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STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

-vs-

JENNIFER MARIE HAMMERLUND,

Defendant-Appellant.
_____/

Supreme Court No. _____

Court of Appeals No. 333827

Circuit Court No. 15-09717 FH

NOTICE OF FILING

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PLEASE TAKE NOTICE that on **December 12, 2017,** the undersigned moves this Honorable Court to grant Defendant-Appellant's **APPLICATION FOR LEAVE TO APPEAL.**

Undersigned hereby certifies that one copy of the application and Notice of Filing was e-served on the Kent County Prosecutor's Office and one copy of this Notice of Filing was served on each of the court clerk's listed above by regular mail.

Respectfully submitted,

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Lower Court No. 15-09717 FH

KENT COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee
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DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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JUDGMENT APPEALED FROM AND RELIEF SOUGHT

The defendant-appellant, Jennifer Hammerlund, appeals from an October 17, 2017, unpublished opinion of the Court of Appeals (Appendix D to this Application). The Court of Appeals affirmed Ms. Hammerlund's convictions and sentences for operating under the influence of intoxicants (third offense)(OUI), MCL 257.625, and failure to report an accident to fixtures, MCL 257.261. The convictions were entered after a jury trial in the Kent County Circuit Court at which Judge Paul J. Sullivan presided. Ms. Hammerlund now seeks this Court's review.

Ms. Hammerlund's appeal presents an opportunity to clarify the application of the Fourth Amendment to doorway and threshold arrests. The law in this area is largely unsettled and clarification is necessary to provide guidance to lower courts. Both the trial court and the Court of Appeals relied on the United States Supreme Court's decision *in United States* v *Santana*, 427 US 38 (1976) to uphold the legality of her arrest. Santana, however, provides limited guidance because the Court's determination of the Fourth Amendment question in the case was premised on its application of the hot pursuit and exigent circumstances doctrines, not on an individual's privacy interests at or near the entrances to their home.

This case provides a vehicle to address this unsettled area of the law because no exigency or hot pursuit justified Ms. Hammerlund's arrest. The legality of her arrest hinged on whether or not she had any expectation of privacy when she was arrested in the doorway of her home. The issue, therefore, is squarely presented for this Court's review. This Court should grant leave in order to clarify the law applying to doorway and threshold arrests.

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STATEMENT OF QUESTION PRESENTED

I. BECAUSE OFFICER STAMAN UNLAWFULLY ENTERED DEFENDANT-APPELLANT JENNIFER HAMMERLUND'S HOME AND ARRESTED HER WITHOUT A WARRANT WHEN HE GRABBED HER ARM WHILE SHE ATTEMPTED TO RETRIEVE HER IDENTIFICATION, DID THE CIRCUIT COURT ERR BY DENYING MS. HAMMERLUND'S MOTION TO SUPPRESS?

Court of Appeals answers, "No".

Defendant-Appellant answers, "Yes".

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STATEMENT OF FACTS

Conviction and Sentence

On April 11, 2016, after a trial in the Kent County Circuit Court at which Judge. Paul J. Sullivan presided, a jury convicted Jennifer Hammerlund of Operating While Intoxicated (3rd Offense), MCL 257.625, and Failure to Report an Accident to Fixtures, MLC 257.621. (TII, 3).[1] On June 7, 2016, Judge Sullivan sentenced Ms. Hammerlund to serve a five-year term of probation, with the first four months to be spent in the Kent County Jail. (ST, 10-16). She now appeals by right.

Testimony Related to Ms. Hammerlund's Warrantless Arrest in Her Home

The charges in this case arose in the early hours of September 30, 2015, after Jennifer Hammerlund was involved in a car accident on southbound US 131 near the 54th Street off-ramp in Wyoming, Michigan. (TI, 97-98, 131-134). Ms. Hammerlund would testify at trial that the accident occurred after she was cut off by a truck and, while swerving to avoid contact with it, crashed her car into a concrete barrier. During the crash, she hit her face on the steering wheel and got a bloody nose (TI, 134). The accident made her vehicle undrivable. (TI, 134). As a result, Ms. Hammerlund, who was on her way home from her job as a bartender, had her roommate call an Uber to get home. (TI, 135). Ms. Hammerlund did not report the accident to the police. The accident took place between 2:30 a.m. and 3:00 a.m. (TI, 130-134).

Once home, Ms. Hammerlund cleaned herself up and grabbed a beer out of the refrigerator. (TI, 136). She was very "shaken up" about the accident and was "crying a lot." (TI, 136). To deal with the stress, she grabbed a bottle of "Rumple Minz" from the freezer and "did a bunch of shots." (TI, 136). She estimated that she had a three to four glasses of liquor with

[1] References to the two-volume trial transcript are abbreviated "TI" and "TII." References to the sentencing transcript are abbreviated "ST." References to the transcript of the evidentiary hearing conducted March 16, 2016, are abbreviated "EH."

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approximately three ounces in each glass. (TI, 136-137). It was her trial defense that she was not intoxicated at the time of the accident and only became drunk by drinking at home afterwards. (TI, 93-94; 157-158).

At about 3:48 a.m., Wyoming Police Officer Erich Staman was on road patrol when he responded to a dispatch regarding an abandoned vehicle on southbound US 131 near the 54th Street off-ramp. (EH, 4-5; TI, 97-98, 104). The vehicle, a Chevrolet Malibu, was found facing the wrong direction against the concrete barrier. (EH, 4-5; TI, 99). According to Officer Staman, there was damage to both sides of the vehicle from hitting the guardrail and concrete barrier on the off-ramp. (EH, 5; TI, 99).

Before having it towed away, Officer Staman conducted an inventory search of the vehicle. (EH, 5; TI, 100-101). This search revealed paperwork with Ms. Hammerlund's name on it. (EH, 5; TI, 100-101). Ms. Hammerlund was also the registered owner of the vehicle. (EH, 5; TI, 100-101). Officer Staman contacted the Kentwood Police Department to have officers dispatched to Ms. Hammerlund's home and drove to the address to meet them there. (EH, 5-6; TI, 101-105).

Once he arrived at the address, the officers informed him that they had made contact with Ms. Hammerlund and that she had admitted to them she was driving. (EH, 5-7; TI, 106-107). Officer Staman began his own conversation with Ms. Hammerlund. (EH, 6). He was outside on her porch, and she remained inside, standing about fifteen to twenty feet from the door. (EH, 6). She was reluctant to move closer. (EH, 6). When he asked for her driver's license, she instead gave it to someone else to hand to him.[2] (EH, 7). He confirmed her identification, and she

[2] There were two other people, a man and a woman, inside the house. At trial, Ms. Hammerlund identified them as her roommate and his girlfriend. (TI, 137). Officer Staman testified he thought she used a third person to hand over her identification because "she thought I might be trying to coax her out of the house." (TI, 109).

acknowledged having been in an accident. (EH, 6-7). She also told him she got a bloody nose during the accident. (EH, 7).

Officer Staman arrested Ms. Hammerlund. How he came to do so was at issue at the pretrial suppression hearing. Having received Ms. Hammerlund's license from an intermediary, Officer Staman now "made sure" that he returned it to Ms. Hammerlund directly. As he described it, "she came to the door where I was standing and reached out to get the I.D. as I gave it to her, at which point I grabbed her by the arm and attempted to take her into custody." (EH, 7). He could not recall whether he or Ms. Hammerlund opened the door. (EH, 9). He did recall that he was standing outside the residence when he grabbed her arm and, after she attempted to pull away from him, took "two or three steps inside the doorway." (EH, 9). He did not "think [his] hand was ever inside the house when [he] handed her the I.D." (EH, 12). Ms. Hammerlund was still inside when she reached out to grab her license. (EH, 11-12). Officer Staman "made sure" she retrieved her identification from him so he could arrest her. (EH, 7). He did not tell her she would be arrested before grabbing her. (EH, 11).[3]

Officer Staman arrested Ms. Hammerlund for her failure to report an accident to fixtures. Though this was a 90-day misdemeanor (and so not an arrestable offense), Staman mistakenly believed it was a 93-day misdemeanor (for which arrest was proper). (EH, 7).

---

[3] At trial, Officer Staman described the arrest as follows (TI, 110-111):

> At this point I was done with her I.D. I had wrote down the information that I needed from it, verifying that it was her. I went to give it back to her. I was standing outside of the residence when I gave it back to her, and she had walked into the doorway and reached out to grab [t]he I.D. from me, at which point I took her into custody for the hit and run charge. During that we had a slight struggle between each other. She had pulled away, stepping back into her house, so I stepped inside the house and ended up taking her into custody without much difficulty. She was handcuffed and then brought out to my car.

