

**ENTRY ORDER**

-SUPREME COURT DOCKET NO. 2007-470

JUNE TERM, 2008

|                  |   |                            |
|------------------|---|----------------------------|
| State of Vermont | } | APPEALED FROM:             |
|                  | } |                            |
| v.               | } | District Court of Vermont, |
|                  | } | Unit No. 1, Orange Circuit |
|                  | } |                            |
| Alan Charland    | } | DOCKET NO. 436-11-06 Oecr  |

Trial Judge: M. Patricia Zimmerman

In the above-entitled cause, the Clerk will enter:

Defendant appeals from his conditional guilty plea to driving under the influence (DUI), third offense. The record indicates that the police entered defendant's home without a warrant and arrested him for DUI. Defendant filed a motion to suppress, asking the court to declare unlawful the warrantless entry into his home, and to suppress his arrest and all evidence obtained subsequent to his arrest. He also filed a motion to dismiss, asserting that the State had no evidence to show that he was operating the vehicle on the evening in question. The court denied both motions, and defendant challenges these rulings on appeal. The State agrees that the court's ruling on the motion to suppress should be reversed.

First, we affirm the trial court's ruling that defendant was not entitled to dismissal under Vermont Rule of Criminal Procedure 12(d)(1). As the trial court found, defendant admitted to police, prior to his arrest, that he had operated the car and driven it into a ditch. A witness observed the operator of this vehicle, who was obviously intoxicated, leaving the scene of the accident. The officers observed additional signs that defendant was intoxicated prior to entering defendant's home. Defendant was thus not entitled to dismissal on the grounds he identified below. See State v. Free, 170 Vt. 605, 605-606 (2000) (in reviewing a V.R.Cr.P. 12(d) motion to dismiss for lack of a prima facie case, the Court views the evidence in the light most favorable to the State, while excluding modifying evidence, to determine if "State has produced evidence fairly and reasonably tending to show the defendant guilty beyond a reasonable doubt" (quotation omitted)). Second, we agree with defendant and with the State, however, that the court's ruling on the motion to suppress must be reversed in light of the police officers' unlawful warrantless entry into defendant's home. See State v. Petruccelli, 170 Vt. 51, 61-62, (1999) (presumption of unreasonableness attaches to all warrantless home entries, and presumption can be overcome only where government proves existence of sufficient exigent circumstances).

Affirmed in part, and reversed and remanded in part.

BY THE COURT:

\_\_\_\_\_  
John A. Dooley, Associate Justice

\_\_\_\_\_  
Denise R. Johnson, Associate Justice

\_\_\_\_\_  
Brian L. Burgess, Associate Justice