

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH OF	:	
PENNSYLVANIA	:	
	:	
v.	:	98-10,955
	:	
KEVIN MICHAEL EIGENBROD,	:	
Defendant	:	

OPINION

This is a summary appeal from an underage drinking conviction, 18 Pa.C.S. § 6308. Prior to trial, the defendant Kevin Eigenbrod asked the court to suppress all evidence because it was obtained through an illegal entry into a residence. He also requested the court to suppress his confession due to a Miranda violation. At trial, the court heard testimony on the entire factual scenario, deferring a decision on the motions to suppress. After reviewing the relevant case law, this court finds that no Miranda violation exists; however, the evidence must nonetheless be suppressed due to an illegal entry into the residence. Without the benefit of such evidence the Commonwealth has not met its burden of proving beyond a reasonable doubt that Mr. Eigenbrod engaged in underage drinking. Therefore, the court finds the defendant not guilty.

Findings of Fact

On 9 January 1999 at 10:50 p.m., Trooper Frederick L. Miller and his partner were dispatched to a private residence on Locust Street in Jersey Shore, Pennsylvania to investigate a complaint of loud music. While attempting to find the front entrance, they passed by a window and observed a number of individuals sitting around a

kitchen table drinking alcohol. None appeared to be twenty-one years of age, and Officer Miller personally knew that a few of the individuals were not yet twenty-one.

Rather than obtaining a search warrant, the officers walked to the front door. The inner door was open, but the screen door was shut. They knocked on the door and Charles Butler, who rented the residence, appeared with a beer in one hand. Seeing the police, he shouted “Cops!” and ran upstairs. The officers heard footsteps all over the house, while the people inside scattered like frightened mice. The officers entered the house. Trooper Miller proceeded to the kitchen while his partner pursued the fleeing suspects.

In the kitchen, Trooper Miller confronted eight people seated around a table, each with a beer in front of them. He asked them to produce identification. The defendant handed over his drivers license, which showed he was nineteen years old. The officer asked the group, “Who’s been drinking?” The defendant raised his hand and said that he had consumed a couple bottles of beer. Trooper Miller then issued him a citation for underage drinking.

Discussion

The defendant argues that all the evidence obtained by the police must be suppressed because the police illegally entered the residence, and that the defendant’s confession must be suppressed because of Miranda violation.

1. Illegal Entry

The Fourth Amendment of the United States Constitution protects an individual’s right to privacy. Nowhere is this right greater than in one’s home. The

United States Supreme Court has explained: “At the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.” Silverman v. United States, 365 U.S. 505, 511, 81 S.Ct. 679, 683, 5 L.Ed.2d 734 Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant. Payton v. New York, 445 U.S. 573, 589-590, 100 S.Ct. 1371, 1381-1382, 63 L.Ed.2d 639, 653 (1980). This has been echoed by our own Supreme Court in Commonwealth v. Flewellen, 475 Pa. 442, 446, 380 A.2d 1217, 1220 (1977): “Upon closing the door of one’s home to the outside world, a person may legitimately expect the highest degree of privacy known to our society.” Therefore, a search and seizure in a private home without a warrant is presumptively unreasonable.” Arizona v. Hicks, 480 U.S. 321, 327, 107 S.Ct. 1149, 1153, 94 L.Ed.2d 347, 355 (1987).

There are times, however, when this privacy right gives way to the even more important goal of public safety and law enforcement. For this reason, the “exigent circumstances” exception has been created, which justifies a warrantless entry into a residence when the need for prompt police action is imperative, either because evidence is likely to be disposed of or because the officer must protect himself from the danger of concealed weapons. Commonwealth v. Holzer, 480 Pa. 93, 102, 389 A.2d 101, 106 (1978).

In determining whether exigent circumstances exist a number of factors are considered such as the gravity of the offense, whether the suspect is reasonably believed to be armed, whether there is probable cause, whether there is a strong reason to believe the suspect is within the premises, whether it is likely the subject will escape if not swiftly apprehended, whether the entry was peaceable, whether the entry

was made at night, whether evidence might be destroyed if the police took the time to obtain a warrant, and whether there is a danger to police or other persons outside the dwelling. Minnesota v. Olson, 495 U.S. 91, 100, 110 S.Ct. 1684, 1690, 109 L.E.2d. 85, 95 (1990); Commonwealth v. Williams, 483 Pa. 293, 298-99; 396 A.2d 1177, 1179-80 (1978).

The police bear a heavy burden when attempting to demonstrate an urgent need that justifies warrantless searches or arrests. Welsh v. Wisconsin, 466 U.S. 740, 749-50, 104 S.Ct. 2091, 2097, 80 L.E.2d 732, 743 (1984).

Moreover, Pennsylvania has rejected the federal rule which permits a defendant to challenge a search or seizure only if he or she has a proprietary or possessory interest in the premises. A Pennsylvania defendant may invoke the protections of Article I, Section 8 of the Pennsylvania Constitution if he or she has a possessory interest in the item seized. Commonwealth v. Sell, 504 Pa. 46, 470 A.2d 457 (1983). Therefore, the defendant in this case may challenge the entry into the Jersey Shore residence.

The Commonwealth attempts to justify the warrantless entry by arguing that once Charles Butler warned his group the police were present, it was necessary to enter the house right away. If they had gone to obtain a search warrant, the suspects could have dispersed and disposed of the alcohol by the time the police returned.

The Commonwealth's argument must fail for two reasons. First, this court seriously questions whether exigent circumstances can *ever* be created by such a minor offense as underage drinking. The United States Supreme Court has held that the warrantless entry into an individual's home to make an arrest for a civil nonjailable traffic offense was prohibited by the Fourth Amendment. The Court went

on to state: “Where an offense being investigated by police is a minor one, a balancing of the foregoing factors should be weighted against finding that exigent circumstances exist.” Welsh, supra, at 750-53.

