



Filed in District Court
State of Minnesota
Dated 4-7-19
DISTRICT COURT

STATE OF MINNESOTA

COUNTY OF WRIGHT

TENTH JUDICIAL DISTRICT



Court File No.:
Case Type: Civil- Implied Consent

Petitioner,

v.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

Commissioner of Public Safety,

Respondent.

The above-entitled matter came before the Honorable Judge of District Court, on December 17, 2018, at the Wright County Courthouse, Buffalo, Minnesota, for an Implied Consent Hearing. Attorney Daniel J. Koewler appeared on behalf of Petitioner Assistant Attorney General appeared on behalf of Respondent, Commissioner of Public Safety.

The sole issue before this Court is whether a warrantless entry into his hosts' home violated Petitioner's constitutional rights. Petitioner waived all other issues. At the hearing, the Court heard testimony from Deputy and D.H., a co-owner of the home. The Court also received Exhibit 1, a squad video of this incident. At the conclusion of the hearing, the Court granted leave to submit post-hearing briefs.

Petitioner asserts in his brief that he was an overnight guest and, as a result, had a reasonable expectation of privacy in the home at the time of entry by law enforcement. Petitioner asks this Court to rescind his license revocation as a result of Deputy unconstitutional entry.

Respondent contends that the record is unclear as to whether Petitioner was an overnight guest. Respondent further argues that even if Petitioner was an overnight guest, law enforcement lawfully entered the home under the "hot pursuit" doctrine. This matter was taken under advisement on January 28, 2019.

Based on the legal memoranda submitted by Counsel and the files, records, and proceedings herein, the Court makes the following:

[REDACTED]

FINDINGS OF FACT

1. On August 18, 2018, Wright County Dispatch received a report from a concerned citizen of erratic operation of a motorcycle in the citizen's neighborhood. Deputy [REDACTED], of the Wright County Sheriff's Department, responded to the citizen's residence. Upon his arrival, Deputy [REDACTED] viewed a video recorded on the concerned citizen's cellphone which showed a person in a black shirt and blue pants driving a blue motorcycle erratically.
2. The concerned citizen pointed to the house, later identified as the home of T.H. and D.H., s/he believed the driver of the motorcycle was located. Deputy [REDACTED] and his partner proceeded to the home identified by the citizen where they encountered T.H., D.H., and Petitioner [REDACTED] in the garage.
3. Petitioner had been invited over earlier to hang out at T.H. and D.H.'s home. D.H. testified that Petitioner was going to spend the night due to his level of intoxication. Petitioner did not bring any clothes or toiletries with him.
4. Approximately fifteen minutes after dispatch learned of the incident, Deputy [REDACTED] and his partner asked to speak with the three individuals in the garage as the officers stood at the threshold of the garage. Petitioner and T.H. agreed and the officers entered without objection.
5. Deputy [REDACTED] observed Petitioner wearing clothes similar to the person in the cellphone video driving the motorcycle. He further observed Petitioner standing near a blue motorcycle swaying back and forth. Deputy [REDACTED] proceeded to speak with Petitioner.
6. Deputy [REDACTED] noted that Petitioner was exhibiting signs of intoxication during their conversation. He specifically found that Petitioner had bloodshot and watery eyes, spoke with slurred speech, and emitted a strong odor of alcohol.
7. Petitioner initially maintained that the blue motorcycle was inoperable, but later professed that the motorcycle did in fact run. Petitioner, however, stated that he had not operated the motorcycle that day. Deputy [REDACTED] inspected the muffler of the blue motorcycle and discovered it was hot to the touch.
8. Deputy [REDACTED] asked Petitioner for his driver's license. Petitioner claimed that he did not have his identification on his person. Deputy [REDACTED] and his partner went back to their squad



car to run Petitioner's name through the law enforcement database. Petitioner and D.H. went inside the home. After finishing at their squad car, the officers saw the garage door closing as the officers walked back to the house.

