STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2216

Derek Kulla, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed June 23, 2014
Reversed
Hudson, Judge

Dakota County District Court
File No. 19HA-CV-13-3159

Rachael Goldberger, Rachael Goldberger, P.A., Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Jeffrey S. Bilcik, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and Smith, Judge.

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

HUDSON, Judge

Appellant challenges the district court's order sustaining the revocation of his driver's license under the implied-consent law, arguing that the district court erred by relying on the emergency-aid exception to justify police entry into his home without a warrant in violation of the Fourth Amendment and that police lacked probable cause to

arrest him for driving-while-impaired (DWI). We conclude that, although the emergency-aid exception justified the warrantless entry after a 911 report of domestic abuse, the objective facts and circumstances did not provide probable cause to arrest appellant for DWI, and we reverse.

FACTS

Hastings police responded to a report of domestic abuse at the home of appellant Derek Kulla, entered his home without a warrant, observed appellant, who showed signs of intoxication, and ultimately arrested him for DWI. The Minnesota Commissioner of Public Safety revoked appellant's driver's license after he refused testing under the implied-consent law, and appellant challenged the revocation, arguing, inter alia, that police lacked probable cause to arrest him for DWI and to invoke the implied-consent advisory.

At the implied-consent hearing, a Hastings police officer testified that he was dispatched to a domestic disturbance, with a report of a 15-year-old pounding on a bedroom door. When he arrived, he saw a young man standing behind the front screen door who stated that his mother had indicated that appellant, his stepfather, had hit her. The young man told the officer that appellant was inside a bedroom and that the young man had been banging on the door to find out what happened.

The officer, who did not have a warrant, testified that he entered the home without knocking or asking permission. He testified that another officer went to the detached garage to investigate and radioed him that he had located a woman in the garage. Although he testified on direct examination that he knew the woman was in the detached

garage when he entered the home, on cross-examination he testified that he had misspoken and did not learn until after he entered that she was not in the house. He testified that, based on the 911 call and the young man's statements, he "believed there was either a victim or suspect still inside the house." The officer eventually located appellant in one of the bedrooms.

The officer testified that he learned the altercation had occurred after appellant drove home from a bar about an hour earlier. While speaking with appellant, the officer noticed that appellant had slurred speech, watery eyes, an odor of alcoholic beverage, and difficulty comprehending questions. He testified that he asked appellant how much he had been drinking that evening, and appellant responded by stating that he had had "plenty to drink." According to the officer, appellant indicated that he had consumed one to two drinks after arriving home. The officer testified that he did not inquire how much appellant had to drink at the bar, did not see him drive home, and did not perform field sobriety testing at the scene. He testified that he learned that the altercation took place in the garage, where he later saw several beer cans, but that he arrested appellant for DWI based on his observation of appellant's level of intoxication. The officer testified that he believed he had probable cause to arrest appellant, based on his observations of appellant's intoxication and the knowledge that appellant had been home for an hour and had been drinking some amount of alcohol. He also arrested appellant for fifth-degree domestic assault and interfering with a 911 call.

Police transported appellant to the Dakota County jail, where he was read his *Miranda* rights, field sobriety tests were administered, and he was read the implied-

consent advisory. Appellant was offered an opportunity to contact an attorney; after learning that his chosen attorney would not be available until morning, he refused chemical testing. After the commissioner revoked appellant's driver's license under the implied-consent law, appellant petitioned for judicial review, and a hearing was held.

The district court denied appellant's motion to suppress. The district court found that "[t]he circumstances surrounding the 911 call were strongly suggestive of an emergency," that the officer testified as to a report of a victim or suspect inside the home, and that "[e]xigent circumstances existed," so that a warrant was not required to enter the residence. The district court also determined that the officer had probable cause to arrest appellant for DWI based on indications of appellant's impairment. This appeal follows.

D E C I S I O N

This court reviews a district court's findings of fact in an implied-consent case for clear error. *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002). Due regard is given to the district court's opportunity to judge witness credibility. *Snyder v. Comm'r of Pub. Safety*, 744 N.W.2d 19, 22 (Minn. App. 2008). But we review the district court's legal determinations de novo. *Shane v. Comm'r of Pub. Safety*, 587 N.W.2d 639, 641 (Minn. 1998).

The United States and Minnesota Constitutions protect against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A warrantless search is per se unreasonable unless an exception to the warrant requirement applies. *State v. Search*, 472 N.W.2d 850, 852 (Minn. 1991). The state bears the burden of demonstrating that the entry was justified by an established exception to the warrant

requirement. *State v. Anderson*, 388 N.W.2d 784, 787 (Minn. App. 1986), *review denied* (Minn. Aug. 20, 1986).

