



Police Law Bulletin



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NORTH CAROLINA COURT OF APPEALS



Exigent Circumstances Justified Officers' Warrantless Entry Into Defendant's Residence

State v. Adams, ___ N.C. App. ___, ___ S.E.2d ___ (Dec. 6, 2016)

On October 7, 2011, Gastonia Police Officers C. Singer and R. Ghant were on routine patrol when, at approximately 11:00 p.m., the officers passed defendant driving in their opposite direction on Meade Avenue. Officer Singer was familiar with defendant and defendant's vehicle because he had stopped defendant and charged him with DWI approximately three months earlier. Officer Singer knew defendant's license had been suspended as a result of the DWI. Officer Singer turned around to follow defendant in time to observe him pull into his driveway. Officer Ghant ran defendant's tag and license information through DCI, which confirmed that defendant's license was revoked.

Upon the belief that defendant was driving while his license was suspended, Officer Singer pulled into defendant's driveway directly behind defendant's vehicle and initiated a traffic stop by activating his blue lights. By this time, defendant had exited from the driver's seat of his vehicle and was approximately 15-20 feet from the front door of his residence. Officer Ghant instructed defendant to stop and to get back inside his car. Despite having a boot on one of his feet as the result of an injury, defendant picked up his pace toward the front door and Officer Singer advised him to stop running. Officer Ghant pursued defendant. Defendant entered the front door and then attempted to close it. Officer Ghant was able to keep the front door from shutting and held the door open until Officer Singer arrived. The officers were then able to force the door open and made physical contact with defendant just inside the front door. Officer Singer patted defendant down and found what he believed was a bag of marijuana in defendant's pocket. Defendant was arrested and charged with DWLR, possession of marijuana, and resisting a public officer. Further observation of defendant after his arrest led Officer Singer to believe defendant

was impaired. Consequently, another officer was called to perform field sobriety tests. Defendant was then additionally charged with DWI.

Prior to trial, defendant filed a motion to suppress which the trial judge denied. A jury returned verdicts finding defendant guilty of DWI and resisting a public officer. Defendant appealed. On appeal, defendant argued the trial court erred in denying his motion to suppress because the officers' entry into his residence to arrest him was unlawful. Thus, defendant contended all evidence of his impairment obtained as a result of the alleged unlawful entry was tainted and should have been suppressed.

Both the United States and North Carolina Constitutions protect against unreasonable searches and seizures. The Supreme Court has emphasized that the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed. Therefore, the Court has recognized, as a basic principle of Fourth Amendment law, that searches and seizures inside a home without a warrant are presumptively unreasonable.

However, there are exceptions to the warrant requirement, which the Court has noted are few in number and carefully delineated. A warrantless arrest in the home may be reasonable where there is probable cause and exigent circumstances. Exigent circumstances exist when there is a situation that demands unusual or immediate action and that may allow people to circumvent usual procedures. The United States Supreme Court has approved the following exigent circumstances justifying warrantless searches and seizures: (1) where law enforcement officers are in "hot pursuit" of a suspect; (2) where there is immediate and present danger to the public or to law enforcement officers; (3) where destruction of evidence is imminent; and (4) where the gravity of the offense for which the suspect is arrested is high.

A determination of whether exigent circumstances are present must be based on the totality of the circumstances. In the case at hand, defendant contended there were no exigent circumstances warranting entry into defendant's home to arrest defendant. The Court of Appeals disagreed.

It is undisputed that the officers had reasonable suspicion to initiate an investigatory stop of defendant for DWLR when they pulled into defendant's driveway behind him and activated the blue patrol car lights as defendant was exiting his vehicle and making his way toward his front door. Defendant did not stop for the blue lights and then continued hurriedly toward the front door after the officers told him to stop. At that point, the officers had probable cause to arrest defendant for resisting a public officer and began a "hot pursuit" of defendant, one of the exigent circumstances delineated by the courts. The officers arrived at the front door of defendant's residence just as defendant made his way across the threshold and were able to prevent defendant from closing the door. Officers then forced the front door open and detained and arrested defendant just inside the front door. We hold such warrantless entry and arrest was proper. A suspect may not defeat an arrest which has been set in motion in a public place by escaping to a private place.

In the present case, defendant did not argue the officers were not in hot pursuit, but instead contended the officers' entry into his residence was unreasonable because there was no threat of

violence, no evidence subject to destruction, and no likelihood of defendant fleeing his own home to elude detection. Defendant's assertions, however, fail to recognize that defendant was considered fleeing when he failed to stop upon the activation of the blue lights and the officers' commands to stop. Hot pursuit has been recognized as an exigent circumstance sufficient to justify a warrantless entry and arrest when there is probable cause without consideration of immediate danger or destruction of evidence.

Facts Were Insufficient to Establish That a Breaking and Entering Had Recently Taken Place or Was Still In Progress So That Exigent Circumstances Would Justify a Warrantless Entry

State v. Jordan, COA14-1070 (4 August 2015).

On April 15, 2011, around 11:40 a.m., Officer Wolf of the Garner Police Department ("GPD") was driving through the Bryan Woods apartment complex when he saw a dog roaming around with no owner in sight. When he stopped his patrol car and attempted to catch the dog, he noticed curtains waving through an open window on the first floor of one of the apartment buildings. As he approached the window, he saw that the window was broken, there were glass shards on the ground, and a screen was propped up against the side of the apartment building. He believed that a breaking and entering could be in progress and called for back-up.