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Officer Staman also thought Ms. Hammerlund might be intoxicated. Inside her residence, she seemed to be leaning against the wall for balance, and her speech seemed "slightly slurred for whatever reason."

Once in the car with Officer Staman, Ms. Hammerlund waived her *Miranda* rights and gave a statement. In the statement, she explained:

- the accident was caused by an unknown third party driver who cut her off and caused her to lose control of the car and crash. (TI, 111-112).
- She drank two beers and a shot that night. (TI, 112).
- She denied drinking alcohol after the crash. (TI, 114).

Officer Staman could also smell "intoxicants" on her during the interview. (TI, 113). He did not see any empty or open containers in Ms. Hammerlund's car or home. (TI, 125).

Officer Staman then took her to the jail for booking and performed two breath tests on her. Those tests revealed a blood alcohol content levels of .22 and .21. (TI, 117).

Motion to Suppress Evidence Obtained From Unlawful Entry and Arrest

Ms. Hammerlund filed a motion filed a motion to suppress evidence obtained from Officer Staman's warrantless entry into her home and her arrest. (Appendix A, Motion to Suppress). Ms. Hammerlund's attorney argued that suppression was required because Officer Staman only had probable cause to arrest Ms. Hammerlund for Failure to Report Accident to Fixtures, MCL 257.621, a 90-day misdemeanor that, pursuant to MCL 764.15, is not subject to arrest if the offense is not committed in the officer's presence and the officer does not have an arrest warrant.

Trial counsel also argued that the evidence resulting from Ms. Hammerlund's arrest should be suppressed because Officer Staman violated her Fourth Amendment rights when he

unlawfully entered Ms. Hammerlund's home by grabbing her arm and arresting her when she tried to retrieve her identification back from him. (EH, 14-17).

In response, the prosecution, relying on *United States v Santana*, 427 US 38, 43 (1976), argued that her motion should be denied because Officer Staman was not inside the home when he grabbed Ms. Hammerlund's arm and only entered the home after she attempted to pull away from him. (Appendix B, Prosecution's Answer to Defendant's Motion to Suppress).

Circuit Court Opinion and Order Denying Motion to Suppress

On March 18, 2016, the Judge Sullivan, relying on *Santana*, entered an opinion and order denying Ms. Hammerlund's motion to suppress. (Appendix C, Opinion and Order Denying Motion to Suppress). The Court concluded:

> In this case, the testimony at the evidentiary hearing reveals that defendant was in the middle of a consensual discussion with Officer Staman, voluntarily approached him, and voluntarily reached out of her door. Officer Staman was legitimately in that area and it did not violate the constitution for him to effectuate an arrest by grabbing her arm when she reached out of her doorway. That he then stepped inside defendant's home as a result of her attempts to pull away does not change the result. *The officer was clearly in pursuit for the arrest at that point, and defendant could not suddenly render the arrest unconstitutional by escaping that pursuit to a private place*.

(Appendix C, Opinion and Order Denying Motion to Suppress) (emphasis added).

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I. BECAUSE OFFICER STAMAN UNLAWFULLY ENTERED DEFENDANT-APPELLANT JENNIFER HAMMERLUND'S HOME AND ARRESTED HER WITHOUT A WARRANT WHEN HE GRABBED HER ARM WHILE SHE ATTEMPTED TO RETRIEVE HER IDENTIFICATION, THE CIRCUIT COURT ERRED BY DENYING MS. HAMMERLUND'S MOTION TO SUPPRESS.

Issue Preservation

Ms. Hammerlund preserved this issue by filing a pretrial motion to suppress illegally obtained evidence and for an evidentiary hearing, and by putting on evidence and making argument at a pretrial suppression hearing. (Appendix A, Motion to Suppress; EH, 14-17).

Standard of Review

This Court reviews de novo a trial court's ruling on a motion to suppress evidence. *People v Henry (After Remand)*, 305 Mich App 127, 137 (2014). A trial court's factual findings, if any, are reviewed for clear error, while underlying constitutional issues are reviewed de novo. *Id*.

To the extent the Court finds that a constitutional error occurred, it "review[s] preserved issues of constitutional error to determine whether they are harmless beyond a reasonable doubt." *People v Dendel (On Second Remand)*, 289 Mich App 445, 475 (2010).

Argument

It is well-established that, even with probable cause, an officer "may not constitutionally enter a home without a warrant to effectuate an arrest, absent consent or exigent circumstances." *Payton v New York*, 445 US 573, 585–90 (1980); *People v Oliver*, 417 Mich 366, 377 (1983). As the Supreme Court noted, "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States v United States Dist Court*, 407 US 297, 313 (1972). The Court has made clear "the Fourth Amendment has drawn a firm line at the

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entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Payton*, 445 US at 590; see also *Oliver*, 417 Mich at 377. Warrantless entry into a home is, therefore, per se unreasonable under the Fourth Amendment, unless one of the "specifically established and well-delineated exceptions" applies. *Mincey v Arizona*, 437 US 385, 390 (1978).

A. OFFICER STAMAN VIOLATED MS. HAMMERLUND'S FOURTH AMENDMENT RIGHTS WHEN HE UNLAWFULLY ENTERED HER HOME AND ARRESTED HER WITHOUT A WARRANT.

The Circuit Court erred in ruling that Ms. Hammerlund left her home and thus exposed herself to a warrantless arrest when she reached through her doorway only long enough to retrieve her identification from a police officer who refused to allow her roommate to retrieve it for her. The Circuit Court relied on the Supreme Court's decision in *United States v Santana*, 427 US 38 (1976), to conclude Ms. Hammerlund was in a public place when she reached through the door and Officer Staman was in "pursuit" of her when he arrested her. (Appendix C, Opinion and Order Denying Motion to Suppress). *Santana*, however, is distinguishable and does not support either conclusion.

In *Santana*, police officers saw "Mom" Santana standing in the open doorway to her home shortly after a heroin transaction they had probable cause to believe she participated in. *Id*. at 40, 42. As they were approaching the defendant's home, officers noticed that she was standing in the doorway. They "pulled up within 15 feet" of her, got out of the vehicle, shouted "police," and displayed their identification. *Id*. at 40. She immediately fled inside her home. The police followed through the open door and arrested her. *Id*. She later moved to suppress evidence found during and after her arrest, arguing that the officers had illegally entered her home. *Id*. at 41. The Supreme Court disagreed and held that she "was in a 'public' place" when the police arrived. *Id*.

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at 42. By standing in her doorway, "[s]he was not in an area where she had any expectation of privacy.... She was not merely visible to the public but was as exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house." *Id*. The Court went on to hold, "a suspect may not defeat an arrest which has been set in motion in a public place ... by ... escaping to a private place." *Id*. at 43. The entry was therefore justified by exigent circumstances: the "hot pursuit" of a fleeing felon. *Id*.

1. MS. HAMMERLUND WAS NOT IN A PUBLIC PLACE WHEN OFFICER STAMAN GRABBED HER ARM.

In *Santana*, the Supreme Court held that a person who stands in an open doorway *before* the encounter with police begins has no expectation of privacy because she was "as exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house." 427 U.S. at 42, 96 S.Ct. 2406. Here, Ms. Hammerlund was not standing in her open doorway before encountering Officer Staman; instead, she only came to her door to retrieve her driver's license from him. In addition, according to Staman's own acount, she was standing inside of her home about 15-20 feet from the door and was "very hesitant" to come closer to come talk to him because she thought he was trying to "coax" her out of the house to arrest her. (EH, 7; TI, 107-108). Indeed, Ms. Hammerlund initially refused to hand her identification over to Officer Staman for that very reason, and came to the door to retrieve her identification from the officer because he "made sure" she was the one that had to get it from him. (EH, 7). Furthermore, unlike *Santana*, Ms. Hammerlund also was not informed she was under arrest or ordered by the police to remain outside of her residence. As a result, she did not relinquish any privacy interest in her remaining within her home.

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The present case is more similar to *Cummings v City of Akron*, 418 F3d 676 (CA 6, 2005)[4] and *Flores v Lackage*, 938 F Supp 2d 759, 768-769 (ND Ill, 2013). In each case, the courts distinguished *Santana* and held that threshold arrests were unlawful even though the individuals stood in open doorways in response to police officers knocking at the door.

