

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT,
IN AND FOR ST. LUCIE COUNTY, STATE OF FLORIDA

STATE OF FLORIDA,

CASE NO.: 56-2013CF-001377-A

v.

DEBORAH ANNE SOLOMON,

Defendant.

_____ /

MOTION TO SUPPRESS

NOW COMES the Accused, DEBORAH ANNE SOLOMON, by and through her undersigned counsel and moves this Honorable Court pursuant to Florida Rule of Criminal Procedure 3.190 (g) & (h), Fourth Amendment, U.S. Constitution, and Article 1, § 12, Florida Constitution, and respectfully requests this Honorable Court to suppress the following items of evidence:

A. Any and all physical evidence including but not limited to items seized from the residence of DEBORAH ANNE SOLOMON.

B. Any and all testimonial evidence including but not limited to any statements given by DEBORAH ANNE SOLOMON.

C. Any and all derivative evidence resulting from the unconstitutional search of the residence of DEBORAH ANNE SOLOMON.

As grounds for this Motion, the Accused states:

1. On May 27, 2013, Port St. Lucie Police officers Ignelzi and Chapman, responding to a noise complaint called in by a neighbor, entered Ms. Solomon's property. They observed no automobile in the driveway. The officers approached the Accused's

front door, knocked, and rang the doorbell several times. The officers could hear the sound of music coming from the back of the house.

2. After getting no response, both officers left the front door area. Neither officer attempted to ascertain Ms. Solomon's name or contact information, nor did they attempt to obtain a warrant to search the residence; rather, both proceeded to cross the driveway to the right of the front door and proceed around the side of Ms. Solomon's residence.

3. A few steps into the side yard, the officers encountered a chain link fence extending perpendicularly from the side of the home to the adjacent property line. The fence enclosed most of the side yard, and the entire backyard. The officers proceeded further onto the Accused's property by passing through a gate in the fence.

4. After proceeding through the gate, the officers continued along the side of the home toward the backyard. Upon reaching the rear corner of the residence, the officers turned left toward the residence. At this point, they were clearly in the backyard area of the home, an area unseen from the street.

5. As the officers proceeded through the fence and into the cartilage, they continued to yell out and announce their presence, but did not receive a response.

6. Approximately fifteen yards from the rear corner residence sits a screen pool enclosure that extends from the rear wall of the house into the backyard. This pool enclosure and rear porch area of the home cannot be viewed from the street. The porch enclosure has a door on either side. Each door stands close to the home's rear wall.

7. The officers proceeded across the backyard to the porch door. They opened the door and stepped into the home's back porch area.

8. When they entered the back porch area, they observed a cabana bath door ajar and the two sets of glass sliders open. The sound of the music, a radio speaker, sat atop a small table in the corner of the porch. It was at this time that the officers first smelled marijuana. Upon looking into the home's interior through the open sliders, they saw marijuana collected on a tray on a kitchen counter.

9. The officers both entered the residence and performed a protective sweep of the interior. During the sweep, they opened a rear bedroom door and discovered a marijuana plant approximately four (4) feet in height.

10. It was only after the officer's had unlawfully searched Ms. Solomon's residence that they began the process of attempting to locate the homeowner by retrieving information available through the databases accessible from a patrol vehicle.

11. While the officers were attempting to locate her, Ms. Solomon returned home from visiting a neighbor. Subsequently, she was arrested.

MEMORANDUM OF LAW

12. The search of the Accused's residence occurred without a search warrant and no exception to the warrant requirement exists.

13. The Fourth Amendment guards against police intrusion into a citizen's home, no matter the degree of probable cause. See State v. Waterman, 638 So. 2d 1032 (Fla. 2d DCA 1994) (Absent exigent circumstances, no amount of probable cause can justify a warrantless search and seizure.)

14. Furthermore, Article I, § 12 of the Florida Constitution guarantees "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches...."

