State v. Martin
222 Or. App. 138

FACTS

(Excerpted from the case)

Defendant appeals from a judgment of conviction for driving under the influence of intoxicants (DUII) and reckless driving. She assigns error to the trial court's denial of her motion to suppress evidence derived from a warrantless entry into her home. The trial court concluded that she consented to the entry by opening the door and running into another room; on appeal, she argues that those actions did not amount to consent. The state responds that the court correctly determined that she consented….

The following facts are undisputed. Late in the evening of July 4, 2005, a witness called 9–1–1 to report that a car, later identified as belonging to defendant, had been involved in a hit-and-run accident with a parked car. The witness had followed the car to defendant's home and reported the address. Within five minutes, officers arrived at that address and found the car that the witness had identified. It was parked in the driveway, at a "skewed" angle, apparently having hit the garage door, and was somewhat damaged.

Some of the officers walked around the home knocking on windows, identifying themselves as Portland police officers, and asking the occupant to go to the front door, where another officer was knocking. The officers had two motives: to check on the welfare of the driver and to question her about her possible involvement in the hit-and-run accident. After the officers had been knocking for approximately two minutes, defendant, completely unclothed, flung open the door. Upon seeing that the person who had knocked was a police officer, she turned and ran into a back bedroom. The officers briefly conferred and decided that they had only two options: to enter the home, or to leave. They decided that leaving "a naked person who's acting strangely, was just involved in a car wreck[,] * * * at midnight, [with] an open door" would be irresponsible, so they entered. They did not consider the option of obtaining a search warrant.

Inside, the officers found the bedroom into which defendant had run. The door was open and they walked in. Defendant was lying on the bed under a blanket. One of the officers asked her if she was all right; she responded, "I'm so drunk," and then she vomited. After a female officer helped her dress, defendant was led outside, where she showed unmistakable signs of intoxication. A subsequent breath test registered a blood alcohol content of .15, nearly twice the level of presumptive legal intoxication.

Two of the officers involved in the arrest, including the one who was at the front door when defendant opened it, testified to the above facts at a pretrial hearing on defendant's motion to suppress all of the statements and other evidence obtained as a result of the warrantless entry into her home. Based on that testimony, the court concluded that, although the circumstances did not present the kind of emergency that would have justified entry under the "emergency aid" exception to the warrant requirement, the entry was nonetheless lawful because, by opening the door, defendant tacitly invited the officers to enter. The court also noted that the circumstances would justify entry under the community caretaking statute, but expressly declined to base its ruling on that conclusion….

RULE

Constitutional Provision

No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

Or. Const. art. I, § 9

Common Law

It is true that voluntary consent may be manifested by conduct. *State v. Brownlie*, 149 Or.App. 58, 62, 941 P.2d 1069 (1997). It is also true that neither this court nor the Supreme Court has held that a person who merely opens a door to a police officer has voluntarily consented to entry for purposes of Article I, section 9…In short, whether a defendant consents to police entry when she opens a door and then retreats depends on the particular facts in each case. We can imagine situations in which doing so would amount to a tacit invitation to enter.

HANDOUT QUESTIONS

1. If you were an attorney for Martin (the defendant), what arguments would you make that Martin DID NOT consent to the search?

2. If you were an attorney for the government, what arguments would you make that Martin DID consent to the search?

3. If you were on the Court of Appeals of Oregon, how would you rule of this case? Would you rule that she did consent or that she did not consent? Explain.

4. If you do not think Martin consented, what would she have had to do to consent?

5. After reading the actual case, answer the following:

    a. What did the Court of Appeals of Oregon hold?

    b. Why did the Court of Appeals of Oregon come to this conclusion?

    c. Did the court create a blanket rule (i.e. a very broad rule)?

    d. Did your initial prediction match the actual decision?

    e. Do you agree or disagree with the Court of Appeals? Why?

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Some of the officers walked around the home knocking on windows, identifying themselves as Portland police officers, and asking the occupant to go to the front door, where another officer was knocking. The officers had two motives: to check on the welfare of the driver and to question her about her possible involvement in the hit-and-run accident. After the officers had been knocking for approximately two minutes, defendant, completely unclothed, flung open the door. Upon seeing that the person who had knocked was a police officer, she turned and ran into a back bedroom. The officers briefly conferred and decided that they had only two options: to enter the home, or to leave. They decided that leaving "a naked person who's acting strangely, was just involved in a car wreck[,] * * * at midnight, [with] an open door" would be irresponsible, so they entered. They did not consider the option of obtaining a search warrant.

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ISSUE

Whether the defendant consented to the warrantless entry into her house when she opened the door and ran to a back room?

HOW DID THIS CASE REACH THE COURT OF APPEALS OF OREGON?

The trial court denied the defendant's motion to suppress based on a warrantless entrance in to the defendant's home. The trial court found that the defendant had consented. The defendant appealed this decision and the Government cross-appealed regarding the reasoning of the trial court.

ARGUMENTS

Martin's argument

1. Martin argues that she did not consent
2. The trial court erred in denying Martin's motion to suppress

Government's Argument:

1. The trial court correctly found consent when the defendant opened the door
2. Even if there was no consent, the officers were performing a community caretaking function

WHO WON?

Martin, the defendant, won. The court held that "evidence was insufficient to establish that defendant consented to police officers' entry into her residence." There was another issue discussed that came out in the favor of the defendant, as well. The case was reversed and remanded.

