

**SUPERIOR COURT
OF THE STATE OF DELAWARE**

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801
(302) 255-0669

Evidentiary Hearing Held On: August 12, 2005
Submitted: September 29, 2005
Decided: December 15, 2005

STATE OF DELAWARE)	
)	
v.)	
)	
JASON GUERERRI,)	ID#: 0502010828
)	
and)	
)	
RAYMOND WHITE,)	ID#: 0502010849
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

For now, this turns on the scope of a search justified by exigent, emergency circumstances. As discussed below, because the police reasonably believed that shots had been fired into a dwelling, during a drive-by shooting, officers entered the house without a search warrant. As they tried to determine whether anyone had been injured and what was going on, officers walked down the

basement steps. There, in plain view, they discovered illegal drugs.

Defendants filed a motion to suppress the contraband, and the court held an evidentiary hearing on August 12, 2005. Basically, the question presented is: Assuming the police were justified in entering the dwelling, which they were, was it reasonable for officers to look in the basement? Considering all the circumstances, discussed below, the court finds that the warrantless search was reasonable.

I.

The parties all but agree to the facts. In the early morning hours, around 4:00 a.m., on February 13, 2005, New Castle County police officers were dispatched to the Newark area in response to a “911” call concerning shots fired on Jefferson Boulevard. Although the original call was anonymous, it was detailed. The caller said that at least two cars were involved and shots were fired at the residence from one car as it sped away.

Once the police arrived, they saw that an SUV, parked on the lawn, had been hit by shotgun ammunition, probably 12 gauge, buckshot or scattershot. The police found shell casings in the street and they saw that the house, a single story ranch, had been hit. Pellets appeared to have entered the siding and at least one window.

The police also spoke with neighbors, who had been awakened by the shooting. They told the police that because the SUV was there, they believed people were inside the house. Based on what they saw and were told, the police were justifiably concerned that someone in the house might have been injured. Accordingly, the police decided to investigate. They asked the police dispatcher to call the house, but no one answered the telephone. Then, they shouted and knocked on the doors and windows, again without response. Finally, after a supervisor arrived, an officer kicked open the front door and the police entered with weapons drawn.

Immediately, the police were confronted by a large Pit Bull, followed by one of the house's groggy occupants, Defendant Guererri, who secured the dog. Then he told the police there was someone else there, in the basement. An officer called down, but he received no response. Soon, however, Defendant White came up from the basement. He was unharmed and upset that the police were in the house. He became irate. So, the police put Defendant White in handcuffs and two officers went downstairs to finish "clearing the house."

As soon as the first officer reached the bottom of the stairs, he smelled marijuana. And in the course of clearing the basement, he quickly discovered

marijuana plants in plain view. From that point, Defendants' arrests were fated.

II.

As the court explained at the suppression hearing, the police were entirely justified in forcing open the front door and entering the house.¹ They had more than probable cause to believe that several, major, violent felonies had just happened at the house. And they had ample reason to be concerned about the occupants' well-being.

Those concerns were heightened when no one answered the telephone calls, shouts and knocks. The neighborhood seemed to have turned-out in response to the peace-shattering, early morning incident. The fact that the police had reason to believe there were people in the house who were not responding underscored the possibility that someone had been wounded, or worse.

Moreover, as the police testified, they generally did not know what really was going on. For example, they could not know whether some of the shots heard by the neighbors had been fired from inside the house. The situation confronting the

¹ *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963) (“The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.”); *Patrick v. State*, 227 A.2d 486 (Del. 1967) (“A search warrant is not required to legalize an entry by police for the purpose of bringing emergency aid to an injured person”)

police was cloudy and potentially life-threatening. Thus, the initial intrusion and confrontations are easy to approve. Perhaps, the police waited too long before they broke in.

The suppression question becomes closer, however, once residents were found unharmed and they were secured. The issue, therefore, is whether the police acted reasonably when they walked down the basement stairs to see if anyone else was there.

III.

