

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

V.

JOHN MAZZURCO,
Defendant.

CASE NO.: 08-023678CF10A

JUDGE: JOHN J. MURPHY III

ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

THIS CAUSE came before the Court upon Defendant's Motion to Suppress on October 30, November 4, and November 5, 2008. This Court, having considered Defendant's motion, testimony of witnesses, oral argument of counsel and applicable law, finds as follows:

On December 12, 2008, Detective Loges, of the Broward Sheriff's Office, received information from a credible and proven confidential source that Defendant was selling cocaine from his residence at 2031 NE 53rd Street, Fort Lauderdale, Florida. Additionally, the tip specified the name, John Mazzurco that he was a white male; he owned or operated a white Kia automobile and a tag number for the Kia.

On December 12, 2008, pursuant to Sergeant Swisher's instruction, Detectives Mocerl and Aguilar along with other police officers responded to Defendant's residence and took up surveillance. A white Kia was observed in the driveway and Detective Mocerl confirmed the vehicle was registered to John Mazzurco. However, Michael Anthony Mazzurco testified he owned the white Kia automobile and it was registered at his address 2655 NE 11th Street, #701, Fort Lauderdale, Florida.

During surveillance, a white male and a white female are observed leaving Defendant's residence, entering into a white Mercedes automobile and driving off. The two persons leaving Defendant's residence are later identified as Defendant and Michele Nosky. While Detectives Mocerl and Aguilar continue their surveillance of Defendant's residence, Sergeant Swisher and other police officers follow Defendant and Michele Nosky as they leave Defendant's residence. Police conduct a traffic stop of the white Mercedes automobile; Defendant, who is driving, is arrested.

Sergeant Swisher then instructs Detectives Mocerri and Agullar to make contact with anyone at Defendant's residence. Detectives Mocerri and Agullar approach Defendant's residence knock on the front door and observe a white female later identified as Christina Mazzurco frantic inside the residence running from room to room. The detectives testified Christina Mazzurco was dressed; she testified she was undressed. Detectives peer into the residence and again knock on the door. Concerned that someone is attempting to break into the residence through a window, Christina Mazzurco calls Defendant, her father, on two occasions and is told on both occasions "don't answer the door". Christina Mazzurco's third call to Defendant went unanswered. Christina Mazzurco sits on the floor shaking. Shortly thereafter, she decides to get dressed and answer the door.

When Christina Mazzurco answers the door, Detectives Mocerri and Agullar identify themselves as police officers and ask if Defendant is inside the residence. Christina Mazzurco responds that Defendant is not at home. Detective Mocerri smells the odor of cannabis. Detectives Mocerri and Agullar enter the residence. According to Detectives Mocerri and Agullar, they obtain Christina Mazzurco's verbal consent before entering and searching Defendant's residence. Christina Mazzurco disputes same and asserts she neither consented to entry into nor search of Defendant's residence.

Prior to the search of Defendant's residence, Detective Mocerri did a protective sweep. During the protective sweep, Detective Mocerri observed in plain view what he believed was cocaine. Based upon Detective Mocerri's observation as well as other information a search warrant was obtained for Defendant's residence. During the search, cocaine, cannabis, oxycodone and firearms were discovered in Defendant's residence and seized. Based upon evidence seized at the residence, the Defendant was arrested for Armed Trafficking in Cocaine and Trafficking in Oxycodone. Defendant was later charged by Information with Trafficking in Cocaine, Trafficking in Oxycodone, Possession of Cannabis and Possession of Drug Paraphernalia.

Deputy Castro, a K-9 officer, was dispatched to the traffic stop and was later requested to take the statement of Christina Mazzurco and Michele Nosky. Deputy Castro maintains he took a single statement from Christina Mazzurco. Christina Mazzurco disputes same and testified two statements were taken and she believes her first statement erased. It is clear that Michele Nosky's statement was taken at 2:12 AM and Christina Mazzurco's statement was taken at 2:50 AM.

Michele Nosky is Defendant's girlfriend. She owns the white Mercedes automobile and accompanied Defendant when he was arrested. According to Michele Nosky, Defendant regularly drove the white Kia automobile and was intending to give it to his daughter Christina Mazzurco.

Jane Davis was called to testify as 911 records custodian for Broward Sheriff's Office. Jane Davis testified her office received timely requests for 911 records from defense counsel, but the records were inadvertently destroyed.

Defendant now moves to suppress all evidence obtained during the search claiming the search was unlawful. Defendant's central argument is that even though a search warrant was obtained for Defendant's residence, since the warrant was predicated upon an initial warrantless entry into the residence without consent and without exigent circumstances, the evidence seized must be suppressed. The Defendant also argues the search warrant was secured based upon an affidavit which lacked probable cause. This Court agrees in part, and finds that Defendant's motion should be granted.

As to Defendant's second argument, where one challenges a search conducted pursuant to a search warrant, the standard for review is whether the sworn facts in the affidavit establish a substantial basis for concluding that probable cause existed. *State v. Raab*, 920 So.2d 1175 (Fla 4th DCA 2006). The factual allegations made in the affidavit were sufficient to establish probable cause to search Defendant's residence.

However, as to Defendant's central argument, since the warrant was predicated upon an initial warrantless entry into the residence without consent and without exigent circumstances, the evidence seized must be suppressed. The search of the Defendant's residence rests solely upon Christina Mazzurco's alleged consent to enter the residence. On the issue of consent this Court finds Christina Mazzurco credible.


Detectives Mocerri and Aguilar did not have probable cause to enter and search Defendant's residence until after Detective Mocerri's entry and observation of cocaine in plain view during the protective sweep. It is well established that a search conducted pursuant to valid consent is a recognized exception to the requirements of probable cause and a search warrant, *Schneckloth v. Bustamante*, 412 U.S. 218, (1973). A question of whether consent to a search was voluntary or was the product of duress or coercion is a question of fact to be determined from the totality of all the circumstances.

Here, there is evidence of coercive tactics. Detectives Mocerri and Aguilar knocked on the door, peered into Christina Mazzurco bedroom windows at night while she was dressing. Detectives Mocerri and Aguilar entered the residence, detained her until a search warrant was obtained and obtained her statement at 2:50 AM in a vehicle occupied by multiple officers. Christina Mazzurco was a newcomer to the law, twenty one years of age and never advised she had a right to refuse entry. It is the State's burden to establish consent. The State failed to establish valid consent.

Accordingly, it is hereby;

ORDERED AND ADJUDGED that Defendant's Motion to Suppress is **GRANTED**.

DONE AND ORDERED on this 10 day of December 2009, in Chambers, Fort Lauderdale, Broward County, Florida.



JOHN J. MURPHY, III
CIRCUIT COURT JUDGE
08-023678CF10A

Copies furnished:
Gary Ostrow, Attorney for the Defendant
Antonya Johnson, Assistant State Attorney