STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0100

Daniel Sean Wicklund, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed October 1, 2012
Affirmed
Harten, Judge*

Redwood County District Court
File No. 64-CV-11-702

Frank F. Munshower, Jr., Estebo, Frank, Gilk & Munshower, Ltd., Redwood Falls, Minnesota (for appellant)

Lori Swanson, Attorney General, Paul R. Kempainen, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and Harten, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

HARTEN, Judge

Appellant challenges the revocation of his driver's license, arguing that his girlfriend did not have apparent authority to consent to a police chief's entry into appellant's apartment and that a sheriff's deputy lacked probable cause to arrest appellant. Because the police chief reasonably believed that appellant's girlfriend had authority to consent to his entry and the deputy had probable cause to arrest appellant, we affirm.

FACTS

At about 5:17 p.m. on 13 July 2011, a fair-weather day, a sheriff's deputy heard that a single-vehicle crash had occurred north of the city of Morgan. The deputy drove to the scene of the accident, learning en route that the accident was a rollover, that no one was found at the scene, that the driver had been picked up by a car with an identified license plate, and that this car had headed south.

When the deputy arrived at the crash scene, he found extensive damage to the vehicle, which had both its airbags deployed, and damage to a cornfield. Given the dry road conditions and the damage to the vehicle, the deputy was concerned that the driver might have been driving while impaired or might be severely injured. The deputy checked the vehicle's registration and found that it was owned by appellant, a resident of Morgan. The deputy then called the Morgan chief of police and asked him to go to appellant's residence to check on him, while the deputy finished at the crash scene.

A car displaying license plates identifying it as the car that had picked up appellant then approached the crash scene, and the officers flagged it down. The driver of the flagged vehicle said that she had given the driver of the crashed vehicle a ride home, that he was very shaken up, and that he did not want her to call 911. She did not know if he had been drinking.

The Morgan police chief went to appellant's house to check on him. He could see appellant walking around inside the house, but appellant did not respond when the chief knocked at the door. Appellant's girlfriend, K.J., then arrived with one of their children. The chief believed that she and appellant were living together at the house, to which she had a key. The chief told her about the crash and asked if he could go inside to check on appellant. She said, "That's fine," opened the door, and entered the house with the chief.

The chief went to the basement, saw appellant, and asked if he was all right. Appellant answered that he had contacted his attorney, who had told him not to talk to the police, and asked the chief to leave the house. The chief noticed the odor of alcohol coming from appellant.

The deputy then arrived at the house and also noticed the odor of alcohol, even before speaking to appellant. Like the chief, he asked if appellant was all right and heard that appellant's attorney had told appellant not to talk to the police. The deputy, having noticed that appellant's speech was slurred and that he was swaying back and forth, suspected appellant of DWI, leaving the scene of an accident, and obstruction of legal process and arrested him. After the arrest, when appellant was outside, the deputy noticed that appellant's eyes were watery and bloodshot and asked if he was injured.

Appellant replied that he was not sure, whereupon the deputy called an ambulance. Appellant was then transported to the jail, where he agreed to a blood test. On the basis of that test, his driving license was revoked.

Appellant claims that the warrantless entry violated his Fourth Amendment rights and that the deputy arrested him without probable cause.

D E C I S I O N

1. Entry of Appellant's Home

This court applies a clear-error standard to its review of the district court's findings of fact. *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006). Whether a person with valid authority consented to a search is a factual finding that we will not disturb unless it is clearly erroneous. *State v. Miranda*, 622 N.W.2d 353, 358 (Minn. App. 2001). When a district court's factual findings are based on credibility determinations, they are unlikely to be overturned as clearly erroneous. *See Hasnudeen v. Onan Corp*., 552 N.W.2d 555, 557 (Minn. 1996) (citing Minn. R. Civ. P. 52.01 for the proposition that, when a matter depends largely on the credibility of the witnesses and the weight, if any, to be given their testimony, a reviewing court cannot conclude that the findings are clearly erroneous).

The district court found that "[b]ecause the officers in this case had [K.J.'s] consent to enter the apartment, no warrant or probable cause was required. Therefore, the entry was lawful." A warrantless, nonconsensual intrusion into a suspect's dwelling is presumptively unreasonable and a violation of the Fourth Amendment. *State v. Thompson*, 578 N.W.2d 734, 740 (Minn. 1998).

> [C]onsent to entry is a well recognized exception to the warrant requirement. Valid consent for police entry of a dwelling may be given by a third party possessing common authority over the premises. Where common authority does not actually exist, consent to entry is still valid where, under an objective standard, an officer reasonably believes the third party has authority over the premises and could give consent to enter. . . .
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> Our initial inquiry then, is whether there was a sufficient objective basis for the officers to believe the person admitting them had authority to consent to their entry.

Id. (citations omitted).

Whether the person admitting the officers had actual authority to admit them is not dispositive. *See State v. Licari*, 659 N.W.2d 243, 252 (Minn. 2003) ("Under some circumstances, police may rely on the consent to search given by a third party who has no actual authority over the premises searched."). Here, the district court "[did] not know whether the individual suspected as being [appellant's] girlfriend [K.J.] had actual authority to allow law enforcement into the residence" but concluded "that she clearly had apparent authority." The district court found that:

> 11. . . . [K.J.,] a person [the police chief] believed was [appellant's] girlfriend, fiancée or "significant other" arrived [at appellant's residence]; [the police chief] believed that she also resided at the residence; specifically, while [the police chief] had been involved in an incident roughly 30 days earlier when it appeared that [appellant] and this individual were splitting up, [the police chief] had seen this individual at the residence since that date, and [he] was aware that this individual and [appellant] have at least one child in common.
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> 12. [The police chief] told that individual that he thought [appellant] had been in an accident, so [the police chief] wanted to see if [appellant] was all right; that individual said that was fine and she let [the police chief] into the residence.