In *Cummings*, two police officers were investigating a domestic disturbance call. *Cummings*, 418 F3d at 679. The plaintiff's girlfriend told them that the plaintiff was at his nearby house, and the officers went there to question him. *Id.* The plaintiff's front door consisted of an outside screen door and an inside entry door. *Id.* One of the officers opened the outside screen door, knocked on the inside entry door, and waited for the plaintiff. *Id.* The plaintiff initially came to a window from inside his home and only came to the front door after the officers requested that he do so. *Id.* He partially opened his inside door and denied the officers' request to enter his house. *Id.* While speaking with the plaintiff, one of the officers smelled the odor of marijuana emanating from inside the plaintiff's home. *Id.* When asked about it, the plaintiff attempted to close his front door and end the encounter. *Id.* He was unable to, however, because one of the police officers had placed his foot inside the doorway. *Id.* The officers then pushed the inside door open and entered the plaintiff's home. *Id.*

The Sixth Circuit, in holding plaintiff's Fourth Amendment rights were violated, concluded the essential distinction between the defendant in *Santana* and the plaintiff in *Cummings* was their differing expectations of privacy as revealed through their behavior. In *Santana*, the defendant stood in her doorway before the police arrived in full view of the general

[4] The Sixth Circuit has repeatedly held that threshold arrests made without a warrant in the absence of exigent circumstances can be a violation of the Fourth Amendment. *Denton v Rievley*, 353 Fed Appx 1 (CA 6, 2009); *Cummings v. City of Akron*, 418 F 3d 676 (CA6, 2005); *United States v. Saari*, 272 F 3d 804 (6th Cir.2001); *Hameline v Wright*, 2008 WL 2696920, 2008 US Dist. LEXIS 49643 (WDMich, 2008).

public. *Santana*, 427 US at 42. In contrast, in *Cummings*, the plaintiff only appeared at his doorway at the command of the officers, never fully opened his door, refused their request to enter his house and tried to end his encounter with them by closing his door; through these actions, he manifested his intent to keep the inside of his home private and to terminate his encounter with the officers. *Cummings*, 418 F3d at 685. Because it was initiated after the plaintiff manifested his desire for privacy, the warrantless arrest, unsupported by consent or exigent circumstances, violated the plaintiff's right to be free of warrantless entry into his home. *Id.* at 686–87; see also *Kentucky v King*, 563 US 452, 470 (2011) ("[a]nd even if an occupant chooses to open the door and speak with the officers, the occupant need not allow the officers to enter the premises and may refuse to answer any questions at any time").

Similarly, in *Flores*, 938 F Supp 2d 759, 768-769 (ND Ill, 2013), the Court also concluded officers unlawfully entered a home while an individual was standing in an open doorway. In response to a dispute between neighbors over calling "dibs" on a parking spot, police came to Flores's door. *Id*. at 764. Flores's apartment had an inner and outer door. *Id*. Flores's outer door was kept closed until the officers knocked on it. *Id*. Flores answered the knock by opening the door, but stayed entirely on the inside of the doorway. *Id*. The officers told Flores he could not leave objects in the street to hold a parking spot, which led to an argument. *Id*. After confirming that the neighbor wished to press charges, an officer announced that Flores was under arrest, took handcuffs out, and reached through the open outer doorway to grab one of Flores's hands. *Id*. Flores swung his arms away to avoid the handcuffs and ran, through an inner door, back into his apartment. The police followed and arrested him inside. *Id*. Flores believed he could exclude people from the area and did not consent to the arrest and entry. *Id*. at 768. Based on these facts, the court concluded "Flores had an objectively reasonable expectation of privacy

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in the area he was standing in at the time the arrest began" and, therefore, the officer's entry was unlawful. *Id*. at 769.

The Court should apply the same analysis here and conclude that Officer Staman violated Ms. Hammerlund's Fourth Amendment rights under *Payton*.

2. THE HOT-PURSUIT EXCEPTION DOES NOT APPLY.

The Circuit Court also erred when it concluded Officer Staman's unlawful entry into Ms. Hammerlund's home and warrantless arrest was justified because he was in "pursuit" of Ms. Hammerlund.

The hot-pursuit doctrine does not excuse every instance where officers enter a home to arrest a suspect. "[H]ot pursuit means some sort of chase." *Santana,* 427 US at 42-43 (internal quotation marks omitted). The Supreme Court clarified this common-sense limitation to the hot-pursuit doctrine in *Welsh v Wisconsin,* 466 US 740 (1984), a case involving a warrantless home entry by officers to arrest a suspect for driving while intoxicated. *Id.* at 743.

The facts of *Welsh* help illustrate its holding. "[A]fter changing speeds and veering from side to side, the [suspect's] car eventually swerved off the road and came to a stop in an open field." *Id.* at 742. The suspect declined the assistance of a passer-by and walked away from the scene. *Id.* at 742. The passer-by contacted the police. The officers soon arrived, interviewed the passer-by, and checked the registration of the now-abandoned car. *Id.* Realizing that the car's owner lived within walking distance, the officers went to the suspect's home, entered the house, and arrested the suspected driver. *Id.* at 742–43.

The Supreme Court unequivocally rejected the contention that the arresting officers were in hot pursuit of the suspect, where the officers arrived at the scene after the suspect had left and then proceeded to arrest him at his home. *Id.* at 753. That holding placed police officers on notice

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that the hot pursuit doctrine requires an "immediate or continuous pursuit of [a suspect] from the scene of a crime." *Id*.

Here, unlike Santana, who was in public view engaged in a drug transaction, Ms. Hammerlund was behind a closed door within the privacy of her home when the police arrived. As a result, it would have been obvious to a reasonable government actor in the officers' positions that, in the absence of an "immediate or continuous pursuit," *id.*, no hot pursuit existed to justify the warrantless arrest of Ms. Hammerlund inside her house.

B. MS. HAMMERLUND'S STATEMENT AND BREATHALYZER TEST RESULTS MUST BE SUPPRESSED BECAUSE THEY ARE THE FRUIT OF OFFICER STAMAN'S UNLAWFUL ENTRY INTO HER HOME AND HER WARRANTLESS ARREST.

The exclusionary rule prohibits use of evidence obtained, whether directly or indirectly, from an unconstitutional search or seizure as "fruit of the poisonous tree." *Wong Sun v United States*, 371 US 471, 487–488 (1963). Whether indirect evidence is suppressible "poisonous fruit" turns on "whether the evidence was discovered through 'exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.'" *Id*. at 488 (citation omitted); *see also People v Shabaz*, 424 Mich 42, 65 (1985); *People v Reese*, 281 Mich App 290, 295-96 (2008).

Here, Ms. Hammerlund's statement to Officer Staman immediately after her arrest and her breathalyzer test results are a direct product of Officer Staman's unconstitutional and unlawful conduct. If Officer Staman had not grabbed Ms. Hammerlund from the privacy of her home he would not have been able to interrogate her and administer the tests.

New York v Harris does not compel a different result. 495 US 14, 21 (1990). In *Harris*, the Court declined to exclude a statement made outside the home following a *Payton* violation

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where the police had probable cause to arrest and the suspect was in legal custody. But *Harris* is distinguishable because Ms. Hammerlund was not in legal custody.

In *Harris*, the defendant's Fourth Amendment rights were violated, under *Payton*, when police officers entered his home without a warrant on suspicion that he killed a woman. *Id*. at 16. Once inside, the officers gave him *Miranda* warnings, and he admitted killing the woman. He was arrested and taken to the station. *Id*. at 16. After arriving at the station, Harris was once again informed of his *Miranda* rights, and he signed an inculpatory statement. He was then given *Miranda* warnings a third time and gave another, video-taped statement. "The sole issue in th[e] case [was] whether Harris' second statement—the written statement made at the station house—should have been suppressed because the police, by entering Harris' home without a warrant and without his consent, violated *Payton* …." *Id*.

In holding the second statement was not subject to the exclusionary rule, the Court limited the scope of the rule because, although Harris was arrested in violation of *Payton*, the police otherwise had probable cause to arrest him and he was in legal custody.
Harris, 495 US at 20 ("[w]e do hold that the station house statement in this case was admissible because Harris was in legal custody ... and because the statement, while the product of an arrest and being in custody, was not the fruit of the fact that the arrest was made in the house rather than someplace else"). This is so because "the exclusionary rule is designed to deter police misconduct." *United States v Leon*, 468 US 897, 916 (1984). The purpose of the exclusionary rule, in *Harris*, was satisfied because the deterrent value of suppressing statements like Harris's would be minimal, since it is doubtful that the desire to secure a statement from a suspect whom the police have probable cause to arrest would motivate them to violate *Payton*. *Harris*, 495 US at 20-21.

