STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1899

Todd Larry Tennin, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed June 16, 2014
Affirmed
Reyes, Judge

Hennepin County District Court
File No. 27CR0960594

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Bjorkman, Judge; and Reyes, Judge.

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

REYES, Judge

In this appeal from the denial of his petition for postconviction relief, appellant challenges his conviction of being a prohibited person in possession of a firearm, arguing

that the district court erred when it denied his pretrial motion to suppress evidence. We affirm.

FACTS

On the night of December 9, 2009, at 9:55 p.m., Minneapolis police received numerous calls from residents reporting multiple gunshots in and around the 3300 block of Russell Avenue North, which is known as an area of high crime and gang-related violence. Callers described the suspects as two black youths without winter coats, who shot a gun in the street before running into the house located at 3343 Russell Avenue North.

Two officers arrived at the house at 10:03 p.m. and called for backup. They observed that the back door was partially open and heard several dogs barking and voices inside. Minutes later, after backup had arrived and a perimeter around the house had been secured, the officers announced their presence and entered the house through the back door with their weapons drawn. They found several people inside, including appellant Todd Tennin, and ordered them to sit on the couch with their hands visible. Tennin, who was a guest at the house, was the only adult male in the house. The officers conducted a protective sweep of the house and found a semi-automatic handgun lying in plain view on a couch in the basement. When asked, none of the occupants of the house claimed knowledge or ownership of the gun.

Police interviewed the occupants separately, and an officer took Tennin outside to a squad car for identification. After releasing Tennin, who went back into the house, the officer was then alerted to a neighbor who had witnessed the shooting. The neighbor

identified Tennin as one of the shooters based on his physical appearance and clothing. The officer returned to the house and arrested Tennin.

The state charged Tennin with one count of being a prohibited person in possession of a firearm. Tennin filed a motion to suppress the evidence, arguing that the police entered the house unlawfully. The district court denied Tennin's motion, and after a jury trial, he was found guilty and sentenced to 60 months in prison. Tennin filed a pro se direct appeal of his conviction, which this court denied because of filing deficiencies. In February 2013, Tennin petitioned for postconviction relief, seeking reversal of the district court's denial of the pretrial suppression motion. The postconviction court denied his petition, and this appeal followed.

D E C I S I O N

I. Standard of review

In reviewing a postconviction court's decision to grant or deny relief, issues of law are reviewed de novo, and issues of fact are reviewed for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). "When reviewing a district court's pretrial order on a motion to suppress evidence, we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotations omitted). "Unlike cases involving searches conducted pursuant to a warrant, we do conduct a de novo review of probable cause determinations made in connection with warrantless searches." *State v. Rochefort*, 631 N.W.2d 802, 805 (Minn. 2001) (emphasis and citation omitted).

II. Probable cause

Tennin first argues that the police did not have probable cause to believe that the suspects were in the house.[1] This claim is without merit.

The United States and Minnesota Constitutions protect individuals from unreasonable searches and seizures by police. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Generally, warrantless searches "are per se unreasonable under the Fourth Amendment–subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967). And generally, evidence that is unconstitutionally seized must be suppressed. *State v. Jackson*, 742 N.W.2d 163, 177-78 (Minn. 2007). "To justify a warrantless entry and search of a person's home to make a felony arrest the state must show either consent or probable cause and exigent circumstances." *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992). Probable cause depends on whether "a person of ordinary care and prudence [would] entertain an honest and strong suspicion that a crime has been committed," which is a "flexible common-sense" standard. *State v. Skoog*, 351 N.W.2d 380, 381 (Minn. App. 1984) (quotations omitted) (alteration in original). "The existence

[1] Tennin was a guest in the house, but the record does not establish the nature of his occupancy. As a threshold matter, the issue of whether Tennin even had a reasonable expectation of privacy to the house and thereby had standing to challenge its warrantless entry by the officers was neither argued to the district court nor was it briefed on appeal. *But see In re Welfare of B.R.K.*, 658 N.W.2d 565, 578 (Minn. 2003) (holding that, under the Minnesota Constitution, a "social guest" is no different than an overnight guest, who has standing to challenge the search of a dwelling). This issue is waived as a result. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

of probable cause depends on the facts of each individual case." *State v. Riley*, 568 N.W.2d 518, 523 (Minn. 1997) (quotation omitted).

Here, the record establishes that officers responded to several callers' reports of multiple shots in a residential neighborhood. Witnesses described the suspects as having run into the house located at 3343 Russell Avenue North, and police arrived at the scene minutes later. Based on this information, it was objectively reasonable to believe the armed suspects were still in the house.

III. Exigent Circumstances

Tennin contends that the officers' warrantless entry into the house was not based on an exigent circumstance excusing the warrant requirement. We disagree.

Having shown that the officers had probable cause to believe the suspects were in the house, the state must show that their warrantless entry was justified by an exigent circumstance. *Othoudt*, 482 N.W.2d at 222; *see Mincey v. Arizona*, 437 U.S. 385, 393-94, 98 S. Ct. 2408, 2414 (1978) (providing that "warrants are generally required to search a person's home or his person unless the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment" (quotation omitted)). We analyze whether an exigency is present based on the totality of the circumstances, using the following factors as a guide:

> (a) whether a grave or violent offense is involved; (b) whether the suspect is reasonably believed to be armed; (c) whether there is strong probable cause connecting the suspect to the offense; (d) whether police have strong reason to believe the suspect is on the premises; (e) whether it is likely the suspect will escape if not swiftly apprehended; and (f) whether peaceable entry was made.

In re B.R.K., 658 N.W.2d at 579 (quotation omitted). These factors, however, are not exclusive, and we may consider other factors such as the time necessary to obtain a warrant. *Matter of Welfare of D.A.G.*, 484 N.W.2d 787, 791 (Minn. 1992).

Here, while several callers informed police that the suspects opened fire in the street before running into the house, police did not receive information that someone had been harmed, and they did not know whether the suspects had fired at a person, car, or home. Tennin argues that, as a result, the "alleged conduct simply does not rise to the level of a grave or violent offense." This argument is not compelling. A gun is an inherently dangerous weapon, and firing a gun under circumstances that endanger a person's safety is a serious offense. *See* Minn. Stat. § 609.66, subds. 1 & 1a (2012) (misdemeanor or felony crime). And the caselaw supports the conclusion that firing a weapon in a residential neighborhood is an undoubtedly violent act that cuts in favor of warrantless entry. *See State v. Paul*, 548 N.W.2d 260, 267 (Minn. 1996) (holding that misdemeanor driving under the influence of alcohol was a serious offense that justified warrantless entry into home).

Police received numerous reports from callers of multiple gunshots in a residential neighborhood of a high-crime area, and events unfolded rapidly. Officers arrived at the scene within minutes, observed that the house door was partially open on a winter night, heard voices inside, and entered the house shortly thereafter. The suspects were reasonably believed to be armed, there was probable cause to connect the house's occupants with the offense, and the police had strong reason to believe the suspects were in the house. While the police established a perimeter around the house, making it

unlikely that the suspect would have escaped if not swiftly apprehended, and the officers entered the house with their guns drawn, these factors do not negate the objective reasonableness of the officers' conduct under these exigent circumstances. Given the serious nature of the offense, the callers' accounts of the incident, the swiftness of the police response, the officers' observations at the scene, and the short time frame, the totality of the circumstances justified the officers' warrantless entry.

Affirmed.