

IN THE CIRCUIT COURT FOR THE TWENTY-THIRD JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS

PEOPLE OF THE STATE)
OF ILLINOIS,)
Plaintiff,)
vs.) Case No. 17 CM 531
)
TAD JOHNSON,)
Defendant.)

FILED IN OPEN COURT

MAR 28 2018

ROBYN INGEMUNSON
CIRCUIT CLERK KENDALL CO.

ORDER

This matter coming on to be heard for ruling on the Defendant's Motion to Quash Arrest and Suppress Evidence filed herein on December 5, 2017, the court being advised in the premises, it is Found and it is Ordered as follows:

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Defendant, Tad Johnson, is charged in two Counts. Count I is brought pursuant to 720 ILCS 5/26-1(a)(1) alleging disorderly conduct, and Count II is brought pursuant to 720 ILCS 5/31-1 alleging the Defendant resisted arrest.

Relevant Statutes:

720 ILCS 5/26-1; Disorderly conduct; (a) A person commits disorderly conduct when he or she knowingly: (1) Does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace; and

720 ILCS 5/31-1; Resisting or obstructing a peace officer; (a) A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer, firefighter, or correctional institution employee of any authorized act within his or her official capacity commits a Class A misdemeanor.

725 ILCS 5/114-12; Motion to Suppress Evidence Illegally Seized; a) A Defendant aggrieved by an unlawful search and seizure may move the court for the return of property and to suppress as evidence anything so obtained on the ground that: (1) The search and seizure without a warrant was illegal;

720 ILCS 5/7-7; Private person's use of force in resisting arrest; A person is not authorized to use force to resist an arrest which he knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if he believes that the arrest is unlawful and the arrest in fact is unlawful.

On February 7, 2018, the court heard evidence on the Defendant's Motion to Quash Arrest and Suppress. The State moved for a directed finding at the close of Defendant's case in chief which was denied by the court on March 7, 2018. Thereafter, additional evidence and argument was heard and the court hereby enters its ruling on the underlying Motion to Quash and Suppress Evidence.

Summary of Relevant Facts:

The following facts are not in dispute and prove to be dispositive of the issue before the court. On September 14, 2017, multiple officers were dispatched to the Defendant's residence to respond to complaints of several neighbors that a man and women were arguing outside a residence and the man was throwing garbage in the road. Upon arrival, the man later identified as the Defendant, Tad Johnson, walked aggressively toward one of the officers while he was still in his squad car, threw his arms at his side, and said "lets go". As the officer was exiting the vehicle, the Defendant turned and ran into the residence. The officers approached the residence but were denied entry by both Tad Johnson and his mother, Charlene Johnson. The officers made repeated demands to open the door but both Defendant and his mother refused to comply. Thereafter, the officers proceeded to attempt to kick in the door, at least twice, but those efforts were unsuccessful. During the time period in which the officers were attempting forcible entry, they observed Tad Johnson acting erratically, screaming obscenities and making an obscene gesture at them through the front window. At one point they observed Tad Johnson holding his hands to his throat in a manner characterized by one of the officers as an effort to "strangle himself". The officers contend they were concerned about Tad Johnson's mental health and about the safety of Charlene Johnson. The defense offered into evidence a video recording, however, due to the positioning of the squad car, only the audio portion of the video was useful to the court. Charlene Johnson was heard on the audio portion speaking calmly to the officers, apparently through the doorway. The court finds the following statements of the officers heard

on the audio recording to be of particular relevance in assessing the issues of probable cause, exigent circumstances, and the validity of the claimed community caretaking functions:

1. Officer's statement to Tad Johnson's mother at the front door: "I'm gonna do what I gotta do to get him".
2. Officer's statements to Tad Johnson through the window during and after he screamed obscenities and grabbed his throat: "Make me... come on out and make me move... come out.... make me move... Hey, you still live with your mom... Bring it, Bring it... Go ahead, finish yourself off!"
3. Statements made after entry unsuccessful: "He's getting cited for littering, that's for sure.... I got the taser out – he's getting tased immediately –just FYI."