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Ms. Hammerlund's case is distinguishable, however, because, unlike the defendant in *Harris*, she was *not* in legal custody when Officer Staman interrogated her in the back of the police car and later administered breath tests. This is so because in addition to violating her rights under *Payton*, the arrest also violated Michigan law: failure to report an accident to fixtures is a 90-day misdemeanor that, unless committed in the officer's presence, is not an arrestable offense. See MCL 764.15 (authorizing arrest for misdemeanor punishable by fewer than 93 days imprisonment only if committed in officer's presence).[5] The end result is that Officer Staman not only violated the Fourth Amendment, but also violated Michigan law when he arrested Ms. Hammerlund for a 90-day misdemeanor not committed in his presence. Unlike Harris, Ms. Hammerlund should not have been exposed to custodial interrogation questioning or other evidence-gathering techniques because she was never in legal custody. Here, unlike in *Harris*, there was misconduct to be deterred. *Leon*, 468 US at 916.

[5] MCL 764.15(1), in relevant part, provides a peace officer, without a warrant, may arrest a person in any of the following situations:

> (a) A felony, misdemeanor, or ordinance violation is committed in the peace officer's presence.
> (b) The person has committed a felony although not in the peace officer's presence.
> (c) A felony in fact has been committed and the peace officer has reasonable cause to believe the person committed it.
> (d) The peace officer has reasonable cause to believe a misdemeanor punishable by imprisonment for more than 92 days or a felony has been committed and reasonable cause to believe the person committed it.

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C. THE ERROR WAS NOT HARMLESS

Finally, the constitutional error here was far from "harmless beyond a reasonable doubt." *Chapman v California*, 386 US 18, 24 (1967); see also *People v Carter*, 412 Mich 214, 217 (1981).

Had the Court suppressed Ms. Hammerlund's statement to Officer Staman the jury would not have heard evidence that she initially denied drinking after the accident. This evidence directly undermined the core of her defense at trial—that she only became intoxicated after she had several shots of alcohol upon returning home. (TI, 93-94; 157-158). In addition, if the Court had suppressed her breathalyzer test results, the only evidence of her intoxication would have come from Officer Staman's observation that when he first talked to her she leaned against a wall as if unsteady and her speech seemed "a little slurred for whatever reason," and that when she came outside he could detect an odor of alcohol that was "[m]oderate at best." (TI 108; 113.) This testimony only provided scant evidence of her alleged intoxication—particularly because Ms. Hammerlund had recently returned from work as a bartender, where she might have had alcohol spilled on her. The breathalyzer results provided the primary basis for the jury's conclusion she was drunk at the time of her accident. Without either of these crucial pieces of evidence, the jury was unlikely to have convicted her of drunk driving. The prosecution cannot meet its burden to show that the error in admitting the evidence was harmless beyond a reasonable doubt.

The remedy is to overturn the suppression ruling, reverse Ms. Hammerlund's conviction, and remand for further proceedings consistent with the Court's opinion. See *People v Roark*, 214 Mich App 421, 424 (1995).

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SUMMARY AND RELIEF

WHEREFORE, for the foregoing reasons, Defendant-Appellant asks that this Honorable Court to grant leave to appeal or appropriate peremptory relief.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

BY: /s/ Jason R. Eggert

JASON R. EGGERT (P75452)
Assistant Defender
3300 Penobscot Building
645 Griswold
Detroit, Michigan 48226
(313) 256-9833

Dated: December 12, 2017

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APPENDIX A

STATE OF MICHIGAN
IN THE 17TH CIRCUIT COURT FOR THE COUNTY OF KENT

STATE OF MICHIGAN

Case No. 15-09717-FH

v

Hon. Paul J. Sullivan

JENNIFER MARIE HAMMERLUND

Bonnie Prevette	Christine M. Tober
Kent County Prosecutor's Office	Kent County Defender's Office
82 Ionia Ave NW Ste 450	146 Monroe Center NW Ste 920
Grand Rapids MI 49503	Grand Rapids MI 49503
616/632-6710	616/774-8181

MOTION TO SUPPRESS AND DISMISS

Defendant, Jennifer Marie Hammerlund, by her attorney, moves this Court to suppress all physical evidence seized by the police. This motion is based on the Fourth Amendment of the United States Constitution, and Section 11 of the Michigan Constitution 1963, and is supported by the accompanying memorandum of law.

1. Jennifer Marie Hammerlund was arrested on September 30, 2015 and charged with Operating While Intoxicated – Third Offense in violation of MCL 257.625(1) and Failure to Report Accident to Fixtures in violation of MCL 257.621.
2. On September 30, 2015, Wyoming police officer Erich Staman was dispatched to the 54th Street exit ramp from US 131 southbound to a vehicle with its hazards on which was facing the wrong way on the exit ramp.
3. According to Officer Staman, the vehicle appeared to have struck the guard rail on the left side of the ramp and spun around and went backwards while in contact with the cement barrier of the right side of the ramp.

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4. Since the vehicle was being towed, Officer Staman did an inventory search and located several items with the name of Jennifer Hammerlund who also was the registered owner of the vehicle.

5. Officer Staman went to 541 Lyles in Kentwood, Michigan to further investigate the Failure to Report Accident to Fixtures which is a 90 day misdemeanor in violation of MCL 257.621. Defendant Hammerlund made it clear that she did not want to allow the officer inside the home.

6. In Officer Staman's investigation of the misdemeanor, Defendant Hammerlund reported that she was the driver and was not hurt from the crash with the exception of a bloody nose.

7. Defendant Hammerlund explained that she was hit by another truck which caused her to lose control and hit the guardrail.

8. Officer Staman asked for Defendant Hammerlund's identification card which she provided through a third party from the home. When done with the identification and while handing it back to the Defendant, who was inside the home, Officer Staman grabbed her by her right arm to take her into custody for the misdemeanor.

9. Defendant Hammerlund pulled away and then Officer Staman took a step inside the home and arrested the Defendant for the misdemeanor.

10. After being taken into custody, the Defendant was given her Miranda warnings and questioned by Officer Staman about whether she had been drinking prior to driving.

11. Based on the interrogation, breath samples taken at the Wyoming police department and revealed readings of .22 and .21.

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12. Officer Staman did not have the authority to arrest on the 90 day misdemeanor without a warrant which makes the arrest illegal and any evidence is fruit of the poisonous tree.

13. Furthermore, if the Court holds that Officer Staman did not need a warrant, Officer Staman's unauthorized entry into the Defendant's private home without consent to makes the warrantless misdemeanor arrest illegal and any evidence is fruit of the poisonous tree.

For these reasons, Defendant Hammerlund asks that this Court grant her motion to suppress the breath samples seized by Officer Staman and any statements to operating while intoxicated – third offense. Furthermore, Defendant Hammerlund asks that this Court dismiss the all charges or, in the alternative, hold a hearing to resolve the issues presented in this motion.

Respectfully submitted,
KENT COUNTY OFFICE OF THE DEFENDER

Dated: 28 Jan 2016

By: Christine M. Tober

Christine M. Tober (P55487)
Attorney for Defendant Hammerlund

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STATE OF MICHIGAN
IN THE 17TH CIRCUIT COURT FOR THE COUNTY OF KENT

STATE OF MICHIGAN

Case No. 15-09717-FH

v

Hon. Paul J. Sullivan

JENNIFER MARIE HAMMERLUND

Bonnie Prevette
Kent County Prosecutor's Office
82 Ionia Ave NW Ste 450
Grand Rapids MI 49503
616/632-6710

Christine M. Tober
Kent County Defender's Office
146 Monroe Center NW Ste 920
Grand Rapids MI 49503
616/774-8181

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO SUPPRESS AND DISMISS

STATEMENT OF FACTS

On September 30, 2015, Wyoming police officer Erich Staman was dispatched to the 54th Street exit ramp from US 131 southbound to a vehicle with its hazards on which was facing the wrong way on the exit ramp. According to Officer Staman, the vehicle appeared to have struck the guard rail on the left side of the ramp and spun around and went backwards while in contact with the cement barrier of the right side of the ramp. Since the vehicle was being towed, Officer Staman did an inventory search and located several items with the name of Jennifer Marie Hammerlund who also was the registered owner of the vehicle.

