



UNDERAGE POSSESSION OF ALCOHOL AND WARRANTLESS HOME ENTRY



August 2010

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©2010 Brian S. Batterton, Attorney, Legal & Liability Risk Management Institute (llrmi.com), Law enforcement officers are frequently dispatched to “loud party” calls that often involve underage persons in possession of alcohol. When responding to such calls, officers must be mindful of the requirements of the *Fourth Amendment* when they decide what course of action to take upon their arrival. An examination of the case of *Georgia v. Ealum*ⁱ provides an excellent review for officers responding to underage party calls involving alcohol.

The facts of *Ealum*, taken directly from the case, are as follows:

During the late night hours of October 31, 2004, three law enforcement officers with the Lee County Sheriff's Department were at a gas station located on Highway 19 in Lee County. While at the station, the officers observed several people standing outside a trailer across the highway who were screaming and laughing. The officers decided to go over to the trailer and ask the individuals to quiet down in order to head off any noise disturbance complaint from the neighbors. Consequently, the officers got into their patrol vehicles and went over to the trailer.

When the officers arrived at the trailer, the individuals who had been standing outside all ran into the residence. Two of the officers proceeded up to the front door of the trailer. The renter of the trailer, defendant Linda Jo Ealum, came out onto the front steps to speak with the officers. The front door to the trailer remained open as she talked with them.

LG 2010 Legal Guide Reference

“Consent Home Searches”

- see “*IL v. Rodriguez*” p61
- see “*GA v. Randolph*” p62

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“Exigent Entry”

- see “*IL v. MacArthur; & MN v. Olson*,” p63
- see “*Brigham City UT v. Stuart*” p64
- see “*MI v. Fisher*” p65
- see “*Mincey v. AZ; & Flippo v. WV*” p66

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“Third Party Home - Entry”

- see “*Steagald v. U.S.*” p58

Note: Legal Guide Updated Annually

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From the vantage point where the officers were talking with Linda Jo, they could see inside the trailer through the front door. The officers claimed that they could smell alcohol emanating from the trailer, although they could not see any bottles or cans of alcoholic beverages. One of the officers later testified at the suppression hearing that he also saw a large group of “young people” in the house, several of whom appeared to be under 21 years of age and in various states of intoxication. None of the young people, however, appeared to be under 18 years of age. Based on these observations, the officer concluded that “it was obvious ... that there was an underage drinking party that was going on at the house.” Without obtaining a warrant, the officers then entered the residence through the open front door.

As the officers entered the trailer, one of them said, “Okay, you're all under arrest.” Approximately 15 people were found and detained in the trailer. Everyone was ordered to present their driver's licenses for inspection. The officers also performed alco-sensor tests, and those individuals who tested positive for alcohol and who were underage were formally arrested and taken to jail.

As these events transpired, defendant Susie Kalyn Ealum, who was Linda Jo's sister, came out onto the front porch and began arguing with one of the officers. According to the officers, she was “obviously underage” and smelled of alcohol, and so she was handcuffed and charged with possession of an alcoholic beverage by an underage person. Susie began struggling with the officers but was eventually placed in a patrol car.

At the same time, Linda Jo was screaming at the officers and would not get out of their way. After she demanded to speak with someone in charge, one of the officers escorted her across the yard to speak with the supervising officer at his patrol vehicle. While speaking with the officer, Linda Jo admitted that there were underage people inside the trailer who had been drinking but asked the officer to “look the other way.” The officer refused. Ultimately, Linda Jo was formally arrested and charged with furnishing alcohol to a minor, maintaining a disorderly house, and obstruction of an officer.ⁱⁱ

Ealum filed a motion to suppress arguing that the deputies' warrantless entry into her residence was unreasonable under the *Fourth Amendment*. The trial court agreed and granted the motion; the State appealed to the Court of Appeals of Georgia.

At the outset, the Court of Appeals noted the following important rule:

[E]ven if the officers had probable cause for the entry, warrantless intrusion of a person's home is prohibited by the *Fourth Amendment*, absent consent or a showing of exigent circumstances.ⁱⁱⁱ

At the motion to suppress, the court concluded, based upon deputies' testimony, that they did not have consent to enter Ealum's residence. Therefore, *the issues before the court were as follows:*

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(1) whether exigent circumstances existed to permit the warrantless entry into the trailer; (2) whether the observations of the law enforcement officers made outside the trailer subsequent to the entry should be excluded as fruit of the poisonous tree; and (3) whether the defendants acted belligerently and obstructed the officers in carrying out their duties such that these alleged criminal acts of obstructing law enforcement officers should purge the taint caused by the initial unlawful entry.

Issue 1

Did exigent circumstances exist to permit the warrantless entry into the trailer?

A. Exigent Circumstances – Protection from serious injury or death

As to the issue of exigent circumstances, the court noted

Exigent circumstances include emergency situations where the warrantless entry [is] justified to protect or preserve life or to avert serious injury.^{iv}

In *Ealum*, the court found that there was no testimony on the part of the deputies regarding the necessity to protect any of the occupants of the trailer from injury or death. In fact, there was testimony to the contrary in that one of the deputies testified that he “had no reason to believe anybody was in danger.”^v The court, in a footnote, gave some future guidance to officers as to what may qualify as an exigent circumstance at a party call. Specifically, the court stated

[N]othing in this opinion forecloses a finding of exigent circumstances in a future case where there is evidence that one or more underage partygoers are passed out from intoxication, are suffering from alcohol poisoning, or are attempting to leave the party in their vehicles while intoxicated, among other things.^{vi}

Thus, there was no evidence to support a finding of exigent circumstances to protect anyone in the trailer from danger.