9. Deputy [REDACTED] hurried and placed his foot in the zone of the garage door safety sensor to trigger the door to open. Deputy [REDACTED] went inside the garage and tried to enter the house. T.H., who was still in garage, told Deputy [REDACTED] that he refused to allow entry without a warrant. T.H. continued to hold the door, refusing Deputy [REDACTED] Access.
10. Deputy [REDACTED] demanded that he be allowed to enter the home to apprehend Petitioner. He told T.H. that T.H. was obstructing his investigation of driving while intoxicated ("DWI"). Deputy [REDACTED] detained T.H. with handcuffs. Deputy [REDACTED] testified that he did not believe he had probable cause to arrest Petitioner while he attempted to gain access to the home.
11. D.H. opened the door to the house. Officers ordered her to step out to the garage. Deputy [REDACTED] entered the home through the door.
12. Deputy [REDACTED] spoke with Petitioner inside the house. Petitioner refused Deputy [REDACTED] request to perform a field sobriety and take a preliminary breath test. Deputy [REDACTED] placed Petitioner under arrest for suspicion of DWI. Petitioner refused to perform an evidentiary breath test. The Commissioner of Public Safety, Respondent, revoked Petitioner's driver's license as a result of Petitioner's refusals.

CONCLUSIONS OF LAW

1. "The implied-consent law states that an officer 'may' require a test if he or she has probable cause to believe a person was driving while impaired and the person has been placed under arrest." *State v. Wood*, 922 N.W.2d 209, 216 (Minn. Ct. App. 2019) (quoting Minn. Stat. § 169A.51, subd. 1(b)(1)). If the person refuses to submit to chemical testing, "the commissioner of public safety will temporarily revoke the person's driver's license." *Stevens v. Comm'r of Pub. Safety*, 850 N.W.2d 717, 723 (Minn. Ct. App. 2014) (citing Minn. Stat. § 169A.52, subd. 3.). "A driver whose license has been revoked under the implied-consent law may petition for judicial review of the revocation under Minn. Stat. § 169A.53 []." *Mortenson v. Comm'r of Pub. Safety*, 918 N.W.2d 573, 575 (Minn. Ct. App. 2018).
2. Any evidence obtained in violation of the Fourth Amendment's prohibition against

[REDACTED]

unreasonable searches and seizures is inadmissible. *Tracht v. Comm'r of Pub. Safety*, 592 N.W.2d 863, 865 (Minn. Ct. App. 1999) (“Generally, the exclusionary rule prohibits the admission of evidence discovered during an illegal search.”). “The purpose of suppression is not to vindicate a defendant’s rights nor to affirm the integrity of the courts, but to deter police from engaging in illegal searches.” *State v. Cook*, 498 N.W.2d 17, 20 (Minn. 1993).

I. Expectation of Privacy Analysis

3. Whether Petitioner can challenge Deputy [REDACTED] warrantless entry into T.H. and D.H.’s home as a social guest is not a question of standing. *State v. Stephenson*, 760 N.W.2d 22, 25–26 (Minn. Ct. App. 2009). Rather, the inquiry concerns whether Petitioner exhibited a subjective expectation of privacy in T.H. and D.H.’s home that “is one that society would recognize as reasonable.” *Id.* at 26.
4. The Minnesota Supreme Court has recognized that a short-term social guest has a reasonable expectation of privacy in their host’s home “and therefore can claim the protections of the Fourth Amendment.” *In re Welfare of B.R.K.*, 658 N.W.2d 565, 576 (Minn.2003).
5. The record clearly establishes that Petitioner exhibited a “subjective expectation of privacy when he sought to conceal his presence in the home, [and] that expectation was reasonable because he had a previous social relationship with the host, and remained at the home with the host’s consent for a purely social gathering.” *State v. Sletten*, 664 N.W.2d 870, 879 (Minn. Ct. App. 2003) (describing the holding in *B.R.K.*). Petitioner moreover authorized the officers to step inside the garage to speak, along with one of the homeowners. *Cf. State v. Stewart*, No. A16-1357, 2017 WL 958475, at *3 (Minn. Ct. App. Mar. 13, 2017) (“Stewart authorized the officers to search her bedroom, demonstrating control that is consistent with a subjective expectation of privacy.”).¹
6. Petitioner meets the requirements of a short-term social guest and, therefore, can invoke his constitutional right against unreasonable searches and seizures. *B.R.K.*, 658 N.W.2d at 576.