Officer Staman went to 541 Lyles in Kentwood, Michigan to further investigate the Failure to Report Accident to Fixtures which is a 90 day misdemeanor in violation of MCL 257.621. Defendant Hammerlund made it clear that she did not want to allow the officer inside the home. In Officer Staman's investigation of the misdemeanor, Defendant Hammerlund reported that she was the driver and was not hurt from the crash with the exception of a

bloody nose. Defendant Hammerlund explained that she was hit by another truck which caused her to lose control and hit the guardrail.

Officer Staman asked for Defendant Hammerlund's identification card which she provided through a third party from the home. When done with the identification and while handing it back to the Defendant, who was inside the home, Officer Staman grabbed her by her right arm to take her into custody for the misdemeanor. Defendant Hammerlund pulled away and then Officer Staman took a step inside the home and arrested the Defendant for the misdemeanor.

After the arrest for the misdemeanor, the Defendant was given her Miranda warnings and questioned by Officer Staman about whether she had been drinking prior to driving. Based on her admission to drinking, breath samples were taken at the Wyoming police department and revealed readings of .22 and .21. Defendant Hammerlund was subsequently arrested and charged with Operating While Intoxicated – Third Offense in violation of MCL 257.625(1) and Failure to Report Accident to Fixtures in violation of MCL 257.621.

LEGAL ARGUMENT

Officer Staman did not have the authority to arrest on the 90 day misdemeanor without a warrant which makes the arrest illegal and any evidence is fruit of the poisonous tree.

MCL 764.15 sets forth the laws on when an officer may arrest without a warrant. Some facts that support an arrest for a misdemeanor are (1) if the misdemeanor was committed in the officer's presence MCL 764.15(1)(a), (2) if the officer has received positive information through authoritative source that another officer or court holds a warrant for the person's arrest MCL 764.15(1)(e), and (3) when the officer has reasonable cause to believe the person

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was, at the time of an accident, the operator of a vehicle involved in the accident and was operating in violation of drunk or drugged driving laws MCL 764.(1)(h).

In this case, the misdemeanor of failure to report accident to fixtures was not committed in the officer's presence nor did the officer have a warrant or positive information that a warrant for Defendant Hammerlund's arrest existed. Although Officer Staman had reasonable cause to believe that Defendant Hammerlund was the operator of a motor vehicle at the time of the accident, he did not have reasonable cause to she was operating the vehicle while impaired. There were no facts indicating alcohol in the vehicle or observations of alcohol consumption. Officer Staman had no authority to arrest without a warrant for the misdemeanor offense making the arrest illegal.

"[T]he appropriate remedy is the suppression of evidence derived as a result of the illegal arrest under the 'fruit of the poisonous tree' doctrine." *People v Spencley*, 197 Mich App 505, 508 (1992) citing *Wong Sun v United States*, 371 US 471, 83 SCt 407 (1963). The blood alcohol test results must be suppressed as in the *Spencley* case.

Because Officer Staman's unauthorized entry into the Defendant's private home without consent to make the warrantless misdemeanor arrest was illegal, the evidence should be suppressed.

If the Court determines that Officer Staman had authority to make a warrantless arrest of Defendant Hammerlund on September 30, 2015, the arrest was still illegal because Officer Staman entered into a private home without consent to made the warrantless misdemeanor arrest. MCL 764.21 provides the requirements for officers to break open a door to make an arrest and states that

> A private person, when making an arrest for a felony committed in his or her presence, or a peace officer or federal law

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> enforcement officer, when making an arrest with a warrant or when making a felony arrest without a warrant as authorized by law, may break open an inner or outer door of a building in which the person to be arrested is located or is reasonably believed to be located if, after announcing his or her purpose, he or she is refused admittance.

When contacting Defendant Hammerlund at her home, Officer Staman was investigating and making an arrest for the 90 day misdemeanor of failure to report accident to fixtures. Officer Staman was not arresting for a felony committed in his presence nor did he have a misdemeanor warrant for Defendant Hammerlund's arrest.

The Michigan Court of Appeals has held that "the Legislature did not authorize police officers to enter private homes without permission to effect warrantless misdemeanor arrests." *People v Reinhardt*, 141 Mich App 173, 178 (1985). Defendant Hammerlund made it clear to Officer Staman that he was not welcome into the home. Her identification was given to Officer Staman outside the home by a third party. Officer Staman illegally entered Defendant Hammerlund's home to arrest without a warrant for the misdemeanor failure to report accident to fixtures.

The evidence to support the felony of operating while intoxicated – third offense was discovered incident to an unlawful arrest and is subject to the exclusionary rule as the "fruit of the poisonous tree." *See Wong Sun v United States*, 371 US 471, 487-488, 83 S Ct 407 (1963). The statements supporting the breath samples and the breath samples it selves were obtained after the illegal arrest and should be suppressed.

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RELIEF REQUESTED

For these reasons, the arrest of Defendant Hammerlund was illegal and all evidence seized pursuant to the illegal arrest, including but not limited to the breath sample, should be suppressed and the charge of Operating While Intoxicated – Third Offense should be dismissed.

Respectfully submitted,
KENT COUNTY DEFENDER'S OFFICE

Dated: 28 Jan 2016

By: Christine M. Tober

Christine M. Tober (P55487)
Attorney for Defendant Hammerlund

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STATE OF MICHIGAN
IN THE 17TH CIRCUIT FOR THE COUNTY OF KENT

PEOPLE OF THE STATE OF MICHIGAN
v

Case No. 15-09717-FH
Hon. Paul J. Sullivan

JENNIFER MARIE HAMMERLUND

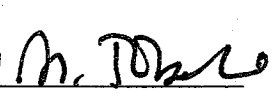
Bonnie Prevette (P68232) Kent County Prosecutor's Office 82 Ionia Ave NW Ste 450 Grand Rapids MI 49503 616/632-6710	Christine Tober (P55487) Kent County Defender's Office 146 Monroe Center NW Ste 920 Grand Rapids MI 49503 616/774-8181

NOTICE OF HEARING

To: Bonnie Prevette
Kent County Prosecutor's Office
82 Ionia Avenue NW Ste 450
Grand Rapids, MI 49503

PLEASE TAKE NOTICE that a **Motion to Suppress and Dismiss** will be brought on to be heard before the Honorable Paul J. Sullivan, Monday, the 8th day of February 2016 at 8:30 a.m. or as soon thereafter as counsel may be heard.

Dated: 28 January 2016



Christine M. Tober (P55487)
Kent County Office of the Defender
146 Monroe Center Ave NW, Suite 920
Grand Rapids, MI 49503
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STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR THE COUNTY OF KENT

PEOPLE OF THE STATE OF MICHIGAN

Case No. 15-09717-FH

v

Hon. Paul J. Sullivan

JENNIFER MARIE HAMMERLUND,

Bonnie Prevette (P68232)
Kent County Prosecutor's Office
82 Ionia Ave NW Ste 450
Grand Rapids, MI 49503
616/632-6710

Christine M. Tober (P55487)
Kent County Defender's Office
146 Monroe Center Ave NW Ste 920
Grand Rapids, MI 49503
616/774-8181

PROOF OF SERVICE

On the date below I sent by courier a copy of the **MOTION TO SUPPRESS AND DISMISS** to: Kent County Prosecutor's Office, 82 Ionia NW Suite 450, Grand Rapids, MI 49503 and by courier a copy to the Kent County Probation Department, 82 Ionia NW Ste 100, Grand Rapids, MI 49503.

I declare that the statements above are true to the best of my information, knowledge, and belief.

Date: January 29, 2016

Pamela Rozanski
Kent County Defender's Office

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APPENDIX B

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STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff,

vs

JENNIFER MARIE HAMMERLUND,
Defendant.
_____/

Circuit Court No. 15-09717-FH

HON. PAUL J. SULLIVAN

ANSWER IN OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS AND DISMISS

Defendant argues that all evidence obtained following her arrest must be suppressed because the arrest was allegedly in violation of MCL 764.15, which permits a warrantless misdemeanor arrest for an offense committed in the officer's presence, where the officer has reasonable cause to believe a misdemeanor punishable by more than 92 days has been committed, or where the officer has reasonable cause to believe that the person was driving while intoxicated at the time of an accident, but does not permit a warrantless arrest for a misdemeanor punishable by less than 92 days. Alternately, Defendant argues that the evidence must be suppressed because it was allegedly effected in violation of MCL 764.21, regarding breaking open a door in order to make an arrest.

