



State v. Morcomb

2007 | Cited 0 times | Court of Appeals of Minnesota | September 18, 2007

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2006).

Affirmed

Considered and decided by Hudson, Presiding Judge; Lansing, Judge; and Parker, Judge.¹

UNPUBLISHED OPINION

In this appeal from conviction of two counts of first-degree and one count of fifth-degree controlled substance crime, George Morcomb challenges the admissibility of evidence seized in a search of his garage. He argues that the evidence should have been suppressed because his wife did not consent to the search. Because the search was justified, partly by limited consent and partly by exigent circumstances, we affirm.

FACTS

The Crow Wing County Sheriff's office received a phone call on February 11, 2004, from a parent who had found drugs in his juvenile daughter's purse. After investigating, a sheriff's deputy learned that the juvenile had recently been at George Morcomb's house and had reportedly obtained the drugs from him.

About 1:00 a.m. on February 12, two sheriff's deputies went to the Morcombs' house and knocked on the door. George Morcomb's wife, Patricia Morcomb, answered the door. The deputies initially told her they were investigating the disappearance of the juvenile who had been caught with the drugs. Later the deputies informed Patricia Morcomb that they had received a report of drug activity at the house. She told them that she would not agree to a search of the house:

Deputy: O.K., would you mind if we go through and look quick?

Patricia Morcomb: Well, yeah,

Deputy: You do?

Patricia Morcomb: That's not fair.



State v. Morcomb

2007 | Cited 0 times | Court of Appeals of Minnesota | September 18, 2007

Later, the deputies tried again to get Patricia Morcomb's consent:

Deputy: O.K., well, first, first of all, can we come in, search, see if there's any drugs in the house?

Patricia Morcomb: No.

Deputy: O.K., well what we're gonna do is we're . . .

Patricia Morcomb: I mean that's not . . .

Deputy: O.K., that's fine, we'll be right back, we're gonna give our narcotics guys a call and see where we're gonna go from here, so . . .

At that point, Patricia Morcomb offered to check on whether George Morcomb was in the office area in the garage:

Deputy: If you wanna show us the shed . . .

Patricia Morcomb: I'm gonna go see if he's there, O.K.?

Deputy: O.K.

Patricia Morcomb walked to the garage and the deputies followed her. She did not object when the deputies followed her into the garage. At some point, Patricia Morcomb waited with one deputy while the other answered his cell phone. When the phone call was finished, a deputy asked, "Where's that at? Do you mind if we, mind if we go in there?" Several seconds later, Patricia Morcomb said, "Sorry."

The deputies moved toward the garage and followed Patricia Morcomb into the garage. Patricia Morcomb knocked on the door of the office area. As the deputies and Patricia Morcomb stood outside the office area within the garage, a deputy asked:

Deputy: Can't you just go in there?

Patricia Morcomb: No.

Deputy: What do you mean no?

Patricia Morcomb: No.

Then one of the deputies knocked on the office door, and George Morcomb opened the door but



State v. Morcomb

2007 | Cited 0 times | Court of Appeals of Minnesota | September 18, 2007

started to close it when he saw the deputy. The deputy--who saw rifles on the interior office wall--grabbed George Morcomb's arm, pulled him out of the office, and arrested him.

At George Morcomb's request, the deputy went into the office to retrieve a pair of shoes. While retrieving the shoes, the deputy observed drug paraphernalia, marijuana, and white powdery residue similar to methamphetamine. The deputies then conducted a security sweep and made further observations of marijuana and drug paraphernalia.

Based on their investigation, the deputies applied for and obtained a search warrant. They executed the search warrant and seized the drugs.

George Morcomb was charged with two counts of first-degree controlled substance crime and one count of fifth-degree controlled substance crime. He challenged the search as illegal and moved to suppress the evidence seized from the Morcombs' garage. The district court concluded that the search of the garage was consensual and denied the motion. After the case was submitted on stipulated facts, the district court found George Morcomb guilty on all three counts and sentenced him to eighty-six months. He now appeals.