¹ This Court recognizes that unpublished opinions of the Minnesota Court of Appeals are not precedential but may be persuasive. See e.g., *Donnelly Brothers Constr. Co., Inc. v. State Auto Prop. And Cas. Ins. Co.*, 759 N.W.2d 651, 659 (Minn. Ct. App. 2009) (citing Minn. Stat. § 480A.08). Unpublished opinions cited in this Order are cited for their persuasive value rather than as precedent.



II. Illegal Entry of Home to Effect an Arrest

7. “The Fourth Amendment of the U.S. Constitution and article I, section 10 of the Minnesota Constitution protect individuals from unreasonable searches and seizures. [] The warrantless search of a person’s home is presumptively unreasonable. [] Evidence obtained from an illegal search is also inadmissible as ‘fruit of the poisonous tree.’ [] In addition to physical evidence, verbal evidence which derives so immediately from an unlawful entry and an unauthorized arrest is no less the fruit of official illegality than the more common tangible fruits of the unwarranted intrusion. []” *State v. McClain*, 862 N.W.2d 717, 720–21 (Minn. Ct. App. 2015) (citations and quotations omitted).
8. Deputy ██████ second entrance into the garage was a warrantless search. Deputy ██████ previous invitation to enter the garage was rescinded prior to his decision to activate the garage door safety sensor with his foot. *Haase v. Comm’r of Pub. Safety*, 679 N.W.2d 743, 747 (Minn. Ct. App. 2004) (“The act of closing the door forecloses any reasonable conclusion that the garage was impliedly open.”); *State v. Chute*, 908 N.W.2d 578, 586 (Minn. 2018) (“The scope of the implied license is limited not only to a particular area but also to a specific purpose.” (quotation omitted)). Deputy ██████ did not have an implied license to subsequently enter the garage. *Id.* at 746.
9. A visitor in similar circumstances would have no right to do the same, nor could it be asserted that such conduct would be expected by a reasonable visitor. *Chute*, 908 N.W.2d at 588 (“[T]he officer’s implied license to enter [respondent’s] property was limited to what ‘any private citizen might do’ when visiting another’s property.”); *Haase*, 679 N.W.2d at 747 (“To conclude that the garage was impliedly open, we must be persuaded that the officer was in a place that an ordinary visitor would be expected to go.”).
10. Deputy ██████ physical intrusion into the home was accordingly unreasonable. *See B.R.K.*, 658 N.W.2d at 576; *Haase*, 679 N.W.2d at 747; *Cf. Hoefl v. Comm’r of Pub. Safety*, No. A12-1928, 2013 WI. 2927158, at *4 (Minn. Ct. App. June 17, 2013) (“We agree with petitioner that, under *Haase*, Deputy Hunt violated the Fourth Amendment when he used his foot to stop the garage door from closing.”). Deputy ██████ warrantless entry into the home was equally unreasonable. *Id.*