Based on the testimony, the court finds that from the moment the police entered the house, they intended to “clear it.” They would look in every room to see if “somebody was down.” And the court is satisfied their intent was reasonable at the outset. If Defendants Guerri and White had not appeared, and if the police had not found anyone on the first floor, they should have been concerned that a wounded or terrified person might have fled to the basement. A reasonable person living in the house would have expected and desired the police to do precisely what the police decided to do here. As a matter of law, where the police have reason to believe someone in a house may need emergency help, they are justified in entering the place without a warrant to see if “someone is down.”

The ultimate question, therefore, is whether Defendants' appearance rendered unreasonable the initial, proper decision to "clear" the entire residence. Perhaps, as defense counsel hypothesized during the hearing, if a middle-age, married couple had answered the door, that would have rendered a police sweep of their home unreasonable. Here, however, the circumstances were different. Two young men and a Pit Bull appeared at the scene of what obviously was a drive-by shooting. For whatever reason, they were less than cooperative (Guererri) or hostile (White). Moreover, Defendants' behavior and their answers to questions did not make sense. For example, it was odd that many neighbors heard the shooting, but Defendants allegedly did not. Thus, the police had reason to doubt anything Defendants told them, including anything they said about no one else being in the house.

Under those circumstances, it was reasonable for the police to follow through on their original, appropriate intent to check every room for injured occupants. The court will not hold as a matter of law or fact that here, because Defendants appeared unharmed, the police were required to abort their original plan. The police could make a cursory sweep of the dwelling to see who actually was

there, determine if anyone was injured and render any necessary assistance.² Based on what happened here - drive-by shooting, no response, the dog's and the two occupants' appearance - the sweep was further justified in the officers' safety.³ The sweep eliminated any chance that someone else, human or animal, would surprise them.

Finally, the court continues to appreciate Defendants' argument that once they were secured by the police, there was no reason for the police to go downstairs. The court further recalls Defendants' insistence that the police searched the house because they viewed Defendants as "suspects," and, therefore, the search was a pretext. Those contentions, however, gain clarity through hindsight.

The police officers' persuasive testimony was repeated and emphatic that their initial concern was whether there was "somebody down" in the residence. They went in planning to render emergency aid. Similarly, as mentioned, when the police entered the house, they generally did not know what was going on there. All they knew was that the place had been shot up in a drive-by shooting at 4:00 in the

² *Wayne v. United States*, 318 F.2d 205 (D.C. Cir. 1963); *United States v. Richardson*, 208 F.3d 626 (7th Cir. 2000); *United States v. Dighera*, 2 F.Supp.2d 1377 (D. Kan. 1998); *Patrick v. State*, 227 A.2d 486 (Del. 1967); *State v. Frankel*, 847 A.2d 561 (N.J. 2004).

³ *Warden v. Hayden*, 387 U.S. 294 (1967); *United States v. Smith*, 797 F.2d 836 (10th Cir. 1986).

morning, and neighbors believed people were inside, people who were not responding. It is now understood that only the Defendants were in the house, unharmed and unarmed. Before dawn on February 13, 2005, the police did not know that. The court expects that the police will react to events as they unfold and not proceed automatically regardless of what happens. The court, however, will not judge first-responders through hindsight.

Based on what they knew then, the police set on a reasonable course of action and they followed-through on their plan.⁴ In a different case, with different facts, the motion's outcome might be different. But here, the court is satisfied, all-in-all, that the police behaved reasonably when they forced the front door, paused at the threshold, secured the two people they found and then swept through the house, including its occupied basement. And, of course, having found no one in distress and if they had not seen contraband in plain view, the police would not have been entitled to linger in the house, much less poke around looking for evidence. Once their initial purpose – lifesaving – was accomplished, the police had to leave. Even a bona fide emergency does not suspend the Fourth Amendment: the police must

⁴ See *United States v. Richardson*, 208 F.3d 626 (7th Cir. 2000) (Holding that the test for whether a search is justified under the exigent circumstances exception is objective, not subjective.).

always act reasonably. Here, the police stumbled on contraband during a non-pretextual, emergency response.

IV.

For the foregoing reasons, Defendants' Motion to Suppress the evidence seized during the warrantless sweep of their dwelling's basement is ***DENIED***.

IT IS SO ORDERED.

Judge

oc: Prothonotary
pc: Martin B. O'Connor, Deputy Attorney General
Christopher D. Tease, Esquire
David J. Haley, Esquire