

*This opinion is nonprecedential except as provided by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
A20-1477**

In the Matter of the Welfare of: D. A. Y., Jr., Child.

**Filed June 1, 2021
Affirmed
Frisch, Judge**

Hennepin County District Court
File No. 27-JV-20-72

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

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Considered and decided by Cochran, Presiding Judge; Worke, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

On appeal from a final order for continuance without adjudication for possession of a firearm by a person under 18 years old, appellant argues that the district court erred by concluding that the search warrant for his residence was valid because the warrant did not indicate that the residence was a multiple-unit dwelling and officers should have realized the mistake during their search. We affirm.

FACTS

On December 31, 2019, Minneapolis Police Officer Souphaphone Daoheuang applied for a search warrant of appellant D.A.Y.'s residence, attesting that (1) an informant had observed D.A.Y. in possession of a firearm at the residence, (2) D.A.Y. was younger than 18 years old, and (3) D.A.Y. was "a known gang member affiliate" on probation for a prior firearm-related offense. The warrant application identified the home only by its address. Officer Daoheuang indicated her belief that officers would find firearms and ammunition within the property. The district court signed and issued the search warrant.

On January 3, 2020, officers executed the search warrant and discovered D.A.Y. in his bedroom with a loaded firearm on his bed. On January 7, the state charged D.A.Y. with felony possession of a firearm by a person under 18 years of age in violation of Minn. Stat. § 624.713, subd. 1(1) (2018).

D.A.Y. filed a motion to suppress the evidence against him, arguing that the warrant was invalid because the warrant application failed to identify the property to be searched as a multiple-unit building. Alternatively, D.A.Y. requested a *Franks* hearing,¹ again challenging Officer Daoheuang's failure to identify the residence as a multiple-unit building. D.A.Y. supported his motion with (1) a Minneapolis Rental Dwelling License indicating that the property was licensed for two dwelling units, (2) paper mailings, some

¹ See *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674 (1978); see also *State v. Andersen*, 784 N.W.2d 320, 327 (Minn. 2010) (stating that defendant seeking to invalidate search warrant must demonstrate that "(1) the affiant deliberately made a statement that was false or in reckless disregard of the truth, and (2) the statement was material to the probable cause determination." (quotation omitted)).

addressed to apartment/floor 1 and others addressed to apartment 2, and (3) the search warrant application.

The district court granted D.A.Y.'s request for a *Franks* hearing and reserved ruling on the motion to suppress pending the results of the evidentiary hearing. We summarize the evidence presented at the hearing as follows.

Officer Daoheuang testified that D.A.Y.'s residence is a single-family home with a single house number on the front. She used a combination of Google, Facebook, Instagram, and Hennepin County property records to gather information about the residence and to confirm the correct address. Officers surveilled the property and looked for clues of multiple occupancy, such as multiple mailboxes, vehicle arrangements, driveways, and alleyways. Officer Daoheuang observed that the property "looked like a multilevel residence" and that the front of the property had only one entrance. She claimed the property had a single mailbox, no intercom system, and no doorbell. During her surveillance, Officer Daoheuang observed only D.A.Y. entering and exiting the home through the front door. She admitted that she did not consult the City of Minneapolis's records to determine what type of building the home was; she testified that she never used that system and instead relied on Hennepin County's records, which indicated that the property was a single-family home.

Officer Daoheuang also testified that she was present when officers executed the search warrant. Upon entering the property, she walked onto the main floor and observed "a bedroom across from the main door and a salon to the right and then a set of stairs leading up to the second level." She testified that she observed no unit numbers present

within the residence. Officer Daoheuang acknowledged that there might have been a door at the entrance of the second level, but that if there was, it was open by the time she arrived.

According to Officer Daoheuang, her department had a standard procedure to apply for and obtain an additional search warrant if the execution of an initial search warrant led officers to conclude that a residence was a multiple-unit dwelling. But she claimed that, at the time of the search (and at the time of the evidentiary hearing), she believed that the home was a single-family residence.

D.A.Y.'s grandmother testified that she rented space in the dwelling. She claimed that there were two units in the building and a salon area. She denied having access to, or paying rent or utilities for, the first-floor unit, which was rented by her son (D.A.Y.'s uncle). Grandmother testified that there was a mailbox and a mail slot on the front of the property, but that the receptacles were used for mail for both units. She also testified that she had her rental license taped outside the second-floor door on the date officers executed the search warrant.

