

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :  
 :  
 vs. : No. CR-703-2019  
 :  
 GARY KNARR, :  
 :  
 Defendant : Motion to Suppress

**OPINION AND ORDER**

The defendant is charged by Information filed on May 30, 2019 with driving under the influence with the highest rate of alcohol, accidents involving damage to attended vehicle or property and related offenses.

Before the Court is the defendant's Motion to Suppress filed on July 8, 2019. A hearing on said motion was not held until October 29, 2019.

According to the testimony provided during the hearing, on February 22, 2019 at approximately 9:15 p.m., Officer Trafford of the Williamsport Bureau of Police was dispatched to the New K Bar parking lot for a report of a hit and run. The dispatch advised that a red Jeep Wrangler struck an occupied vehicle and fled the scene.

Rebecca Rishel was patronizing the K Bar that evening. While at the bar, she recognized the defendant and saw him drinking.

After leaving the bar, she went to her vehicle and while sitting in the driver's seat, she saw the defendant get into his car, back up, hit her vehicle on the rear driver's side door and then drive away. She tried to get the defendant's attention by honking her horn but he continued to drive off.

She returned to the bar and enquired as to the defendant's last name and

contacted the police. She waited for the police to arrive.

Officer Trafford arrived at approximately 9:30 p.m. He spoke with Ms. Rishel who informed him of what occurred. Having the defendant's last name, he ran the name, located the defendant's address and drove to it.

At approximately 9:45, he arrived at the defendant's residence. He initially parked on the roadway but looking down Defendant's driveway, he saw an open garage with a vehicle in it. He subsequently drove his patrol unit approximately fifty or so yards down the driveway parking it approximately 10 to 20 feet from the garage. He then entered the garage,<sup>1</sup> viewed damage to the rear of a Jeep vehicle matching the description, and which damage was consistent with Rishel's version of the events.

He knocked on the side door to the residence. He spoke with the defendant who admitted that he was at the K Bar but indicated that he left at approximately 4:00 p.m. Officer Trafford noticed an odor of alcoholic beverages coming from the defendant's breath. As well, Officer Trafford noticed that the defendant's speech was thick and slurred. He concluded that these observations were consistent with someone "who had been drinking."

Because it was cold outside, the defendant indicated that he was going to get his shoes and jacket. The defendant closed the door. Officer Trafford indicated that he could see through the clear storm door. The defendant was on the phone and talking with a female

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<sup>1</sup> The garage is within the curtilage of the defendant's residence. The officers walked past the door to the residence to enter the garage.

and did not appear to be getting any shoes or jacket. Officer Trafford knocked on the door a second time. The defendant looked at him and held up a finger giving Officer Trafford the impression that the defendant was asking him to hold on or wait just a minute. However, the defendant continued talking with the female as well as on the phone.

Officer Trafford then knocked a third time. The female came to the door but did not answer.

Collectively, with Corporal Cochran, they decided to take the defendant into custody for suspected driving under the influence. This was based on the defendant's odor of an alcoholic beverage, his speech, information that he was seen drinking at the bar, information that his vehicle hit another car and left the scene, and the defendant not coming out of the house to continue the conversation with the officers.

The entire encounter with the defendant lasted about five minutes before the officers opened the door and went inside the residence. Among the other factors supporting the entry into the residence, Officer Trafford indicated that the defendant was "clearly not addressing the issue with us", "avoiding this" and "preventing and/or obstructing justice."

Corporal Cochran of the Old Lycoming Township Police Department assisted Officer Trafford with the investigation in this matter. He went to the defendant's residence upon being informed that there was a hit and run and that the suspected vehicle was a dark in color Jeep Wrangler.

He arrived at the residence at approximately 9:46 p.m. He was dispatched at approximately 9:40 p.m. He confirmed what was testified to by Officer Trafford.

Among other things, he drove down the driveway, walked into the garage and noticed the vehicle and damage.

Following the third knock on the door and the defendant's "wife" coming to the door, speaking briefly with Officer Trafford and then shutting the door, he decided to enter the residence. He was not sure if it was a collective decision or his decision alone. His decision was based on his information that the defendant had been drinking, the defendant's refusal to come back to and open the door, and the defendant not putting on a jacket or shoes as the defendant indicated he was going to do. When the defendant was taken into custody, he was being arrested for suspected DUI and a hit and run. Corporal Cochran testified that the door to the residence was unlocked, that he opened it and entered the house. He indicated that the decision had already been made to take the defendant into custody.

