

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0636**

State of Minnesota,
Respondent,

vs.

Antonio Loren Garbow-Hanks,
Appellant.

**Filed April 19, 2021
Affirmed
Hooten, Judge**

Mille Lacs County District Court
File No. 48-CR-17-2623

Keith Ellison, Attorney General, Ed Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Joe Walsh, Mille Lacs County Attorney, Milaca, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

In this direct appeal from the judgments of conviction for unlawful possession of a firearm and ammunition, appellant argues that the district court erred by denying his

motion to suppress the firearm and ammunition because they were discovered after law enforcement officers had unlawfully entered his home without a warrant. We affirm.

FACTS

Officers Walker and Pekarek of the Mille Lacs Tribal Police Department were on patrol when they observed a vehicle exceeding the speed limit. After briefly losing sight of the vehicle, the officers located it in the driveway of a house. After identifying the occupants of the vehicle, officers were notified by dispatch that there was an active warrant for the arrest of one of the occupants, E.S. E.S. initially exited the vehicle and entered the house, but later came back outside and was placed under arrest.

While Officer Walker was placing E.S. under arrest, I.N. exited the house. I.N. spoke with E.S. and mentioned someone named S.J. Officer Walker knew that S.J. was I.N.'s sister. He also knew that the house belonged to I.N. and S.J.'s mother, Y.G., and that there was an active warrant for the arrest of S.J. Officer Walker had encountered S.J. at the house a year prior and suspected that she might be inside, but the officers did not have a warrant to search the house for S.J.

Officer Walker and I.N. walked to the door of the house while speaking to each other. I.N. denied mentioning S.J. and stated that Officer Walker must have misunderstood her. As Officer Walker and I.N. had this conversation, Officer Cook—who had by then arrived at the scene to assist Officers Walker and Pekarek—took up a perimeter position behind the house to watch for any attempted escape.

From the doorway, Officer Walker spoke with Y.G., the owner of the house, who has limited mobility and was sitting on a couch inside during this conversation. Officer

Walker told Y.G. that there was an active warrant for S.J.'s arrest and that he had reason to believe that she was inside the house, and he asked Y.G. if S.J. was inside. Y.G. replied that S.J. was not inside the residence and that she did not allow her to stay there. Officer Walker then informed Y.G. that he "wanted [S.J.] out of the house," and that "it is kind of a standard thing, grab the person with the warrant and we leave." Y.G. then told Officer Walker in exactly which bedroom within the house S.J. could be found.

Officer Walker then entered the house to place S.J. under arrest. Officers Pekarek and Cook also entered the residence. S.J. was located in the bedroom Y.G. had indicated and was placed under arrest. A man named C.H. was also in the bedroom with S.J. On Officer Cook's way out of the house, Y.G. and I.N. told Officer Cook that there was an active warrant for the arrest of C.H., and they asked Officer Cook to remove him from the house.

While inside the house, Officer Cook observed suspected narcotics and paraphernalia in plain view. Based on this observation, the officers decided to obtain a search warrant for the premises. The officers secured the house and cleared it of occupants. Appellant Antonio Loren Garbow-Hanks was found in his bedroom inside the residence, across the hall from the room in which S.J. was located. Officers discovered ammunition and a rifle in a closet in appellant's bedroom. Appellant had previously been adjudicated delinquent of second-degree assault, a crime of violence, and was therefore prohibited from possessing a firearm or ammunition.

Respondent State of Minnesota charged appellant with possession of a firearm by an ineligible person, possession of ammunition or a firearm following conviction or

delinquent adjudication of a crime of violence, and obstruction of legal process.¹ Appellant moved to dismiss the complaint and suppress all evidence of the firearm and ammunition, arguing that the officers had made an illegal warrantless entry into the residence. A contested omnibus hearing was held, and the district court issued an order denying appellant's motion. Following a jury trial, appellant was convicted on both possession charges and sentenced to 60 months of incarceration. This appeal follows.

DECISION

“Both the United States and Minnesota Constitutions prohibit the state from conducting unreasonable searches or seizures.” *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001) (citing U.S. Const. amend. IV; Minn. Const. art. 1, § 10). Warrantless searches are presumptively unreasonable and are only permitted if an exception to this general rule applies. *State v. Stavish*, 868 N.W.2d 670, 675 (Minn. 2015). “Courts are particularly reluctant to find exceptions to this rule in the context of a warrantless search or seizure in a home.” *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992). To justify the warrantless search of a residence, the state must show either (1) consent or (2) probable cause to search coupled with exigent circumstances. *Id.* If entry into a residence is made without a warrant and neither exception applies, evidence obtained as a result of the entry must be suppressed. *Id.*

¹ This third charge for obstruction was based on the allegation that appellant had refused to cooperate by wrestling with officers when they asked him to leave his room. Appellant was acquitted of this charge, and it is not at issue in this appeal.