Our Supreme Court has agreed in Williams, supra. The court indicated that the need for proceeding without a warrant is more likely to be found lacking when the offense is a minor one. Id. at 298. Moreover, our Supreme Court has itself questioned whether a warrantless search can be justified by exigent circumstances to effect a citation for underage drinking in Commonwealth v. Gibson, 638 A.2d 203 (Pa. 1994). The court acknowledged that exigent circumstances had been found to exist where cocaine was the evidence in question, but stated: “We find a critical difference between the criminal possession of illegal drugs and the summary offense of underage drinking.” Id. at 206 n. 1. Because the police in Gibson had no probable cause to enter the residence, however, the court declined to decide whether underage drinking is serious enough to create exigent circumstances. The tone of the pertinent passage, however, clearly conveys the court’s skepticism.

Even if exigent circumstances can exist in a summary case, however, a consideration of the factors listed above leads this court to conclude that there were no exigent circumstances here. The factors indicate that the exigent circumstances exception exists only when the situation is very serious and the loss of evidence would be extremely undesirable. That was not the case here. After balancing the factors, this court concludes that the right to be free from unreasonable government intrusion into a residence outweighs the opportunity to issue a few underage drinking citations.

Moreover, there is another reason why the entry cannot be justified on the

grounds of exigent circumstances: the emergency was created by the police themselves. Police may not excuse a warrantless entry on the basis of exigent circumstances of their own making. Commonwealth v. Ariondo, 397 Pa. Super. 364, 580 A.2d 341, 346-47 (1990). Permitting them to do so would allow the Fourth Amendment to be devoured by the exigent circumstances exception. An emergency created by the police is no emergency at all, for such an “emergency” can be foreseen, and therefore prevented. A true emergency arises only when it catches the police by surprise and leaves them no realistic opportunity to obtain a search warrant without the risk of losing evidence or suspects.

In this case the police observed what appeared to be an underage drinking violation. They clearly had probable cause to obtain a warrant, and they could have taken the time to do so without risking loss of evidence or suspects. Officer Miller stated it would have taken an hour at most to obtain a warrant. Delaying entry into the house for one hour would hardly have jeopardized the chances of issuing the underage drinking citations. The night was still young—the officers arrived before 11:00 p.m., which is early indeed for a teenage party. In fact, the defendant testified that he had arrived at the residence only twenty minutes before the police. But instead of going to the District Justice for a warrant, the police went to the front door—knowing full well that their presence would alarm the teenage drinkers inside the home.

The District Attorney argued that the officers had a duty to tell the individuals to turn down the music first. Admittedly, the situation presented a dilemma for the police. However, it was their choice: either get a warrant and apprehend underage drinkers or secure an extra hour of peace and quiet for the neighbors. The officers cannot have it both ways. They made a choice, and now must accept the

consequences of that choice.

Because no exigent circumstances existed, the entry and search was illegal and the appropriate remedy is exclusion of all the evidence derived from that search.

Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). The observations of the police, as well as the identification of the defendant himself, were fruits of the illegal search. Gibson, supra at 207. Without this evidence the Commonwealth cannot prove its case beyond a reasonable doubt and the court must find the defendant not guilty.

II. Miranda Violation

The defendant also contends his confession should be suppressed because he was given no Miranda warnings. Because the court has found that the police illegally entered the residence, this issue is moot. However, the court will address it in case of an adverse appellate decision.

The protections provided by Miranda v. Arizona, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), apply to a person suspected of committing a summary offense. Berkemer v. McCarty, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984). However, no Miranda warnings were necessary in this case because the defendant was not undergoing custodial interrogation. Custodial interrogation means questioning by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. Miranda, supra. The focus of the inquiry is whether the suspect reasonably believed his freedom of movement was restricted. Commonwealth v. Williams, 539 Pa. 61, 650 A.2d 420 (1994); Commonwealth v. Schoellhammer, 308 Pa. Super. 481, 454 A.2d 576 (1982).

In this case there is no evidence that the defendant actually believed his freedom was restricted. The defendant even stated he was not aware he would be arrested during the incident. Moreover, even if he did believe that, he had no reasonable basis for the conclusion. Officer Miller's testimony, which the court finds credible, indicates neither of the officers did anything to create the impression that the individuals seated around the table were not free to leave.

Miranda also does not apply to this case because the defendant was not undergoing interrogation. Officer Miller asked the individuals to provide identification and then asked, "Who's been drinking?" These questions were not directed specifically to the defendant. Rather, they were directed to the entire group of individuals seated at the table. Miranda warnings are not required before an officer asks questions directed to several persons at one time. Commonwealth v. Brittain, 455 Pa. 562, 317 A.2d 219 (1974). Therefore, if the court had found no illegal entry, the defendant's confession would not be suppressed and the Commonwealth would have produced sufficient evidence to prove beyond a reasonable doubt that the defendant committed the offense of underage drinking.

ORDER

AND NOW, this _____ day of March, 1999, after trial, the court grants the defendant's motion to suppress evidence and finds that the Commonwealth has not proven the charge of underage drinking beyond a reasonable doubt. Therefore, the

court finds the defendant not guilty. Costs are to be paid by the county of Lycoming.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell, Esq., Law Clerk
Hon. Clinton W. Smith
District Attorney
Frederick Lingle, Esq.
310 E. Water St., Lock Haven, PA 17745
Gary Weber, Esq., Lycoming Reporter