State v. Sargent

2004 | Cited 0 times | Court of Appeals of Minnesota | June 15, 2004

Affirmed

UNPUBLISHED OPINION

Appellant challenges his conviction of felon in possession of a firearm, arguing that the district court erred in denying his omnibus motion to suppress evidence. We affirm.

FACTS

On the afternoon of July 20, 2002, the Cass County Sheriff's Department received a report that appellant Carlos Ramone Sargent had used a black 9 mm handgun in a drive-by shooting. That evening, Cass County deputies responded to a report of shots fired in Cass Lake. At the scene, a group of people informed the deputies that appellant had run into the nearby residence of Earth Matthews - his ex-girlfriend and mother of his two children, who also live in the residence - carrying a dark-colored, semi-automatic handgun. The witnesses reported that they had heard appellant chamber a round by pulling the gun's slide back.

The deputies surrounded and secured the Matthews residence. Matthews, speaking through an open window, denied that appellant was in the house and refused to consent to a search. She subsequently left the house with the children, whereupon the deputies entered the house and discovered appellant in the cellar and a black, semi-automatic gun in a rear bedroom.

The state charged appellant, who was convicted in 1999 of felony assault, with felon in possession of a firearm in violation of Minn. Stat. § 609.165, subd. 1b (2002). Appellant filed a motion to suppress the gun and dismiss the charges for lack of probable cause. At the omnibus hearing, a police officer who responded to the report of shots fired testified that when he arrived at the scene, he was aware of an outstanding warrant for appellant's arrest in connection with the earlier drive-by shooting. The officer stated that in light of the possibility that an armed suspect was in the house, he decided a warrantless search was necessary "for [Matthews's] safety and the children's safety." Earth Matthews also testified. When asked whether appellant was staying at her house at the time of the search, Matthews responded, "Kind of. Off and on, not really." Matthews testified that although appellant entered her house with her consent on the evening of October 20, she told him to leave when the police arrived.

The district court denied appellant's motion to suppress the evidence, reasoning that appellant

lacked standing to challenge the search of Matthews's home and that even if appellant had standing, exigent circumstances justified the police's decision to enter Matthews's residence. Appellant waived his right to a jury trial and submitted the matter to the district court on stipulated facts. The district court found appellant guilty and sentenced him to 60 months in prison. This appeal follows.

DECISION

When reviewing pretrial orders on motions to suppress evidence, we review the facts independently to determine, as a matter of law, whether the district court erred in admitting the evidence. State v. Harris, 590 N.W.2d 90, 98 (Minn. 1999). But the district court's factual findings will not be reversed unless clearly erroneous. State v. George, 557 N.W.2d 575, 578 (Minn. 1997).

The Fourth Amendment and article I, section 10 of the Minnesota Constitution protect individuals from unreasonable searches and seizures by the government of "persons, houses, papers and effects." "A search occurs whenever government agents intrude upon an area where a person has a reasonable expectation of privacy." State v. Hardy, 577 N.W.2d 212, 215 (Minn. 1998).

Appellant argues that the district court erred in concluding that he lacked standing to assert any violation of his Fourth Amendment rights. Standing is a matter of law, which we review de novo. Schiff v. Griffin, 639 N.W.2d 56, 59 (Minn. App. 2002). In order to establish standing to suppress evidence obtained in alleged violation of the Fourth Amendment, appellant must establish a legitimate expectation of privacy in Earth Matthews's home by demonstrating (1) a subjective expectation of privacy and (2) that the expectation was reasonable in light of "longstanding social custom[s] that serve[] functions recognized as valuable by society." Minnesota v. Olson, 495 U.S. 91, 95-96, 98, 110 S.Ct. 1684, 1687, 1689 (1990).

