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STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0958

State of Minnesota,
Respondent,

vs.

Patrick Sean Lanigan,
Appellant.

Filed May 15, 2017
Reversed
Reyes, Judge

Meeker County District Court
File No. 47-CR-15-742

Lori Swanson, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Brandi Schiefelbein, Meeker County Attorney, Litchfield, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijó, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Randall, Judge.

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

REYES, Judge

On appeal from his conviction of fifth-degree controlled-substance possession following proceedings under Minn. R. Crim. P. 26.01, subd. 4, appellant argues that the

district court erred by finding that appellant voluntarily consented to an unwarranted search of his home and by not suppressing evidence obtained during the warranted search because there was insufficient probable cause to support issuance of the warrant. We reverse.

FACTS

On August 6, 2015, the CEE-VI Drug Task Force, with the assistance of the Meeker County Sheriff's Office, was investigating the whereabouts of a wanted fugitive, Amanda Rohde. The agents learned that Rohde was staying at appellant Patrick Sean Lanigan's home, a trailer with an attached screened-entry porch. The Meeker County Sheriff contacted one of his deputies about Rohde but mistakenly relayed to the deputy a different name. With that information, the deputy knocked on the front door of appellant's residence, appellant answered, and the deputy asked him whether the different woman was present. Appellant stated that he did not know anyone by that name but that there was a female named "Mandy" inside the house.

The sheriff arrived on the scene, and along with the deputy, engaged appellant in a conversation about Rohde. The sheriff told appellant that he "needed to talk to her." Appellant informed the officers that Rohde was in the back bedroom of his house, and the sheriff testified that appellant "kind of gestured toward the back area when he said back bedroom." According to the sheriff, appellant then opened the screen door and stepped to the side, which the sheriff took to mean that appellant was allowing them inside the house.

Conversely, appellant, testified that the sheriff never asked for Rohde. He claims that the sheriff appeared while he was talking to the deputy and, without asking him any questions, pulled open the door. As a result, appellant stepped to the side of the door because he believed that the officers wanted to enter his home, and he wanted to get out of their way. The parties agree that the officers did not ask appellant for permission to enter the residence and that appellant did not give verbal permission for the entry.

The officers entered appellant's home and found Rohde in the "middle bedroom" sitting on the bed. She was placed under arrest pursuant to the fugitive warrant and led out of the bedroom by the deputy.

The sheriff, however, remained in the bedroom and conducted a warrantless search of the area. He noticed a wrapped bandana on the bed adjacent to the area where Rohde had been sitting, grabbed and unwrapped it, and found a pipe containing white residue. Based upon his experience, he believed that the white residue was methamphetamine.

Continuing his warrantless search of the bedroom, the sheriff also discovered a marijuana pipe and a "dugout"[1] inside an open box on a night stand. The sheriff then stopped his search because he knew the task-force agents would be obtaining a search warrant to search appellant's home.

[1] A "dugout" is a wooden case that contains two compartments, one for storing tobacco or marijuana and the other to store the smoking mechanism. *See e.g., State v. Brockel*, 746 N.W.2d 423, 425 (N.D. 2008).

The sheriff went outside and told appellant that he could not go back inside his home because the task-force agents would be obtaining a search warrant. The sheriff asked appellant if there was anyone else inside the trailer, and appellant hesitated in responding. As a result, the sheriff and other officers went back inside to make sure no one else was inside the trailer. The officers did not ask for appellant's permission to enter his home a second time, and he did not give them permission. As the officers exited appellant's home, Rohde asked if one of the officers could go back and get her shoes for her. An officer did. The officers did not ask for appellant's permission to enter his home a third time, and he did not give them permission.

Another police officer arrived at appellant's home with a narcotics field test kit, and the sheriff and the officer reentered appellant's home. The officers did not ask for appellant's permission to enter his home a fourth time, and he did not give them permission. The officers conducted a field test of the pipe the sheriff found wrapped in the bandana, which tested positive for methamphetamine. During this fourth warrantless search, the sheriff noticed a tin container on the bed, opened it, and discovered a substance he suspected to be marijuana.

