STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellee,

-v-

BART ALLEN BASSETT,

Defendant/Appellant.

District Court File No. 92-5348-SD
Circuit Court File No. 93-6282-AR
HON. PHILIP E. RODGERS, JR.

DECISION AND ORDER

Defendant/Appellant (hereafter Defendant) timely filed a Claim of Appeal of the 86th District Court's denials of Defendant's Motions to Suppress Evidence. Defendant seeks this Court's order to dismiss all charges against him. Defendant untimely filed his brief on appeal. Plaintiff/Appellee (hereafter the People) untimely filed a brief in response to the appeal. MCR 7.101(I)(1). This Court heard the parties' oral arguments on August 23, 1993. This Court has reviewed the appeal, the parties' briefs, the transcripts of the District Court's hearings on Defendant's two motions to suppress evidence[1] and the Court file.

The standard of review is set forth, as follows, in People v Bowers, 136 Mich App 284, 290; 356 NW2d 618 (1984):

> Admission and rejection of evidence during the course of a trial is a matter committed to the sound discretion of the trial court; reversal will be ordered only upon a showing that the trial court abused its discretion.

In People v Talley 410 Mich 378, 386-387, 301 NW2d 809 (1981), the Supreme Court's per curiam opinion provides the following analysis of this standard:

Our standard for review, furthermore, in testing for an

[1] Defendant's [First] Motion to Suppress was heard in the District Court on October 27, 1992. Defendant's Second Motion to Suppress was heard by the District Court on December 7, 1992.

abuse of discretion is a narrow one. The classic description of this standard, first articulated in Spalding v Spalding, 355 Mich 382, 384-385; 94 NW2d 810 (1959) (a modification of a divorce decree case) and later given a somewhat stricter interpretation in the criminal context by this Court in People v Charles O Williams, 386 Mich 565, 573; 194 NW2d 337 (1972), reads as follows:

> Where, as here, the exercise of the discretion turns upon a factual determination made by the trier of the facts, an abuse of discretion involves far more than a difference in judicial opinion between the trial and appellate courts. The term discretion itself involves the idea of choice, of an exercise of the will, of a determination made between competing considerations. In order to have an 'abuse' in reaching such determination, the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgement but defiance thereof, not the exercise of reason but rather of passion or bias.

In Talley, Justice Levin wrote a concurring opinion commenting on the Spalding decision and advocating a "more balanced view of judicial discretion":

> Spalding's hyperbolic statement leaves the impression that a judge will be reversed only if it can be found that he acted egregiously--the result evidencing "perversity of will", the "defiance [of judgment]", "passion or bias". To repeatedly invoke this overstatement leads lawyers and judges to believe that a discretionary decision is virtually immune from review and leads appellate courts to view any challenge to such a decision as essentially unfounded. Repetition of this statement is simplistic and misleading, and should not be indulged in by this Court or any other.
>
> * * * *
>
> A more restrained statement, speaking merely of the exercise of will, logic and reason, would have said all that needed to be said. Unfortunately, in the endeavor to send an unmistakably clear message, the Court raised the standard of review to an apparently insurmountable height.
>
> A more balanced view of judicial discretion was

presented in Langes v Green[2], where Justice Sutherland said:

> The term "discretion" denotes the absence of a hard and fast rule. * * * When invoked as a guide to judicial action it means a sound discretion, that is to say, a discretion exercised not arbitrarily or wilfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result.
>
> * * * *
>
> Thus when a question of abuse of discretion is properly framed, it is incumbent upon a reviewing court to engage in an in-depth analysis of the record on appeal. (Emphasis added.)

Talley, supra, pp 396-399.

Defendant's [first] motion to suppress stated, in pertinent part, as follows:

> 1. The arresting officers entered defendant's home while he was sleeping without a search or arrest warrant or other legal justification.
>
> 2. Defendant was arrested as the result of an illegal search and seizure in violation of the Fourth Amendment.

Defendant's second motion to suppress reads, in pertinent part, as follows:

> 1. The court denied defendant's original Motion to Suppress on the grounds that the officers entry into defendant's residence without a warrant was justified by the arresting officers concern for the "well-being" of the defendant.
>
> 2. Testimony at the hearing established that said entry was based upon the officer's observation and inspection of the defendant's automobile located in defendant's attached garage which was covered and partially uncovered by another officer from Benzie County.
>
> 3. The intrusion into the defendant's garage without warrant and uncovering of his auto by the Benzie officer

---

[2] Langes v Green, 282 US 531, 541; 51 S Ct 243; 75 L Ed 520 (1931).

was an illegal search and not justified by any warrant failure exception.