DECISION

The state and federal constitutions protect against unreasonable searches and seizures. U.S. Const. amends. IV, XIV, § 1; Minn. Const. art. I, § 10. A search occurs when a police officer enters an area in which a person has a legitimate expectation of privacy. *State v. Carter*, 697 N.W.2d 199, 206 (Minn. 2005). A warrantless search is unreasonable unless an exception to the warrant requirement applies. See *id.* (discussing valid consent). Under the consent exception to the warrant requirement, a warrantless search is reasonable if (1) police officers obtain consent, (2) that is voluntarily given, (3) by a person authorized to consent, and (4) the search does not exceed the scope of the consent. On appeal, we review a district court's findings of facts for clear error. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005). As applied to specific facts, the reasonableness of a search and seizure presents a question of law, which we review de novo. *Id.*

The district court found that Patricia Morcomb consented to the search of the garage. The record contains evidence that partially supports this finding. Patricia Morcomb offered to find George Morcomb and permitted the deputies to follow her into the garage. One of the deputies testified that "she led us to the out buildings." The record also indicates, however, that Patricia Morcomb had consistently rejected the deputies' requests for permission to search parts of her property. In light of her refusals, we conclude that the record supports the conclusion that Patricia Morcomb gave only limited consent. Although the district court could find that Patricia Morcomb permitted the deputies to enter the garage, she did not give the deputies permission to enter or search the office area within the garage.



State v. Morcomb

2007 | Cited 0 times | Court of Appeals of Minnesota | September 18, 2007

The record also confirms that the consent was voluntary. George Morcomb argues for the first time on appeal that his wife's consent was involuntary because it was coerced and because she was impaired when she gave consent. The testimony shows that Patricia Morcomb had been using marijuana before she consented to the search and that she only consented after repeated requests by the deputies. Nonetheless, sufficient evidence supports the district court's conclusion that the consent was voluntary. Before consenting to the search, Patricia Morcomb displayed a clear ability to refuse the deputies requests. When she eventually did give consent, she was able to limit the scope of that consent. Furthermore, after police arrested George Morcomb, Patricia Morcomb had the presence of mind to request that the deputies leave her property. Therefore, the district court's conclusion that the consent was voluntary is not clearly erroneous.

Thus, the deputies had obtained voluntary consent to enter the garage and approach the office area. Nonetheless the deputy exceeded the scope of the consent when he reached into the office area and arrested George Morcomb. Therefore, the search was not entirely justified by the consent exception to the warrant requirement.

The fact that the deputy exceeded the scope of the consent will not invalidate the search if it is otherwise justified by another exception to the warrant requirement. Exigent circumstances may justify a search that exceeds the scope of the initial consent. In *re Welfare of B.R.K.*, 658 N.W.2d 565, 578-79 (Minn. 2003). Exigent circumstances may be based on a highly compelling single event, such as a fleeing felon, or it may be based on the totality of the circumstances. *State v. Hummel*, 483 N.W.2d 68, 72 (Minn. 1992). Exigent circumstances exist when, for example, the police are in hot pursuit of a suspect or need to protect human life. *State v. Paul*, 548 N.W.2d 260, 264 (Minn. 1996). A warrantless search may be justified by exigent circumstances when the safety of law enforcement officers is threatened. *United States v. Cunningham*, 133 F.3d 1070, 1072 (8th Cir. 1998).

After George Morcomb opened the door to the office area, he saw the deputy and then quickly started to close the door. At that point, the deputy was confined in the garage area, had observed rifles on the wall of the office area, and had received a report that George Morcomb was selling drugs. The other deputy had walked outside and was waiting outside the office area's window. Thus, when George Morcomb took evasive action and moved back into his office, toward the rifles, the deputy was isolated and his safety was threatened. The deputy's act of reaching into the office area was therefore justified by exigent circumstances. The officers had consent to enter the garage and approach the office area. We cannot conclude that the deputies impermissibly manufactured the exigent circumstances. After the deputy seized George Morcomb, the deputy's subsequent entry into the office area to retrieve George Morcomb's shoes was based on consent. George Morcomb does not challenge the security sweep of his office. Therefore, we conclude that the search of the office area was reasonable.

In addition, the state argues that George Morcomb's consent argument is moot because the deputies later obtained a search warrant. If a prior illegal search is not the direct or indirect basis for a search



State v. Morcomb

2007 | Cited 0 times | Court of Appeals of Minnesota | September 18, 2007

warrant, a subsequently obtained search warrant can provide an independent basis for admitting the evidence. See *State v. Lieberg*, 553 N.W.2d 51, 58 (Minn. App. 1996) (remanding for finding on whether illegal search prompted officers to obtain warrant). Because the search was justified, partly by limited consent and partly by exigent circumstances, we do not address the state's argument that the search warrant was issued on evidence that was independent from the search of the Morcombs' garage.

Affirmed.

1. Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