B. Exigent Circumstances – Prevention of the Imminent Destruction of Evidence

Officers can enter a residence without consent and without a warrant when they have probable cause to believe that evidence is located in the residence and they have a reasonable belief that evidence is in imminent danger of being destroyed. The court stated

Another common example of an exigent circumstance is where contraband is in imminent danger of destruction if entry into the residence is not immediately effectuated.^{vii}

In *Ealum*, the court noted that there was no evidence the deputies observed any bottles, cups with alcohol or cans located inside or outside of the trailer. Furthermore, even if the deputies had made such observations the court, citing to precedent in Pennsylvania and Ohio, stated

[U]nlike a controlled substance, containers and cups containing alcohol are not a type of evidence that can be readily destroyed, as, for example, by flushing them down a drain or burning them.^{viii}

Additionally, in an underage possession of alcohol case, the State is not required to prove a particular level of intoxication, so there was no danger of evidence dissipating over the time that it would have taken to obtain a search warrant.^{ix}

Therefore, in light of the lack of evidence to support a finding of exigent circumstance, the court found that no exigent circumstance existed at the time of the entry to dispense with the warrant requirement.

Issue 2

Should the observations of the law enforcement officers made outside the trailer after the unlawful entry be excluded as fruit of the poisonous tree?

In order for the observations of the officers made after the unlawful entry to be admissible, these observations must not have been caused by the unlawful conduct. Here, the evidence shows that Susie Ealum exited the trailer to speak to the deputies in response to their entry into the trailer and after the deputies announced that the party goers were under arrest. As such, the observations of Susie must be suppressed since the observations are connected to the unlawful conduct.

With respect to incriminating statements made by Linda Jo Ealum, these were made while the officers were in the process of effecting the unlawful entry. Other incriminating statements made by Linda Jo were made while she was in a heated argument with the deputies' supervisor regarding the entry into the trailer. As such, the court held these statements were properly suppressed.

Issue 3

Did the defendant's actions (behaving belligerently and obstructing the officers in carrying out their duties) purge the taint caused by the initial unlawful entry?

The court stated

[U]nder Georgia law, a defendant's commission of a new crime in the presence of law enforcement can be sufficient to purge the taint of the prior illegality.^x

In *Ealum*, in order to purge the taint of the illegal entry, the State must show that the defendants committed a new crime. The crime that the state alleges was committed was that of "obstructing a law enforcement officer."^{xi} Under the obstruction statute, the State must prove that the defendant "have knowingly and willfully obstructed a law enforcement officer in the lawful discharge of his official duties."^{xii} The court then stated

An officer who carries out an unlawful entry into a residence or conducts an unlawful arrest is not lawfully discharging his duties, and a citizen who resists an officer under such circumstances is not guilty of obstruction.^{xiii}

Since the officers were not lawfully discharging their duties when making an unlawful entry, the State could not prove the “obstruction” charge. Therefore, the evidence was properly excluded.

In light of the fact that all issues were resolved in favor of the defendants, the judgment of the trial court was affirmed.

Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal advisor regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

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CITATIONS:

ⁱ 283 Ga. App. 799 (643 S.E. 2d 262) (2007)

ⁱⁱ *Id.* at 801

ⁱⁱⁱ *Id.* (quoting *Carranza v. State*, 266 Ga. 263, 264-265 (467 SE2d 315) (1996) citing *Steagald v. United States*, 451 U. S. 204, 211 (III) (101 S. Ct. 1642, 68 LE2d 38) (1981))

^{iv} *Id.* at 802 (quoting *Welchel v. State*, 255 Ga. App. 556, 559 (565 SE2d 870) (2002))

^v *Id.*

^{vi} *Id.* at fn. 4

^{vii} *Id.* at 802 (citing *Curry v. State*, 271 Ga. App. 672, 675 (2) (610 SE2d 635) (2005))

^{viii} *Id.* (citing *Pennsylvania v. Roland*, 637 A2d 269 (Pa. 1994). See also *State v. Davis*, 133 Ohio App. 3d 114, 726 [**266] NE2d 1092, 1096-1097 (Ohio Ct. App. 1999))

^{ix} *Id.*

^x *Id.* at 804-805 (citing *Faulkner v. State*, 277 Ga. App. 702, 705 (1) (627 SE2d 423) (2006); *State v. Stilley*, 261 Ga. App. 868, 870-871 (584 SE2d 9) (2003))

^{xi} See O.C.G.A. § 16-10-24(a)

^{xii} *Id.*

^{xiii} *Id.* at 805 (citing *Collins v. State*, 153 Ga. 95, 99 (8) (111 SE 733) (1922); *Shaw v. State*, 247 Ga. App. 867, 871 (2) (b) (545 SE2d 399) (2001); *Green v. State*, 240 Ga. App. 774, 775 (1) (525 SE2d 154) (1999); *Brown v. State*, 163 Ga. App. 209, 212 (4) (c) (294 SE2d 305) (1982))