III. Exigent Circumstances Exception Does Not Apply

11. “A warrantless arrest by police in a home or similar area in which a suspect has a privacy interest is *per se* unreasonable unless exigent circumstances exist.” *State v. Gray*, 456 N.W.2d 251, 255–56 (Minn. 1990). “If warrantless entry is made without probable cause and exigent circumstances, its fruit must be suppressed.” *State v. Morin*, 736 N.W.2d 691, 695 (Minn. Ct. App. 2007). “The state bears the burden of establishing at least one exception to the warrant requirement.” *State v. Ture*, 632 N.W.2d 621, 627 (Minn.2001).
12. “Exigent circumstances exist in cases of hot pursuit, danger to human life, imminent destruction of evidence, and possible flight of the suspect.” *State v. Paul*, 548 N.W.2d 260, 264 (Minn.1996) (citations omitted). “The seriousness of the offense does not itself create exigency . . . and does not reduce the quantum of evidence the State must present to prove exigent circumstances.” *State v. Stavish*, 868 N.W.2d 670, 680 (Minn. 2015).
13. Respondent asserts that the entry necessary under the “hot pursuit” exception. Respondent argues in support of his assertion that: (1) the garage was a public place; (2) Deputy ██████ obtained probable cause to believe Petitioner drove the motorcycle while intoxicated prior to the entry; (3) Deputy ██████ seized Respondent when he told Respondent to wait while he and his partner went to the squad car; (4) the closing of the garage door was an attempt to evade an arrest set in motion in a public place. Nevertheless, Respondent’s contentions find no support in the law.
14. First, the garage here was not a public place. *See Collins v. Virginia*, 138 S. Ct. 1663 (2018) (“So long as it is curtilage, a parking patio or carport into which an officer can see from the street is no less entitled to protection from trespass and a warrantless search than a fully enclosed garage”); *see also Haase*, 679 N.W.2d at 747. This is evidenced by Deputy ██████ and his partner’s initial request to enter the garage as they stood at the threshold.
15. Next, the record is at best unclear on whether petitioner was seized prior Deputy ██████ leaving the garage. The facts undisputedly show that Deputy ██████ and his partner left the garage without physically restraining T.H., D.H., or Petitioner. Considering the circumstances of the encounter, a reasonable person would have felt free to leave after the officers exited the garage. *Cf. Illi v. Comm’r of Pub. Safety*, 873 N.W.2d 149, 151–52 (Minn.

[REDACTED]

Ct. App. 2015) (holding appellant was not seized where officer approached appellant in her vehicle, did not block appellant's vehicle, never activated emergency lights, and did not give appellant a verbal command).

16. The "hot pursuit" doctrine is additionally not applicable because the facts here are more analogous to a situation where an officer is still investigating whether a crime was committed. *Paul*, 548 N.W.2d at 268 (Minn. 1996) ("Our decision today should not be read, however, as providing a green light for officers to make a warrantless home arrest whenever evidence is needed in a drunk driving investigation."). Deputy [REDACTED] had an opportunity to arrest Petitioner prior to leaving the garage. He and his partner instead went back to their squad car to investigate Petitioner's background. *Steinbrenner v. Comm'r of Pub. Safety*, 413 N.W.2d 557, 559 (Minn. Ct. App. 1987) ("In cases in which a warrantless entry into the home is made to arrest a fleeing suspect, the officers often will not have the opportunity to tell the suspect that he is under arrest.").
17. Lastly, the application of "hot pursuit" doctrine here is inapposite because Deputy [REDACTED] never pursued, chased, or tracked Petitioner at any point outside of the constitutionally protected area of the home. *See Paul*, 548 N.W.2d at 268 (Minn. 1996) ("[T]he present case is distinguishable from *Welsh* because . . . *Welsh* did not involve the hot pursuit of a suspect because there was no immediate or continuous pursuit of the petitioner from the scene of a crime." (quotation omitted)); *see also Steinbrenner*, 413 N.W.2d at 559 ("In this case, the driver had been stopped on a public street for erratic driving . . . Appellant left the squad car and the officer pursued him.").
18. A finding of probable cause is not required because Respondent has failed to meet their burden of showing an exigent circumstance. In any event, the Court finds Deputy [REDACTED] testimony on the existence of probable cause to be persuasive and deferential in light of the record. *Reeves v. Comm'r of Pub. Safety*, 751 N.W.2d 117, 120 (Minn. Ct. App. 2008) ("[R]eviewing courts should pay great deference to an officer's determination of probable cause.").
19. The Court concludes that Deputy [REDACTED] lacked probable cause and an exigent circumstance before entering the home without a warrant and, consequently, the evidence gathered after his intrusion, including all statements by Petitioner, are inadmissible. For that reason, Petitioner's license was erroneously revoked.



ORDER

1. Petitioner's request to rescind the driver's license revocation is **GRANTED**.

Dated: April 7, 2019