Two closely related exceptions include those for probable cause and exigent circumstances and for emergency aid. *See State v. Lemieux*, 726 N.W.2d 783, 787–88 (Minn. 2007) (discussing emergency-aid exception); *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992) (discussing exigent-circumstances exception). The district court found that appellant had implicitly raised the issue of exceptions to the warrant requirement in cross-examining the officer and appeared to apply both the exigent-circumstances and emergency-aid exceptions to conclude that the officer was justified in making a warrantless entry.

Exigent-circumstances exception

The United States Supreme Court has recently indicated that in the context of the general exigent-circumstances exception, "each case" must be evaluated "based on its own facts and circumstances." *Missouri v. McNeely*, 133 S. Ct. 1552, 1559 (2013) (quotation omitted). The totality of the circumstances is analyzed by examining several factors, including whether the offense was grave or violent, whether the suspect is reasonably believed to be armed or on the premises and likely to escape, the strength of probable cause connecting the suspect to the offense, and whether peaceable entry was made. *See In re Welfare of B.R.K.*, 658 N.W.2d 565, 579 (Minn. 2003).

Here, the totality of the circumstances does not support application of the exigent-circumstances exception. Even though the officer testified that he believed that there was "either a victim or suspect" inside the home, he had not received information that the

suspect might be armed or likely to escape, and he did not have the strong probable cause required to conduct a warrantless search. *See In re Welfare of D.A.G.*, 484 N.W.2d 787, 791 (Minn. 1992) (noting "strong" showing of probable cause required to justify a warrantless search). Therefore, to the extent that the district court based its ruling on application of the exigent-circumstances exception, it erred by doing so.

Emergency-aid exception

Under the emergency-aid exception, law-enforcement officers "may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Lemieux*, 726 N.W.2d at 787–88 (quotation omitted). "[P]olice must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property." *Id*. at 788 (quotation omitted). A reasonable basis, approximating probable cause, must exist to associate the emergency with the area of the search. *Id.*

The state has the burden to show that circumstances meet the emergency-aid exception and that an objective standard applies to determine the reasonableness of the officer's belief that an emergency existed. *Othoudt*, 482 N.W.2d at 223. This court inquires whether, with the facts available to the officer at the time of the search or seizure, a person of reasonable caution would have believed that the action taken was appropriate. *Id.* The district court made findings that supported the application of the emergency-aid exception and implicitly found that that exception allowed the warrantless entry into appellant's home.

Appellant argues that, under an objective standard, the nonspecific 911 call, combined with the young man's statements about possible domestic abuse, did not provide enough information to invoke the emergency-aid exception. We disagree. The officer testified that he had a report of "a victim or suspect still inside the house." And the 911 call indicated that the young man was inside, banging on a bedroom door; the officer also testified that the young man told him that appellant was inside the bedroom. Based on the report that an altercation had occurred and the possibility that a victim may be inside the house, the officer had reasonable grounds to believe that an emergency existed and that there was an immediate need for his assistance to help an injured victim or protect her from imminent injury. *See Lemieux*, 726 N.W.2d at 788; *cf. State v. Fitzgerald*, 562 N.W.2d 288, 288 (Minn. 1997) (concluding that emergency-aid exception did not apply when police entered residence on information that a person "may need help," submitted to police the following day).

Appellant maintains that the record shows that the officer already knew when he entered the home that the victim was in the garage. On direct examination, the officer testified that he spoke with another officer, found out that the victim was in the garage, and "went inside the residence to speak to [appellant]." But on cross-examination, he stated that he had misspoken and did not know where the victim was when he entered the home and was told only later that she was in the garage. The district court's findings show that it implicitly credited the officer's later testimony, and we defer to the district court's credibility determinations. *See Snyder*, 744 N.W.2d at 22.

Appellant also argues that under the collective-knowledge doctrine, the knowledge of the other officer about the victim's location should be imputed to him. *See Lemieux*, 726 N.W.2d at 789 (stating that for purposes of assessing the emergency-aid exception, if officers have "some degree of communication between them," the knowledge of all facts known by other officers in the search is imputed to the officer conducting the search). But the officer testified that after speaking with the young man, he had him speak to the sergeant, and he himself went to locate "whoever was in the bedroom or in the house," while a third officer went to locate the woman in the garage. Therefore, the testimony does not support the conclusion that the officers actually knew the victim's location before the search occurred, and the collective-knowledge doctrine does not apply.