Shortly thereafter, Officer Doak arrived and proceeded to the door of the apartment. Officer Doak told Officer Wolf that the door was unlocked. The officers knocked on the door. The officers opened the door slightly, again announced their presence, and waited for approximately one minute. When there was still no response, the officers entered the apartment. While conducting a sweep of the apartment, the officers came to a room where the door leading to the room was blocked by a heavy object. The officers pushed the door open and knocked over a dresser that was blocking their entry. Once inside the room, the officers saw narcotics and other drug paraphernalia in plain view. After the officers completed the sweep and exited the apartment, defendant pulled up to the apartment with her boyfriend James Chance. Defendant and Chance told the officers that they lived in the apartment. The officers explained that they believed that a break-in could be in progress or that someone had broken in and asked that they check to see if anything was missing or out of place. Defendant and Chance went into their living room and said that everything was fine without checking any other room.

Based on the observations of drug paraphernalia and narcotics in the apartment, the officers then proceeded to obtain a search warrant for the residence. Pursuant to the warrant, officers found "MDMA," marijuana, digital scales, and a marijuana blunt. Defendant and Chance were arrested following the search and later indicted.

Defendant moved to suppress the evidence obtained as a result of the search of her residence arguing that the officers did not have an objectively reasonable belief that a breaking and entering was in progress or had recently been committed and that, therefore, the search was not justified under the exigent circumstances exception to the warrant requirement. The trial court denied defendant's motion. Defendant entered a negotiated guilty plea. Defendant then appealed.

In *State v. Woods*, 136 N.C. App. 386, 391, 524 S.E.2d 363, 366 (2000), the North Carolina Court of Appeals recognized that “State and federal courts in other jurisdictions generally agree that where an officer reasonably believes that a burglary is in progress or has been recently committed, a warrantless entry of a private residence to ascertain whether the intruder is within or there are people in need of assistance does not offend the Fourth Amendment.” In *Woods*, an officer was dispatched to the defendant’s mobile home to investigate an alarm that was going off. When the officer arrived, he heard the alarm and observed that the rear door of the mobile home was ajar. He announced his presence, identified himself as a police officer, and requested that anyone inside exit the residence. When he heard no response, he entered the mobile home to search for potential victims or perpetrators. A cursory search of the home revealed that a window had been broken. Under these circumstances, the Court held that the entry into the defendant’s home was supported by both probable cause and exigent circumstances, as “it was clear an uninvited entry had been made at the residence and the officers had reason to believe that intruders or victims could still be on the premises.”

Similarly, in *State v. Miller*, ___ N.C. App. ___, ___, 746 S.E.2d 421, 425 (2013), *rev’d on other grounds*, 367 N.C. 702, 766 S.E.2d 289 (2014), this Court held that the officers’ warrantless entry into the defendant’s home was justified based on the exigent circumstances exception because the officers had an objective reasonable belief that a burglary or breaking and entering was in progress and that a suspect or suspects may still be in defendant’s home. In that case, the officer had received a burglar alarm report concerning a suspected breaking and entering at the defendant’s home, and when the officer arrived, he noticed a back window was broken. Because all the doors remained locked, the officer reasonably believed that the intruder could have still been in the home.

In the case at hand, Officer Wolf observed a broken window, the window’s screen leaning up against the apartment building, glass on the ground directly below the window, an unlocked front door of the apartment and no response from inside the apartment when officers knocked. The dispositive issue for the court was whether these facts are sufficient to support a conclusion that the officers had an objectively reasonable belief that a breaking and entering was in progress or had been recently committed.

The court noted that the facts of this case are distinguishable from the facts in *Woods* and *Miller*. In each of those cases, the officers were specifically dispatched to investigate reports of an alarm sounding at the defendants’ residences. The officers’ subsequent discovery of a broken window and door left ajar in those cases confirmed what the officers had already suspected -- that a burglary had recently taken place. Here, in contrast, there was no alarm, and the officers were not called to the location to investigate a suspected burglary. Rather, Officer Wolf just happened upon the broken window of the apartment while he was on patrol in the middle of the day. Absent an alarm or additional information provided in a dispatch, there is no indication of how or when the window was broken. Even assuming that the broken window gave the officers probable cause to believe that a burglary had been committed, there is no evidence that the burglary had been committed recently or that it was on-going. In *Miller*, the Court recognized that the locked door suggested that the perpetrator was still inside. Thus, it stands to reason that the unlocked

door in this case suggests that any perpetrator who may have gained entry to defendant's apartment through the broken window had already left through the front door.

Furthermore, the court noted that 1) Officer Wolf had not heard any screams or cries for help coming from the apartment; 2) there were no reports of any burglaries in the area; 3) the broken window was discovered in the middle of the day in broad daylight; 4) defendant's apartment was located in a heavy traffic area of the apartment complex; 5) the broken window was plainly visible from the tennis courts, pool, club house, and main road of the complex; and 6) the officer did not take any steps to further investigate the broken window or contact the apartment manager prior to entering defendant's apartment. As it turns out, an investigator with the Wake County Public Defender's Office testified that he spoke to the property manager of the apartment complex and was told that the window had been broken by defendant's boyfriend after he and defendant had locked themselves out of the apartment. The window had not yet been fixed because the apartment complex wanted defendant to pay for it.

While the State also argued that exigent circumstances existed based upon the possibility that a victim could have been inside and in need of aid, the court found that there were no facts supporting such a conclusion.

Therefore, the Court of Appeals held that the facts were insufficient to establish an objectively reasonable belief that a breaking and entering had *recently* taken place or *was still in progress*, such that there existed an urgent need to enter the property. Since the search warrant was based upon evidence discovered during the sweep of the home, any evidence obtained pursuant to the search warrant is the fruit of an illegal search and should be suppressed. Accordingly, the Court of Appeals held that the trial court erred in denying the motion to suppress and vacated the judgment against the defendant.