To prevent the Defendant from leaving in a vehicle, the officers parked a second squad car in front of the garage door thereby blocking the driveway. When the garage door opened, the officers entered into the garage, and observed the defendant and Charlene Johnson inside a running vehicle. They immediately ordered both of them to exit the vehicle. When they refused, the officers forcibly opened the car doors. Officer Hayes proceeded to attempt to forcibly remove Tad Johnson from the car, and when he refused to allow them to do so, Officer Johnson immobilized Tad Johnson with his taser gun. The officers then forcibly removed Tad Johnson from the vehicle and placed him in handcuffs.

The Defendant's motion alleges the officers did not have probable cause to arrest, nor did they have sufficient exigent circumstances to justify their warrantless entry into the garage. The state contends the evidence shows sufficient probable cause to arrest Tad Johnson for littering based on litter in the street and for disorderly conduct based on the complaints from neighbors that the Defendants were seen arguing outside their home. Initially, the state contends these alleged offenses were alone sufficient to justify the forcible entry into the residence and the garage to effectuate a warrantless arrest. The state additionally argues that sufficient exigent circumstances existed to forcibly enter the home based on Tad Johnson's erratic behavior and the possibility he might present a threat of harm to himself or to others. Alternatively, the state contends that even if warrantless entry was not justified based upon any of those reasons, forcible entry was justified in furtherance of a community caretaking function with regard to the

officers' duty to ensure the safety and welfare of Tad Johnson and the other occupant(s) of the home.

Conclusions of Law:

The defense does not dispute the officers were properly dispatched to the scene to investigate the littering and the complaints regarding the alleged domestic disturbance. Clearly, the officers had probable cause to charge Tad Johnson with littering although it is unclear whether this offense could have been charged as anything other than a municipal ordinance violation. Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime. *People vs. Love*, 199 Ill. 2d 269, 279 (Il. 2002). The existence of probable cause depends upon the totality of the circumstances at the time of the arrest. *Id* at 279.

With regard to the sufficiency of probable cause to arrest for disorderly conduct, the evidence before the court is limited to initial calls to the police from multiple neighbors complaining about a man and a woman arguing outside their home, litter in the street, and the officer's observations that the Defendant was acting erratically. As a preliminary matter, the disorderly conduct complaint is defective in that it fails to allege that Defendant provoked a breach of the peace. To sustain a charge for disorderly conduct the state must prove that Defendant knowingly engaged in conduct that: (1) was unreasonable, (2) alarmed or disturbed another, and (3) provoked a breach of the peace. 720 ILCS 5/26-1(a)(1) (West 2008). *People v. McLennon*, 2011 IL App (2d) 091299. In the absence of evidence that the conduct described above actually alarmed or disturbed the neighbors and that it actually provoked a breach of the peace, this court cannot assume that element of the offense exists.

Before concluding whether probable cause existed to arrest the Defendant for disorderly conduct, the court must first determine when the Defendant was placed under arrest for that alleged offense. Our Supreme court has defined four factors that may be indicative of a seizure, they are: 1) the threatening presence of several officers; 2) the display of a weapon by an officer, 3) some physical touching of the person of the citizen, and 4) the use of language or tone of voice indicating that compliance with the officer's request might be compelled. *People vs. Luedemann*, 222 Ill. 2d 530, 553 (Il. 2006). See also *United States vs. Mendenhall*, 446 U.S. 544 (1980). All of the above factors were present in the present case. The officers' authoritative demands to enter combined with their efforts to kick in the door conclusively establish that the

Defendant was seized at the point the officers attempted to forcibly enter the residence. Accordingly, considering the totality of the circumstances, this court finds that while the officers had sufficiently reasonable and articulable suspicion to justify a continued investigation into the domestic disturbance, no probable cause existed that would justify a forcible, warrantless entry into the residence to effectuate the arrest of the Defendant solely for disorderly conduct.

