

STATE OF MINNESOTA

COUNTY OF SHERBURNE

TENTH JUDICIAL DISTRICT

J. [REDACTED] B. [REDACTED]

Petitioner,

v.

IMPLIED CONSENT ORDER

Commissioner of Public Safety,

Respondent.

Court File No. 71-CV-[REDACTED]

The above-entitled matter came on for an implied consent hearing on September 24, 2021, before the Honorable Brianne J. Buccicone, Judge of District Court, at the Sherburne County Government Center in Elk River, Minnesota.

Ryan P. Garry, Attorney at Law, appeared on behalf of Petitioner, J. [REDACTED] [REDACTED] B. [REDACTED] [REDACTED], Assistant Attorney General, appeared on behalf of the Commissioner of Public Safety.

NOW, THEREFORE, upon review of the files, the exhibit (squad video), the testimony of Detective [REDACTED] and [REDACTED], arguments of counsel, and applicable law, the Court makes the following:

FINDINGS OF FACT

1. On March 24, 2018, at approximately 10:35 p.m., Detective [REDACTED] with the Elk River Police Department was on duty and in his squad car in the parking lot of a senior living apartment on Twin Lakes Road in Elk River, Minnesota. It was dark outside, but there was no precipitation.
2. While he was parked, Detective [REDACTED] observed a Mazda passenger vehicle traveling at a high rate of speed on a residential street. There was a sports motorcycle driven by Petitioner, J. [REDACTED] [REDACTED] B. [REDACTED], behind the Mazda.
3. Detective [REDACTED] observed the motorcycle quickly accelerate and pass the Mazda on the left-hand side. Detective [REDACTED] was unable to get a radar reading because of the position of his squad car, but he estimated the speed to be well above the posted speed limit.

4. Detective ██████████ believed the motorcycle was driving recklessly by speeding and passing the Mazda in that manner on a residential street, so he sped up and tried to catch up to them in his squad car.
5. Detective ██████████ observed the motorcycle pull into a driveway and into an open garage. The Mazda went down the street, but then turned around and came back in the direction of Detective ██████████'s location.
6. Detective ██████████ parked his squad at the end of the driveway, which was approximately 40 feet long. He did not have his emergency lights or siren activated, but only had his headlights illuminated. It was dark and Detective ██████████ acknowledged it may have been difficult for Petitioner to perceive he was a police officer.
7. The motorcycle was in the garage and the garage was open. The contents of the garage were visible from the street. Detective ██████████ walked around the front of his squad and started to walk up the driveway to engage Petitioner. He observed Petitioner quickly dismount the motorcycle and run towards the service door that led into the residence. He started running and yelled "Stop! Stop! Police! Stop!" Petitioner, who was still wearing his helmet, turned his head back towards Detective ██████████ but did not stop.
8. Petitioner ran into the residence through the service door. As he did so, he hit the button to close the garage door. As the garage door was closing, Detective ██████████ went underneath the door and the safety sensor caused the garage door to reopen.
9. Detective ██████████ did not knock on the service door leading into the residence. Instead, he kicked the service door open and went into the residence.
10. Detective ██████████ did not have a search warrant to enter the residence. He believed he was in hot pursuit and that Petitioner had fled on foot.
11. Detective ██████████ observed Petitioner starting to go up the staircase in the residence. Petitioner then stopped on the stairway and apologized to Detective ██████████.
12. On cross examination, Detective ██████████ admitted that his initial reason for his investigation was due to Petitioner's speed. He also acknowledged that speeding is a petty misdemeanor and is not considered a crime, but he stated he believed Petitioner was fleeing on foot after he told Petitioner to stop, which would be a misdemeanor.
13. ██████████ was in a car in the road when he witnessed the interaction between Petitioner and Detective ██████████. Mr. ██████████ saw what turned out to be Detective ██████████'s squad car pull up to the end of the driveway. It was unclear to him that it was a marked squad car because the headlights were pointed in his direction.

14. Mr. ██████ did not realize Detective ██████ was a police officer until later when Detective ██████ walked out of the residence with Petitioner. Mr. ██████ could only see a person running towards and into the house. Mr. ██████ also thought Detective ██████ yelled something and that is what originally caught his attention.
15. At an implied consent hearing on September ██████, 2021, Petitioner challenged his license revocation, arguing his Fourth Amendment right against unreasonable search and seizure were violated due to the warrantless entry into his garage and home. He asserts that any evidence obtained after the warrantless entry should be suppressed.
16. Petitioner submitted a brief on October ██████, 2021. Respondent submitted a brief on October ██████, 2021, and the matter was taken under advisement.

