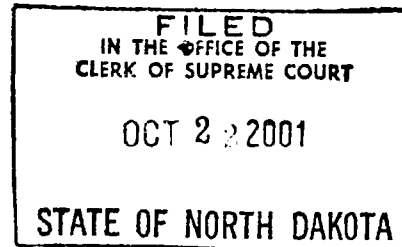


IN THE SUPREME COURT

STATE OF NORTH DAKOTA 20010175

City of Fargo, ) 20010176  
)  
Plaintiff-Appellee, ) SUPREME COURT NO. 20010175  
) DISTRICT COURT NO. 09-01-K-818  
vs. )  
) SUPREME COURT NO. 20010176  
Jeremy Robert Steffan, ) DISTRICT COURT NO. 09-01-K-846  
Christopher Neil Zarak, )  
)  
Defendants-Appellants.)



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APPELLANTS' BRIEF

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STATUTES AND RULES CITED:

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10-0101 - Minor Possessing, Consuming, or Minor Under the Influence of Alcohol.....	2

## STATEMENT OF ISSUE

Whether the police may perform an unconsented and warrantless entry into a residence to make an arrest for the misdemeanor offense of Minor Consuming Alcohol after the police officer's request to enter has been denied.

## STATEMENT OF THE CASE

Jeremy Robert Steffan and Christopher Neil Zarak appeal their convictions for Minor in Possession/Consumption of Alcohol. (Appendix 26-27). Appellants Steffan and Zarak entered conditional pleas of guilty, reserving the right to appeal the denial of their Motions to Suppress Evidence. (Appendix 24-25).

Appellants were charged with Minor Possessing, Consuming or Under the Influence of Alcohol in violation of Fargo Municipal Ordinance 10-0101 on February 16, 2001. They appeared in Fargo Municipal Court on February 16, 2001, and later transferred their case to Cass County District Court. (Appendix 7-8).

Appellants filed Motions to Suppress Evidence and Appellee filed a written response. A hearing was held before the Honorable Ralph R. Erickson on June 5, 2001. Judge Erickson denied Appellants motions, issuing a written order on June 18, 2001. (Appendix 22-23).

Appellant Zarak entered a conditional plea of guilty on June 26, 2001, and Appellant Steffan entered a conditional plea of guilty on June 27, 2001. (Appendix 24-25).

Notice of Appeal was filed both by Appellant Steffan and Appellant Zarak on July 2, 2001. (Appendix 26-27). The Trial Court issued a Judgment on June 26 on Appellant Zarak and issued a Judgment on June 27 on Appellant Steffan which

continued sentencing pending appeal. (Appendix 33-34).

## STATEMENT OF THE FACTS

On February 16, 2001, Officer Matthew Sanders, of the Fargo Police Department, was called to 702 33<sup>rd</sup> Avenue West, Apartment Number 105 on a report of a loud party. (Trans. p.8). Upon arrival Sanders heard loud talking, laughing, music coming from apartment 105. (Trans. p.8).

He knocked on the door and identified two people as renters of the apartment. (Trans. p.8). Officer Sanders determined that the two renters, by their own admission were under 21 and had been drinking alcohol. (Trans. p.9). He then asked for permission to enter the apartment. (Trans. p.13). One of the renters, Miles Fischer, asked whether they had a warrant. (Trans p.27,45). When the officers said no, Fischer and his roommate then responded that they could not enter. (Trans. p.13,27). At the time Officer Sanders was standing in the hallway, outside the apartment and the two renters were standing inside their apartment. (Trans. p.9) Officer Sanders then placed them under arrest, breached the threshold of the apartment, reached in, grabbed the two renters, pulling them out into the hallway and handcuffed them. (Trans. p.9).

At the time the officers breached the threshold to reach in and grab the tenants, the officers had no information regarding the identity of the remaining occupants or their ages. (Trans. p.21-22). After arresting the tenants, and pulling them out of their apartment, Officer Sanders,



according to his testimony, ordered the remaining occupants of the apartment to come out. (Trans. p.16). At the time the two tenants were in the hallway under arrest and handcuffed. (Trans. p. 16-17,20). Sanders testified that he would never send an arrested person back into their residence unaccompanied by police and that he did not do that in the instant case. (Trans. p.18).

According to Renter Fischer, after he was handcuffed, Fischer was told by the police to tell the other persons in the apartment to come to the doorway. (Trans. p.28).

Appellant, Jeremy Steffan, was a guest at the residence of Miles Fischer. (Trans. p.35). He heard the police arrive and heard the conversation between the police and Miles Fischer wherein Miles told the police they could not enter after ascertaining whether they had a search warrant. (Trans. p.36).