Defendant's argument is without merit because Defendant fails to recognize the difference between an *unconstitutional* arrest and an arrest that is allegedly not authorized by statute. A warrantless arrest for either a felony or a misdemeanor is *constitutional* if it is based on probable cause. The exclusionary rule is a judicially-created remedy intended to deter the police from violating *constitutional* rights. *People v Hawkins*, 468 Mich 488, 498 (2003). Michigan, as a matter of *statutory* policy, has placed additional limits on an officer's authority to make warrantless

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arrests for minor offenses. However, it is the province of the Legislature, not the judiciary, to determine what if any sanction is to be imposed for a violation of the statute. Michigan appellate courts have consistently held that statutory violations do not trigger the exclusionary rule if the underlying conduct is constitutional. *People v Hamilton,* 465 Mich 526 (2002) (abrogated on other grounds by *Bright v Ailshie*, 465 Mich 770 (2002)); *Hawkins, supra.* The Court of Appeals has expressly held that the exclusionary rule does not apply to a violation of MCL 764.15 as long as the arrest is based on probable cause and therefore constitutional. *People v Lyon*, 227 Mich App 599, 611- 612 (1998).

It is undisputed that Defendant was the driver of a car involve in an accident resulting in damage to fixtures (MCL 257.621) and that she failed to report the accident. She admitted all of those facts to the officer before she was arrested. The officer therefore had probable cause to believe that Defendant had committed a misdemeanor, and the arrest on that offense was constitutional.

It also appears that the officer was standing outside the home when he initially grabbed Defendant's wrist and attempted to arrest her, and that he did not cross the threshold of the home until after Defendant pulled away from him. The United States Supreme Court has held that "a suspect may not defeat an arrest which has been set in motion in a public place . . . by the expedient of escaping to a private place." *US v Santana*, 427 US 38, 43 (1976). Assuming that the evidence will show that the officer was outside the home when he grabbed Defendant's wrist to arrest her, his act of crossing the threshold to complete the arrest after Defendant pulled away from him was also constitutional.

Where a statute does not prescribe a sanction for failing to comply, it is not the province of the Court to fashion one. *Hawkins, supra, at* 500. Neither MCL 764.15 nor MCL 764.21

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contains any sanction, nor does anything in the statutory language suggest that the Legislature intended to impose such a radical sanction as exclusion of evidence for a violation of those sections. Nor is there any sanction set forth in the entire statutory chapter on arrests. MCL 764.1 – 764.29. In contrast, MCL 780.657 and 780.658 expressly set forth penalties for "Willfully exceeding authority" in the execution of a search warrant, or "Unlawfully procuring a search warrant" – and neither statute provides for the exclusion of evidence as the sanction to be imposed.[1]

While the People do not concede that the arrest was made in violation of the statute, it is clear even under Defendant's description of the facts that the arrest was constitutional – the officer had probable cause to believe that Defendant had committed a misdemeanor, and the officer did not enter the home to complete the arrest until after Defendant pulled away from him and attempted to flee into the home. The exclusionary rule is a remedy only for constitutional violations, and is not applicable to the present case. Even if the Court finds that the arrest was not authorized by the statue, the Legislature has not mandated exclusion of evidence as a sanction for a statutory violation, and it is not the province of the courts to read into the statute a sanction that the Legislature did not enact. Defendant's motion fails as a matter of law because the remedy requested – exclusion of evidence – does not apply to the alleged statutory violations. Defendant's motion should be denied.

[1] The statutes state that the individual who exceeded their authority or unlawfully obtained the search warrant is subject to criminal penalties – a fine of not more than $1,000 or imprisonment for not more than one year.

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Respectfully submitted,

William A. Forsyth (P 23770)
Kent County Prosecuting Attorney

James K. Benison (P54429)
Chief Appellate Attorney

Dated: February 3, 2016

By: _____
T. Lynn Hopkins (P44771)
Assistant Prosecuting Attorney

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APPENDIX C

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

JENNIFER MARIE HAMMERLUND,

Defendant.

Case No. 15-09717-FH

Hon. Paul J. Sullivan

OPINION & ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS AND DISMISS

REC'D & FILED
MAR 1 8 2016
JUDGE SULLIVAN
17TH JUDICIAL COURT

Appearances:

Christine M. Tober (P55487)
KENT COUNTY OFFICE OF THE DEFENDER
Attorneys for Defendant
146 Monroe Center Avenue NW, Suite 920
Grand Rapids, MI 49503

Bonnie L. Prevette (P68232)
Assistant Prosecuting Attorney
Kent County Prosecutor's Office
82 Ionia NW, Suite 450
Grand Rapids, MI 49503

OPINION & ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS AND DISMISS

Defendant Jennifer Marie Hammerlund moves to suppress evidence and dismiss this case due to an allegedly invalid arrest. This opinion & order follows an evidentiary hearing during which the testimony of the arresting officer was presented. For the reasons explained below, after considering the testimony and the law, defendant's motion is respectfully DENIED.

I. FACTS AND BACKGROUND

Defendant is charged with driving while intoxicated and failing to report an accident resulting in damage to fixtures on or adjacent to a highway. The charges arise from an incident on September 30, 2015. That night, Officer Eric Staman, a ten-year veteran of the City of Wyoming Police Department, was dispatched to an exit ramp off of southbound US 131. At the exit ramp, an unoccupied vehicle was facing the wrong way and had its hazard lights on. It appeared that the vehicle had struck the guard rail on one side of the ramp and hit a cement barrier on the other side.

Officer Staman did an inventory search of the vehicle before it was towed and found items with defendant's name. Defendant was also the registered owner of the vehicle. While another officer waited for the vehicle to be towed, Officer Staman went to defendant's home in Kentwood to investigate the accident and potential charges for failing to report it.

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Officer Staman arrived at defendant's home around 15 to 20 minutes after the initial dispatch. He went to the front porch of the residence, and defendant was standing in the home, approximately 15 to 20 feet from the door. It appeared that she did not want to come closer, so Officer Staman spoke with her from the porch. Defendant confirmed that it was her car involved in the accident and she was the driver. She claimed she was not hurt from the crash, except for a bloody nose. Officer Staman asked for her ID. Defendant was reluctant to give it to him, but she gave it to a third party to hand to Officer Staman through the doorway. He verified the information from the ID and wrote it down. He then offered to give the ID back to defendant, and she approached him to retrieve it. When defendant reached through the doorway for the ID, Officer Staman grabbed her arm to take her into custody. This was due to his belief that defendant committed the misdemeanor of failing to report an accident, which he believed to be a misdemeanor punishable by up to 93 days imprisonment. Defendant then tried to pull away into her home, but Officer Staman regained his grip on her arm and took two or three steps inside her home as she pulled away. He completed the arrest immediately inside the home and brought her outside. Defendant was given *Miranda* warnings and asked about what she had to drink. Breath tests were eventually conducted, which showed BACs of .22 and .21, leading to the present charges.

Defendant now argues that the arrest was illegal because the underlying misdemeanor for failing to report an accident is actually a 90-day misdemeanor, so it generally would not be allowed without a warrant under MCL 764.15. Additionally, defendant argues that even if the arrest were initially legal, it became illegal when Officer Staman stepped into defendant's home while defendant was attempting to pull away from him.

II. LAW AND ANALYSIS

MCL 764.15 sets forth the authority for police officers to arrest suspects without a warrant. Warrantless arrests are allowed by statute if "[t]he peace officer has reasonable cause to believe a misdemeanor punishable by imprisonment for more than 92 days or a felony has been committed and reasonable cause to believe the person committed it." MCL 764.15(d). However, the arrest in this case for failing to report the accident involved a 90-day misdemeanor. MCL 257.621, .901. Accordingly, it appears the arrest may have violated a Michigan statute.

