Filed 11/17/04

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. DANIEL LYON THOMPSON, Defendant and Appellant.	2d Crim. No. B176808 (Super. Ct. No. 1106282) (Santa Barbara County)

The Fourth Amendment to the United States Constitution prohibits the police from making a warrantless entry into a dwelling. Case law has established a "bright line" at the home's threshold, i.e. it's door. Were we to sanction the instant entry, the line would not be bright. Instead, it would be dim, if not altogether erased.

After the trial court denied his suppression motion, Daniel Lyon Thompson pled guilty to driving with a blood alcohol content of 0.08 percent or higher (Veh. Code, § 23152, subd. (b)) and resisting arrest (Pen. Code, § 148, subd. (a)(1)). A majority of the Appellate Division of the Superior Court of Santa Barbara County affirmed the judgment, concluding that the warrantless entry into appellant's residence did not violate the Fourth Amendment. Judge Anderle dissented, relying on dicta in a recent opinion from this court. (*People v. Schofield* (2001) 90 Cal.App.4th 968, 975.) We ordered transfer to settle an important question of law. (Cal. Rules of Court, rule

62.) As shall be explained, we meant what we said in *Schofield.* We reverse the judgment of the appellate division.

Facts

On July 21, 2003, Madelene Orvos found appellant passed out in a Ford Bronco in her apartment parking space. A neighbor asked him to move his vehicle out of Orvos' parking space. Appellant was intoxicated, threw an empty Vodka bottle on the ground, and drove away.

Orvos called 911, got into a car, and followed appellant. After she lost sight of him, a police officer found the Ford Bronco parked outside appellant's residence. Orvos identified the vehicle which still had a warm engine. Two officers knocked on the residence door. Slavka Kovarick opened the door and said that the Ford Bronco belonged to Daniel, a man who rented a room from her, later identified as appellant. Because her grandchildren were asleep, she refused to let the officers enter her residence. She told the officers that she would get Daniel.

Kovarick returned and said that Daniel was asleep. Through the open door, the officers could see through the house into the backyard. Appellant was in the backyard. The officers gestured for him to come to the door. Appellant entered the house through the back door. He stopped about seven feet from the open front door, and told the officers that he did not want to talk to them. When appellant turned and walked towards his bedroom, the officers entered the house, handcuffed appellant, and forcibly took him outside. Orvos identified appellant and made a citizen's arrest.

Appellate Division Opinion

Relying on *People v. Hampton* (1985) 164 Cal.App.3d 27, the majority of the appellate division ruled that the warrantless entry did not violate the Fourth Amendment. The court reasoned that Orvos, who had probable cause to make a citizen's arrest, somehow authorized the officers' entry into the residence: "[T]he exigencies of preventing defendant from fleeing and possibly again driving while

intoxicated, and of preserving evidence of his blood alcohol content, along with the physical presence of the complaining private citizen, . . . all combined to justify the officers' entry to follow and apprehend defendant . . . ."

In his dissent, Judge Anderle adhered to the *Schofield* dicta (see *infra.)* and said: "It is unaccountable why there was the necessity to make an entry without a warrant in this circumstance. There are judges on standby for the purpose of effectuating emergency protective orders, search warrants and arrest warrants. . . . The potential of lost evidence because of 'burn off' does not support the decision to make the arrest. Among other things, that problem is always subject to an expert's calculation."

Warrantless Entry Into a Residence

It is a basic principle of Fourth Amendment law that warrantless entry into a suspect's home is presumptively unreasonable. (*Payton v. New York* (1980) 445 U.S. 573, 586 [63 L.Ed.2d 639, 651].) In *People v. Schofield, supra*, 90 Cal.App.4th at page 970, we held that an officer with probable cause may arrest a person for misdemeanor driving under the influence of alcohol not committed in the officer's presence, where evidence may be destroyed unless the person is immediately arrested. There, the suspect agreed to step outside of his house, answered questions about a citizen complaint, and submitted to field sobriety tests. (*Id*., at p. 971.) This was an arrest in a public place. (*Id*., at p. 976.)

Citing *Welsh v. Wisconsin* (1984) 466 U.S. 740 [80 L.Ed.2d 732, 753] *(Welsh),* we expressly cautioned that a peace officer may not enter a residence to effect a driving under the influence arrest simply because evidence may be destroyed or concealed by the passage of time. (*People v. Schofield, supra*, 90 Cal.App.4th at p. 975.) Our reference to Welsh was based on the principle that the Fourth Amendment draws a "firm line" at a house entrance. " '[A]t 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 intrustion.' [Citation]." (*Payton v. New York, supra*, 445 U.S. at pp. 589-590 [63 L.Ed.2d at p. 653].) "Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." (*Ibid*.) Our California Supreme Court has recently reaffirmed these principles. (*People v. Celis* (2004) 33 Cal.4th 667, 676.)[1]

In *People v. Hampton* (1985) 164 Cal.App.3d 27, the officer stopped defendant for driving while intoxicated, locked defendant's vehicle, and drove her home. Minutes later, the officer saw a woman driving the vehicle and found it parked outside defendant's apartment. (*Id*., at p. 29.) The officer heard a door slam and knocked on the apartment door. Defendant opened the door and admitted driving the vehicle home. The officer grabbed defendant's hand and asked her to step outside. (*Id.*, at p. 30.)