Subsequently, law enforcement obtained a search warrant to search appellant's home. The search-warrant affidavit identified the methamphetamine pipe, the small amount of marijuana, and the marijuana pipe and dugout as support for the search warrant. In executing the search warrant, small amounts of marijuana, methamphetamine, and drug paraphernalia were recovered.

Respondent State of Minnesota charged appellant with felony fifth-degree possession of a controlled substance pursuant to Minn. Stat. § 152.025, subd. 2(a)(1) (2014), and petty misdemeanor possession of drug paraphernalia pursuant to Minn. Stat. § 152.092 (2014).

Prior to trial, appellant filed a motion to suppress all the evidence obtained from his home as a result of the four warrantless entries and final warranted search of his home. At the contested omnibus hearing, the sheriff and appellant testified. The district court then issued an order in which it determined, in relevant parts, that: (1) the initial entry by the officers into appellant's home was lawful because appellant gave them limited consent to enter to speak with Rohde; (2) the sheriff's search of the bedroom incident to Rohde's arrest was improper because the "search incident to lawful arrest" exception did not apply; (3) all three subsequent reentries into appellant's home were unlawful, because appellant did not give consent, and no other warrant exception applied and any incriminating evidence recovered during these entries could not be used to support the search warrant; (4) but, because, the dugout was in plain view, its recovery was lawful and provided sufficient probable cause to support the search warrant; and (5) the drugs seized in executing the search warrant are admissible as evidence against appellant. As a result, the district court denied appellant's motion to suppress the evidence because the dugout provided sufficient probable cause for the subsequent search warrant.

Appellant waived his right to a jury trial and agreed to proceed to trial before the district court pursuant to Minn. R. Crim. P. 26.01, subd. 4. Appellant was convicted of

felony fifth-degree possession of a controlled substance, and the district court dismissed the paraphernalia charge. This appeal follows.

D E C I S I O N

On a stipulated-fact trial pursuant to Minn. R. Crim. P. 26.01, subd. 4, "this court's review is limited to the pretrial order that denied the motion to suppress." *State v. Sterling*, 782 N.W.2d 579, 581 (Minn. App. 2010). When reviewing a district court's pretrial order on a motion to suppress evidence, this court reviews the district court's factual findings for clear error and its legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). "A factual finding is clearly erroneous if it does not have evidentiary support in the record or if it was induced by an erroneous view of the law . . . [or] if we are left with the definite and firm conviction that a mistake has been made." *State v. Roberts*, 876 N.W.2d 863, 868 (Minn. 2016) (quotation omitted).

I. Any voluntary consent appellant may have given was for the sole purpose of speaking to Rohde.

Appellant challenges the district court's ruling on consent, arguing that he did not give the officers any consent to enter his home.

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures, and any evidence obtained as a result of an unreasonable search or seizure must be suppressed. U.S. Const. amend. IV; Minn. Const. art. I, § 10; *Wong Sun v. United States*, 371 U.S. 471, 484, 83 S. Ct. 407, 416 (1963); *State v. Askerooth*, 681 N.W.2d 353, 370 (Minn. 2004). "[A]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental

intrusion." *Payton v. New York*, 445 U.S. 573, 589-90, 100 S. Ct. 1371, 1382 (1980) (second alteration in original) (quotation omitted). A warrantless entry into a constitutionally protected area, such as one's home, is "presumptively unreasonable." *Id.* at 586, 100 S. Ct. at 1380; *State v. Thompson*, 578 N.W.2d 734, 740 (Minn. 1998). Valid consent is an exception to the warrant requirement. *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992).

Even if we assume, without deciding, that appellant consented to the officers' initial entry into his home, the scope of the consent was limited to speaking with Rohde. *State v. Auman*, 386 N.W.2d 818, 820 (Minn. App. 1986) (describing scope of consent as limited to terms of consent), *review denied* (July 16, 1986). Any putative consent did not include consent to search his home, and the district court so held. The nature of the conversation between appellant and the officers was strictly about Rohde and their desire to speak with her. Instead of exiting the bedroom once Rohde was arrested and escorted out of appellant's home, the sheriff stayed behind and conducted an unwarranted search of the bedroom, without appellant's consent. This action was unlawful.