4. The entry of officer Edington into defendnat's [sic] residence without warrant was additionally violative of defendant's constitutional protection because the alleged reason for same was itself the result of an illegal entry and search.

The Michigan Supreme Court's analysis and ruling in People v Davis, 442 Mich 1; 497 NW2d 910 (1993) is helpful and instructive. Justice Brickley, writing for the Davis Court, set forth the constitutional protection and exceptions as follows:

> The Fourth Amendment of the United States Constitution prohibits unreasonable searches and seizures and provides that no warrants shall issue without probable cause. The Michigan constitutional provision is substantially the same. Const 1963, art 1, § 11. Essentially, in order to search a dwelling for evidence of a crime, the police must have probable cause to search, and must also have a warrant based on that probable cause. People v Blasius, 435 Mich 573; 459 NW2d 906 (1990), citing Coolidge v New Hampshire, 403 US 443, 455; 91 S Ct 2022; 29 L Ed 2d 564 91971); see also Payton v New York, 445 US 573, 590; 100 S Ct 1371; 63 L Ed 2d 639 (1980). The United States Supreme Court has recently reiterated this requirement, noting; Searches conducted without a warrant are per se unreasonable under the Fourth Amendment, " 'subject only to a few specifically established and well-delineated exceptions' " Horton v California, 496 US 128, 133, n 4; 110 S Ct 2301; 110 L Ed 2d 112 (1990). See also Mincey v Arizona, 437 US 385; 98 S Ct 2408; 57 L Ed 2d 290 (1978). Thus, in order to show that a search was legal, the police must show either that they had a warrant, or that their conduct fell under one of the narrow, specific exceptions to the warrant requirement.
>
> Examples of the exception to the warrant requirement are: (1) searches incident to arrest, (2) automobile searches and seizures, (3) plain view seizure, (4) consent, (5) stop and frisk, and (6) exigent circumstances. People v Toohey 438 Mich 265, 271 n 4; 475 NW2d 16 (1991). See also People v Blasius, supra.

Davis, supra at pp 9-10.

The People argued that the officers' entry into Defendant's home was a reasonable exercise of the "community caretaker function" which was described in City of Troy v Ohlinger, 438 Mich

477; 475 NW2d 54 (1991). In Ohlinger, the Supreme Court ruled that, "[a] police officer may enter a dwelling without a warrant when he reasonably believes that a person inside is in need of medical assistance." Ohlinger, supra, p 481. The Ohlinger ruling required that the primary justification for entry into the home must be a perceived need to render assistance. The People argued that the police officers were performing a "community caretaking function" in response to an exigent circumstance. The People concluded that this Court should find that the officers were acting reasonably and their entry into Defendant's home was not a violation of his constitutional right to privacy.

The Court of Appeals, in People v Dugan, 102 Mich App 497, 503; 302 NW2d 209 (1980), provided the following discussion of the exigent circumstances exception:

> The "exigent circumstances" exception provides that when the police have probable cause to believe that a search of a certain place will produce specific evidence of that crime (the foundation requirements for issuance of a search warrant), there is no need for a warrant if the police also have probable cause to believe that an immediate warrantless search is necessary in order to (1) protect the officers or others, (2) prevent the loss or destruction of evidence, or (3) prevent the escape of the accused. People v Harris, 95 Mich App 507, 510; 291 NW2d 97 (1980). See United States v Chadwick, 433 US 1; 97 S Ct 2476; 53 L Ed 2d 538 (1977), People v Plantefaber, 91 Mich App 764, 770; 283 NW2d 846 (1979). The rationale of the exception is clear; when the police have the probable cause necessary to secure a warrant, but circumstances make it impossible for them to obtain the warrant in time, then it is "reasonable" under the fourth Amendment to conduct a search and to seize evidence or contraband. See United States v Guidry, 534 F2d 1220, 1222-1223 (CA 6, 1976).