The court must further consider the possibility of any other probable cause or other circumstances which could justify warrantless entry. Clearly, the officers had probable cause for the offense of littering, but no reasonable person could ever conclude that a forcible, warrantless entry is ever justified based solely on littering. Nonetheless, the state additionally contends the Defendant's erratic behavior constituted an exigent circumstance justifying warrantless entry. The state submits that Tad Johnson's conduct in approaching the squad car aggressively upon arrival, throwing out his arms and saying "let's go", along with his profane outbursts, noise making within the home, yelling and gesturing at the police caused them to be concerned for his safety and the safety of other occupants of the home. Significantly, when Tad Johnson challenged the officer arriving on the scene, the officer was in his car. Given the fact that the Defendant fled while the officer was exiting his vehicle, the threat of imminent harm dissipated substantially. No reasonable person would dispute this type of behavior is erratic or that the officer's were justified in being concerned about what other events may have taken place or were taking place that would explain the defendant's behavior.

To determine whether sufficient exigent circumstances justified warrantless entry to render aid to occupants the court must consider the totality of the circumstances. As a general rule, under the Fourth Amendment, absent exigent circumstance or consent, a home may not be searched without a warrant. *People v. Greene*, 289 Ill. App. 3d 796, 801 (2nd Dist. 1997). However, it is well settled that no warrant is necessary when police enter into and search the premises with a reasonable belief that immediate action is necessary for the purpose of providing aid to persons or property in need thereof. *People vs. Ferrell*, 397 Ill. App. 3d 697, 704 (2nd Dist. 2009). Factors which have been considered relevant to a determination of exigency include whether: (1) the crime under investigation was recently committed; (2) there was any deliberate or unjustified delay by the police during which time a warrant could have been obtained; (3) a grave offense was involved, particularly a crime of violence; (4) there was reasonable belief that the suspect was armed; (5) the police officers were acting on a clear showing of probable cause;

(6) there was a likelihood that the suspect would escape if he was not swiftly apprehended; (7) there was strong reason to believe the suspect was in the premises; and (8) the police entry was made peaceably, albeit non-consensually. *People v. Williams*, 161 Ill. 2d 1, 26 (Il. 1994).

It is well established that arguing or disputing with a policeman is not per se disorderly conduct or a breach of the peace. "An officer of the law must exercise the greatest degree of restraint in dealing with the public. He must not conceive that every threatening or insulting word, gesture, or motion amounts to disorderly conduct. It may be of such a character or so provoked or conditioned as to be fully justified. It is apparent from this statement of the law that words addressed to an officer in an insolent manner do not without any other overt act tend to breach the peace because it is the sworn duty and obligation of the officer not to breach the peace and beyond this to conduct himself so as to keep others from so doing." *Chicago v. Blakemore*, 15 Ill. App. 3d 994 (1st Dist. 1973). Rather than attempting to diffuse the situation, the officers on the scene in the present case chose to escalate the conflict by insulting and taunting a person who was obviously experiencing emotional distress. The video recording reveals the officers trying to goad him into committing acts of violence by challenging him to come out of the residence to fight. Inexplicably, one officer even challenged him to take his own life. (e.g. "Go ahead, finish yourself off!") Although the court is unaware of any case authority on the issue, the officers' actions in escalating the conflict must be taken into consideration when weighing the totality of the circumstances.

The state asks the court to conclude that Tad Johnson's aggressive behavior, obscene language, obscene gestures, taunts, yelling and noise from within the home constitute sufficient exigent circumstances to justify warrantless entry into the home. Only two of the factors cited in *People v. Ferrell* appear have any merit with regard to the present case, namely the fact that the crime (littering) had recently been committed, and they knew the defendant was inside the home. None of the other factors outlined therein were present to any significant degree. No grave offense was involved. The officers' conduct which escalated the conflict argues strongly against finding exigent circumstances. Moreover, even if probable cause (for littering or disorderly conduct) existed, that alone is not sufficient to justify a warrantless entry into a suspect's home to effect an arrest. *People vs. Foskey*, 136 Ill. 2d 66, 77, (Il. 1990). Ultimately, the state bears the burden of demonstrating exigent circumstance necessitating a warrantless search or arrest. Id. at 75. Applying the factors expressed within *People vs. Williams*, this court concludes that there

were not sufficient exigent circumstances present to justify a warrantless entry into the home or the garage.