Appellant asserted standing before the district court solely on the basis of Olson's holding that "an overnight guest has a legitimate expectation of privacy in his host's home." 495 U.S. at 98, 110 S.Ct. at 1689. He now asserts standing pursuant to the holding in In re Welfare of B.R.K., 658 N.W.2d 565, 576 (Minn. 2003), that "a short-term social guest... ha[s] a reasonable expectation of privacy in his host's home." Although we generally will not consider constitutional issues raised for the first time on appeal, see State v. Roby, 463 N.W.2d 506, 508 (Minn. 1990), we will address the merits of appellant's argument in light of B.R.K., which was decided after the omnibus hearing but is nonetheless applicable to this appeal. See Griffith v. Kentucky, 479 U.S. 314, 328, 107 S.Ct. 708, 716 (1987) (holding that a case announcing a federal constitutional rule affecting criminal defendants is to be applied retroactively to cases pending on direct review at the time it is decided).

Applying the rule announced in B.R.K., however, we conclude that appellant's subjective expectation of privacy in Matthews's residence was not objective or reasonable. In B.R.K., the court held that short-term social guests - there, a minor guest attending a party at a friend's house - have a reasonable expectation of privacy in the host's home because, "[l]ike an overnight visit, entering the

home of another for a short-term social visit is also a longstanding social custom that serves functions recognized as valuable by society." B.R.K., 658 N.W.2d at 576 (quotation omitted). In concluding that B.R.K. had a reasonable expectation of privacy in his host's home, the court observed that (1) his presence at the party was consented to by his host; (2) he engaged in social interaction with his host; (3) he had a "previous social connection" with his host; and (4) B.R.K.'s host "shared his privacy interest with B.R.K. by allowing him to participate in locking the doors, turning off the lights, and hiding behind the furnace." Id. at 574.

Here, Matthews testified that there were previous social connections between appellant and Matthews. Appellant initially entered her house that night with her consent but she told him to leave when the police arrived. But the record is also clear that appellant had no social purpose for entering Matthews's home on the evening of July 20, and that no social interaction took place between himself and Matthews that evening. Appellant entered the home because he was fleeing the police, an activity entirely inconsistent with a "longstanding social custom that serves functions recognized as valuable by society." B.R.K., 658 N.W.2d at 576; see also State v. Sletten, 664 N.W.2d 870, 879-80 (Minn. App. 2003) (observing that an individual's expectation of privacy in entering a hotel room for the purpose of evading the police is not "one that society is willing to recognize as reasonable"). We therefore conclude that appellant lacked standing to challenge the search.

Although our conclusion as to standing is dispositive, we also observe that there is no merit in appellant's argument that the warrantless search of Matthews's residence violated the Fourth Amendment prohibition against unreasonable searches and seizures because it was not justified by exigent circumstances.

Exigent circumstances justifying a warrantless entry and search of a private residence can be established either by a single factor or "totality of the circumstances" analysis. State v. Gray, 456 N.W.2d 251, 256 (Minn. 1990). Single-factor exigent circumstances include "hot pursuit of a fleeing felon, or imminent destruction of evidence, or the need to prevent a suspect's escape, or the risk of danger to the police or to other persons inside or outside the dwelling." Olson, 495 U.S. at 100, 110 S.Ct. at 1690 (quotations and citations omitted). Here, exigent circumstances were present because an eyewitness had earlier identified appellant as the shooter in a drive-by shooting, and the police entered Matthews's residence in response to a report that appellant had entered the home of his ex-girlfriend and children carrying a loaded, cocked gun.

A totality-of-the-circumstances analysis should consider the factors set forth in Dorman v. United States, 435 F.2d 385, 392-93 (D.C. Cir. 1970), which include

(a) whether a grave or violent offense is involved; (b) whether the suspect is reasonably believed to be armed; (c) whether there is strong probable cause connecting the suspect to the offense; (d) whether police have strong reason to believe the suspect is on the premises; (e) whether it is likely the suspect will escape if not swiftly apprehended; and (f) whether peaceable entry was made.

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State v. Hummel, 483 N.W.2d 68, 72-73 (Minn. 1992) (quotation omitted). Nearly every Dorman factor is present here: a grave or violent offense - a drive-by shooting and a felon brandishing a gun in public - is involved; appellant was reasonably believed to be armed; there was strong probable cause - an eyewitness account - connecting appellant to both offenses; police had strong reason to believe appellant was on the premises; and peaceable entry was made.

Affirmed.