

IN THE CIRCUIT COURT OF GRANT COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

FILED

v.

MAY 24 2018

Case No. 17-MAP-1

MICHAEL SHANE REXRODE,
Defendant.

Angela B. Van Meter
Clerk of Circuit Court

ORDER DENYING APPEAL

Now comes this Court, the Honorable Lynn A. Nelson presiding, having given due consideration to the Petition for Appeal, the Response thereto, and the arguments of counsel held thereon, and does hereby FIND AND CONCLUDE as follows:

1. This appeal originates from a magistrate court jury trial held September 22, 2017. Defendant was convicted on one count of domestic battery. The Defendant alleges twelve assignments of error.
2. The facts in evidence at trial showed that on April 19, 2017, the Grant County 911 Center received a call advising that there was a possible domestic situation under way at Defendant's residence. The call did not originate from the residence. Trooper Nazelrodt was dispatched to the Defendant's residence pursuant to the caller's report. Upon arriving at the residence, the trooper knocked on the door and Defendant's wife answered. Her appearance was concerning to the trooper because she had an obviously injured eye. She informed the trooper that the eye injury had occurred earlier in the day as a result of a farming accident. Trooper Nazelrodt did not believe her explanation. He then entered the residence in an attempt to locate the Defendant. He located the Defendant and detained him prior to placing him under arrest for domestic battery.
3. With respect to Defendant's first ground of error, Defendant alleges that the Magistrate Court erred in denying Defendant's Motion to Dismiss based upon the Defendant's

assertion that his arrest was unlawful inasmuch as the misdemeanor offense of domestic battery did not happen in the officer's presence and that there were no exigent circumstances present. The State asserts that the officer would have been remiss in his duty had he left the residence upon the victim's request and was justified under the community caretaker doctrine to enter the residence.

4. The West Virginia Supreme Court of Appeals has previously held that, "[s]earches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment and Article III, Section 6 of the West Virginia Constitution -subject only to a few specifically established and well-delineated exceptions. The exceptions are jealously and carefully drawn, and there must be a showing by those who seek exemption that the exigencies of the situation made that course imperative." Syllabus Point 1, *State v. Moore*, 165 W. Va. 837, 272 S.E.2d 804 (1980), *overruled on other grounds by State v. Julius*, 185 W.Va. 422, 408 S.E.2d 1 (1991)." The Court later recognized a particular exigency wherein it held that, "[a]lthough a search and seizure by police officers must ordinarily be predicated upon a written search warrant, a warrantless entry by police officers of a mobile home was proper under the 'emergency doctrine' exception to the warrant requirement, where the record indicated that, rather than being motivated by an intent to make an arrest or secure evidence, the police officers were attempting to locate an injured or deceased child, which child the officers had reason to believe was in the mobile home, because of information they received immediately prior to the entry." Syllabus point 2, *State v. Cecil*, 173 W.Va. 27, 311 S.E.2d 144 (1983).

5. Upon review of the record below, this Court finds this ground of appeal to be without merit. Defendant's assertion that exigent circumstances did not exist is complete fiction.

The officer was dispatched to the Defendant's home to check the situation because a caller reported arguing at the Rexrode residence. This was not a run of the mill well-check. Upon encountering Mrs. Rexrode, the officer observed her injury and did not believe her explanation for how the injury occurred. Moreover, the officer knew that the original call was for an argument and it is unlikely Mrs. Rexrode was arguing with herself, therefore the officer had reasonable suspicion to believe that there was at least one other individual at the residence whose physical condition was unknown. Mrs. Rexrode's insistence that the officer not enter the residence was likewise suspicious. The officer's entry of the home was therefore under exigent circumstances because the safety and well-being of the occupants was in doubt at the time of entry, the officer observed injuries on Mrs. Rexrode consistent with her being in an altercation, Mrs. Rexrode's explanation for the injury did not appear to the officer to be credible, and Mr. Rexrode's whereabouts were unknown to the officer at the time of entry into the home. Although the investigation concluded that the Defendant was the perpetrator, at the time the officer entered, he could have found a scene where the Defendant was injured or deceased. Accordingly, exigent circumstances existed for the warrantless entry into the Defendant's home.

