

COMMONWEALTH OF PENNSYLVANIA
v. WAYNE SCOTT EISENHOUR, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action No. 326 of 2005

Motion to Suppress; Search and Seizure; Hit and Run; Entry of Home Without Warrant

1. In a private home, searches and seizures without a warrant are presumptively unreasonable.
2. The entry of a home without a warrant is prohibited under the Fourth Amendment unless justified by exigent circumstances.
3. The Commonwealth bears the burden to demonstrate an urgent need that justifies a warrantless search of a private home.
4. When a defendant commits a minor hit-and-run offense and is inside his residence before the police arrive, the police may not enter the private residence without sufficient justification.
5. When an eyewitness has seen the defendant between the time when the hit-and-run occurred and when the police arrived and the defendant did not appear to be injured, concern for the defendant's safety is not sufficient to justify entering the home even if there is some blood found on the defendant's vehicle.

Appearances:

David W. Rahausser, Esq., *Assistant District Attorney*

Sean M. Fitzgerald, Esq., *Assistant Public Defender*

OPINION

Walker, P.J., August 24, 2005

Procedural History and Factual Summary

On December 19, 2004, Trooper Patrick Bradley entered the house of the defendant, Wayne Scott Eisenhower, without a warrant while investigating a hit and run accident. A vehicle moving at a high rate of speed had struck an unoccupied vehicle that was parked in someone's front yard. An eyewitness to the accident called the police after observing the vehicle leave the scene and proceed a short distance down the road before turning into a driveway. After reporting the accident to the police, the eyewitness followed a trail of radiator fluid up the defendant's driveway. While waiting for the police to arrive, the eyewitness observed the defendant exit his vehicle and enter the residence. A short time later, the defendant walked out of the residence, looked at the eyewitness, and then returned into the residence. Upon Trooper Bradley's arrival at the defendant's residence, he saw blood on the defendant's vehicle. Trooper Bradley then knocked on the door of the residence three times and identified himself as a Pennsylvania State Police Trooper. After not receiving a response, the trooper entered the residence and found the defendant seated on a couch bleeding superficially. The issue before this Court is whether the entry into the defendant's home was proper.

Discussion

In a private home, searches and seizures without a warrant are presumptively unreasonable. Arizona v. Hicks, 480 U.S. 321, 327, 107 S.Ct. 1179, 1153 (1987). The entry of a home without a warrant is prohibited under the Fourth Amendment unless justified by exigent circumstances. Payton v. New York, 445 U.S. 573, 583-90, 100 S.Ct. 1371, 1378-82 (1980). A number of factors should be considered when determining whether exigent circumstances exist. Some of these factors are: 1) the gravity of the offense, 2) whether the suspect is reasonably believed to be armed, 3) whether there is above and beyond a clear showing of probable cause, 4) whether there is 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 peaceful, 7) and the time of the entry. Commonwealth v. Wagner, 486 Pa. 548, 557, 406 A.2d 1026, 1031 (1979). Other factors may be taken into consideration. Nevertheless, the police bear a heavy burden to demonstrate an urgent need that justifies a warrantless search. Welsh v. Wisconsin, 466 U.S. 740, 749-50, 104 S.Ct. 2091, 2097 (1984).

After applying these factors to the present case, the Court regards the entry by the police into defendant's home as improper. The underlying offense was a hit and run accident in which the defendant struck a parked vehicle. The Court finds this is a minor offense because there were no occupants in the vehicle that was struck. Where the offense being investigated by police is a minor one, a balancing of the foregoing factors should be weighted against finding that exigent circumstances exist. Id. at 750-3, 2098-99.

Although the police had probable cause based on the eyewitness account, had reason to believe that the defendant was in the home, and made a peaceful entry, exigent circumstances did not exist to justify this entry. There was no reason to believe that the defendant was armed or that evidence was being destroyed.[1] The police arrived after the defendant had already entered his house, so there was not a hot pursuit.

The Commonwealth argues that the police were justified in entering the house because the trooper saw blood on the defendant's vehicle and was concerned that he may be injured and unable to answer the door. Although the Court believes that under certain circumstances this is sufficient justification for a warrantless search of a private home, it is not sufficient here because the eyewitness saw the defendant two times in the short time between when the accident occurred and when the police arrived at the defendant's house. By the eyewitness's account, the defendant did not appear to be seriously injured; therefore, the trooper's concern was unfounded.

The Commonwealth cites to Commonwealth of Pennsylvania v. John Earl Dommel, 2005 Pa.Super. 205 (2005), to support their argument that when a defendant initiates an incident in a public area and then retreats into a private residence to avoid arrest, the police can reasonably enter the home. Although Dommel is also a hit and run case, the facts leading to the conclusion that the entry was reasonable in that case are quite different from the facts in the present case. In Dommel, the police were at the defendant's home before he entered the residence. The police witnessed the defendant park his vehicle and ordered him to stop several times before he entered the home while leaving the door wide open. The court found that those facts suggested a blatant disregard for the police, a likelihood of an escape attempt, and a possibility that the home was not the defendant's own home which provided a sufficient basis for an immediate pursuit. Id. Furthermore, the court found that Dommel did not have an expectation of privacy in his home because he led a police pursuit from outside his home to inside his home. Id. In the present case, the defendant was already inside his home with the door closed when the police arrived, so there was no hot pursuit to justify entering the residence. Nor did his actions invite the police to follow him into his residence. Therefore, this Court holds that the warrantless entry into defendant's home was not justified by exigent circumstances and was an improper entry.

The Court finds this decision upsetting because it is unreasonable that an individual can avoid arrest by retreating into a private home. Furthermore, the Court finds it blatantly offensive when the defendant retreats into his home so he can lessen the charges against him by hiding until his blood alcohol level is within the legal limit. The Court's opinion would have been different if there had been occupants in the other car because there would have been a greater risk of bodily injury. This Court also believes that there should be a mandatory jail sentence for drivers who commit a hit and run.

ORDER OF COURT

August 24, 2005, the Court orders the suppression of the evidence of the DUI gained by entering the home without a warrant.

[1] . Although it was later discovered that the defendant had been driving while intoxicated, the police did not know this at the time they entered the residence. Furthermore, a decreasing blood alcohol level is not sufficient provocation to justify a warrantless entry into a private home. *Welsh v. Wisconsin*, 466 U.S. 740, 104 S.Ct. 2091 (1984).