S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 20, 2004
v	No. 242583 Kalkaska Circuit Court
RANDALL WILLIAM MANN, Defendant-Appellant.	LC No. 01-002139-FH

Before: O'Connell, P.J., and Wilder and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of third-degree fleeing and eluding, in violation of MCL 257.602a(3). We affirm.

This case arises out of a high speed chase that ensued after Deputy Randolph Snyder observed defendant speeding past in a green Corvette. Snyder pursued defendant at speeds exceeding 115 miles per hour across the Kalkaska County line into Antrim County. Snyder lost sight of defendant when he entered the loop-shaped Alden Meadows subdivision. Snyder wisely blockaded the subdivision and radioed for backup rather than continuing the car chase through the residential area. When local backup arrived, one of the officers, Trooper David Kaiser, recalled issuing defendant a ticket for speeding in the Corvette the week before. The officers determined the location of defendant's residence by running a LEIN check on the earlier ticket. They discovered the defendant's residence was in the subdivision and quickly surrounded it. A neighbor confirmed that a person who matched defendant's description and drove a green Corvette lived at the address. A set of yawing skid marks led into defendant's driveway. Although the house appeared recently occupied, the police did not receive a response when they shouted for defendant to come out.

About a half-an-hour after the search began, Deputy Jonathan Wheatley tugged at a towel that draped over a window on a side door to defendant's garage. Wheatley's tug lifted a portion of the towel inside the door, revealing the Corvette.

Approximately an hour and a half after the search began, a neighbor called to defendant, and he emerged from the basement. Snyder and Kaiser immediately identified defendant through a window from defendant's deck. Despite defendant's orders to stay out, the police went into the house and arrested him. In a motion to suppress, defendant argued that the police illegally obtained the car as a result of a warrantless and unreasonable search of his garage, and

that his subsequent identification stemmed from that illegal discovery and his illegal arrest. The trial court denied defendant's motion, and defendant was found guilty following a jury trial.

Defendant first argues that the trial court clearly erred in determining that exigent circumstances, namely "hot pursuit," justified the warrantless search of his garage. We disagree with defendant. We review a trial court's findings of fact regarding a motion to suppress for clear error, but we review the trial court's ultimate decision de novo. *People v Williams*, 240 Mich App 316, 319; 614 NW2d 647 (2000).

"Both the United States and Michigan Constitutions guarantee the right against unreasonable searches and seizures." *People v Beuschlein*, 245 Mich App 744, 749; 630 NW2d 921 (2001)(citing US Const, Am IV; Const 1963, art 1, § 11). "A warrantless search is unreasonable per se unless there exists both probable cause and circumstances establishing one of the delineated exceptions to the warrant requirement." *People v Anthony*, 120 Mich App 207, 210-211; 327 NW2d 441 (1982). "Probable cause has been defined as a state of mind which stems from some fact, circumstance or information which would create an honest belief in the mind of a reasonably prudent person." *Id.*, at 211. "Exigent circumstances are present where immediate action is necessary to: (1) protect the police officers or other persons, (2) prevent the loss or destruction of evidence, or (3) prevent the escape of the suspect." *Id.* "Hot pursuit" of a felon usually qualifies as an "exigent circumstance." *People v Raybon*, 125 Mich App 295, 301; 336 NW2d 782 (1983).

In the instant case, the police had probable cause to search defendant's home because the facts the police had gathered at the time of the garage's search indicated a very strong likelihood that defendant and his car were at the location. The issue then becomes whether the trial court clearly erred in determining that the exigent circumstance of "hot pursuit" existed to justify a warrantless search of defendant's garage.

In *People v Joyner*, 93 Mich App 554, 559-560; 287 NW2d 286 (1979), we determined that tracking-dog evidence which culminated in a warrantless entry into the defendant's home fit the "hot pursuit" exception to the warrant requirement because "there was no break in the chain of immediate pursuit." Here, Snyder's pause to await backup did not mean that police had broken off their pursuit. Rather, Snyder's delay prevented defendant from doubling back and preserved an eventual arrest from jurisdictional entanglements. With the serendipitous discovery that defendant resided nearby, the officers soon resumed their pursuit. While reasonably certain that defendant had arrived at the house and remained inside, the officers would have risked defendant's escape if they immediately focused on sealing off the house without first verifying his presence there. This need for immediate verification provided ample exigency to justify Wheatley's peek into defendant's garage. If the garage contained a different vehicle, or nothing at all, the continuing pursuit would have resumed elsewhere. Therefore, this was not the kind of cold, "planned warrantless search" decried in *People v Heard*, 65 Mich App 494, 499; 237 NW2d 525 (1975), and the trial court did not clearly err when it applied the "hot pursuit" exception to the warrant requirement.[1]

[1] We also note, however, that police already knew that defendant owned the Corvette and had
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Defendant next argues that the trial court clearly erred when it allowed the prosecutor to introduce evidence of his identification by Snyder and Kaiser who spotted him through a window. Defendant argues that the illegal discovery of his car in the garage identified him as the felon and led to his arrest. We disagree. The minimally invasive search of defendant's garage was justified by the exigent circumstances created by defendant's flight. Moreover, the officers did not identify defendant because of his car, but because they had seen him before. It was the LEIN search, skid marks, and information from a neighbor that pointed to the house as the likely place where defendant took refuge. Without any relationship between Wheatley's detection of the car and defendant's identification through the window, we would affirm the trial court even if we found the search of the garage invalid. Because exigent circumstances justified Wheatley's search, the identification evidence was completely untainted by illegal police conduct.[2]

Affirmed.

/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray

(…continued)

positively identified him as its driver, so any error in admitting this evidence was harmless. The police would have eventually discovered the Corvette even without Wheatley's search.

[2] While defendant also questions the validity of his arrest, the prosecutor did not use any evidence at trial that followed from defendant's arrest and defendant does not argue any related error on appeal. Therefore, defendant's conviction stands.