However, even assuming that the arrest violated MCL 764.15, this *statutory* violation does not automatically implicate the exclusionary rule. The plain language of MCL 764.15 does not create a remedy of exclusion. "Michigan courts have distinguished between constitutionally invalid and statutorily invalid arrests and have refused to apply the exclusionary rule to mere statutory violations." *People v Lyon*, 227 Mich App 599, 611 (1998). Constitutional validity of an arrest requires only that "probable cause to arrest existed at the moment the arrest was made by the officer." *Id.* In this case, defendant does not challenge that there was probable cause regarding the misdemeanor charge for failing to report the accident resulting in damages to fixtures. There was sufficient cause for the arrest to be constitutionally valid, so suppression of evidence from it is not warranted. *Id.*; *see also People v Hawkins*, 468 Mich 488, 507 (2003) ("[W]here there is no determination that a statutory violation constitutes an error of constitutional dimensions, application of the exclusionary rule is inappropriate unless the plain language of the statute indicates a legislative intent that the rule be applied.").

Given that the arrest had sufficient cause to be constitutionally valid, the next issue is whether something about the location of the arrest rendered it unconstitutional. "[T]he warrantless arrest of an individual in a public place upon probable cause d[oes] not violate the Fourth Amendment." *United States v Santana*, 427 US 38, 42 (1976). A home's open doorway is considered a public place for Fourth Amendment purposes when effectuating an arrest of a person standing in the doorway. *Id.* Furthermore, "a suspect may not defeat an arrest which has been set in motion in a public place . . . by the expedient of escaping to a private place." *Id.*

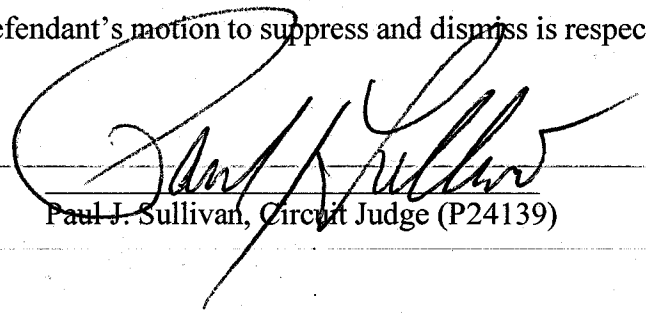
In this case, the testimony at the evidentiary hearing reveals that defendant was in the middle of a consensual discussion with Officer Staman, voluntarily approached him, and voluntarily reached out of her door. Officer Staman was legitimately in that area and it did not violate the constitution for him to effectuate an arrest by grabbing her arm when she reached out of her doorway. That he then stepped inside defendant's home as a result of her attempts to pull away does not change the result. The officer was clearly in pursuit for the arrest at that point, and defendant could not suddenly render the arrest unconstitutional by escaping that pursuit to a private place. *Id.*

Based on the foregoing, the Court finds there was a constitutionally valid arrest and defendant's attempt to flee from that arrest did not render it unconstitutional.

Order

For the reasons set forth above, defendant's motion to suppress and dismiss is respectfully DENIED.

Dated: March 18, 2016



Paul J. Sullivan, Circuit Judge (P24139)

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APPENDIX D

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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JENNIFER MARIE HAMMERLUND,

Defendant-Appellant.

UNPUBLISHED
October 17, 2017

No. 333827
Kent Circuit Court
LC No. 15-009717-FH

Before: MURRAY, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

Defendant was convicted by a jury of operating under the influence of intoxicants (third offense) (OUI), MCL 257.625, and failure to report an accident to fixtures, MCL 257.621. She was sentenced to five years' probation, with four months' imprisonment for the felony OUI conviction. On appeal by right, defendant argues that the trial court erred by denying her motion to suppress evidence because her state and federal constitutional rights against unreasonable search and seizures were violated when she was arrested in her home without a warrant. For the reasons that follow, we reject defendant's arguments and, therefore, affirm her convictions and sentences.

I. MATERIAL FACTS AND PROCEEDINGS

On September 30, 2016, defendant crashed her car into a guardrail on an off-ramp from US 131 to 54th Street in Wyoming, Michigan, while driving home from work as a server at approximately 2:20 a.m. Sustaining only a minor injury, she abandoned her car and called for a ride home. She did not report the accident to police.

At approximately 3:30 a.m., Officer Erich Staman of the Wyoming Police Department was dispatched to the area to investigate the reported crash where he observed an unoccupied vehicle facing the wrong direction on the off-ramp. His investigation revealed that the vehicle belonged to defendant, a Kentwood resident. On request, Kentwood Police Department officers made contact with defendant at her home to check on her welfare.

When he arrived at defendant's address, Officer Staman approached the home and initiated a conversation through the open front door with defendant standing approximately 15 to 20 feet inside. He remained on the porch while they talked. Defendant would not provide her identification directly to Officer Staman and, instead, gave her driver's license to a third party

who walked to the door and handed it over on her behalf. In a five- or six-minute conversation, defendant told Officer Staman that she was the owner of the crashed car and that she had been driving. Other than a bloody nose, she said she was uninjured in the crash. She confirmed that she did not report the accident. Officer Staman testified that he believed defendant was intoxicated because her speech was slightly slurred and she was using the wall for balance.

Officer Staman collected the information he needed from defendant's driver's license and held it out for only her to retrieve. When defendant came to the doorway and reached out of the home to take back her ID, Officer Staman grabbed her wrist to take her into custody for the "hit and run charge." He then testified:

> I stood on the outside of the porch when I initially grabbed [her arm], and she had pulled away, which caused me to have to grab it again, and the momentum took us inside, maybe two or three steps inside the doorway.

Defendant was handcuffed inside the home and placed in a police car where she was recited her *Miranda*[1] warnings. She waived her rights and agreed to talk further with Officer Staman. A stipulated portion of an in-car audio/video recording was played for the jury. Defendant said the crash occurred when an erratic driver whom she had encountered earlier on the highway cut her off as she exited. She admitted that she had two beers and a shot within several hours of driving, but she did not think alcohol was a factor in the accident. Defendant told Officer Staman unequivocally that she did not have anything to drink after the accident. Defendant was placed under arrest for the property damage accident and driving under the influence. At the Kent County jail, she submitted to two breath alcohol tests shortly after 5:00 a.m. reflecting a blood alcohol content of .22 and .21, respectively.

In her pre-trial motion to suppress and dismiss, defendant alleged that Officer Staman violated her Fourth Amendment rights when he unlawfully entered her home to arrest her, and therefore evidence obtained after the arrest should be excluded. The trial court issued a written opinion denying defendant's motion, ruling that "there was a constitutionally valid arrest and defendant's attempt to flee from that arrest did not render [the arrest] unconstitutional." As a result, evidence of defendant's in-car statements and Breathalyzer tests were admitted at trial. As previously noted, a jury found defendant guilty on both charges, and defendant was sentenced to five-years' probation and four months in jail.

II. DISCUSSION

"To preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection that it asserts on appeal." *People v Aldrich*, 246 Mich App 101, 116; 631 NW2d 67 (2001). Defendant's pre-trial motion to suppress evidence raised the argument that there had been an unlawful entry into her home by Officer Staman in violation of the Fourth Amendment. Therefore, defendant preserved this issue for review.

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[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

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This Court reviews for clear error a trial court's findings of fact in a suppression hearing and reviews de novo the ultimate decision on a motion to suppress. *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009). In addition, "whether there has been a violation of the Fourth Amendment and application of the exclusionary rule resulting from a constitutional violation are matters of law that [this Court] review[s] de novo." *People v Fletcher*, 260 Mich App 531, 546; 679 NW2d 127 (2004).

A. LAWFULNESS OF ARREST

We first turn to the issue whether the trial court erred in denying application of the exclusionary rule when the trial court assumed the arrest to be in violation of Michigan law. "[T]he drastic remedy of exclusion of evidence does not necessarily apply to a *statutory* violation." *People v Hawkins*, 468 Mich 488, 500; 668 NW2d 602 (2003). "Whether the exclusionary rule should be applied to evidence seized in violation of a statute is purely a matter of legislative intent." *Hawkins*, 468 Mich at 500.

The relevant statute provides that a peace officer may make a warrantless arrest if "[t]he peace officer has reasonable cause to believe a misdemeanor punishable by imprisonment for more than 92 days . . . has been committed and reasonable cause to believe the person committed it." MCL 764.15(1)(d). Officer Staman did not have a warrant to arrest defendant, nor did the misdemeanor crime he was investigating meet the sentencing threshold for a warrantless arrest.[2] But even though Officer Staman was under the misimpression that the crime of failure to report damages to fixtures was a 93-day misdemeanor, as the trial court ruled, "the plain language of MCL 764.15 does not create a remedy of exclusion." As this plain reading of the statute is consistent with our previous case law, the court did not err in denying application of the exclusionary rule based solely on violation of the statute.