A person with “common authority” over a residence “may consent to a search even though the person with whom that authority is shared is absent and does not consent.” *Matter of Welfare of D.A.G.*, 484 N.W.2d 787, 789 (Minn. 1992). “Consent does not have to be verbal, but may be implied from conduct.” *Othoudt*, 482 N.W.2d at 222. But “[m]ere acquiescence on a claim of police authority or submission in the face of a show of force is, of course, not enough.” *State v. Howard*, 373 N.W.2d 596, 599 (Minn. 1985). Whether valid consent to enter was given is determined from “all the relevant circumstances.” *Id.* The state bears the burden of establishing that valid consent was given. *See Ture*, 632 N.W.2d at 627.

Here, appellant made a pre-trial motion to suppress all evidence of the firearm and ammunition found in his bedroom, arguing that the officers’ warrantless entry into the residence was illegal because it was not justified by consent or exigent circumstances. The district court denied appellant’s motion. In doing so, the district court concluded that law enforcement entry into the residence was lawful because Y.G. had impliedly consented to that entry. Specifically, the district court concluded that “[b]y telling Officer Walker in exactly which room he would find [S.J.], rather than continuing to deny her presence, [Y.G.] implied that it was okay for Officer Walker to enter the residence.”

“When reviewing a pretrial order on a motion to suppress evidence, we review the district court’s factual findings under a clearly erroneous standard and its legal determinations de novo.” *State v. deLottinville*, 890 N.W.2d 116, 119 (Minn. 2017). Whether an individual voluntarily consented to law enforcement entry into a home is a question of fact. *State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011); *Othoudt*, 482 N.W.2d

at 222. “Findings of fact are clearly erroneous if, on the entire evidence, we are left with the definite and firm conviction that a mistake occurred.” *Diede*, 795 N.W.2d at 846–47.

The district court did not err in denying appellant’s motion to suppress. The record before the district court when deciding appellant’s motion can be summarized as follows. Officer Walker testified that he had told Y.G. that he “wanted [S.J.] out of the house, she had an active warrant, she is in the house, it is kind of a standard thing, grab the person with the warrant and we leave,” after which Y.G. told him in exactly which bedroom within the house S.J. could be found.

The district court admitted into evidence a probable cause packet containing a copy of the complaint and reports from Officers Walker, Pekarek, and Cook. Officer Walker’s report contains a version of events matching the testimony he gave at the contested omnibus hearing. Officer Cook’s report states that Y.G. and I.N. informed him that there was a warrant for C.H.’s arrest and asked the officers to remove C.H. from the residence.

Finally, the district court admitted into evidence a compact disc containing footage from Officer Cook’s body-worn camera. This footage does not depict the exchange Officer Walker had with Y.G. before the officers entered the home. The footage does, however, depict the exchange during which I.N. and Y.G. stated that there was an active warrant for C.H.’s arrest and I.N. asked Officer Cook to remove him from the residence. The majority of this footage supports the district court’s finding that “there was no verbal or non-verbal objection to law enforcement being present” after they entered the residence. At the end of the footage, both I.N. and Y.G. appear to state that Y.G. did not give consent for the

officers to enter the residence, and I.N. appears to claim that Y.G. “told them not to come in.” But these statements were made after appellant had already been arrested.

On this record, the district court’s finding that Y.G. impliedly consented to the officers’ entry into her residence is not clearly erroneous.² The fact that Y.G. told Officer Walker exactly where in the residence S.J. could be found strongly supports the district court’s finding of implied consent. It is unclear what reason Y.G. could have had for sharing this information with Officer Walker other than to facilitate—and indicate her consent to—the officers entering the residence and executing the warrant for S.J.’s arrest. The familiar, almost friendly manner in which Y.G. appears to interact with Officer Cook on the body-worn camera footage, and the fact that Y.G. and I.N. requested that Officer Cook remove an additional person from the residence also support the district court’s finding.

Appellant contends that, even if Y.G. consented to Officer Walker’s entry into the residence, that consent was involuntarily. Appellant also argues that the officers exceeded the scope of Y.G.’s consent by having Officers Pekarek and Cook accompany Officer Walker into the house to detain S.J. Appellant did not raise the argument that Y.G.’s consent was limited to Officer Walker before the district court, and we generally will not consider issues raised for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). More importantly, both of appellant’s arguments are unconvincing. It

² As a threshold matter, it should be noted that Y.G. had authority to consent to law enforcement entry into the home because she is the home’s owner. See *D.A.G.*, 484 N.W.2d at 789.

appears that when Officer Walker was initially speaking with Y.G., Officer Cook had taken up a position behind the residence, and Officer Pekarek was also outside. But as respondent points out, nothing in the record suggests that Y.G. was aware of this fact. And the mere fact that three uniformed officers were present at the scene does not automatically render Y.G.'s consent involuntary, as voluntariness is determined from the totality of the circumstances. *Howard*, 373 N.W.2d at 599. Likewise, there is nothing in the record to support appellant's assertion that Y.G. impliedly consented to only Officer Walker entering the house. There is no indication that Y.G. indicated that Officer Cook or Officer Pekarek was not allowed inside. And given the fact that the officers were attempting to execute an arrest warrant, Y.G. may very well have anticipated that multiple officers would be entering the home, both to ensure officer safety and to prevent S.J. from escaping.

On this record, the district court's finding that Y.G. impliedly consented to the officers' entry into her home is not clearly erroneous. Accordingly, appellant has failed to demonstrate that the district court erred in denying his motion to suppress.

Affirmed.