The state asserts one final argument, in the alternative, to support the validity of the warrantless entry, namely the community caretaking doctrine. Courts use the term “community caretaking” to uphold searches or seizures as reasonable under the fourth Amendment when police are performing some function other than investigating the violation of a criminal statute. *People vs. Luedemann*, 222 Ill. 2d 530, 546 (Il. 2006). “The community caretaking doctrine is analytically distinct from consensual encounters and is invoked to validate a search or seizure as reasonable under the fourth amendment. It is not relevant to determining whether police conduct amounted to a seizure in the first place”. *Id.* at 548. Generally, a court must find two general criteria to decide that a seizure is justified as community caretaking. “First, law enforcement officers must be performing some function other than the investigation of a crime. Second, the search or seizure must be reasonable because it was undertaken to protect the safety of the general public”. *People v. McDonough*, 239 Ill. 2d at 260, 272 (Il. 2010). “Reasonableness, in turn, is measured in objective terms by examining the totality of the circumstances.” *Id.* at 272. “The court must balance a citizen's interest in going about his or her business free from police interference against the public's interest in having police officers perform services in addition to strictly law enforcement.” *Id.* at 272. While the officers may have had some concern about the emotional state of the Defendant, their own words recorded on tape reveal that they were intent upon forcibly entering the residence, not out of concern for his safety or well being, but rather to effectuate his arrest. Of particular concern to this court is the officer's stated intention to use his taser gun on the Defendant “immediately” [upon his apprehension]. Considering the circumstances surrounding the entry as a whole, there can be no question that the officer's warrantless entry was conducted primarily, if not entirely, to arrest the defendant. According to *McDonough* and *Luedemann*, the state's tenuous argument that the officers were acting in furtherance of a community caretaking function cannot be relied upon to justify their warrantless entry.

Having found that warrantless entry was not justified under any of the theories proffered by the state, the court must necessarily turn to whether probable cause existed to charge the Defendant with resisting and/or obstructing arrest. The Defendant is charged under 720 ILCS 5/31-1 which provides in relevant part: “Resisting or obstructing a peace officer... (a) A person

who knowingly resists or obstructs the performance by one known to the person to be a peace officer... of any authorized act within his or her official capacity commits a Class A misdemeanor”.

It is undisputed that the defendant refused the officers demands to enter the home and also refused demands to exit the vehicle; these actions constitute passive resistance. “The terms “resistance” and “obstruct” imply a physical act or exertion and the complaint must set out what physical act of the defendant constituted resisting or obstructing an officer. Refraining from physical action or failing to cooperate with the police is generally not considered the same as resisting or obstructing an officer”. *People vs. Cope*, 299 Ill. App. 3d 184, 189 (2nd Dist. 1998). Accordingly, this court’s analysis addresses only whether the Defendant passively resisted arrest, and whether he was justified in doing so.

It is settled that nonconsensual, warrantless entries into private premises are per se unreasonable absent probable cause coupled with exigent circumstances. *People vs. Hilgenberg*, 223 Ill. App. 3d 286, 291 (2nd Dist. 1991). In *Hilgenberg*, the court affirmed the Defendant’s right to refuse to open the door for police and held that when an officer demands entry but presents no warrant, “there is a presumption that the officer has no right to enter, because it is only in certain carefully defined circumstances that lack of a warrant is excused. An occupant can act on that presumption and refuse admission. *** He is not require to surrender his Fourth Amendment protection on the say so of the officer. The Fourth amendment gives him a constitutional right to refuse to consent to entry and search. His asserting it cannot be a crime.” *Id.* at 292. See also *People vs. Cope*, 299 Ill. App. 3d 184, 191 (2nd Dist. 1998).

