NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

ON APPEAL TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

APPELLATE DIVISION

DALE ALLEN NARDUCCI,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

_____/

Appeal Case No.: CRC 10-00088 APANO
UCN No.: ~~522009CT1429228XXXXXX~~

Opinion filed: 8/1/11.

Appeal from the County Court
for Pinellas County
County Judge Robert Dittmer

Curtis M. Crider, Esquire
Attorney for Appellant

Joshua Riba, Esquire
Assistant State Attorney
Attorney for Appellee

ORDER AND OPINION

PER CURIAM

Defendant was charged with possession of marijuana and leaving the scene of a crash involving property damage. Defendant filed a motion to suppress evidence obtained when

officers entered his home without a warrant. The trial court denied the motion and found that because the officers reasonably believed that Defendant required immediate medical attention, exigent circumstances permitted warrantless entrance into Defendant's home. We agree.

On July 5, 2009, Corporal Gassen went to 209 North Walton Street in Tarpon Springs to assist another officer with a hit-and-run investigation. A witness to the accident had followed the vehicle allegedly involved and observed the driver of the vehicle enter the residence at this address. Gassen observed that the vehicle had sustained "significant" damage that led him to believe, based on his years of experience as a paramedic, that the driver likely sustained chest or head injuries. To complete an accident investigation, the officers made contact with a person in the home after knocking on the door numerous times. The officers had five or six conversations with the individual, who refused to come out. Following these conversations, the officers heard a large crash that sounded like glass breaking. The officers were unable to reestablish contact with the individual for the next 10 to 15 minutes. Out of concern for the well-being of the driver and the individual potentially affected by the loud crash, the officers searched around the outside of the residence, but observed no indication that the individual was unharmed. After speaking with superiors, the officers decided to enter the residence with paramedics standing by to check on the welfare of the person they had been talking to. The doors to the home were unlocked and entrance to the home was not forced. Upon entry, the officers took the most direct route to the individual, but checked the bedrooms and the bathrooms to ensure officer safety. The officers noticed a shattered table in the living room, as well as marijuana and drug paraphernalia in plain view. The sole occupant of the residence (the defendant), was unconscious and the officers had to wake him.

Factual findings on a motion to suppress evidence must be supported by competent and substantial evidence and the application of law to those facts is reviewed de novo. *State v. Delrio,* 56 So. 3d 848, 850 (Fla. 2d DCA 2011). "Mixed questions of law and fact that ultimately determine constitutional rights are examined using a two-part approach, deferring to the trial court on questions of historical fact, reviewing the evidence and all reasonable inferences in a light most favorable to affirming the trial court's ruling," and reviewing constitutional issues de novo. *Watson v. State*, 979 So. 2d 1148, 1150 (Fla. 1st DCA 2008).

The Fourth Amendment protects the home from physical entry, rendering entrance unreasonable absent exigent circumstances. *Payton v. N.Y.,* 445 U.S. 573, 590 (1980). It is the State's burden to demonstrate that exigent circumstances exist to overcome the presumption of unreasonableness associated with warrantless home entries. *Welsh v. Wis.,* 466 U.S. 740, 750 (1984). The State must show a "grave emergency" that "makes a warrantless search imperative to the safety of the police and of the community." *Ill. v. Rodriguez,* 497 U.S. 177, 191 (1990). Entry is "imperative" when the State shows a "compelling need for official action and no time to secure a warrant." *Mich. v. Tyler,* 436 U.S. 499, 509 (1978). Reasonableness is determined by the totality of the circumstances. *Zeigler v. State,* 402 So. 2d 365, 371 (Fla. 1981). The "emergency exception" to the prohibition against a warrantless entry allows police to enter and investigate private residences to "preserve life . . . or render first aid." *Riggs v. State,* 918 So. 2d 274, 280 (Fla. 2005); *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006). Authorities may enter a dwelling based on a reasonable fear of a medical emergency, because in those limited circumstances, the sanctity of human life becomes more important than the sanctity of the home. *Riggs,* 918 So. 2d at 281. The invasion of privacy is one that law-abiding citizens can accept as the fair and necessary price of having the police available as a safety net in emergencies. *Id.*

Whether an actual emergency exists is immaterial. Authorities may enter as long as the circumstances, viewed objectively, justify action. *Eastes v. State*, 960 So. 2d 873, 875 (Fla. 5th DCA 2007); *Brigham City, Utah*, 547 U.S. at 404. It does not matter if subjective motives point to a desire to arrest suspects or gather evidence. *Brigham City, Utah*, 547 U.S. at 403-04. Courts justify warrantless entries when law enforcement observes or learns something at the scene that demonstrates the existence of a grave emergency. *Wheeler v. State*, 956 So. 2d 517, 522 (Fla. 2d DCA 2007). Such searches must stop when the exigency no longer exists, but officers may seize items in plain view that are apparently illegal. *Seibert v. State,* 923 So. 2d 460, 470 (Fla. 2006); *Byrd v. State*, 16 So. 3d 1026, 1028 (Fla. 2d DCA 2009).

Corporal Gassen's fear that a medical emergency existed was objectively reasonable. Officers were responding to a witnessed hit-and-run crime. Gassen observed damage to the suspected vehicle and was immediately concerned that the driver may have sustained an injury to the chest or head. Consistent with *Wheeler*, Gassen not only observed damage to a vehicle at the residence that could produce serious chest or head injuries but also heard a loud crash followed by terminated contact with the person in the home. Not only did the trial court believe that entrance was reasonable but the court also found that Gassen's intentions were to protect the safety of the defendant. This Court must defer to such factual determinations. *Delrio,* 56 So. 3d at 850; *Watson*, 979 So. 2d at 1150.

Defendant argues that evidence obtained by the warrantless entry into his home violated the Fourth Amendment because exigent circumstances were not present. Defendant correctly argues that to enter a home without a warrant under exigent circumstances, the State must rebut the presumption that such entry is unreasonable by demonstrating a "grave emergency" that makes warrantless entry imperative for the safety of the police and community. *Ill.*, 497 U.S.

177. However, the defendant incorrectly argues that the facts of this case do not rise to the level at which courts have traditionally permitted warrantless entry. Correctly applying an objective test, the trial court's conclusion that Corporal Gassen believed Defendant's life was in danger was based on competent and substantial evidence. Therefore, entry into the home was reasonable and all evidence in the officers' plain view while they were in Defendant's home investigating the exigent circumstances was obtained legally under the Fourth Amendment.

ACCORDINGLY, the trial court's denial of the motion to suppress and its subsequent judgment and sentence is therefore AFFIRMED.

DONE AND ORDERED at Pinellas County, Florida this 1st day of Aug, 2011.

Original order entered on August 1, 2011, by Circuit Judges David A. Demers, Thane B. Covert, and Chris Helinger.

Copies:

The Honorable Judge Robert Dittmer

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