Appellant Steffan recalls that after the conversation about the warrant, the two tenants, Miles Fischer and John, came back in the apartment and told the remaining guests to come to the doorway. (Trans. p. 28-29,36). Both tenants were handcuffed at the time. (Trans. p.28,36). Thereafter, the remaining guests, including Appellant Steffan went to the apartment door. (Trans. p.37). At the doorway, but standing inside the apartment, Steffan was asked by the police his age and whether he was drinking. (Trans. p.37,38). He responded that he had a few drinks and that he was twenty. (Trans.

p.37). After he responded to the question he was physically grabbed by the police and pulled out of the apartment, put up against a wall and handcuffed. (Trans. p.38). Prior to being pulled out of the apartment he was not asked for identification and the police did not know his name until he was taken to the police station. (Trans. p.38).

Appellant Zarak, upon approaching the door was also asked his age and whether he had been drinking. (Trans. p.46). After admitting that he was 20 years of age and drinking he was told he was under arrest, grabbed from the apartment, and handcuffed. (Trans. p.46).

## ARGUMENT

Appellant's have standing to challenge the warrantless entry as guests of the residence pursuant to this Court's ruling in State v. Ackerman, 499 N.W.2d 882 (N.D. 1993).

In City of Jamestown v. Dardis, 2000 ND 186, 618 N.W.2d 495, the North Dakota Supreme Court set out the standard of review of a district court's denial of a suppression motion:

We defer to a district court's findings of fact in the disposition of a motion to suppress, resolving conflicts in testimony in favor of affirmance, as we recognize the district court is in a superior position to assess credibility of witnesses and weigh the evidence. State v. Wanzek, 1999 ND 163, ¶ 5, 598 N.W.2d 811. In general, we will not reverse a district court's decision to deny a motion to suppress if there is sufficient competent evidence capable of supporting the district court's findings, and if its decision is not contrary to the manifest weight of the evidence. Id. However, while we defer to the district court's findings of fact, questions of law are fully reviewable. State v. Overby, 1999 ND 47, ¶ 5, 590 N.W.2d 703. Additionally, whether findings of fact meet a legal standard is a question of law. State v. Kitchen, 1997 ND 241, ¶ 12, 572 N.W.2d 106.

Dardis, 2000 ND at ¶ 7.

This Court in Dardis, reviewing the law with respect to warrantless entries into a residence, stated as follows:

The Fourth Amendment of the United States Constitution, made applicable to the states by the Fourteenth Amendment, as well as Article I, Section 8, of the North Dakota Constitution prohibit unreasonable searches and seizures. State v. Wanzek, 1999 ND 163, ¶ 7, 598 N.W.2d 811(citing State v. Lanctot, 1998 ND 216, ¶ 5, 587 N.W.2d 568). A physical entry into a home is a chief evil against which the Fourth Amendment protects. State v. DeCoteau, 1999 ND 77, ¶ 8, 592 N.W.2d 579 (citing Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980)). The United

States Supreme Court stated in Payton that warrantless searches and seizures in a home are presumptively unreasonable. 445 U.S. at 586, 100 S.Ct. 1371. See Minnesota v. Olson, 495 U.S. 91, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990); New York v. Harris, 495 U.S. 14, 110 S.Ct. 1640, 109 L.Ed.2d 13 (1990); Welsh v. Wisconsin, 466 U.S. 740, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984); Steagald v. United States, 451 U.S. 204, 101 S.Ct. 1642, 68 L.Ed.2d 38 (1981) (confirming the Fourth Amendment provides great protection for persons inside their home). The United States Supreme Court also determined: "[T]he Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." Payton, 445 U.S. at 590, 100 S.Ct. 1371.

Warrantless searches are unreasonable unless they are within one of the few recognized exceptions to the requirement for a search warrant. Wanzek, 1999 ND 163, ¶ 7, 598 N.W.2d 811. The burden is on the government to show a warrantless search is within an exception to the warrant requirement. City of Fargo v. Lee, 1998 ND 126, ¶ 8, 580 N.W.2d 580 (citing State v. Avila, 1997 ND 142, ¶ 16, 566 N.W.2d 410). Consent is one of the exceptions. Schneckloth v. Bustamonte, 412 U.S. 218, 219, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); DeCoteau, 1999 ND 77, ¶ 9, 592 N.W.2d 579; Lee, 1998 ND 126, ¶ 9, 580 N.W.2d 580 (citing Avila, 1997 ND 142, ¶ 16, 566 N.W.2d 410).

Dardis at ¶ 8-9.

In the absence of such an exception, evidence obtained in violation of the Fourth Amendment's protections against unreasonable searches must be suppressed as inadmissible under the exclusionary rule. . . . Moreover, and significantly for purposes of this case, any evidence derived as a result of the initial, illegally acquired evidence must also be suppressed as "fruit of the poisonous tree" unless the search was excepted from the requirement of a warrant.