HOW THE COURT EXPLAINED ITS DECISION

(Excerpted from the case)

Guided by these rules and this precept, we conclude that the state failed to prove that defendant consented to the officers' entry. It is true that voluntary consent may be manifested by conduct. *State v. Brownlie,* 149 Or.App. 58, 62, 941 P.2d 1069 (1997). However, it is also true that neither this court nor the Supreme Court has held that a person who merely opens a door to a police officer has voluntarily consented to entry for purposes of Article I, section 9. A comparable situation occurred in only one case, *State v. Cota,* 66 Or.App. 650, 675 P.2d 1101, rev. den. 297 Or. 124, 681 P.2d 134 (1984). Police had a warrant for the arrest of the defendant. When they knocked on his door, an officer showed him the warrant and informed him that he was under arrest. The defendant "did not resist by word or act and did not attempt to retreat from the doorway. [He] did not invite the officers into the house. Nor did he object to, or resist, their entry. They simply walked in without requesting his consent." Id. at 653, 675 P.2d 1101. A divided court held *143 that, regardless of whether the entry was lawful, the subsequently discovered evidence had to be suppressed because the purpose of the entry-to serve the arrest warrant-had been achieved before the discovery. Id. at 654–55, 675 P.2d 1101. None of the four opinions discussed the issue of consent; instead, the divisive issue was whether the arrest warrant itself provided a justification for the entry. The court again did not confront the issue of consent in *State v. Apodaca*, 85 Or.App. 128, 133, 735 P.2d 1264 (1987); although the court held that police violated the defendant's rights under Article I, section 9, by entering an unattended but open door, the state did not argue consent and the court did not discuss it.

Nor does *State v. Voits*, 186 Or.App. 643, 64 P.3d 1156, rev. den., 336 Or. 17, 77 P.3d 320 (2003), cert. den., 541 U.S. 908, 124 S.Ct. 1612, 158 L.Ed.2d 253 (2004), provide significant guidance. The defendant in that case called 9–1–1 to report a "suicide" that was ultimately found to be a homicide. Although we held that an open door amounted to consent for officers to enter, we based our decision on the case's unique facts: "By calling 9–1–1, reporting a suicide, failing to restrict **996 his request for assistance to medical personnel, admitting emergency personnel into his residence, and leaving the front door ajar, defendant manifested his consent to the police officers' initial entry into his home to investigate the death of a person." Id. at 648, 64 P.3d 1156. Of somewhat more assistance is *State v. Doyle*, 186 Or.App. 504, 63 P.3d 1253, rev. den., 335 Or. 655, 75 P.3d 898 (2003). In that case, we held that the defendant, the occupant of a motel room, did not tacitly consent to the officers' entry by standing silently after another occupant—one without authority to grant consent—gestured for the officers to enter: "At most, in failing to immediately object, defendant acquiesced in the officers' entry. Her silence did not establish that

she had consented to that entry from the outset." Id. at 510–11, 63 P.3d 1253. Thus, although the facts in Doyle are significantly different from those in the present case, we can nonetheless infer that mere acquiescence by silence is not consent.

In short, whether a defendant consents to police entry when she opens a door and then retreats depends on the particular facts in each case. We can imagine situations in which doing so would amount to a tacit invitation to enter. This is not one of those situations. The incident occurred at *144 night; there was no activity occurring in the home, and it was unlit, thereby negating the possibility that defendant meant to allow the officers in so that they could talk to somebody else. But the crucial fact is that, after opening the door, defendant—completely unclothed—ran away and retreated into her bedroom. Her haste suggests that she did not want to talk to the police, and that suggestion, in turn, suggests that her actions did not invite them in. Even if opening the door can be seen as consent, it was consent for the officers to enter the house, not consent for them to enter and then, on their own, to roam about. Walking to defendant's bedroom, in other words, exceeded the scope of any consent that merely opening the door and fleeing might have conferred. Considering all of the circumstances, and acknowledging that defendant's actions might have sent an ambiguous message, we conclude that the state did not meet its burden of proving by a preponderance of the evidence that defendant's actions amounted to anything more than passive acquiescence.

APPLICATION

1. This case is great because drunk driving is a crime that the students can "wrap their heads around." While they might not personally drink, other students they know may drink. Further, students may know some students that drive drunk. Although this case does not center on drunk driving, it is a crime that could be seen as "familiar." Crimes like murder, rape, and burglary may be more abstract.
    a. Having a crime that is relatable for the students may help them put themselves in the defendant's position.
    b. Also, using a crime without a victim may make it easier for the students to separate "defendant" and "bad guy." It is essential to understanding the Fourth Amendment and defenses to disassociate the defendant with being a "bad guy."

2. Much of federal consent law is derived from social custom. I think this is great because they know when they are welcome in a house and when they are not. Pick students for demonstrations with differing levels of welcoming. If you want to get more students involved, write the scenarios down ahead of time and have a student be the person answering the door:
    a. Open the door and then slam it shut
    b. Open the door and gesture the person to come in
    c. Open the door and high five the person
    d. Open the door and walk away calmly
    e. Open the door and just stand there
    f. Open the door and run away out of the house

3. If the students are still having trouble relating to a drunk driver who is found naked, perhaps use an example between the student and the parent (e.g. breaking curfew, not doing chores, etc.). This will give the students a better understanding of how important privacy is and the importance of protecting it.