendment applies equally to search and seizure of both persons and property.³ While noting that that the degree of intrusiveness may differ between a police entry to search and seize personal property, and an entry to arrest, the Supreme Court in *Payton v. New York* held that both intrusions involve the breach of the entrance into an individual's home.⁴ "[T]he Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant."⁵ Consequently, courts must apply the same Fourth Amendment analysis to either type of intrusion.

Consent

The Defendant argues that the trooper did not have his or his mother's consent to enter the home or the bedroom where he was arrested. Although a resident may consent to a warrantless entry into his home to arrest a person, the State has the burden of proving that unequivocal and specific consent was given by a person with authority to do so.⁶ The Court examines the totality of the circumstances to determine the validity of the consent.⁷

In this case, the State argues that Sally Johnson, Defendant's mother, gave valid consent to the trooper to enter the home. There is no question that

² *Payton v. New York*, 445 U.S. 573, 590 (1979) (finding exigent circumstances exception to warrant requirement); see also *Schneckloth v. Bustamonte*, 412 U.S. 218, 221-22 (1973) (finding consent exception to warrant requirement).

³ *Payton* at 590; see also *Mason v. State*, 534 A.2d 242, 534 (Del. 1987).

⁴ *Id.* at 589.

⁵ *Id.*

⁶ *Rizzo* at 396 (citing *U.S. v. Shaibu*, 920 F.2d 1423, 1427-1428 (9th Cir. 1990)).

⁷ *Id.*

defendant's mother, as a resident of the home, had authority to consent to the entry. The Court must determine whether she actually consented to the trooper's entry of the home.⁸

The officer first testified that, after he repeatedly and loudly "beat" on the door, the defendant's mother came to the door. He told her that a man went into the house "running from him." He testified that the mother opened the door and that he went in and saw the defendant sitting on a bed. Upon further questioning the officer stated that, after entering the home, he walked down the hall to a closed bedroom door, that he opened the door and found the defendant sitting on a bed. He also stated that the defendant's mother was behind him as he walked into the house and to the bedroom.

The defendant's mother, Sally Johnson, testified that she gave no express consent to the officer to enter the home. She said that in response to the trooper's knocking on the door, she opened the door and that the trooper then "shoved [her] out of the way," and stated he was going to "take whoever came in here away." Ms. Johnson testified that she said, "You can't come in here, can you?" She said the officer responded "I can go wherever I want."

In rebuttal, the officer testified that he did not shove Ms. Johnson out of the way. He said he told her that he was "after the gentleman that just came in here," and that Ms. Johnson "moved out of the way." He then asked where the person went, and Ms. Johnson said, "Down the hall." The officer acknowledged

⁸ See *State v. Harris*, 642 A.2d 1242, 1245 (Del. Super. 1993).

that it all happened “very quick.” After consideration of all of the testimony, and in light of the totality of the circumstances, the Court finds the State has not met its burden of proof to establish that Ms. Johnson gave unequivocal and specific consent for the officer to enter the home. Therefore, the State may not rely upon consent as an exception to the constitutional warrant requirement.

Exigent Circumstances

Absent consent, warrantless searches and seizures are presumed unreasonable and violative of the Fourth Amendment, even where supported by probable cause, unless exigent circumstances exist to justify the intrusion.⁹ Exigent circumstances have been found to justify a warrantless entry where there is “a hot pursuit of a *fleeing felon*, or imminent destruction of physical evidence . . . or the need to prevent a suspect’s escape, or the risk of danger to the police or to other persons inside or outside the dwelling.”¹⁰ In determining whether the exigency was sufficient for the warrantless entry, the Court considers factors such as (1) the degree of urgency involved and the amount of time needed to obtain a warrant; (2) the reasonable belief the contraband is about to be removed; (3) risk of danger to the police guarding the site while waiting for the search warrant; (4) police information that the suspects are aware the police are on their trail; (5) police knowledge that traffickers of the

⁹ *Welsh v. Wisconsin*, 466 U.S. 740 (1984).

¹⁰ *Minnesota v. Olsen*, 495 U.S. 91, 100 (1990) (citations omitted) (emphasis added).

suspected contraband characteristically attempt to dispose of destructible contraband and escape.¹¹

In applying the relevant factors to the present case, the Court finds insufficient exigency in the facts surrounding this misdemeanor matter to justify the warrantless intrusion into Defendant's home at about 2:00 am to arrest him. "Hot pursuit" in Delaware has been recognized as an exception to the warrant requirement when officers are pursuing a "fleeing felon";¹² in the present case, the officer only suspected the defendant of speeding and driving under the influence of alcohol, both traffic violations. The State has not established any credible degree of urgency in making this arrest, nor that it would take unduly long for the officer to radio for assistance in observing the home while he obtained a warrant from a neutral and detached magistrate. The facts demonstrate no concern of removal of contraband or police safety in watching the home while waiting for a warrant. Although there is evidence that the defendant may have been aware that the officer had pursued him into his driveway, there is no credible evidence that the officer had a genuine, objective concern the defendant might attempt to escape the residence. Police must obtain and use warrants whenever reasonably practicable, and their unexplained failure to secure a warrant when they had enough time to do so mandates a finding that the search or seizure was unlawful.¹³ The State has failed to

¹¹ *State v. Wilson*, Del. Super., 2001 WL 845749, Del. Pesco, J. (July 6, 2001) (citing *State v. Ada*, Del. Super., 2001 WL 660227, Goldstein, J. (June 8, 2001)).

¹² *Minnesota v. Olsen*, 495 U.S. at 100.

¹³ *Mason v. State*, 534 A.2d 242, 249 (Del. 1987) (citing *State v. Reader*, 328 A.2d 146, 149 (Del. Super. 1974)).

demonstrate that sufficient exigency existed in this situation to justify the extreme, nonconsensual intrusion into the constitutional sanctity of the home made by the arresting officer.

CONCLUSION

The State failed to establish that the arresting officer had valid consent to enter the Defendant's home. No exigent circumstances existed to justify the warrantless entry. Therefore, the motion to suppress evidence obtained as a result of the arrest is **GRANTED**.

IT IS SO ORDERED, this ____ day of February, 2007.

Kenneth S. Clark, Jr., Judge