Nicole Knarr is the defendant's wife. She was with him that evening in the K Bar. When they left neither he nor she realized that the defendant had hit Ms. Rishel's vehicle.

By the time the police arrived, she and her husband had been home for approximately 40 minutes "having some drinks."

Prior to the police knocking on the door, she had observed them walking inside the garage. She confirmed that the police knocked on the door three times and had brief discussions first with her husband, and lastly with her.

Following the third knock, she advised Officer Trafford that they were waiting for their attorney, Mr. Miele. She then shut both the wooden door and the glass screen door.

Soon thereafter, the wooden door swung open, her husband was hit by the door. The police came inside and arrested the defendant. At no time did she give the police permission to enter the residence or invite them into the residence.

The defendant first contends that the entry onto his property was unlawful and as a result all of the evidence obtained thereafter should be suppressed. The Commonwealth does not dispute that the officers did not obtain a search warrant prior to entering onto the defendant's property. The Commonwealth argues that it is within the province of the police to be allowed a limited intrusion onto a defendant's property to investigate a crime that has already occurred.

More specifically, the Commonwealth argues that the entry into the garage was based on probable cause and exigent circumstances. The Commonwealth relies on *Commonwealth v. Fickes*, 969 A.2d 1251 (Pa. Super. 2009) and *Commonwealth v. Johnson*, 668 A.3d 930, 935 Pa. Super. 2013).

The court cannot agree. Instead, the court finds that the result in this case is dictated by *Collins v. Virginia*, 138 S.Ct. 1663 (2018), *Commonwealth v. Loughnane*, 643 Pa. 408, 173 A.3d 733 (2017), and *Commonwealth v. Lee*, 972 A.2d 1 (Pa. Super. 2009). While there may have been probable cause, there certainly were not exigent circumstances. The Commonwealth was required but failed to obtain a search warrant.

The defendant next argues that the entry into his residence was unlawful and as a result all of the evidence should be suppressed. The Commonwealth argues that it had probable cause and exigent circumstances. In support of its argument, the Commonwealth

relies on *Commonwealth v. Dommel*, 885 A.2d 998 (Pa. Super. 2005) and *Commonwealth v. Fickes*.

Again, however, the court cannot agree. The cases are not analogous and the Commonwealth could not and did not establish exigent circumstances.

The police were investigating a “hit and run,” i.e., an accident involving damage to an attended vehicle, and not a DUI. The dispatch was for a “hit and run,” and there was no mention in the police report of the defendant drinking at the K Bar.

Accidents involving damage to an attended vehicle is a misdemeanor of the third degree. It is not a felony. It is a relatively minor offense.

The police were not in hot pursuit. They did not observe the defendant leaving the scene of the incident. In fact, they never even saw the defendant driving the Jeep. Instead, they arrived at the defendant’s residence approximately 40 minutes after the “hit and run” incident allegedly occurred.

There was no reason to believe the defendant was armed and dangerous or in need of medical attention. The police could see the defendant the entire time they were on his porch. In fact, there is absolutely no evidence that anyone was ever in danger while the police were on the defendant’s property.

The entry into the defendant’s residence occurred at night time and was not peaceable. The officers pushed open the doors to the defendant’s residence and entered without a warrant or consent.

There was nothing in the record to indicate that there was a danger of the

defendant destroying evidence. The Jeep was parked in the defendant's garage, the defendant was inside his residence, and the police were at the defendant's door. The defendant could not get to the Jeep to destroy evidence without leaving his residence and being apprehended by the police. Even if the police had been investigating a DUI instead of an accident involving damage to an attended vehicle (which they were not), the mere fact that alcohol dissipates from the blood stream is not sufficient to establish exigent circumstances. *Missouri v. McNeely*, 569 U.S. 141, 133 S.Ct. 1552 (2013)(the natural metabolization of alcohol in the bloodstream does not present a per se exigency that justifies an exception to the warrant requirement).

In light of these facts and circumstances, the police did not have exigent circumstances to enter the defendant's residence.

**ORDER**

**AND NOW**, this \_\_\_ day of December 2019, following a hearing, argument and the submission of briefs, the court **GRANTS** the defendant's motion to suppress. All of the evidence obtained by the Commonwealth following its illegal entry onto the defendant's property is suppressed.

By The Court,

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Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (DA)  
William Miele, Esquire  
Gary Weber, Esquire (Lycoming Reporter)  
Work File