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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0758**

State of Minnesota,  
Respondent,

vs.

Cartez Lamar Cook,  
Appellant.

**Filed March 18, 2013  
Reversed  
Halbrooks, Judge**

Hennepin County District Court  
File No. 27-CR-11-21706

Lori Swanson, Attorney General, St. Paul, Minnesota; and

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Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and  
Rodenberg, Judge.

**UNPUBLISHED OPINION**

**HALBROOKS**, Judge

Appellant challenges his conviction of being a prohibited person in possession of a  
firearm, arguing that the district court erred in denying his motion to suppress evidence

found in a warrantless search of his garage. Alternatively, he argues that the district court erred in calculating his sentence. Because no exigent circumstances were present to justify the warrantless search of Cook's garage, we reverse.

### **FACTS**

In July 2011, appellant Cartez Lamar Cook was a suspect in two carjackings that occurred on two consecutive days near the Minneapolis home where he lived with his mother. The first occurred on July 15, 2011, when K.B. was carjacked at gunpoint by a man described as a black male approximately 5'8" or 5'9" with silver teeth and wearing black clothing. Early on July 16, 2011, police found K.B.'s car in the parking lot of an apartment building in Minneapolis. The caretaker of the building, J.O., informed police that a man matching K.B.'s description of the suspect had left the car there the night before and that he recognized the man as a person who lived nearby at 4724 Nicollet Avenue South.

Shortly before midnight on July 16, 2011, a second victim, Z.H., was carjacked at gunpoint about a block away from where K.B.'s car had been found early that morning. Z.H. immediately contacted the police and described the perpetrator as a black male in his twenties, with gold teeth and short hair, and wearing black clothing. Officers responded to Z.H.'s location and to 4724 Nicollet, surmising that the suspect involved in K.B.'s carjacking was the same person who was involved in Z.H.'s carjacking.

Officers Christine Peterson and Ka Yang arrived at 4724 Nicollet approximately 10-15 minutes after Z.H. reported the incident. They parked in the alley and approached the home on foot. As they approached, they observed a garbage can lying on its side next

to a puddle of water. They also observed that the lights in the house were on, but that the lights in the garage were off. The officers shined flashlights into the garage and observed clutter but did not see anything suspicious or anyone in the garage. Officer Peterson crouched down and peered inside beneath the garage door, which was raised approximately 4-8 inches above the driveway. As she crouched, she “virtually simultaneous[ly]” lifted the garage door open. Officer Peterson testified that as she lifted the door, she saw a car that appeared to match the description of Z.H.’s car.

The officers entered the garage with their guns drawn; they did not see anyone inside. But Officer Yang observed a black semi-automatic handgun on a chair in the side area of the garage. The officers left the handgun in its place, exited the garage, and contacted their supervisors. The supervisors discussed getting a search warrant for the garage but ultimately determined that it was unnecessary and called the forensics team. They also decided that the officers did not have probable cause to enter the house without a warrant.

As the officers waited for the forensics team, a woman exited the home and informed them that the description of the suspect sounded like her son. With her permission, the officers searched the house but found nothing significant. The forensics team subsequently arrived, took pictures of the garage, seized the handgun, and had the car towed. The handgun was later processed and revealed one fingerprint matching Cook’s finger.

On July 17, 2011, Cook was arrested. On July 18, 2011, Z.H. identified Cook from a photo lineup as the man who had carjacked him, and Cook was charged with first-

degree aggravated robbery in violation of Minn. Stat. § 609.245, subd. 1 (2010). Because Cook has several prior felony convictions, he was also charged with being a prohibited person in possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (2010).

Prior to trial, Cook moved to suppress the evidence found during the search of the garage. At the suppression hearing, Officer Yang testified that he and Officer Peterson had entered the garage out of concern for their safety and the safety of the community. The district court denied the suppression motion, determining that the warrantless search was justified by probable cause and exigent circumstances. At trial, the prosecutor introduced the handgun, photographs taken of the handgun in the garage, and the forensic evidence matching the fingerprint on the handgun to Cook. The jury acquitted Cook of first-degree aggravated robbery but convicted him of being a prohibited person in possession of a firearm. The district court sentenced Cook to 68 months in prison. Cook now appeals.

## **D E C I S I O N**

Cook argues that the search of his garage violated his Fourth Amendment rights and that the district court erred by denying his motion to suppress the evidence found in the warrantless search. In reviewing a district court's pretrial order on a motion to suppress evidence, we review factual findings to determine if they are clearly erroneous and legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). We independently review undisputed facts to determine, as a matter of law, whether the district court erred in failing to suppress the evidence. *Id.*

The United States Constitution guarantees “the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV; *see also* Minn. Const. art. 1, § 10. This protection extends to the home and its curtilage, which includes the garage. *State v. Crea*, 233 N.W.2d 736, 739 (Minn. 1975).

Warrantless searches and seizures are presumptively unreasonable under the Fourth Amendment unless they fall within a recognized exception to the warrant requirement. *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012). The state bears the burden of establishing that, in the absence of a search warrant, the search was reasonable because it “fell within one of the exceptions to the warrant requirement.” *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). The state argues that the exigent-circumstances exception applies. This exception obviates the need for a warrant when the “exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” *State v. Shriner*, 751 N.W.2d 538, 541 (Minn. 2008) (quotation omitted). To justify a warrantless search based on the exigencies of the situation, the state must show that both probable cause and exigent circumstances are present. *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992).