State v. Blumler, 458 N.W.2d 300, 302 (N.D. 1990) (citations omitted).

The facts of the cases at bar are remarkably similar to

those of City of Jamestown v. Dardis. In Dardis, police responded to a call to investigate a loud party at an apartment. Id. at ¶ 2. A warrantless and unconsented entry was made into a residence to make an arrest for minor consumption of alcohol and disorderly conduct. Id. at ¶ 6. The officer entered the residence "a few feet" after discovering facts that lead him to believe Dardis was a minor consuming or perhaps under the influence of alcohol and after witnessing obnoxious and disorderly conduct. Id. at ¶ 6 & 17. The Dardis Court found that there was no consent nor did any exigent circumstances exist and reversed the trial court's denial of Dardis's motion to suppress evidence. Id. at ¶ 19-20.

The case at bar differs from Dardis in that the officers witnessed no disorderly conduct and the tenants had asked for a warrant and expressly refused to allow the officers to enter. The Fargo police then, according to the uncontested testimony, breached the threshold of the apartment by reaching in and grabbing the shirts of the renters and pulling them out in the hallway. (Trans. p.9). At the time the renters were pulled from their apartment, police did not have the names of any of the other persons in the apartment. (Trans. p.15). They did not have the ages of anybody in the apartment. (Trans. p.15). The police then shouted into the apartment and ordered everyone to come out. (Trans. p.16). Officer Matthew Sanders testified that once he arrests someone he would never

send them back into their residence unaccompanied by police, and squarely denied that he ever sent the renters back into the apartment. (Trans. p.18). The renter, Miles Fischer, testified that after he had been pulled from his apartment and handcuffed, he was required to go back into his apartment and have the remaining persons come to the door. (Trans. p.29). When the Appellants approached the doorway they were then similarly dragged out of the apartment by the police. (Trans. p.37-38).

In Dardis, the prosecution argued that the entry was justified as the officer had probable cause to believe the crime of minor consuming/possessing alcohol was being committed in the officer's presence. 2000 ND at ¶ 16. This argument was rejected on the basis of City of Fargo v. Lee, 1998 ND 126, 580 N.W.2d 126, wherein it was held that "probable cause to believe minors were illegally consuming alcohol was a relatively minor infraction and did not create exigent circumstances to justify a warrantless entry into a home". Dardis 2000 ND at ¶ 16.

That a warrantless and unconsented entry into the residence was made is uncontested. As in City of Fargo v. Lee:

The only crimes being committed in the officer's presence were class B misdemeanors, relatively minor infractions. The United States Supreme Court stated in Welsh v. Wisconsin, . . . "application of the exigent circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense . . . has been committed."

Lee, 1998 ND ¶ 13 (citation omitted). At the time of the initial entry into the apartment to pull out the tenants, the police did not know how many persons were in the apartment, their identities, whether they were consuming alcohol or whether they were of age. (Trans. p.21-22). At the time of the entry there was no consent and no exigent circumstances.

Absent one of these exceptions to the warrant requirement at the time of entry, evidence gained in violation of the Fourth Amendment's protections against unreasonable searches and seizures is inadmissible under the exclusionary rule and must be suppressed.

Dardis, 2000 ND ¶ 19.

The Fargo Police clearly crossed the fine line at the entrance of the residence and crossed the threshold without a warrant and without exigent circumstances. For these reasons, the Trial Court's Order is against the manifest weight of the evidence and should be reversed.

## CONCLUSION

The manifest weight of the evidence clearly shows that Fargo Police Officers made a warrantless and unconsented entry into a residence in the absence of exigent circumstances. The trial court's order denying Appellants' Motions to Suppress is against the manifest weight of the evidence and should be reversed and all evidence obtained by reason of the warrantless and unlawful entry should be suppressed.

Dated this 22 day of October, 2001.



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STATE OF NORTH DAKOTA)

) SS.

COUNTY OF CASS )

AFFIDAVIT OF  
SERVICE BY MAIL

DENISE BRINKMAN being first duly sworn deposes and states that she is of legal age and that on the 22 day of October, 2001, she served the following attached documents:

1. Appellants' Brief
2. Appendix to Appellants' Brief

RE: City of Fargo vs. Jeremy Robert Steffan and Christopher Neil Zarak  
Supreme Court Nos. 20010175 and 20010176  
District Court Nos. 09-01-K-818 and 09-01-K-846

upon the following person or persons:

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by placing a true and correct copy thereof in an envelope so addressed and depositing the same, with postage prepaid, in the United States mails in Fargo, North Dakota.

  
DENISE BRINKMAN

Subscribed and sworn to before me this 22 day of October, 2001.

  
Notary Public  
My Commission Expires: 3-20-2003

( S E A L )