This Court must determine whether the officers' entry into the home was permissible because it falls within the "community caretaker" subcategory of the exigent circumstances exception to the search warrant requirement. Davis, supra; Dugan, supra. The following excerpt, from Defendant's brief, provides a factual context (transcript citations are omitted):

At approximately midnight on the 24th[3], Trooper Wayne Edington of the Michigan State Police responded to an accident report. A witness told Trooper Edington that he observed a gray Corvette strike the guardrail located on North Long Lake Road. A second witness observed the Corvette leave the accident scene heading westbound on County Road 610 and recorded the vehicle's license number (which was registered at a "downstate" address). Neither witness could give a description of the driver. Trooper Edington relayed this information to the Grand Traverse Central Dispatch which in turn requested assistance from, among others, the Benzie County Sheriff['s] Department.

Deputy Tucker of the Benzie County Sheriff Department responded to the dispatch and began patrolling the Lake Ann area for a gray Corvette "with front-end damage." After patrolling the area for some time, Deputy Tucker entered a subdivision where he observed a car with its dome lights on. The car was covered with a lightweight nylon dust cover and parked in an attached garage whose overhead door was open.

Deputy Tucker pulled into the driveway and observed in the garage what he thought to be a Corvette with rear window damaged [sic]. To verify his hunch, Deputy Tucker asked a neighbor if the person across the street owned a gray Corvette, to which she responded "yes". Thereupon Deputy Tucker radioed central dispatch and waited for his supervisor, Sergeant Brozoski, to arrive. The two officers decided to contact the state police and another Benzie County deputy but failed to request that a search and arrest warrant be obtained.

Before the state troopers arrived, the three Benzie county officers knocked on the front door of the house and entered the garage to knock on the side door. At one point Sergeant Brozoski lifted the car cover to determine whether the vehicle's license number matched the dispatch information. When the state troopers arrived, Trooper Edington entered the garage, removed the car cover, and felt the car's hood, which was warm to the touch.

Having confirmed their suspicions that the Corvette's driver resided at the house, the five officers surrounded the premises and began pounding on windows and doors trying to get a response from the home's occupant. Trooper Edington then observed Appellant sleeping naked in bed and proceeded to rap on the bedroom window. Appellant did not awaken. Despite lacking both a

---

[3] Referring to September, 24, 1992.

> description of the Corvette driver reported earlier and any evidence as to Appellant's physical condition, Trooper Edington became convinced the Appellant was his man and that Appellant's failure to respond was due to a medical emergency. Trooper Edington thereupon entered Appellant's home through the unlocked attached garage/kitchen door and awoke Appellant. Trooper Edington questioned Appellant, noticed liquor on Appellant's breath, interrogated him, and took Appellant into custody. (Emphasis supplied.)

Defendant's brief, pp 2-3.

The main issue of this appeal is whether the police officers' entry into the garage was a violation of Defendant's constitutional right to privacy. The second motion for suppression was brought to test whether the officers' entry into the garage which led to their entry into the home was reasonable or a violation of Defendant's Fourth Amendment rights. In People v Houze, 425 Mich 82, 92, n 1; 387 NW2d 807 (1986), the Supreme Court provided the following text regarding police entry onto the curtilage and observation into the garage:

> It is not objectionable for an officer to come upon that part of the property which "has been opened to public common use." The route which any visitor to a residence would use is not private in the Fourth Amendment sense, and thus if police take the route "for the purpose of making a general inquiry" or for some other legitimate reason, they are "free to keep their eyes open," and thus it is permissible for them to look into a garage or similar structure from that location [1 LaFave, Search & Seizure, § 2.3, p 318.]

Courts have upheld entries onto driveways, carports, front walks and porches as non intrusive. See, e.g. Pistro v State, 590 P2d 884 (Alas, 1979)--an officer's observation of a stolen car from defendant's driveway; State v Seagull, 26 Wash App 58; 613 P2d (1980), aff'd 95 Wash 2d 898; 632 P2d 44 (1981)--an officer's observation of marijuana plants in a greenhouse twenty feet from the house from defendant's back door; United States v Ventling, 678 F2d 63 (CA 8, 1982)--an officer's observation of tire tracks from defendant's driveway and front door; State v Wilbourn, 364 So 2d 995 (La, 1978)--officer's observation of suspect's care in carport from suspect's driveway. In each case, the courts found that

the officers' observations were made from a normal means of ingress or egress.

The trial court heard testimony of Benzie County Sheriff's Department Deputy David Tucker, and the Defendant's neighbors Mary and Brad Storey. Deputy Tucker stopped at Defendant's home because he noticed that the automobile in the garage had its dome light on. Observing the car from his vehicle, he could see that it was a Corvette and that the back window was damaged. (Transcript, 12/7/92, pp 7-12.) Deputy Tucker testified that he and two other Benzie County officers looked into the home, through a window near the front door, and saw the Defendant lying asleep on a bed before Officer Edington arrived at Defendant's home. The Deputy testified that they tried, unsuccessfully, to arouse the Defendant. (Transcript, December 7, 1992, pp 37-38.)