The *Hampton* court ruled that exigent circumstances justified the warrantless entry: "[T]he facts in this case are significantly different from those in *Welsh*. In that case, there was no 'hot pursuit.' The police did not see defendant's accident; their first encounter with him was in his bedroom. In contrast, in this case, after observing the person whom he believed to be respondent driving for the second time, the officer followed the car to her apartment building and went to her apartment; respondent herself answered his knock. In *Welsh*, immediately prior to the arrest there was little

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[1] Our United States Supreme Court has articulated the rationale for the "bright line" concept: " 'A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be "literally impossible for application by the officer in the field." ' (Citation.)" [¶] ". . . '[A] single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.' (Citation.)" (*New York v. Belton* (1981) 453 U.S. 454, 458 [69 L.Ed.2d 768, 773-774].)

threat to the public safety, because the driver had abandoned his car in a field and had gone home to bed. In contrast, in this case, after the officer locked respondent's car, pocketed her keys, and drove her home, she apparently returned to the car with other keys and drove again. . . . [E]ven though respondent was separated from her car by the time of her arrest, the officer had good reason to believe that the separation might only be temporary and that she might start driving again." (*Ibid*.)

Unlike *Hampton*, here the officers did not observe appellant driving, follow in hot pursuit, or arrest appellant at his doorway. Appellant refused to come outside or talk to the officers. The officers, without permission and contrary to the express objection of the homeowner, forcibly entered the residence to detain appellant and take him outside for possible identification and possible citizen's arrest by Ms. Orvos. [2]

The evidence does not support the finding that appellant was likely to flee and again drive while intoxicated. The Ford Bronco was parked in the street where another officer was stationed. (E.g., *People v. Keltie* (1983) 148 Cal.App.3d 773, 779 [no imminent public danger where a driving under the influence suspect is separated from his vehicle].) " '[E]xigent circumstances' means an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence." (*People v. Ramey* (1976) 16 Cal.3d 263, 276.)

A private citizen may expressly or impliedly delegate the physical act of arrest to an officer. (*Padilla v. Meese* (1986) 184 Cal.App.3d 1022, 1030-1031.) No magic

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[2] We did not cite or discuss *People v. Hampton, supra,* 164 Cal.App.3d 27, in *Schofield, supra,* 90 Cal.App.4th 968, because, given the facts in *Schofield,* it was unnecessary to do so. We still think it is unnecessary to agree or disagree with *Hampton* because here 1. there was no misdemeanor committed in the officer's presence, and 2. there was no police hot pursuit to effect an arrest.

words are required. (*Johanson v. Department of Motor Vehicles* (1995) 36 Cal.App.4th 1209, 1217.) The officers' authority to assist in a citizen's arrest does not include the right to forcibly enter a driving under the influence suspect's residence, detain him, and remove him outside for possible identification and possible arrest. (Pen. Code, §§ 837, 839; *Stapleton v. Superior Court* (1968) 70 Cal.2d 97, 100 [warrantless search of car based on police-citizen "joint operation" violates Fourth Amendment]; *Raymond v. Superior Court* (1971) 19 Cal.App.3d 321, 325-326 [same; warantless entry and search of residence by police and 12 year old boy].) Here the citizen's arrest was made after appellant was handcuffed, forcibly removed from the residence, and identified by Orvos.

In *People v. Ramey, supra,* 16 Cal.3d 263, 275, our Supreme Court said: "An intrusion by the state into the privacy of the home for any purpose is one of the most awesome incursions of police power into the life of the individual. Unrestricted authority in this area is anathema to the system of checks envisaged by the Constitution. It is essential that the dispassionate judgment of a magistrate, an official dissociated from the 'competitive enterprise of ferreting out crime' (*Johnson v. United States* (1948) 333 U.S. 10, 14 [92 L.Ed. 436, 440, 68 S.Ct. 367]), be interposed between the state and the citizen at this critical juncture. The frightening experience of certain foreign nations with the unexpected invasion of private homes by uniformed authority to seize individuals therein, often in the dead of night, is too fresh in memory to permit this portentous power to be left to the uninhibited discretion of the police alone. . . ."

In *People v. Escudero* (1979) 23 Cal.3d 800, 811, our Supreme Court cautioned that ". . . the courts must ever be on their guard to keep 'hot pursuit' justification within firm and narrow bounds: 'the exception must not be permitted to swallow the rule' (citation)." Here, the People's theory, adopted by the majority opinion of the appellate division, would allow the exception to swallow the rule.

As the United States Supreme Court has recently said: "[P]olice officers need either a warrant or probable cause plus exigent circumstances in order to make a lawful entry into a home." (*Kirk v. Louisiana* (2002) 536 U.S. 635, 638 [153 L.Ed.2d 599, 603].) Warrantless entry into a residence to detain a suspect for removal outside for possible identification and possible citizen's arrest is the antithesis of keeping the "hot pursuit" justification within firm and narrow bounds. (*People v. Escudero, supra,* 23 Cal.3d at p. 811.) We decline the invitation to carve out a citizen's arrest "warm pursuit" exception to the Fourth Amendment.

Conclusion

The judgment of the appellate division is reversed. The trial court is ordered to vacate appellant's guilty pleas and its order denying the motion to suppress and enter a new order granting the motion to suppress.

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YEGAN, Acting P.J.

We concur:

COFFEE, J.

PERREN, J.

Frank Ochoa, Judge
Superior Court County of Santa Barbara

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