We next determine whether Officer Staman's warrantless arrest of defendant was an error of "constitutional dimensions" to implicate the exclusionary rule. See *People v Vasquez (After Remand)*, 461 Mich 235, 241; 602 NW2d 376 (1999). A warrantless arrest does not offend the constitution when "probable cause to arrest existed at the moment the arrest was made by the officer." *People v Lyon*, 227 Mich App 599, 611; 577 NW2d 124 (1998); see also *People v Johnson*, 431 Mich 683, 691; 431 NW2d 825 (1988). In this case, defendant does not dispute there was probable cause for the arrest.[3] Thus, the trial court did not err in ruling that the arrest in and of itself was supported by probable cause and, therefore, constitutionally valid.

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[2] Failure to report an accident with damage to fixtures is a misdemeanor punishable by "imprisonment for not more than 90 days[.]" MCL 257.621(a); MCL 257.901(2).

[3] While not in dispute, there was sufficient evidence in the record to demonstrate probable cause for an arrest. Officer Staman discovered an abandoned car registered to defendant that showed signs it had been the cause of damage to public road fixtures. Subsequently, defendant made pre-arrest statements that she was driving and that she had left the scene of the accident without reporting the damage.

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Having established probable cause supported the arrest, and thus did not violate defendant's constitutional rights, defendant argues that Officer Staman violated her Fourth Amendment rights[4] by unlawfully entering her home to arrest her when (1) the arrest did not occur in a public place and (2) the hot-pursuit exception to justify a warrantless entry does not apply.

B. LOCATION OF ARREST

The Fourth Amendment of the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

"[T]he Fourth Amendment has drawn a firm line at the entrance to the house." *Payton v New York*, 445 US 573, 590; 100 S Ct 1371; 63 L Ed 2d 639 (1980). In *People v Williams*, 472 Mich 308, 314; 696 NW2d 636 (2005), the Michigan Supreme Court recognized that "the touchstone of the Fourth Amendment is reasonableness." (citations omitted). "Reasonableness is measured by examining the totality of the circumstances." *Id.*

In *United States v Santana*, 427 US 38, 42; 96 S Ct 2406; 49 L Ed 2d 300 (1976), the Court held that "the warrantless arrest of an individual in a public place upon probable cause [does] not violate the Fourth Amendment." See also *People v Collier*, 183 Mich App 473, 475; 455 NW2d 313 (1989). In *Santana*, police were investigating the defendant for a suspected illegal drug transaction when they recognized her standing in her doorway. When the defendant retreated into her home, police officers pursued her inside and arrested her without a warrant. The Court reasoned that standing in the doorway of a home was "not in an area where [the defendant] had any expectation of privacy." *Santana*, 427 US at 42. See also *People v Beachman*, 98 Mich App 544, 552; 296 NW2d 305 (1980). Further, the Court reasoned that the defendant "was not merely visible to the public but was as exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house." *Santana*, 427 US at 42.

Defendant attempts to distinguish her case from the holding in *Santana*, by pointing out that she was in her bedroom when police arrived rather than standing in the doorway like the defendant in *Santana*. Defendant's argument would have had merit had she remained in her bedroom or standing "15-20 feet" inside the home with an open door. The argument fails under the facts, however, as *Santana* does not define a doorway as a public place only when a

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[4] The state constitutional right against unreasonable search and seizure is contained within Const 1963, art 1, § 11, and is construed to provide the same protections as the Fourth Amendment to the United States Constitution. *People v Antwine*, 293 Mich App 192, 194-195; 809 NW2d 439 (2011).

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defendant is observed there first. Rather, the Court emphasized the defendant's expectation of privacy. By voluntarily moving into the doorway, defendant exposed herself to a fundamentally unique characteristic of a public place that she had not up to that point – touch. By extending her arm beyond the threshold, she went further than the defendant in *Santana*, who was standing "directly in the doorway," where one step backward or forward would have left that defendant either inside or outside. *Santana*, 427 US at 40 n 1. Therefore, defendant's act of reaching out to grab her identification from Officer Staman caused her to cross *Payton's* "firm line" of the entrance to her house, thereby exposing herself to a public arrest based on probable cause. 445 US at 590.

Finally, defendant seeks support from two cases where courts held that doorway arrests were unconstitutional and not in line with *Santana*. Both are readily distinguishable from the current case in that the defendants did not cross the threshold of their respective doorways prior to arrest by the officers.

First, in *Cummings v City of Akron*, 418 F3d 676, 687-688 (CA 6, 2005), the Sixth Circuit held that police investigating a domestic disturbance call unlawfully entered the defendant's home without a warrant to arrest him after an encounter in the doorway. When the defendant attempted to close the door and end the encounter, one of the arresting officers prevented him from doing so by placing his foot inside the door. *Id.* at 679. The court distinguished *Santana* in that the defendant "never fully exposed himself to the public view." *Id.* at 686. The court reasoned that the defendant had "manifested his intent to keep the inside of his home private, first by attempting to talk to the officers through the window and later by only partially opening the front door . . . ." *Id.* at 685.

In this case, the door was at least more than partially open, as Officer Staman testified that he could see defendant 15-20 feet inside her home without any difficulty. There is no evidence in the record that Officer Staman prevented defendant from closing the door or ending her encounter with him. Holding out defendant's identification for only her to retrieve was not an obstacle on par with placing a foot in the door. Defendant was free to refuse to move to the door and retrieve her identification, thereby avoiding exposing herself to arrest, as she understood when she refused to hand it over directly in the first place.

In *Flores v Lackage*, 938 F Supp 2d 759, 770-771 (ND Ill, 2013), the court held that a warrantless arrest was unconstitutional when police arrested the plaintiff following a doorway encounter resulting in pursuit and arrest inside his home. The court reasoned that "[the plaintiff] (who at no point left the confines of his home) did not relinquish his reasonable expectation of privacy simply by answering a knock at his door." *Id*. In this case, Officer Staman grabbed defendant's wrist when she reached out to retrieve her identification. Unlike the plaintiff in *Flores*, the record reflects that pursuit of defendant by Officer Staman "maybe two to three steps" inside the house occurred after defendant left the confines of her home when she reached out to retrieve her identification.

Therefore, the ruling by the trial court that defendant was in a public place was not in error.[5]

C. "HOT-PURSUIT" EXCEPTION

Defendant next argues that the trial erred in ruling that Officer Staman's warrantless entry into defendant's home was justified because he was "clearly" in pursuit of the arrest. Defendant contends that the hot-pursuit exception to a warrantless arrest is not applicable because defendant was inside when police arrived and she never left her home.

"Generally, a search conducted without a warrant is unreasonable unless there exists both probable cause and a circumstance establishing an exception to the warrant requirement." *People v Snider*, 239 Mich App 393, 407; 608 NW2d 502 (2000) (citation and quotation marks omitted). "[P]olice bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches or arrests." *Welsh v Wisconsin*, 466 US 740, 749-750; 104 S Ct 2091; 80 L Ed 2d 732 (1984). However, a defendant "may not defeat an arrest which has been set in motion in a public place . . . by the expedient of escaping to a private place." *Santana*, 427 US at 43.

In her argument that the hot-pursuit doctrine did not justify a warrantless entry into her home by police, defendant cites the *Welsh* Court's refusal to apply the doctrine to a warrantless entry and arrest by police into a private home. The holding in *Welsh* does not compel us to reach the same result here. In that case, a similar type of abandoned vehicle investigation led police to proceed directly into the defendant's house without a warrant where he was found in bed and arrested for a non-criminal traffic offense. *Welsh*, 466 US at 740. Here, and consistent with *Santana*, Officer Staman did not proceed directly from the accident scene into defendant's home and arrest her in her bedroom or even while in the confines of her home. Instead, as the trial court determined, Officer Staman grabbed defendant's arm when it was extended outside of her home and only entered when defendant "pulled away," drawing him inside where he completed the arrest.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Jane E. Markey

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[5] Defendant does not challenge the trial court ruling that Officer Staman was "legitimately in the area" while standing on her porch at approximately 3:45 a.m. Therefore, this Court does not have occasion to address whether that finding is consistent with the recent Michigan Supreme Court ruling on warrantless "knock and talk" visits by police to a home during unusual hours. *People v Frederick*, 500 Mich 228; 895 NW2d 541 (2017) (Docket Nos. 153115; 153117).

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