6. Having found the entry into the home was lawful, the Court FINDS that the Defendant's second assignment of error is without merit and the evidence gathered against the Defendant relating to his domestic violence conviction was properly obtained.

7. The Court FINDS Defendant's third assignment of error to be without merit inasmuch as his complaints about Magistrate Feaster are without merit and Defendant fails to provide any evidence that the matters complained of had any impact on the jurors decision of this case.

8. The Court FINDS Defendant's fourth assignment of error to be without merit. Juror Ours' attorney-client relationship with Prosecutor Ours was twenty years prior to the trial and she was questioned as to whether she could be impartial. She answered that she could be impartial notwithstanding Prosecutor Ours' prior representation of her. Accordingly, there was no error in allowing her to remain on the jury panel.

9. The Court FINDS Defendant's fifth assignment of error is without merit. The 911 call which was the basis for the officer's interaction with the Defendant was not offered for the truth of the matter asserted and is an exception to the hearsay rule.

10. The Court FINDS Defendant's sixth assignment of error is without merit. Magistrate Feaster did contact Chief Judge Courier regarding the victim's refusal to submit to questioning through the assertion of her 5th Amendment Right against self-incrimination. Magistrate Feaster did not abdicate his role as presiding judge by doing same. Furthermore, Judge Courier is not, under the 21st Circuit's case load rotation, the appellate judge for criminal appeals. Magistrate Feaster did not violate the Code of Judicial Conduct and this assignment of error is without merit.

11. The Court FINDS Defendant's seventh assignment of error is without merit. Upon review of the transcript and record, it is obvious that the victim, Mrs. Rexrode, and Defendant had reconciled at the time of the trial. Mrs. Rexrode then became a hostile witness for the State. She likewise decided to plead the 5th Amendment to every question asked, even though nothing she was asked was incriminating *to her*. The assertion of her 5th Amendment right was a ruse to protect her abuser. The Magistrate instructed her to testify. Defendant cannot claim any constitutional error for a constitutional right a witness asserted. Therefore this assignment of error is without merit.

12. The Court FINDS Defendant's eighth assignment of error to be without merit. The Prosecutor's statement regarding what may happen to the victim if the Defendant was not convicted was supported, in part, by the victim's apology to the Defendant as she left the courtroom, in the presence of the jury, for testifying against him. The evidence clearly supported the State's contention that the victim was beaten by the Defendant and the victim's behavior at trial likewise showed her deference to the Defendant and her desire to avoid doing anything that would result in his conviction.

13. The Court FINDS Defendant's ninth assignment of error to be without merit. There was ample evidence to support the jury verdict.

14. The Court FINDS Defendant's tenth assignment of error to be without merit. Defendant received a very light sentence considering the physical injuries sustained by the victim so obviously whatever statement the Prosecutor made did not result in a harsher sentence for the Defendant.

15. The Court FINDS Defendant's eleventh assignment of error to be without merit. The Court has not found any error in the conduct of the trial, therefore, there was no cumulative error that merits reversal.

16. The Court FINDS Defendant's twelfth assignment of error requesting a reversal for unidentified errors to be without merit.

ACCORDINGLY, it is hereby ORDERED:

1. The Defendant's Petition for Appeal is DENIED as described herein and Defendant's objections to any adverse rulings are hereby SAVED.

2. The Defendant was previously sentenced by the Grant County Magistrate Court to serve 10 days in jail. The Defendant is hereby committed to the custody of the Sheriff of Grant County, West Virginia, and shall report directly to the Potomac Highlands Regional Jail no later than 9:00 am on Monday, June 4, 2018, and there to remain until he serves his full sentence.

3. The Circuit Clerk shall provide a copy of this Order to all counsel of record and to the Potomac Highlands Regional Jail.

ENTERED this 24 day of May 2018.



JUDGE