The chief's testimony supports these findings. When asked what happened while he was at appellant's residence, he said, "[A]ppellant's . . . I'm not sure what, significant other [K.J.], showed up. . . . I asked her . . . 'Would you mind to let us in to go check on [appellant]?' She said, 'Yes, that's fine.' She let us into her house." When asked if he knew who the person was, the chief answered, "Yes, I do, I've dealt with her [K.J.] as well [as with appellant.]" When asked if K.J. was living at appellant's residence, the chief answered, "Yes." When asked "[I]s that the reason why you asked her . . . if you could get in?," he again answered, "Yes." When asked what she said in response to his request, the chief answered, "I said, '[Appellant] may have been in a vehicle rollover . . . I'd like to go in and check on him to make sure he is all right,' and she said, 'That's fine.' And she opened the door and let us in." When asked what his "main concern" was when he entered the house and found appellant, the chief said, "Just to make sure [appellant] was okay from that accident." When asked if K.J. said anything "about not wanting you in the house," the chief answered, "No." When asked what his understanding was, on the day of the accident, as to whether K.J. lived in the house, the chief answered, "She drove up in her vehicle and I assumed that she still lived there, come in – she has kids – they have kids together, and she come (sic) into the house. She had one of their kids with her then, I believe."

The district court did not clearly err in finding that the chief reasonably believed appellant's significant other had authority to let him enter the residence. If K.J. did not have actual authority over the premises, it was a reasonable mistake of fact for the chief, based on his knowledge of the relationship and K.J.'s arrival at the residence, to believe

she did. *See Licari*, 659 N.W.2d at 254 (holding that searches based on "reasonable mistakes of fact are unobjectionable" but searches based on mistakes of law are not). Accordingly, the chief's entry into appellant's residence falls under the consent exception to the warrant requirement.

2. Probable Cause

Whether undisputed facts establish probable cause is a question of law. *Shane v. Comm'r of Pub. Safety*, 587 N.W.2d 639, 641 (Minn. 1998). We apply a de novo standard in reviewing the district court's determinations of law. *Bourke*, 718 N.W.2d at 927.

> Probable cause exists where all the facts and circumstances would warrant a cautious person to believe that the suspect was driving or operating a vehicle while under the influence. Probable cause is evaluated from the point of view of a prudent and cautious police officer on the scene at the time of the arrest. In reviewing an officer's actions, the trial court should consider the totality of the circumstances and should remember that trained law-enforcement officers are permitted to make inferences and deductions that might well elude an untrained person. Great deference should be paid to the officer's experience and judgment. A determination of probable cause is a mixed question of fact and law. Once the facts have been found the court must apply the law to determine if probable cause exists.
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> An officer need not personally observe the defendant in the act of driving or operating the vehicle to request a test to determine the alcoholic content of his blood.

Johnson v. Comm'r of Pub. Safety, 366 N.W.2d 347, 350 (Minn. App. 1985) (quotations and citations omitted).

The district court concluded that law enforcement had probable cause to arrest appellant for DWI because, by the time appellant asked the chief to leave the house, the investigating officers knew that:

> (1) [appellant's] vehicle had been in a single-car rollover, in which the vehicle was totaled; (2) the driving conditions were fine, as it was light outside and the road was dry; (3) the driver had been picked up by someone else [who] drove the driver to his residence in Morgan; (4) [appellant] was the owner of the vehicle, and his residence was in Morgan; (5) [the police chief] smelled alcohol when he first spoke with [appellant] in his basement.[1]

This information sufficiently established probable cause for two reasons. First, the odor of alcohol by itself is probable cause for an officer to believe an individual is under the influence of alcohol. *See State v. Kier*, 678 N.W.2d 672, 678 (Minn. App. 2004) (holding that a police officer "needs only one objective indication of intoxication to constitute probable cause to believe a person is under the influence"). Second, the combination of the odor of alcohol and a serious single-car accident unrelated to weather or any other apparent cause has been held to indicate probable cause for a DWI arrest. *See Heuton v. Comm'r of Pub. Safety*, 541 N.W.2d 361, 361 (Minn. App. 1995) ("The officer had probable cause to believe [an individual] had been driving while under the influence of alcohol where [he] was involved in a serious single-vehicle accident in the late afternoon on a clear, dry day, and a paramedic smelled the odor of alcohol on [his]

[1] The district court also noted that, before appellant left his house, the deputy "actually arrested [appellant] for obstructing legal process, and an individual cannot be arrested for obstructing legal process in these circumstances." But, contrary to appellant's argument, the fact that he should not have been arrested for obstructing legal process does not mean he could not be arrested for DWI.

breath."); *see also Eggersgluss v. Comm'r of Pub. Safety*, 393 N.W.2d 183, 185 (Minn. 1986) (totality of circumstances, including passenger reported drinking and one-car rollover at 4:30 a.m. supported probable cause).

The district court's findings of fact were not clearly erroneous, and the district court correctly applied the law to conclude that the deputy had probable cause to arrest appellant for DWI.

Affirmed.