

PEOPLE v. SWANSON

**2016 IL.App (2d) 150340
No. 2-15-0340**

Warrantless entry into defendant's home was not justified because defendant's wife did not consent to the Deputies' entry and there was no emergency requiring the police to provide aid.

The defendant was charged with two counts of driving under the influence of alcohol, leaving the scene of a property damage accident, illegal transportation of alcohol, failure to reduce speed to avoid an accident and improper lane usage. Defendant filed a motion to suppress evidence (motion) and a petition to rescind his statutory summary suspension (petition).

During the combined hearing on the motion and petition, defendant testified that on January 7, 2015 he met a friend at a tavern, and during the hour to hour and a quarter that he was there, he drank three beers. Defendant left the tavern, and drove his car toward home. The road had icy, snowy patches. Defendant's vehicle slid into a snowy ditch when defendant was approximately a mile-and-a-half to two miles from his home. Defendant's car struck a sign, the airbags deployed, and defendant cut his right index finger. His vehicle would not start, and defendant tried to call home. He could not call home, so defendant locked the vehicle and started to walk home.

The temperature that evening was below zero, the ground was covered with snow and snow was blowing. Because of the cold, defendant ran to a home about a mile from the accident. The occupants would not allow defendant to enter. Because defendant refused to leave, the occupants called 911. Defendant ran away when he saw one of the occupants holding a handgun. Defendant ran to another house, about half a mile from his home. Because no one was at the second home, defendant ran the remaining half-mile to his home.

A DeKalb County Sheriff's Deputy testified that he was dispatched to the first house to investigate the report of a suspicious or disoriented person. While driving to the first house, the Deputy saw defendant's vehicle in the ditch. The vehicle was heavily damaged, the airbags were deployed, and there was an open beer can on the passenger-side floorboard. The Deputy did not see any blood in the vehicle.

A DeKalb County Sheriff's Sergeant testified that once the DeKalb County Sheriff's Police determined that the vehicle belonged to defendant, the Sergeant drove to defendant's home. Defendant's wife answered the door and invited him in. He explained that defendant's vehicle had been in an accident but that defendant had not been located. The Sergeant left his business card, and asked defendant's wife to call when defendant arrived home.

The defendant's wife testified that shortly after the Sergeant left, defendant arrived home. She testified that defendant was freezing cold and covered in snow. She saw a cut on her husband's finger. She went upstairs to treat defendant's finger and start a warm bath for him. She saw a pint glass of vodka and orange juice on the counter in the upstairs bathroom. Defendant had poured the glass to warm himself up. While she treated his finger, defendant drank the vodka and orange juice.

She called the number on the Sergeant's business card. Defendant's wife informed the dispatcher that defendant was home, he did not require any medical attention, and she would arrange to have his vehicle towed from the ditch. During this telephone call to the dispatcher, a Deputy broke into the conversation and told her that the police needed to see defendant to confirm that he was at home. Defendant's wife stated several times that defendant was safely home, he was fine, and that the Deputies did not have to come to their house. The Deputy told her that he was going to come to the house and that she would have to let him in. She again told the Deputy that there was no need for him to come to their home, and that defendant was fine.

A few minutes later, two Deputies arrived at defendant's home. Defendant's wife opened the interior door and spoke with the Deputies through a closed storm door. She again told the Deputies that defendant was fine, she would take care of him, and they did not need to be at their home. To better hear what the Deputies were saying, she slightly opened the storm door, which had springs that prevented the storm door from being left open. When she slightly opened the storm door, one of the Deputies opened the storm door farther and both Deputies walked into defendant's home.

Another Deputy testified that after receiving a dispatch that defendant was home, he drove to defendant's home and knocked on the door. Defendant's wife answered the door, and he asked where defendant was. Defendant's wife said that he was upstairs in the bath. He told her that he needed to speak with defendant. According to the Deputy, she then stepped into the kitchen, leaving the door open. The Deputy interpreted her actions as inviting him to follow her.

He denied pushing the door, or telling defendant's wife that she needed to let him in or he would enter the home anyway. Defendant's wife never asked him to leave.

The Sergeant testified that when he arrived at defendant's house the second time, the Deputy was present in the kitchen and let him into defendant's house. Defendant's wife never told them that they did not have permission to be in the house. Defendant's wife did not ask them to leave. Defendant's wife was polite and cooperative. Once the two Deputies were inside defendant's home, they remained in the kitchen. The Sergeant denied that he or the Deputy said that if defendant did not come downstairs they would go up and get him. Defendant came downstairs, and one of the Deputies asked him what had happened. Defendant said that his vehicle slipped off the road, initially stating that a friend had driven him home, but later admitting that he had walked home.

According to defendant's wife, once the Deputies entered the home, they asked where defendant was. She told them that he was fine, he was upstairs, and that she was running a warm bath for him. Defendant walked to the top of the stairs and told the Deputies that he was fine and that they did not need to be there. Defendant thanked them for coming to the home. After the Deputies told defendant's wife that if defendant did not come downstairs they would go up and get him, she repeated that to defendant. Defendant came downstairs.

When defendant came downstairs, one of the Deputies observed snow and ice on defendant's pants, and asked defendant if he needed medical assistance. Defendant responded that he did not need medical assistance. The Deputy described defendant as having bloodshot and glassy eyes, slurred speech, a strong odor of an alcoholic beverage, and unsteady balance. While present in the house, the Deputies arrested defendant for leaving the scene of a property damage accident. After they arrested defendant, the Deputies removed him from the house. The Deputies later arrested defendant for driving under the influence.

The trial court found that defendant's wife was credible, there were two doors, and the defendant's wife did not indirectly or impliedly invite the Deputy into defendant's house. The trial court also ruled that no exigent circumstances existed that justified the Deputies' entry into defendant's home. The trial court granted the motion "as to everything that occurred after Deputy Hiatt entered the residence on that evening." The trial court also granted the petition, because there was not probable cause that defendant had been driving under the influence. The State filed a certificate of impairment and a notice of appeal.

On appeal, the State argued that the trial court erred in granting the motion, because the Deputies' warrantless entry was justified by either consent or the need for emergency aid. The State also argued that the trial court erred in granting the petition, because there was probable cause for defendant's arrest.

The Appellate Court addressed, first, the propriety of the trial court's ruling regarding the motion. The Appellate Court framed the first issue: whether defendant's wife consented to the warrantless entry depended upon what happened during the exchange between her and the Deputies at the door. The Appellate Court noted that the trial Court found defendant's wife credible, and, as described by defendant's wife, there were both an interior door and a storm door.

The Appellate Court applied the facts to the issue of whether defendant's wife consented to the Deputies' entry into defendant's home, and concluded that she did not consent. Writing for the Appellate Court, Justice Spence noted that defendant's wife repeatedly told the Deputies that she and defendant did not need assistance, the Deputies did not need to be at defendant's home, and that the Deputies could leave. The Appellate Court noted that defendant's wife spoke with the Deputies through a closed storm door. Although defendant's wife slightly opened the storm door, she did so only to facilitate communication between her and the Deputies. The Appellate Court noted that the record did not show that defendant's wife slightly opened the storm door as a gesture for the Deputies to enter the home. When defendant's wife slightly opened the storm door, the Deputy opened the door farther and walked in. The Appellate Court reasoned that although she was polite, that alone did not support a reasonable conclusion that defendant's wife, either indirectly or impliedly, invited the Deputies into the home. The Appellate Court ruled that the State failed to meet its burden of establishing that defendant's wife consented to the Deputies' entry into the home, and that the trial court correctly ruled that the warrantless entry was not justified by consent.

The Appellate Court then addressed the issue of whether or not the warrantless entry into defendant's home was justified by the need to provide emergency aid. Citing *People v. Ferral*, 921 N.E.2d 414, 336 Ill. Dec. 800 (2nd Dist. 2009) the Appellate Court discussed the two-part test to determine whether the emergency aid exception applied. First, the police must have reasonable grounds to believe that there is an emergency at hand. Second, the police must have

some reasonable basis, approaching probable cause, to connect the emergency with the area entered or searched.

The Appellate Court addressed the State's argument regarding the emergency aid exception. Relying on the emergency aid exception, the State identified, as the need for aid, defendant's automobile accident and defendant's exposure for over an hour to extremely cold weather. The Appellate Court concluded that neither circumstance constituted, at the time of the Deputies' entry into defendant's home, an emergency requiring the police to provide aid.

The Appellate Court reasoned that although the accident caused extensive damage to defendant's vehicle, the Deputy, who observed defendant's vehicle in the snowy ditch, did not see any blood or other signs of injury at the scene. The Deputies knew that defendant had walked nearly two miles in inclement weather, indicating a lack of serious injury. Defendant had safely returned to his home and his wife was providing him aid by the time the Deputies arrived. The Appellate Court stated that it was not reasonable to conclude that defendant needed aid when he was under the care of his wife. The Appellate Court reasoned that if defendant needed aid from the Deputies, then his wife would not have repeatedly told the Deputies that he was fine and that he did not need medical assistance. Any emergency had clearly dissipated by the time the Deputies arrived at defendant's home. The Appellate Court concluded that once the Deputies had received assurances from defendant's wife that she was caring for him, it was not reasonable for the Deputies to believe that they needed to enter defendant's home to provide emergency aid.

The Appellate Court reasoned that defendant's exposure to inclement weather did not constitute an emergency justifying the Deputies' warrantless entry. Although defendant's exposure to inclement weather might have constituted an emergency before he returned home, any such emergency ended once he arrived home and was being cared for by his wife. The Appellate Court noted that the record did not show that defendant was suffering any lingering effects from his exposure to the cold, which constituted an emergency. The Appellate Court concluded that the Deputies had no reason to believe that there was a need for emergency medical aid based on defendant's exposure to inclement weather.

The Appellate Court noted that the Deputies had no warrant to enter defendant's home. Finding that there was neither consent nor a need for emergency aid, the Appellate Court held that the warrantless entry into defendant's home was unconstitutional. The Appellate Court affirmed the trial court's ruling on defendant's motion to suppress.

The Appellate Court then addressed the trial court's ruling on the petition. The Appellate Court noted that in the matter at bar, there were two bases that supported the trial court's granting of the petition: (1) the absence of probable cause to support the DUI arrest; and (2) the unlawful entry into defendant's home.

The Appellate Court reasoned that without the evidence unlawfully gathered in defendant's home, the only evidence of probable cause that defendant had driven under the influence was that he had been in an accident and a Deputy observed an open beer can in defendant's vehicle. The Appellate Court noted that the State did not argue that this was sufficient to support a finding of probable cause to arrest defendant for driving under the influence. The Appellate Court ruled that defendant's driving under the influence arrest was unlawful, and rescission was proper on that basis.

Citing *People v. Feddor*, 823 N.E.2d 217, 291 Ill. Dec. 207 (2nd Dist. 2005) the Appellate Court stated that even if there had been probable cause independent of that developed after the Deputies' entry into the home, rescission was nonetheless proper, because the entry into the home, which led to defendant's arrest for driving under the influence, was unlawful. The Appellate Court affirmed the trial court's rescission on that basis as well.

The Appellate Court affirmed the judgment of the circuit court of DeKalb County granting defendant's motion to suppress and his petition to rescind his statutory summary suspension.

David B. Franks

Lake in the Hills, Illinois