Appellant maintains that the officer should have knocked before entering the home without a warrant. *See*, *e.g.*, *Anderson*, 388 N.W.2d at 787 (holding that the emergency-aid exception justified officer's warrantless entry into home when altercation was reported, and officer knocked on door and yelled without receiving response). Although the better practice would have been for the police to announce their presence, we cannot conclude that the officer's failure to do so here invalidates his warrantless entry under the emergency-aid exception. We therefore agree with the district court that, under the emergency-aid exception, the officer was permitted to enter the home without a warrant.

We note that a warrantless search must be limited to the scope of the emergency. *Lemieux*, 726 N.W.2d at 788. Here, the officer was investigating a possible emergency and was entitled to ask questions as a part of that investigation. In that process, the officer observed appellant's state of intoxication, which was in plain view, and thus he

was permitted to ask additional questions relating to appellant's drinking. *See, e.g.*, *State v. Halla-Poe*, 468 N.W.2d 570, 574 (Minn. App. 1991) (stating that, following officers' warrantless entry into a home under the emergency-aid exception after a report of an impaired driver, "[t]he evidence of DUI came into plain view while the officers were legitimately on the premises").

II

Appellant argues that the district court erred by concluding that the officer had probable cause to arrest him for DWI. A peace officer may lawfully arrest a person for DWI without a warrant on probable cause. *See State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011) (stating that a warrantless arrest is reasonable if it is supported by probable cause). We give due weight to inferences drawn from the facts by the district court and review de novo the district court's legal conclusion as to whether probable cause to arrest existed. *State v. Kier*, 678 N.W.2d 672, 678 (Minn. App. 2004).

Probable cause to arrest for DWI and to require a chemical test exists when "there are facts and circumstances known to the officer which would warrant a prudent man in believing that the individual was driving or was operating or was in physical control of a motor vehicle while impaired." *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011) (quotation omitted). "[T]he probable cause standard asks whether the totality of the facts and circumstances known would lead a reasonable officer to entertain an honest and strong suspicion that the suspect has committed a crime." *Id.* at 363 (quotation omitted). This is an objective inquiry that is conditioned by the officer's own observations, information, and experience. *Id.* at 362–63.

We recognize that, for a probable-cause determination under the implied-consent statute, an officer need not observe a defendant driving. *See State v. Harris*, 295 Minn. 38, 42, 202 N.W.2d 878, 880-81 (1972) (determining that probable cause existed to arrest a driver for DWI when he was found intoxicated, slumped in the driver's seat of a stopped vehicle with the motor running). And a driver's admission of alcohol consumption, when combined with other indicia of intoxication, may establish probable cause. *State v. Laducer*, 676 N.W.2d 693, 698 (Minn. App. 2004). But here, the connection between appellant's admission that he drove home from the bar and his appearance of intoxication an hour later is simply too attenuated to establish probable cause to arrest him for DWI. Probable cause to arrest or request chemical testing requires a higher standard than reasonable suspicion. *See State v. Vievering*, 383 N.W.2d 729, 730 (Minn. App. 1986) (differentiating between the reasonable-suspicion standard applicable to requesting a preliminary breath test (PBT), which requires only articulable facts supporting a belief that a DWI violation occurred, and "the higher standard of probable cause to support a request for a chemical test"), *review denied* (Minn. May 16, 1986).

We have carefully reviewed the record, and we note that when appellant told the officer that he had "plenty to drink," he was responding only to the officer's general question about how much he had been drinking that evening, not how much he had to drink before driving home from the bar. Appellant told the officer that he had consumed one to two drinks since returning home. But his statements would not reflect his level of impairment at the time he drove home. *Cf. Eggersgluss v. Comm'r of Pub. Safety*, 393

N.W.2d 183, 185 (Minn. 1986) (concluding that probable cause existed to believe a defendant was impaired at the time of an accident when a one-car rollover had occurred and a passenger told police that the driver had been drinking before the accident). Therefore, those statements did not, by themselves, provide probable cause to arrest him for DWI. We acknowledge that the officer was not required to administer a PBT or field sobriety testing, but these circumstances necessitated further investigation, such as asking appellant how many drinks he had before driving home, or questioning the victim, with whom appellant had been drinking at the bar. Because no such investigation occurred, and because the record lacks additional evidence about appellant's alcohol consumption or level of intoxication while driving, the district court erred by concluding that probable cause existed to arrest him for DWI, and we reverse the order affirming the revocation of his driver's license.

Reversed.