Exigent circumstances may exist in two situations: (1) where there is a “highly compelling” single factor or (2) a “totality of the circumstances situation.” *State v. Hummel*, 483 N.W.2d 68, 72 (Minn. 1992) (quotation omitted). The parties do not dispute that the single-factor situation does not apply. The district court applied the

totality-of-the-circumstances test and concluded that the officers were justified in their warrantless search of Cook's garage. Under the totality-of-the-circumstances test, the district court considers six factors adopted by the supreme court in *State v. Gray*, 456 N.W.2d 251 (Minn. 1990), from *Dorman v. United States*, 435 F.2d 385, 392-93 (D.C. Cir. 1970):

- (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.

*Gray*, 456 N.W.2d at 256. The factors are not rigid and should be applied so as to give effect to other relevant circumstances. *Id.* In addition to these factors, the district court may consider whether the search was planned in advance or whether it occurred in the field as a result of unfolding developments. *Id.* at 256-57.

Here, the district court found that the initial search “was not planned in advance, but rather unfolded quickly in response to the second carjacking which had been reported no more than 10 minutes prior to the search,” thus supporting a finding of exigent circumstances. It also found that the first three *Dorman* factors supported a finding of exigent circumstances and that the last three factors, though not highly likely, reasonably supported a finding of exigent circumstances.

We agree that the first two *Dorman* factors are present. There is little question that an armed carjacking constitutes a “grave or violent offense,” *see In re Welfare of*

*B.R.K.*, 658 N.W.2d 565, 579 (Minn. 2003) (assuming that robbery and assault are “grave or violent” offenses), and that such an offense would lead officers to reasonably believe that the suspect remained armed just 10-15 minutes after it occurred.

As to the third factor, however, although probable cause may have existed for officers to obtain a search warrant, a finding of probable cause for a search warrant does not necessarily equate to the “strong” probable cause required to justify a warrantless search. *See id.* at 579-80 (noting that a phone call from an informant did not give rise to “particularly strong” probable cause of underage drinking for purposes of finding exigent circumstances); *see also In re Welfare of D.A.G.*, 484 N.W.2d 787, 791 (Minn. 1992) (“[A]lthough the information that [the witness] provided may have established probable cause for the issuance of a search warrant by a neutral judge, it did not constitute the ‘strong’ showing required to conduct a warrantless search.”). The evidence supporting probable cause consisted of (1) J.O.’s statement that a person matching the description given by K.B. lived at the home and (2) the officers’ speculation that the same person was involved in the carjacking of Z.H. There is no evidence that officers independently verified that a person matching the descriptions given by K.B. and J.O. lived at the home. Moreover, even the officers who entered the garage conceded that they did not have probable cause to enter the home. Upon this record, we cannot say that the officers had “strong” probable cause to conduct a warrantless search.

Furthermore, as to the fourth factor, the officers had little reason to believe that the suspect was on the premises. Officers did not follow Cook (or anyone) from the carjacking to 4724 Nicollet, nor did they have information other than their own

speculation that he was there. *Cf. Gray*, 456 N.W.2d at 254 (suspect’s mother told police that the suspect was on the premises); *Hummel*, 483 N.W.2d at 73 (same). They were simply aware that a suspect in the July 15 carjacking possibly lived at the home and went there suspecting that the same person may have also been involved in the July 16 carjacking. When the officers arrived at Cook’s home, they observed that lights were on in the house but not in the garage. The officers had no reason to believe that anyone was in the garage—other than the tipped-over garbage can and the puddle of water, evidence Officer Peterson surmised meant that the garbage can had been recently tipped over. But we disagree that a puddle of water and a tipped-over garbage can was strong enough evidence connecting a person to the premises so as to justify entering the premises without a warrant.

Similarly, as to the fifth factor, the officers had no reason to believe that the suspect was likely to escape from the garage, given the lack of evidence that the suspect was actually in the garage.

Finally, as to the sixth factor, an officer’s entry “‘with guns drawn’ does not constitute peaceable entry under any circumstances.” *D.A.G.*, 484 N.W.2d at 791. The officers entered a dark garage, at night, with guns drawn. This is not peaceable entry.

Only two of the *Dorman* factors weigh in favor of justifying a warrantless search under the exigent-circumstances exception. We recognize that public safety may dictate that these two factors are significant in determining whether a warrantless search is justified. But when no evidence, other than the officers’ speculation, suggests that a suspect is actually on the premises, the search is unlikely to allay the threat to public

safety. Moreover, there appears to be no reason why the officers could not have obtained a warrant to search the garage. Indeed, Officer Yang testified that it was not uncommon to “freeze the scene” while waiting to obtain a search warrant in similar situations. We see no exigent circumstances that justified the officers’ failure to do so here.

Cook also argues that even if the initial search was lawful, the reentry of the garage by the forensics team was not justified by exigent circumstances. Because we conclude that the initial search was unlawful, we do not reach this issue. Likewise, because we reverse the district court’s denial of Cook’s motion to suppress, we do not reach his argument that the case should be remanded for re-sentencing.

**Reversed.**