Based on the foregoing Findings of Fact, the Court hereby makes its

CONCLUSIONS OF LAW

I. Warrantless Entry

Both the Fourth Amendment to the United States Constitution and Article I, Section 10, of the Minnesota Constitution protect the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” The constitutional protection extends to all places where an individual has a “reasonable expectation of privacy, including the home and its curtilage.” *Haase v. Comm’r of Pub. Safety*, 679 N.W.2d 743, 746 (Minn. App. 2004). The curtilage is defined as the “area so immediately and intimately connected to the home that within it, a resident’s reasonable expectation of privacy should be respected.” *Garza v. State*, 632 N.W.2d 633, 639 (Minn. 2001). This includes the garage. *State v. Crea*, 233 N.W.2d 736, 739 (Minn. 1975).

When an overhead garage door is left open, police may enter the garage solely for the purpose of knocking on a service door leading into the home and not to look for evidence. *Tracht v. Comm’r of Pub. Safety*, 592 N.W.2d 863, 864 (Minn. App. 1999). However, a person does not forfeit their reasonable expectation of privacy when they briefly open a garage door.

Haase, 679 N.W.2d at 747. The act of closing the overhead door “forecloses any reasonable conclusion that the garage was impliedly open.” *Id.*

Absent exigent circumstances, a warrantless entry to a constitutionally protected area to make an arrest is presumed to be unreasonable. *State v. Lohmes*, 344 N.W.2d 605, 610 (Minn. 1984). To justify a warrantless entry, either consent or probable cause and exigent circumstances must be shown. *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992). In order to show probable cause, the police must show that they “reasonably could have believed that a crime has been committed by the person to be arrested.” *State v. Olson*, 436 N.W.2d 92, 94 (Minn. 1989).

As to exigency, in a hot pursuit situation, it is generally held that police do not need a warrant before entering a dwelling in which a fleeing suspect has entered. *State v. Koziol*, 338 N.W.2d 47, 48 (Minn. 1983). However, when the situation involves the need to pursue a misdemeanor, there is not a bright line rule that allows entry into a home. *Lange v. California*, 141 S.Ct. 2011, 2021-2022 (2021). “When the nature of the crime, the nature of the flight, and surrounding facts present no such exigency, officers must respect the sanctity of the home – which means they must get a warrant.” *Id.* at 2022. Some circumstances provide good reason to enter a home, such as “to prevent imminent harms of violence, destruction of evidence, or escape from the home,” but when police have time to get a warrant, they must do so “even though the misdemeanor fled.” *Id.* at 2024.

In this case, Detective [REDACTED] approached Petitioner’s residence in his squad car while it was dark outside and he at no time activated his emergency lights or siren. He identified himself as a police officer only after yelling for Petitioner to stop twice while Petitioner was running into his home from the garage with a helmet on. Even Mr. [REDACTED], a witness to the events, did not recognize Detective [REDACTED] as law enforcement until after he came out of the

residence with Petitioner. Detective [REDACTED] entered Petitioner's garage as the overhead garage door was closing and then proceeded to kick open the service door into the residence and advance into Petitioner's home. It is undisputed that Detective [REDACTED] did not get a warrant to enter the garage or residence.

To justify the warrantless entry into the garage and then home, both probable cause and exigent circumstances need to be shown. Here it is highly questionable that Detective [REDACTED] reasonably believed that a crime had been committed. He acknowledged on cross examination that his initial reason for pursuing Petitioner was for a speeding violation, which is a petty misdemeanor offense and is not a crime. Further, even if Detective [REDACTED] reasonably believed that Petitioner had committed the misdemeanor crimes of reckless driving or fleeing on foot, the totality of the circumstances do not present an exigency. There was no evidence that Detective [REDACTED] had concerns of violent behavior, destruction of evidence, further flee, or other criminal activity. As such, there was time and opportunity to get a warrant and the entry into both Petitioner's garage and home was unreasonable.

Based on the foregoing, the Court makes the following:

ORDER

1. Petitioner's request for rescission of the revocation of Petitioner's driving privileges is **GRANTED**.
2. Service of this Order shall be by e-service or United States mail and shall be sufficient for all purposes.

IT IS SO ORDERED.

BY THE COURT:

Dated: 10/[REDACTED]/2021

Brianne Bucciccone Buccicone, Brianne (Judge)
 2021.10.[REDACTED] 11:52:11 -05'00'
 The Honorable Brianne J. Bucciccone
 Judge of District Court