The district court found that Officer Daoheuang testified credibly regarding her investigation and the officers' observations, which included reviewing property records; searching Google Maps; conducting surveillance and observing a single house number, a single mailbox, and a single front door; and observing only D.A.Y. entering and exiting the property. The district court also emphasized that there was no indication inside the dwelling that the building was subdivided and that officers had access to the entire property upon their entry. The district court therefore found that "police officers acted reasonably to determine whether the location to be searched was a multiple-occupancy dwelling" and

that “[b]ased on the information obtained during the course of the investigation, it was reasonable for the officers to conclude that this was, in fact, a single-family home.”

The district court concluded that “the search warrant does not lack sufficient particularity regarding the place to be searched” and that “police officers acted reasonably to determine whether the place to be searched was a multiple-occupancy residence.” It determined that the search warrant was valid and denied D.A.Y.’s motion to suppress.

The case proceeded to a stipulated-evidence trial. See Minn. R. Crim. P. 26.01, subd. 4; Minn. R. Juv. Delinq. P. 13.03, subd. 3. The district court found D.A.Y. guilty as charged, and on October 23, 2020, the district court entered an order continuing the matter without adjudication until March 20, 2021. This appeal follows.

DECISION

D.A.Y. urges us to reverse the order denying his motion to suppress, arguing that the search warrant was invalid because reasonable investigation would have revealed that the property was a multiple-unit dwelling and because officers should have realized at the time of the search that the property was a multiple-unit dwelling. The state urges us to affirm because the officers acted reasonably both before and during the search.

“Following a stipulated-evidence trial, this court’s review is . . . limited to the pretrial order that denied [the appellant’s] motion to suppress.” *State v. Marsh*, 931 N.W.2d 825, 829 (Minn. App. 2019) (quotation omitted). When reviewing a pretrial order denying a motion to suppress, we review the district court’s findings of fact for clear error and its legal conclusions de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009).

The United States and Minnesota Constitutions prohibit unreasonable searches and require that search warrants describe the place to be searched with particularity. U.S. Const. amend. IV; Minn. Const. art. I, § 10. “A search that exceeds the scope of a warrant is unconstitutional.” *State v. Molnau*, 904 N.W.2d 449, 452 (Minn. 2017). “The test for determining whether a search has exceeded the scope of the warrant is one of reasonableness.” *Marsh*, 931 N.W.2d at 830 (quotation omitted).

“The general rule [in Minnesota] is that a search warrant for a multiple occupancy building is invalid unless it describes the particular unit to be searched with sufficient definiteness.” *State v. Lorenz*, 368 N.W.2d 284, 286 (Minn. 1985) (quotation omitted). But under an exception to the rule, “such a warrant is valid . . . when police, acting reasonably, do not learn until executing the warrant that the building is a multiple occupancy building.” *Id.* If officers realize that a property is a multiple-occupancy dwelling during their search and thereby become aware of the error in the warrant, they are obligated to limit their search. *See Maryland v. Garrison*, 480 U.S. 79, 88, 107 S. Ct. 1013, 1018 (1987) (identifying issue as being “whether the officers’ failure to realize the overbreadth of the warrant was objectively understandable and reasonable”). Accordingly, “the validity of the search of a rented [unit], pursuant to a warrant authorizing the search of the entire house, depends on whether officers reasonably knew or should have known that it was a multiple-occupancy building at the time of the search.” *Marsh*, 931 N.W.2d at 831. In determining the reasonableness of the officers’ actions, we “must look at the totality of the circumstances.” *Id.* at 830. Although we review the district court’s factual findings for clear error, *see Ortega*, 770 N.W.2d at 149, we independently review those

facts to determine reasonableness under the totality of the circumstances, *see State v. Walker*, 584 N.W.2d 763, 766 (Minn. 1998).

As a threshold matter, D.A.Y. contends that the district court applied the wrong legal framework by determining that D.A.Y. failed to demonstrate any deliberate falsification or reckless disregard of the truth by Officer Daoheuang. We disagree. The district court addressed *both* the reasonableness of the officers' conduct *and* D.A.Y.'s claim that Officer Daoheuang deliberately made false statements or recklessly disregarded information when applying for the search warrant. The district court did not conflate the issues; it explained that the question before it was "whether the Officers acted reasonably to ascertain that the residence was a single-family residence" and it cited and applied proper authorities.

On the merits, D.A.Y. argues that the officers' actions were not reasonable because adequate investigation would have revealed that the property was a multiple-unit dwelling and "because officers should have realized there were multiple units while executing the warrant." He emphasizes that (1) the city's licensing records indicated the dwelling was a two-unit building, (2) the police department's arrest records indicated that D.A.Y. lived in Apartment 2, (3) "[c]hecking utility bills would have revealed there were two separate accounts for the dwelling," (4) court records showed D.A.Y. lived in Apartment 2, (5) officers should have observed two doors at the back of the property, and (6) "there was a rental license posted outside the entrance to the second-floor unit specifically stating there were two units at the address."