The People argued that the officer's entry into the home was motivated by a public duty to provide medical intervention when they had a reasonable suspicion that an emergency existed. The Davis Court held as follows:

> [W]hen the police are investigating a situation in which they reasonably believe someone is in need of immediate aid, their actions should be governed by the emergency aid doctrine, regardless of whether these actions can also be classified as community caretaking activities.
>
> Drawing upon the standard articulated in Ohlinger, and upon the cases discussed above,[4] we hold that police may enter a dwelling without a warrant when they reasonably believe that a person within is in need of immediate aid. They must possess specific and articulable facts that lead them to this conclusion. In addition, the entry must be limited to the justification therefor [sic], and the officer may not do more than is reasonably necessary to determine whether a person is in need of assistance, and to provide that assistance. (Footnotes omitted.)

---

[4] Referring, inter alia, to People v Blasius, supra, pp 593-594.; Schmerber v California, 384 US 757; 86 S Ct 1826; 16 L Ed 2d 908 (1966); Vale v Louisiana, 399 US 30; 90 S Ct 1969; 26 L Ed 2d 409 (1970); and People v Krezen, 427 Mich 681; 397 NW2d 803 (1986).

Davis, supra at pp 25-26.

At the first motion to suppress hearing, during defense counsel's cross-examination, Officer Edington stated his purpose in entering Defendant's home. The following excerpts of Officer Edington's testimony are significant in this Court's review of the trial court proceedings:

Q And is it your testimony also that you weren't -- you didn't know for certain whether or not the person sleeping in that bed in his bedroom was the person that had driven that car an hour before, did you?

A I could not know a hundred percent.

Q You had a suspicion that it was?

A Yes sir.

Q As a matter of fact, the focus of your investigation was to determine whether or not it was, correct?

A That was why we went to the house, yes sir.

Q And that's primarily why you went through the kitchen to arouse him, isn't it?

A No, primarily, at this point why I went through the kitchen is because I didn't know his welfare.

Q And you're saying that to the officer (sic), that that was your primary intention, officer? To the Court?

A Yes sir --

Q Is that what your statement is?

A -- I can wholeheartedly say that that's why I went into the house. After we got no response, either we leave and assume that he's okay, or we go in and check.

* * *

Q Your initial approach to the house was to follow up on an accident investigation, was it not?

A Yes sir.

Q And you ultimately -- ultimately made an arrest for that accident investigation, or pursuant to it, did you not?

A That's correct.

Q And your statement to this Court this morning is, that your only reason for entering that house without a warrant, was because of your concern for the well-being of the Defendant in this case?

A The reason that I would violate the search warrant rule and enter that house without a search warrant, was for the well-being of the person inside.

Q Are you admitting that you did violate the search warrant rule as you understood it, that evening?

A I admit that I did not have --

Q Are you admitting that you did violate the search warrant rule as you understood it, that evening?

A I admit that I did not have --

MR. PAPPAS: Objection, your Honor.

THE WITNESS: -- a search warrant when I went into the home yes.

MR. PAPPAS: Your Honor --

MR. APREA: And -- go ahead.

MR. PAPPAS: -- isn't that a legal conclusion?

THE COURT: Obviously.

MR. APREA: His words, your Honor.

THE COURT: We all understand what he's saying.

MR. APREA: Well, I --

THE COURT: Violating that normal requirement of having a search warrant because of an exigent circumstance, is exactly what he's talking about.

Transcript, October 27, 1992, pp 27-28 and pp 34-35.

The following array of facts, taken from the record, support the conclusion that the officers reasonably believed that Defendant was in need of aid and entered the home for that purpose:

1) Deputy Tucker observed the Corvette, with rear window damage, from the street;

2) Defendant, asleep or unconscious, was visible through a window near the front entry to the home;

3) Defendant did not respond or awaken when officers knocked repeatedly at the doors and windows in the front of the house;

4) upon entering the home, Officer Edington went directly to Defendant's bedside.