15. Fourth Amendment and Article I, § 12 privacy protections extend to a home's curtilage. Morseman v. State, 360 So.2d 137 (Fla. 2d DCA 1978), *writ dismissed*, 394 So.2d 408 (Fla.1981) *cert. denied*, 452 U.S. 930, 101 S.Ct. 3066, 69 L.Ed.2d 431 (1981). A person's backyard falls within a "zone clothed by a reasonable expectation of privacy into which the government could not reasonably intrude to conduct a search." Id., at 138. "Typically, the yard adjacent to a residential dwelling, particularly the part of the back yard blocked from view from the street by the dwelling, is clothed with a reasonable expectation of privacy from unreasonable governmental intrusion." *Id.*, at 139 (footnote omitted). See, State v. Witherington, 702 So. 2d 263 (Fla. 5th DCA 1997) (Defendant's privacy rights violated when officer, investigating a misdemeanor, walked into screened in back porch and discovered defendant smoking marijuana.); Potts v. Johnson, 654 So.2d 596 (Fla. 3rd DCA 1995).

16. In Brigham City v. Stuart, 547 U.S. 398, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006), the Supreme Court set forth the principles of Fourth Amendment law relating to the search of home:

It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable. Nevertheless, because the ultimate touchstone of the Fourth Amendment is "reasonableness," the warrant requirement is subject to certain exceptions.... [W]arrants are generally required to search a person's home or his person unless the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.

Id. at 1947. (citations and some internal quotation marks omitted)

17. Therefore, a warrantless search of a residence can only be justified if

exigent circumstances are determined to exist. See Riggs v. State, 918 So. 2d 274 (Fla. 2005). Exigent circumstances that justify warrantless entry are those characterized by grave emergency, imperativeness for safety, and compelling need for action, as judged by the totality of the circumstances. See Dixon v. State, 36 So. 3d 920 (Fla. 4th DCA 2010).

18. In Riggs, the Florida Supreme Court cited several U.S. Supreme Court decisions while discussing the nature of exigent circumstances and the standard to judge the reasonableness of entry into a private citizen's home:

When the government invokes this [exigent circumstances] exception to support the warrantless entry of a home, it must rebut the presumption that such entries are unreasonable. *See Welsh v. Wisconsin*, 466 U.S. 740, 750, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984). To do so, it must demonstrate a "grave emergency" that "makes a warrantless search imperative to the safety of the police and of the community." *Illinois v. Rodriguez*, 497 U.S. 177, 191, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990). An entry is considered "imperative" when the government can show a "compelling need for official action and no time to secure a warrant." *Michigan v. Tyler*, 436 U.S. 499, 509, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978). As is often the case under the Fourth Amendment, "[t]he reasonableness of an entry by the police upon private property is measured by the totality of existing circumstances." *Zeigler v. State*, 402 So.2d 365, 371 (Fla.1981).

Id. at 278.

19. A key ingredient of the exigency requirement is that the police lack time to secure a search warrant. Id.; Dixon v. State, 36 So. 3d at 920.

20. The state must prove that the police lacked sufficient time to obtain a search warrant; if time to get a warrant exists, then the enforcement agency must use that time to obtain the warrant. See Diaz v. State, 34 So. 3d 797 (Fla. 4th DCA. 2010).

21. An officer may seize contraband items in plain view only if the officer is lawfully at a viewpoint to see the items. State v. Morseman, 394 So.2d 408 (Fla. 1981) (officer's view and subsequent seizure of marijuana plants from defendant's backyard unlawful; officer had no lawful right to be in defendant's backyard).

22. In the present case, the officers had the right to go to the Accused's front door in an attempt to contact her. However, when they received no answer they had no lawful right to violate the Accused's privacy by entering her fenced in side yard and backyard, much less entering the door to her rear screen porch area. Although music was playing, there were no objective facts that the officers had that any grave exigency existed. Actually, the available facts at that time portrayed the opposite: no car in the drive and no one answering the front door. Facts indicative of a homeowner who had let her music play while she left her home. This is exactly what occurred. Although the officers ultimately saw a back cabana and sliding glass door open and smelled marijuana, they did so after they had unlawfully invaded the Accused's privacy. Thus, what was seen or smelled by the officers while in a place they were not lawfully allowed to be in cannot form the basis for their search and seizure. State v. Morseman, 394 So.2d at 408

WHEREFORE the Accused, DEBORAH ANNE SOLOMON, respectfully requests this Honorable Court to enter an Order suppressing from the unlawful search of her residence all physical and derivative evidence discovered as a result of the unconstitutional, illegal, warrantless search and seizure of the Accused and her property.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Courthouse Box to the ASA Michael Smith, Esq., Office of the State

Attorney, 411 South Second Street, Fort Pierce, Florida 34950 on this 27th day of August , 2013.

Respectfully Submitted,



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