We assume that the officer's failure to consult city licensing records and utility records weighs in D.A.Y.'s favor. See *In re Welfare of T.L.K.*, 487 N.W.2d 911, 914 (Minn. App. 1992) (noting officers' failure to contact utility companies). But other circumstances cited by D.A.Y. contradict the district court's findings or were assigned little weight by the district court. Regarding the existence of arrest and court records indicating that D.A.Y. lived in Unit 2, the district court credited Officer Daoheuang's testimony that she lacked access to juvenile court records. As for the rental license D.A.Y. claims was posted outside the second-floor unit, the district court explicitly found that there "were no room or unit numbers, *and no signs indicating private residences.*" (Emphasis added.) The district court credited Officer Daoheuang's testimony rather than crediting grandmother's testimony, and D.A.Y. fails to assert that the credibility determination and relevant findings are clearly erroneous.

Regardless, the district court was aware of these circumstances and weighed them against numerous *other* circumstances suggesting that the building was a single-family home: the officer referred to county property records and viewed the home on Google Maps, both of which indicated it was a single-family residence; officers saw a single house number, a single mailbox, and a single front door; officers saw no intercom; officers saw only D.A.Y. coming and going from the residence; upon entering, officers had access to the entire home; and there were no room or unit numbers indicating multiple occupancies. In reviewing the totality of the circumstances, we cannot say that the district court erred by determining that it was reasonable for the officers to conclude that the property was a single-family home rather than a multiple-unit dwelling.

Our conclusion is consistent with relevant caselaw. In *Marsh*, we considered circumstances in which officers “believed the house to be a single-family residence prior to obtaining the warrant and conducting the search.” 931 N.W.2d at 830. We noted that the house outwardly appeared to be a single-family residence and described the relevant circumstances as follows:

There were two doors, front and back, and one mailbox. Upon entering, an open staircase provided the only way to access the second floor, which meant the agents had to go through the main floor to the stairs. Once inside, law enforcement had access to the entire house. The upstairs common space had a mini fridge and doors leading to bedrooms and a bathroom, but there were no room or unit numbers and no signs indicating private residences. All of these would have indicated to the agents that this was indeed a single-family home.

Id. at 831. We also noted the lack of separate doorbells. *Id.* D.A.Y.’s case is similar; officers observed only one mailbox,² saw no doorbells, had access to the entire house upon entry, and observed no unit numbers or signs indicating private units.

D.A.Y.’s case is distinguishable from others in which suppression was proper. In *T.L.K.*, we concluded that police officers should have known that a home contained two separate dwelling units. 487 N.W.2d at 914. We noted that officers failed to contact utility or telephone companies, the home had multiple mailboxes, and access to the two units was available “only through separate doors on separate floors.” *Id.* at 913. Here, Officer Daoheuang did not investigate utility listings, but the home had only one visible mailbox and the police could access the entire home upon entry. In *United States v. Andrews*, 713

² Although grandmother testified that there was a second mail slot, she claimed the mail was intermingled regardless.

F. Supp. 1319, 1322 (D. Minn. 1989), a federal district court granted a motion to suppress evidence because officers failed to adequately investigate whether the property to be searched comprised multiple dwelling units. In that case, the district court noted that the property resembled a single-family dwelling with one visible main entrance and one address. *Id.* at 1320-21. But the district court noted the house had “two voice boxes, under separate names, by the front door” and that officers had found a letter prior to the search indicating that an occupant of the house took mail on floor 2. *Id.* at 1321. Here, however, there was no intercom system and the officers were unaware that occupants were receiving mail at separate floor or apartment listings.

Because the district court’s findings are not clearly erroneous and because the district court did not err by determining that “it was reasonable for the officers to conclude that [the residence] was, in fact, a single-family home,” the exception to the multiple-occupancy rule applied and the search warrant was valid.³ Accordingly, we affirm the district court’s denial of D.A.Y.’s motion to suppress.

Affirmed.

³ The district court also observed that “there is evidence indicating that the residence . . . may fall under the community-occupation situation” and stated that “[t]he evidence tends to confirm that the residence was similar to a community-occupation situation . . . rather than a multiple-occupancy residence.” As we explained in *Marsh*, the general multiple-occupancy rule “does not apply in situations of ‘community occupation’ when two or more people ‘occupy a single residence in common rather than individually, as where they share common living quarters but have separate bedrooms.’” 931 N.W.2d at 830 (quoting *Lorenz*, 368 N.W.2d at 286). Here, it is unclear whether the district court actually applied the community-occupation rule as an alternative ground to deny D.A.Y.’s motion. Because we affirm based on the exception to the multiple-occupancy rule, we need not reach the community-occupation issue.