The trial court summarized the sequence of the police officers' investigation and entry into Defendant's home as follows:

> I think just from what the officer - this officer - observed himself from outside the garage and from his conversation with the neighbors across the street, which, as I say, did certainly confirm at least that it was grey - a grey Corvette - and from the husband that -- that to the best of his recollection it had been gone during the evening. I think he was at that point -- had strong enough suspicion that this was the driver that they were looking for was inside, to be going around the doors and knocking. When nobody answered, walking around the house with flashlight, looking in the windows, was not a violation. I don't believe under these circumstances they had to have a search warrant to do that. When they saw somebody asleep or passed out on a couch who they could not arouse even with making a lot of noise, again, as I indicated before, at that point they had a right to go in as a -- as a protective measure somewhat like the United States going to Somalia, so I -- I guess to go to back to the beginning, I think that although -- although the actions inside the garage of the officer[']s lifting the cover to check the license plate number or to determine if the hood was hot without a search warrant and without an arrest warrant was not permissible. I don't believe that those steps added to or had any effect upon what transpired thereafter. They were already -- they already had decided this was the car and this was the house and that the driver was inside. They didn't need to do those things, those were -- those were gratuitous, they were irrelevant really to the action taken, so I'm denying the motion again.

Transcript, December 7, 1992, pp 78-79.

It appears to this Court that the law enforcement officers in this situation were faced with complex and multiple tasks. The impetus for their activity was investigation of an auto accident which resulted in damage to public property and vehicular damage. An officer who was in the area looking for a vehicle which might have been involved in the accident saw a car with a dome light on

and stopped to tell the owners. Ultimately, the officers perceived a need to assist an individual who they suspected was the driver in the auto accident. This Court finds the following encyclopedic analysis to be helpful and instructive:

> The "exigent circumstances" warrant exception is generally spoken of in terms which include within it all manner of situations where some exigency or emergency exists. This is analytically unsound for in truth the "exigent circumstances" exception is a "true" exception. That is, it is a traditional search concerned with the discovery of evidence of a crime, such as in People v Blasius[5]. But there are many situations involving "exigency" which do not have as their purpose the seizure of evidence, and do not involve probable cause to believe that evidence will be found. These sorts of warrantless entries are better denominated "emergency circumstance" entries, and are not true warrant "exceptions" because they do not have as their purpose the seizure of particular items on probable cause. Rather, they are constitutional if reasonable. They are concerned with what is termed the "community caretaking function" of the police, frequently involving concerns with the safety of an individual or individuals. As the ABA Standards for Criminal Justice state,[6] the police have "complex and multiple tasks to perform in addition to identifying and apprehending persons committing serious criminal offenses." Among these other tasks, society expects the police to "aid individuals who are in danger of physical harm," and "provide other services on an emergency basis."[7] The basis for this doctrine can be found in United States Supreme Court cases rejecting a "homicide scene" warrant exception.

Gillespie, Michigan Criminal Law & Procedure, Search and Seizure, § 4.08, pp 72-73.[8]

---

[5] People v Blasius, 435 Mich 573, 459 NW2d 906 (1990) [remainder of footnote omitted].

[6] (This footnote is n 3 in the source text.) ABA Standards for Criminal Justice §1-1.1 (2nd ed).

[7] (This footnote is n 2 in the source text.) ABA Standards for Criminal Justice § 1-1.1 (2nd ed).

[8] The law is dynamic. The American Bar Association addressed the complexity of tasks in its Standards for Criminal Justice. The commentary which follows § 1.1 of the Standards included a discussion of whether the society should continue to

It is the opinion of this Court that the officers' entry into Defendant's home without a warrant was justified by Officer Edington's concern for the "well-being" of the Defendant. The officers responded reasonably to the emergency circumstance which existed when Defendant could not be roused from sleep by the officers' knocking at the doors and windows. The trial court did not abuse its discretion when it ruled that evidence of Defendant's level of intoxication was admissible in this matter. Dugan, supra; Davis, supra; Houze, supra. This appeal is denied and the case is hereby remanded to the 86th District Court for further proceedings.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: 12/14/94

xc: Dennis LaBelle
Prosecuting Attorney

Joseph G. Aprea
Attorney for Defendant-Appellant

---

rely on police to perform the community caretaker role:

> The unique characteristics that are currently combined in the job of a police officer -- twenty-four hour availability, a capacity to handle potentially dangerous situations, investigative skill, and the possession of general police authority -- are not easily duplicated in others to whom portions of the police function might be assigned.

ABA Standards for Criminal Justice, § 1-1.1, p 1.19.