Once Rohde was located in the bedroom, arrested, and escorted out of the bedroom, any putative consent to be there ceased to exist. At that point, the officers were under an obligation to exit appellant's home or ask him for consent to search the bedroom. *See id*. Therefore, the sheriff exceeded the scope of any consent given by conducting an unwarranted search of the bedroom.

II. The plain-view exception is inapplicable because the sheriff was not lawfully present in the bedroom.

The district court found that the plain-view exception applies. We are not persuaded.

A limited voluntary consent does not authorize "indiscriminate rummages" of a person's possessions. *State v. Powell*, 357 N.W.2d 146, 150 (Minn. App. 1984), *review denied* (Jan. 15, 1985). But, when an officer is lawfully present in a home, evidence may be seized if it is in plain view of the officer. *State v. Campbell*, 581 N.W.2d 870, 871 (Minn. App. 1998) (citation omitted). In order to satisfy the plain-view exception, it must be established that: "(1) [the] police are legitimately in the position from which they view the object; (2) they have a lawful right of access to the object; and (3) the object's incriminating nature is immediately apparent." *State v. Zanter*, 535 N.W.2d 624, 631 (Minn. 1995) (alteration in original) (quotation omitted).

After Rohde was removed from the bedroom, the sheriff remained in the bedroom, saw a bandana near where Rohde was sitting, and unwrapped it. He then continued to search the bedroom and observed a marijuana pipe and a dugout inside of a box on a night stand. But, at this point, the sheriff was no longer lawfully present in the bedroom. *See e.g.*, *Horton v. California*, 496 U.S. 128, 137, 110 S. Ct. 2301, 2308 (1990) ("The officer [must] be lawfully located in a place from which the object can be plainly seen . . . [and] must also have a lawful right of access to the object itself."); *see also State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003) ("The plain view exception to the warrant requirement contemplates that the police are lawfully in a place that produces plain view

of an incriminating article."). Because Rohde had already been escorted out of the bedroom, the sheriff no longer had any lawful consent to remain there. *Licari*, 659 N.W.2d at 254. As such, the plain-view exception cannot justify the recovery of the dugout. *Id.*

III. The dugout was unlawfully seized and cannot not provide probable cause to support issuance of the search warrant.

Appellant argues that the district court erred in determining that the dugout[2] provided sufficient probable cause for the issuance of the search warrant. We agree.

No warrant shall issue without a showing of probable cause. U.S. Const. amend. IV; *see also* Minn. Const. art. I, § 10. "A search warrant may be issued only upon a finding of probable cause by a neutral and detached magistrate." *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999). Here, the search warrant affidavit identified the methamphetamine pipe, the small amount of marijuana, and the marijuana pipe and dugout as supporting probable cause for the search warrant.

For the reasons discussed above, the dugout could not be used as a basis for the search warrant. *Licari*, 659 N.W.2d at 254 ("When police have made an . . . intrusion into a place and that intrusion is not justified by one of the recognized exceptions to the warrant requirement, the seizure of objects in plain view from that place is likewise invalidated . . . ."). Accordingly, we conclude that because there was no incriminating evidence that the officers could have used in support of their search warrant, the issuance

[2] The district court determined that the dugout was the only evidence that could support the issuance of the search warrant, and we agree. The district court's order also does not distinguish between the dugout and the marijuana pipe, which were found together.

of the search warrant was unlawful. Therefore, the evidence recovered from the execution of the unlawful search warrant should have been suppressed and could not be used to prosecute appellant.[3]

Because the parties agreed to a stipulated-evidence court trial pursuant to rule 26.01, subdivision 4, our conclusion that the district court erred in its pretrial ruling is dispositive of the case, and a contested trial is unnecessary. *See* Minn. R. Crim. P. 26.01, subd. 4(a), (c); *see also State v. Yang*, 814 N.W.2d 716, 718, 722-23 (Minn. App. 2012) (reversing conviction without remand after concluding that district court erred in pretrial ruling in case tried pursuant to rule 26.01, subdivision 4).

Reversed.

[3] The district court also ruled that the evidence it had previously determined was seized unlawfully is admissible to prosecute appellant under the inevitable discovery rule. Because we have determined that there existed no probable cause to support the issuance of the search warrant, we need not address this issue.