

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| COMMONWEALTH OF PENNSYLVANIA | : NO. 02-11,358 |
| | : |
| | : |
| vs. | : CRIMINAL DIVISION |
| | : Motion to Suppress |
| DOMINICK . NOVIELLO, | : |
| Defendant | : |

OPINION AND ORDER

Before the Court is a Motion to Suppress filed by Defendant in the above-captioned matter, asking this Court to suppress all evidence obtained as a result of an uninvited entry into the home of Defendant's mother to apprehend Defendant. The background of the arrest is as follows:

In the early morning hours of July 17, 2002, two Pennsylvania State Troopers Justin Bieber and Angela Piurkoski, while on patrol, observed Defendant's vehicle take a wide turn onto S.R. 654 in Armstrong Township, Lycoming County. The vehicle then swerved onto the berm of the road and then crossed over the centerline. The troopers, in a marked police car, activated their emergency lights and siren and attempted to stop the vehicle. The vehicle sped away traveling 75 mph in a 45 mph zone. During the course of the 2 ½ mile chase, the vehicle swerved back and forth and at one point ran over several mailboxes. The vehicle finally pulled into the yard of a residence along S.R. 654, the operator exited the vehicle, stumbled, and ran through the rear door of the residence. While running toward the residence, the troopers ordered the individual to stop, however, to no avail. The troopers then split up and Trooper Piurkoski followed Defendant to the rear of the house entering the same door as Defendant. The door was unlocked but apparently was closed. Upon entering the home, she identified herself as a state police officer and she repeated her announcement of entry three times. The officers called for backup and Trooper Bieber also entered the home. After a brief search, the

troopers found Defendant hiding in the basement. The officers testified that Defendant had a strong odor of alcohol and was aggressive toward the officers. While the Defendant was kicking and struggling, the officers handcuffed him. At this point, the owner of the residence, Bonnie Noviello, appeared pointing a rifle at the troopers. Ms. Noviello directed the officers to leave her son (Defendant) alone. Backup officers arrived at the scene and the incident was diffused. Defendant was physically carried from the house, having been placed under arrest.

The Court is asked to suppress all evidence obtained as a result of the entry into the home. There is of course no question that searches and seizures in a private home without a warrant are presumptively unreasonable. Arizona v Hicks, 480 U.S. 321, 107 Supreme Court 1149 (1987). In Commonwealth v Wagner, 486 Pa. 584, 406 A.2d 1026 (1979), the Commonwealth identified a number of factors to be considered in determining whether a set of particular circumstances are “exigent.” Among the factors to be considered are: 1) the gravity of the offense, 2) whether the suspect is reasonably believed to be armed, 3) whether there is a clear showing of probable cause, 4) whether there is a strong reason to believe that the suspect is within the premises being entered, 5) whether there is a likelihood that the suspect will escape if not swiftly apprehended, 6) whether the entry was peaceable, and 7) the time of the entry, whether it was being made at night. These factors are to be balanced against one another in determining whether a warrant less intrusion is justified. Beyond these numerated factors, the Court went on to say that some other factors may also be taken into account such as whether there is hot pursuit of a fleeing felon, a likelihood that evidence will be destroyed if the police take the time to obtain a warrant and whether there is danger to the police or other persons inside or outside the dwelling. Although the Court has defined these factors, it went on to suggest that in spite of the analysis police bear a heavy burden when attempting to demonstrate an urgent need which might justify warrant less searches or arrests. Welch v Wisconsin, 466 U.S. 740, 104 S. Ct., 2091 (1984).

It is against this background that the factors are to be considered. Under the circumstances enumerated above, the Court finds that the police had probable cause to believe that Defendant was driving under the influence of alcohol or some other intoxicant and had committed a number of motor vehicle violations, however, there was no reason to suspect that

Defendant was armed. Obviously, the police saw Defendant entering the premise so there was a strong reason to believe that he was within the premises being entered. There may have been some likelihood that he would escape if not swiftly apprehended, but it is quite likely that Defendant could have been contained within the premises. The testimony of the troopers established that the entry was peaceable and there is no question that the time of the entry was made at night. As far as the other factors, there was hot pursuit, but there was no probable cause to believe that Defendant was a fleeing felon. Finally, the police could not make a determination as to whether there was a danger to the persons inside the dwelling.

Under such circumstances, it appears that the Court is to apply a balancing standard in determining whether the factors considered above constitute such exigent circumstances as to overcome the presumption of unreasonableness that attaches to warrant less home entries. As the Court analyzes each of the factors to be considered, it appears that none of the factors overwhelmed the presumption of unreasonableness that attaches to warrant less home entries except that of the potential danger to police or other persons inside or outside of the dwelling.

Under the circumstances of the facts presented, the pursuing troopers are indeed in a very difficult position. The troopers, at the time the Defendant entered the house, did not know the identity of Defendant nor did they know the address on the vehicle registration. The manner in which the vehicle entered the property, abruptly turning into the property, taking out several mailboxes, crossing the lawn and coming to an abrupt stop with Defendant running into the house did not give any indication of ownership or privilege to enter the property. Had Defendant entered the property with a key, garage door opener or other device which indicates a means of access to the property, then certainly the police could have reasonably concluded that Defendant had some license to be on the property.

However, in this case none of those factors existed. The police therefore are in a position where they must make an instantaneous decision as to the potential danger to any of the occupants of a residence whether a fleeing suspect in a DUI case has in the manner described above entered the property. Surely, if the police had stopped at the door, taken the time for a warrant and entered the property after Defendant had caused injury or damage inside, they, the police would be subject to harsh criticism and perhaps civil liability. On the other hand, if they

enter the house even in the manner described by these officers, they are accused of violating Defendant's Fourth Amendment rights.

It is the conclusion of the Court that exigent circumstances existed which permitted the officers to enter the house in the manner that they did. The officers entered the house peaceably, they announced their presence three times, they were in full uniform and their entry posed no threat to the occupants of the house.

ORDER

AND NOW this 9th day of June, 2003, for the reasons stated above, the Motion to Suppress Evidence as a result of the officers' entry into the home is Denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA
George Lepley, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson