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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1696**

State of Minnesota,
Respondent,

vs.

Todd Alexander Gunther,
Appellant.

**Filed July 8, 2019
Affirmed
Bjorkman, Judge
Dissenting, Reyes, Judge**

Dakota County District Court
File No. 19HA-CR-16-412

Keith Ellison, Attorney General, St. Paul, Minnesota; and

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(for appellant)

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

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his controlled-substance conviction, arguing that the district
court erred by applying the emergency-aid exception to deny his motion to suppress

evidence obtained during the warrantless entry into his home. Appellant also challenges his sentence, arguing that the district court erred in imposing a mandatory minimum sentence and in calculating his criminal-history score. We affirm.

FACTS

On February 2, 2016, police received a report that a man and a woman were “screaming and yelling” in an apartment in Burnsville. When responding officers arrived, they did not hear anything. But one of the officers listened at the door and heard a man and a woman talking. After a minute or two, he knocked on the door. The talking stopped, but nobody answered the door. The officer continued to knock, announcing that he was with the police and needed to speak with the occupants. Only after the officer stated that a strike would be issued against the apartment¹ did a man, later identified as appellant Todd Gunther, answer the door.

Gunther opened the door slightly and stuck his head out to speak with the officers; he appeared nervous. The officers explained they were responding to a complaint of screaming and yelling and asked if “everyone was okay.” Gunther told the officers there was no one else in the apartment. The officers said they heard another person in the apartment and asked that the other person come to the door. Gunther repeated that nobody was in the apartment, stated that he was talking to his girlfriend on the phone, and moved to close the door. The officers stopped him. Concerned that there may have been a physical

¹ When police respond to a disturbance at a rental property and the tenant does not answer the door, the city will issue a “strike” against the property; after three “strikes,” the tenant is evicted. See Burnsville, Minn., City Code § 3-28-11 (2015) (requiring landlord to evict tenant after third strike).

altercation and that the woman “may need medical attention,” the officers grabbed the door and pulled Gunther into the hallway, where they secured him.

The officers called into the apartment, asking the woman to approach the door for a welfare check. They waited several minutes with no response. When a third officer arrived to remain with Gunther, they entered the apartment. They announced their entry and proceeded to search for the woman.

The officers walked through the apartment, clearing it room by room. As they passed through, the officers observed evidence of potential illicit drugs. They did not observe evidence of other occupants until reaching the last space, the master bathroom. The door was locked from the inside, and the lights were off. The officers knocked, identified themselves as police, and indicated their purpose to check health and welfare. When they received no response, they threatened to enter by force. A woman emerged, and the officers confirmed there were no other occupants. In checking the bathroom, they observed possible drug paraphernalia. Police subsequently obtained a warrant, searched the apartment, and recovered approximately six grams of methamphetamine.

Gunther was charged with third-degree possession of a controlled substance. He moved to suppress the drug evidence obtained after the warrantless entry into his home. The district court denied the motion, reasoning that the entry was justified based on the emergency-aid exception to the warrant requirement. Gunther thereafter waived a jury trial and submitted the charge to the district court on stipulated facts under Minn. R. Crim.

P. 26.01, subd. 4. The district court found Gunther guilty and sentenced him to 24 months in prison.² Gunther appeals.

D E C I S I O N

I. The warrantless entry into Gunther’s apartment falls within the emergency-aid exception to the warrant requirement.

When reviewing a pretrial order denying a motion to suppress evidence, we independently review the facts and determine whether, as a matter of law, the district court erred in not suppressing the evidence. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004). We review 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).

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 presumptively unreasonable. *State v. Stavish*, 868 N.W.2d 670, 675 (Minn. 2015) (citing *Kentucky v. King*, 563 U.S. 452, 459, 131 S. Ct. 1849, 1856 (2011)). But “because the ultimate touchstone of the Fourth Amendment is reasonableness, that presumption may be overcome if a recognized exception to the warrant requirement applies.” *State v. Ries*, 920 N.W.2d 620, 627 (Minn. 2018) (quotation omitted). One such exception—the emergency-aid exception—permits warrantless entry into a home when police have (1) “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” and (2) “some reasonable

² The sentence is a downward durational departure from the presumptive term of 34-46 months. Minn. Sent. Guidelines 4.A. (2015).

basis, approximating probable cause, to associate the emergency with the area or place to be searched.” *State v. Lemieux*, 726 N.W.2d 783, 788 (Minn. 2007) (quotation omitted). Application of the exception does not depend on the subjective motivation of the officers. *Id.*; see *Ries*, 920 N.W.2d at 632 n.6. Nor “does [it] matter if officers have reason to believe some criminal activity is afoot as long as they are objectively motivated by the need to give aid.” *Ries*, 920 N.W.2d at 632. In short, when circumstances indicate an emergency such that officers would be “derelict in their duty” if they did not address it, they may do so without first obtaining a warrant. See *id.* at 633 (quotation omitted). But “the warrantless search must be limited by the type of emergency involved.” *Id.* at 632 (quotation omitted).

Gunther does not challenge the district court’s findings of fact. But he contends that the circumstances of this case are insufficient to show an emergency existed. He specifically points out that the officers overheard a man and woman talking in normal tones—not the reported screaming and yelling—and that Gunther had no visible injury. We are not persuaded. The report of screaming and yelling between a man and a woman raised reasonable concerns about present or imminent domestic violence in Gunther’s apartment. The officers approached the apartment in order to check on the welfare of the occupants. They did not hear screaming or yelling but were able to hear a man and a woman talking in the apartment. When Gunther eventually responded to the officers’ repeated knocking and announcements that they were there to do a welfare check, he was evasive. The officers reiterated their intent to “make sure everyone was okay” and repeatedly requested that the woman come to the door so they could confirm her welfare without entering the apartment. Gunther not only declined to cooperate with that request

but also increased the officers' reasonable welfare concerns by denying her presence entirely. The fact Gunther did not appear injured did nothing to dispel concern for the welfare of the woman officers knew was in the apartment.

Based on the initial report of a man and a woman "screaming and yelling" in the apartment, the officers' confirmation that a man and a woman were present, Gunther's delay in responding to repeated knocking and expressions of welfare concerns, Gunther's nervous and evasive conduct, and Gunther's untruthful statements that no one else was in the apartment, the officers undertook the minimal intrusion of preventing Gunther from closing the door and securing him in the hallway. The officers then called into the apartment, asking the woman to approach so they could see if she was okay. After multiple such requests elicited no response, they entered the apartment and moved quickly from room to room. Their search was limited to finding the woman.

Overall, the officers' conduct demonstrates a focused and measured approach designed to ascertain the safety of a woman whom they had reason to believe was not only present in the apartment but also had participated in an altercation during which she may have been injured. On this record, we conclude that the officers' entry and search of the apartment was objectively reasonable under the emergency-aid exception.³

³ Gunther asserted at oral argument that the probable-cause standard governs our analysis. We disagree. The first prong of the emergency-aid analysis requires only "reasonable grounds to believe that there is an emergency at hand." *Lemieux*, 726 N.W.2d at 788 (quotation omitted). It is the second prong that requires a reasonable basis "approximating probable cause" to associate that emergency with the place to be searched. *Id.* (quotation omitted). Gunther does not dispute that, to the extent officers had reasonable grounds to believe an emergency was at hand, there was probable cause to believe that his apartment was the place to be searched.

II. The district court did not err by sentencing Gunther based on the law in effect at the time of the offense.

In May 2016, the Minnesota Legislature passed the Drug Sentencing Reform Act (DSRA), modifying both the quantity thresholds and sentencing provisions of various controlled-substance offenses. 2016 Minn. Laws ch. 160, §§ 1-22, at 576-92; *see State v. Otto*, 899 N.W.2d 501, 503 (Minn. 2017) (discussing the DSRA). Gunther argues that the district court erred in declining to apply the DSRA in determining whether his prior controlled-substance convictions⁴ require a mandatory minimum sentence and in calculating his criminal-history score. We address each argument in turn.

Mandatory Minimum Sentence

A district court does not have discretion to impose less than an applicable statutory mandatory minimum sentence. *See State v. Bluhm*, 676 N.W.2d 649, 651 (Minn. 2004) (stating that “the legislature may restrict the exercise of judicial discretion in sentencing, such as by providing for mandatory sentences”).

At the time of the current offense, Minnesota law provided for a mandatory minimum sentence of “not less than two years” if the current third-degree controlled-substance conviction is “a subsequent controlled substance conviction.” Minn. Stat. § 152.023, subd. 3(b) (2014). The phrase “subsequent controlled substance conviction”

⁴ At the time of the current offense, Gunther had two prior felony controlled-substance convictions: a 2003 conviction of third-degree possession of a controlled substance (cocaine) and a 2005 conviction of second-degree possession of a controlled substance (9 grams of methamphetamine).

meant that “before commission of the [current] offense” the defendant was convicted of a felony controlled-substance crime. Minn. Stat. § 152.01, subd. 16a (2014).

The DSRA changed all aspects of this mandatory-minimum sentencing calculation. It removed the mandatory minimum sentence for third-degree controlled-substance crimes. 2016 Minn. Laws ch. 160, § 5, at 582. It narrowed the scope of the phrase “subsequent controlled substance conviction” so that only first- or second-degree prior offenses make the current offense subject to the mandatory minimum. *Id.* § 1, at 576. And it increased the quantity thresholds for third- through first-degree controlled-substance offenses, reducing the number of felony controlled-substance crimes. *Id.* §§ 3-5, at 577-82. But all of these changes were expressly limited to “crimes committed on or after” the August 1, 2016 effective date. *Id.* §§ 1, 3-5, at 576-82; *see Otto*, 899 N.W.2d at 503. Because the 2014 mandatory minimum sentence was still in effect at the time Gunther committed the current offense, the district court correctly applied it in sentencing Gunther.

Criminal-History Score

We review a district court’s determination of a defendant’s criminal-history score for an abuse of discretion. *State v. Maley*, 714 N.W.2d 708, 711 (Minn. App. 2006).

Gunther argues that the district court used an incorrect criminal-history score because the DSRA reclassified the conduct underlying his prior felonies to non-felony offenses. This argument is unavailing. “[T]he classification of prior offenses for the purpose of calculating a defendant’s criminal history score is based on . . . Minnesota offense definitions and sentencing policies in effect when the defendant committed the current crime.” *State v. Scovel*, 916 N.W.2d 550, 559 (Minn. 2018). Because Gunther’s

prior offenses were felonies at the time he committed the current offense, the district court accurately classified them as such and correctly assigned Gunther a criminal-history score of 3.

In sum, the district court did not abuse its discretion by sentencing Gunther to 24 months' imprisonment.

Affirmed.

REYES, Judge (dissenting)

I respectfully dissent.

Yelling and screaming. That is what this case is about. The police used a report of “loud yelling and screaming” between a man and a woman, which ceased to exist when police arrived at the residence, to support a warrantless entry into appellant’s home. Because I believe this does not justify violating a person’s Fourth Amendment rights in the sanctity of their home, I would reverse.

FACTS

In February 2016, two Burnsville police officers responded to a call complaining of nothing more than loud yelling and screaming coming from appellant Todd Alexander Gunther’s apartment. As the officers approached the apartment, they did not hear any loud yelling or screaming. They did not hear any arguing or fighting. They did not hear loud voices. Instead, with an ear pressed to the door, they could “faintly” hear a man and woman talking.

The officers knocked, the voices stopped, but no one came to the door. The officers identified themselves as the police and stated that if someone did not come to the door, the occupants would receive a “strike,” which is a repercussion against a tenant who is loud in front of law enforcement or who “knowingly” fails to respond to law enforcement.¹ Three strikes against a tenant results in eviction. In response, appellant partially opened the door

¹ A strike threat, used to coerce a person to open the door, can only be used against a tenant in an apartment building and not against an owner of a private residence. The implicit discriminatory effect of this tactic is troubling.

to speak with the officers. One officer held the door open to prevent appellant from closing it. They questioned him about the yelling, and he stated that he had been talking to his girlfriend on his cell phone. When he tried to close the door to prevent his cat from escaping, the officers grabbed him, pulled him out of his apartment into the hallway, and physically sat him down. After securing appellant in the hallway, the officers entered and searched the entire apartment without a warrant. After searching the entire apartment, they came upon a locked bathroom and ordered the occupant to exit, threatening to break down the door. Eventually, a female occupant exited. Officers saw drugs in plain view around the apartment, which they used as a basis to obtain a search warrant and collect the drugs. A jury convicted appellant of third-degree possession of a controlled substance.

ANALYSIS

“When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence.” *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We review the district court’s findings of fact for clear error. *State v. Lemieux*, 726 N.W.2d 783, 787 (Minn. 2007).

Both the Fourth Amendment of the United States Constitution and Article 1 Section 10 of the Minnesota Constitution guarantee a person’s right to be secure in their own home and free from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Indeed, the sanctity of a person’s home is afforded the utmost protection from invasion under the Fourth Amendment. *Payton v. New York*, 445 U.S. 573, 589, 100 S. Ct. 1371, 1381-82 (1980). It is well established that “evidence discovered by exploiting

previous illegal conduct is inadmissible.” *State v. Olson*, 634 N.W.2d 224, 229 (Minn. App. 2001).

Warrantless searches of a home “are *per se* unreasonable, subject to a few exceptions.” *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992). Under the emergency-aid exception to the warrant requirement, “law enforcement officers, in pursuing a community-caretaking function, ‘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 (emphasis added) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S. Ct. 1943, 1947 (2006)). The belief of injury or imminent injury must be reasonable. *Othoudt*, 482 N.W.2d at 223.

The state carries the burden of demonstrating that police engaged in conduct justified under the exception, based on an objective standard. *Lemieux*, 726 N.W.2d at 788. To determine whether the actions of law enforcement meet the objective standard of reasonableness, courts ask whether a person of reasonable caution, faced with the facts available to the officers at the time of the search, would believe that the action taken was appropriate. *Othoudt*, 482 N.W.2d at 223. The “police do not have the option to go into people’s homes *carte blanche* whenever they claim they hear that . . . someone’s safety may be in question.” *State v. Bunce*, 669 N.W.2d 394, 400 (Minn. App. 2003) (quotation marks omitted), *review denied* (Minn. Dec. 16, 2003).

Here, the state failed to meet its burden to show evidence of an injured occupant or of imminent injury to justify a warrantless entry by police into appellant’s home. The police relied on a report of loud yelling and screaming to enter the apartment, but upon

approaching appellant's door, police heard neither yelling nor screaming. They "faintly" heard a man and woman talking, and only after placing an ear on the door. As a result, there were no signs that an imminent injury would occur. Further, no other observations supported a reasonable belief of injury to an occupant of appellant's home. Police observed that appellant showed no signs of a physical altercation or injuries, such as bruises, cuts, injuries, torn clothes, heavy breathing, or other noises coming from inside the apartment. Officers only described that appellant appeared nervous. Any initial suspicion of injury the police may have had, based on the report of yelling and screaming, dissipated upon arrival.

A review of caselaw supports this conclusion. In *Brigham City*, police responded to a call of a loud party. 547 U.S. at 400-01, 126 S. Ct. at 1946. Upon arrival, police heard thumping and crashing, heard people saying "stop" and "get off me," and saw a physical fight resulting in a victim incurring injuries and bleeding. *Id.* at 406, 1949. The Supreme Court upheld the warrantless entry, concluding in part that police had an objectively reasonable belief of injury requiring assistance. *Id.* In *Lemieux*, police entered an apartment located near a recent homicide after observing signs of a burglary, including forced entry, a torn window screen, an open window, and an unlatched door. 726 N.W.2d at 784-85. Based on this evidence, the supreme court concluded that police had a reasonable belief of violence accompanying the forced entry and nearby homicide. *Id.* at 790. And this court upheld a warrantless search under the emergency-aid exception based on a detailed report of a person drinking, "throwing people around," and picking his

daughter up by her sweater, causing her to be “scared frantic.” *State v. Anderson*, 388 N.W.2d 784,787 (Minn. App. 1986), *review denied* (Minn. Aug. 20, 1986).

In each of these cases, police had objective facts of either an injured occupant, as in *Brigham City*, 547 U.S. 400-01, 126 S. Ct. at 946 (complaint of loud party followed by police observing physical fight and bloodied victim), or of imminent injury or danger to an occupant, as in *Lemieux*, 726 N.W.2d at 784-85 (signs of forced-entry burglary near recent homicide) and *Anderson*, 388 N.W.2d at 787 (detailed report of person drinking and throwing people around). Those objective facts are absent here. The police did not receive a report of drinking, a physical altercation, or of a crime. Upon arrival, police did not observe a physical altercation or signs of an altercation, hear sounds indicating an altercation occurring or about to occur, see an injured person, or see signs of a possible crime.

A report of loud yelling and screaming, followed by an on-site observation of only faint talking with no signs of injury or imminent harm, cannot support a warrantless entry into a person’s home and runs afoul of the Fourth Amendment protections afforded to a person in their own home. I would therefore reverse.