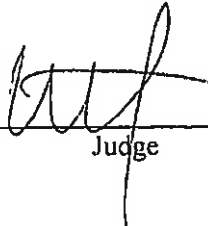
Having established that the Defendant had the right to refuse entry, the court must next address whether the Defendant had the right to resist the actions of the officers in physically taking his person into custody. To constitute a crime under 720 ILCS 5/31-1, the Defendant must “knowingly resist or obstruct the performance by one known to the person to be a peace officer... of any authorized act...” [emphasis added]. Generally, an “authorized act” means simply an act of a type that an officer is authorized to perform. *People v. Pickett*, 34 Ill. App. 3d 590, 597, (1st Dist. 1975). However, where the authorized act is an arrest, the inquiry usually ends because a defendant is not privileged to resist even an unlawful arrest. *City of Champaign v. Torres*, 214 Ill. 2d 234, 241-42, (Il. 2005). Where, however, the officer's act is the entry into the defendant's home, Section 7-7 [720 ILCS 5/7-7] does not apply. *Id.* at 243. Thus, an officer's

entry into the defendant's home in violation of the fourth amendment is not an "authorized act" for purposes of Section 31-1 [720 ILCS 5/31-1], even if the entry is undertaken pursuant to an official investigation. *People v. Jones*, 2015 IL App (2d) 130387 at P11.

Accordingly, having found that the officer's warrantless entry into the Defendant's home took place in violation of his Fourth Amendment rights, the officers' acts of entering into the home, garage, and vehicle, were not "authorized acts", even if they were undertaken pursuant to an official investigation, and therefore no probable cause can be found to exist to support the charge of resisting arrest.

It has been long settled that evidence obtained as a result of an unlawful entry and arrest cannot be admitted into evidence in court. *Wong Sun vs. United States*, 371 U.S. 471, 485 (1963). The Defendant's motion to suppress evidence is therefore granted. All evidence obtained by the police subsequent to the Defendant's first refusal to open the door to the residence is hereby suppressed and shall not be admitted into evidence at trial of this cause.

Dated this 24 day of March, 2018

Enter:  _____
Judge

IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS

GEN. NO. ~~75-531~~ 170-531
 JURY NON-JURY

People

vs.

Tad Johnson

PLAINTIFF(S)

DEFENDANT(S)

JUDGE	Krentz	COURT REPORTER	ED	PLTF. ATTY.	DeLoe
DEPUTY CLERK		<input type="checkbox"/> A copy of this order should be sent to: <input type="checkbox"/> has been sent to:		DEFT. ATTY.	Dixon
			CHECK IF PRESENT		

ORDER

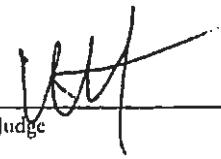
This cause coming before the Court, the Court being fully advised in the premises, and being in jurisdiction of the subject matter:

FILED IN OPEN COURT
 MAR 28 2018
 ROBYN INGEMUNSON
 CIRCUIT CLERK KENDALL CO.

IT IS HEREBY ORDERED:

This matter was before the Court for continuity of Mt. A & Synges Hearing. State will 3 officers and admit Pops #1 into evidence. The Motion to Dismiss is granted with a written ruling to follow Case C to 4/24/18 @ 11:30 AM

Date: 3/28/18


 Judge

IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS

GEN. NO. 17 CM 534
 JURY NON-JURY

People PLAINTIFF(S)	VS.	Charlene Johnson DEFENDANT(S)
----------------------------	-----	---

JUDGE <u>Krentz</u>	COURT REPORTER <input type="checkbox"/> A copy of this order should be sent to: <input type="checkbox"/> has been sent to:	PLTF. ATTY. <u>Phelps</u> CHECK IF PRESENT DEFT. ATTY. <u>Dixon</u>
---------------------	--	---

ORDER

This cause coming before the Court, the Court being fully advised in the premises, and having jurisdiction of the subject matter:

IT IS HEREBY ORDERED:

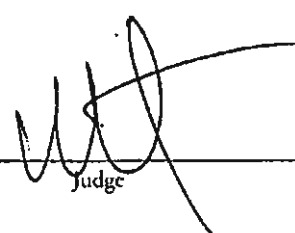
FILED IN OPEN COURT
 MAR 28 2018
 ROBYN INGEMUNSON
 CIRCUIT CLERK KENDALL CO.

Motion to quash arrest and suppress evidence is continued. State called Officer Johnson, Officer Hayes and Sgt. Klinge

Court grants motion to quash & suppress for reasons stated on record - written opinion to follow.

Case continued to April 23, 2018 @ 11:30 AM

Date: 3/28/18



 Judge