

FOR IMMEDIATE RELEASE

(Los Angeles) October 1, 2007

On June 17, 2006, defendant Amy Tucker had the Orange County Sheriff's Department enter her home without a warrant based upon a hunch that she was possibly driving under the influence of alcohol ("D.U.I.").

The police officer who initiated the contact did not observe any poor driving, but she was targeting Ms. Tucker due to seeing her earlier at a party and hearing music coming from her vehicle. Ms. Tucker filed a motion to suppress the evidence which was heard on January 4, 2007 and taken under submission. On January 17, 2007, the court issued a ruling denying the motion.

The defense had argued that the police may not make a warrantless entry into someone's home based upon on a hunch that there may have been a D.U.I. The People had argued that there was enough evidence to support probable cause to make a D.U.I. arrest, thus providing exigent circumstances to enter the home to make the arrest to prevent the evaporation of the blood alcohol evidence.

Since the Law Offices of Ronald Richards & Associates does not give up, they filed an appeal to the Appellate Department of the Orange County Superior Court. The odds of winning a D.U.I. suppression motion is 1 in 2500. In Orange County it is 1 in 7500. The odds of an appellate court reversing the trial court is 1 in 25,000. The odds of it happening in Orange County is 1 in 250,000.

At the oral argument in the appellate department on September 20, 2007, the People changed theories and argued that there was probable cause to arrest Ms. Tucker for resisting arrest once Ms. Tucker refused to come outside when the police knocked on the door. However,

defense counsel Ronald Richards, Esq. pointed out there was no exigent circumstances to initiate a warrantless entry for the new theory of resisting arrest. There was no evidence there was a risk of destruction if the locus poenitentiae of the offense was Ms. Tucker refusing to come outside her home.

Richards argued the police can never use the refusal to open a door as the basis for disregarding the warrant requirement. Otherwise, there would never be a need for a warrant because the police could simply knock on doors and persons would simply have to open their doors or face arrest.

Attached as a pdf is the opinion issued September 26, 2007 reversing the trial court with an order **granting** the suppression motion. The appellate court ruled the police could not enter a home, without a warrant, simply to investigate a D.U.I.

The firm would like to thank and commend, Vanessa Rownaghi, Esq. who drafted the briefs. The firm would also like to thank the Adam Stull, Esq. who attended the motion and oral argument and who assisted in the case from Orange County, California. Without Mr. Stull or Ms. Rownaghi, this would have been a losing effort.

Even though attorneys may not win everything, once again, this firm has shown itself to win the hard cases and to win consistently, and in out of county forums where losing criminal motions is a way of life.

Congratulations to Ms. Tucker whose 4th Amendment violations were vindicated.

SEP 26 2007

ALAN SLATER, Clerk of the Court
Beverly Ryan
BY B. RYAN

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APPELLATE DIVISION
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

PEOPLE OF THE STATE OF CALIFORNIA,)	CASE NO. AP-14899
)	
Plaintiff and Respondent,)	JUDGMENT ON APPEAL
)	from the
vs.)	SUPERIOR COURT
)	of
AMY ELIZABETH TUCKER,)	ORANGE COUNTY
)	HARBOR JUSTICE CENTER
Defendant and Appellant.)	HON. DAVID CHAFFEE
)	JUDGE

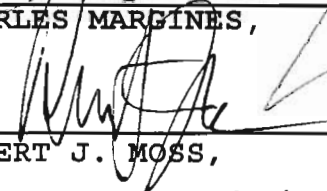
Insofar as Deputy Gilman's testimony may have established probable cause to arrest appellant for violation of Vehicle Code § 27007, appellant's commission of such an infraction would not have justified a warrantless entry in hot pursuit of her. (Welsh v. Wisconsin (1984) 466 U.S. 740, 750-754.) Although the deputy's testimony also provided grounds for an investigatory detention of appellant for violation of Vehicle Code § 23152(a), the deputy's observations did not provide probable cause for a DUI arrest or for a warrantless entry into the apartment in hot pursuit of appellant. (Cf. People v. Thompson (2006) 38 Cal.4th 811, 815, 818-820; People v. Wolterman (1992) 11 Cal.App.4th Supp. 15, 20-21.) Nor did the possible destruction of evidence constitute an exigent circumstance justifying the warrantless entry, since dissipation

1 of alcohol from appellant's blood was the only factor supporting
2 application of this exception to the warrant requirement and since
3 probable cause to believe appellant had violated § 23152(a) was
4 lacking. (Cf. People v. Thompson, *supra*, 38 Cal.4th at 818-820,
5 827-828; People v. Hampton (1985) 164 Cal.App.3d 27, 34.)

6 Although probable cause to arrest for violation of Penal Code
7 § 148(a) may justify a warrantless entry in hot pursuit, it is an
8 element of § 148(a) that the defendant "knew or reasonably should
9 have known that the other person was a peace officer engaged in
10 the performance of his or her duties." (People v. Simons (1996) 42
11 Cal.App.4th 1100, 1109.) There is no evidence in the record that
12 the officer identified herself before appellant entered the
13 apartment or that the officer was in uniform, and in the absence
14 of such evidence the trial court could not have properly inferred
15 that appellant should have been aware that the person telling her
16 to stop was a peace officer. The People thus failed to meet their
17 burden of establishing probable cause to believe a violation of §
18 148(a) had occurred.

19 The order denying appellant's motion to suppress evidence is
20 reversed, with direction to enter an order granting the motion.

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22 
23 CHARLES MARGINES, Presiding Judge

24 
25 ROBERT J. MOSS, Judge

26 
27 RONALD L. BAUER, Judge*

28 * Sitting by assignment of the Chief Justice of the California Supreme Court.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

JUSTICE CENTER: Central Justice Center
Civil Operations - Appellate Division
700 Civic Center Dr. West
Santa Ana, CA 92701

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

SEP 26 2007

PLAINTIFF/PETITIONER: PEOPLE

DEFENDANT/RESPONDENT: TUCKER

ALAN SLATER, Clerk of the Court

BY: B. RYAN, DEPUTY

NOTICE OF FILING OF JUDGMENT/ORDER
Appellate Division

APPEAL CASE NUMBER:
AP14899

TRIAL COURT CASE NUMBER:
06SM03530

To the above named parties and their attorneys of record:

You are notified that an Judgment in the above entitled matter was filed on: 9/26/07.

A Copy of the Judgment is attached for reference.

CLERK'S CERTIFICATE OF MAILING

RONALD RICHARDS
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BEVERLY HILLS, CA 90213

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
HARBOR JUSTICE CENTER
LAGUNA NIGUEL FACILITY
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LAGUNA NIGUEL, CA 92677-2089

ANTHONY RACKAUCKAS
O.C. DISTRICT ATTORNEY
P.O. BOX 808
SANTA ANA, CA 92702

HON. DAVID CHAFFEE, JUDGE
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
HARBOR JUSTICE CENTER
LAGUNA NIGUEL FACILITY
30143 CROWN VALLEY PARKWAY
LAGUNA NIGUEL, CA 92677-2089

I certify that I am not a party to this action and that this certificate was mailed in accordance with Section 1013a of the Code of Civil Procedure. A copy of this Notice of Filing of Judgment/Order with a copy of the Judgment/Order was deposited in the United States mail, in a sealed envelope with postage fully prepaid addressed as shown above. The mailing and this certification occurred at Santa Ana, California,

ALAN SLATER, Clerk of the Court

on 9/27/07

BEVERLY RYAN

Beverly Ryan, Deputy Clerk

NOTICE OF FILING OF JUDGMENT/ORDER