STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0953

State of Minnesota,
Respondent,

vs.

Craig Kennard Bahneman,
Appellant.

Filed May 6, 2008
Affirmed
Wright, Judge

Carlton County District Court
File No. CR-06-582

Matthew K. Begeske, 713 Board of Trade Building, 301 West First Street, Duluth, MN 55802 (for appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Thomas H. Pertler, Carlton County Attorney, Nichole J. Carter, Assistant County Attorney, Room 202 Courthouse, P.O. Box 300, Carlton, MN 55718 (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Peterson, Judge; and Wright, Judge.

U N P U B L I S H E D O P I N I O N

WRIGHT, Judge

Appellant challenges the denial of his motion to suppress evidence, arguing that the district court erred by concluding that the hot-pursuit exception to the warrant requirement justified the police officers' warrantless entry into his residence. We affirm.

FACTS[1]

At approximately 7:10 p.m. on February 12, 2006, Officer Rebecca Seboe observed a vehicle that appeared to be speeding. After confirming her suspicion with radar, Officer Seboe activated her squad car's flashing lights and drove directly behind the vehicle, trailing it by a distance of approximately two car lengths. The vehicle did not stop. Officer Seboe followed the vehicle as it continued down the highway for a short distance, turned off of the highway, traveled through a residential neighborhood, made several turns, and finally turned into the driveway of a residence. Throughout this "meandering" half-mile chase, Officer Seboe remained directly behind the vehicle with her flashing lights activated.

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[1] Bahneman entered a "conditional guilty plea" and stipulated to the state's case in order to preserve the suppression issue for appeal. Although the parties and the district court believed that they were following the procedure set forth in *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980), the *Lothenbach* procedure does not involve a guilty plea. *State v. Prax*, 686 N.W.2d 45, 49 (Minn. App. 2004). Minnesota does not recognize a conditional guilty plea; rather, under the *Lothenbach* procedure, the defendant enters a plea of not guilty, waives the right to a jury trial, and stipulates to the facts supporting the prosecution's case. *Lothenbach*, 296 N.W.2d at 857; *cf.* Minn. R. Crim. P. 26.01, subd. 4 (2007) (codifying trial on stipulated facts). But given the parties' and district court's clear intent regarding the proceeding, the interests of judicial economy underlying the *Lothenbach* procedure compel us to treat Bahneman's plea as a not-guilty plea with stipulated facts. 296 N.W.2d at 857-58; *see* Minn. R. Crim. P. 26.01, subd. 4.

Officer Seboe saw the vehicle enter the garage and the garage door close. But she was unable to identify the driver. After waiting a few minutes, Officer Seboe pounded on the front door and identified herself as a police officer; there was no response. Officer Seboe called for assistance, and two additional officers arrived shortly thereafter.

One of the officers peered into the garage window and obtained the vehicle's license-plate number; the other walked around the house to ensure that the driver did not escape through an outside door. Dispatch identified appellant Craig Bahneman as the vehicle's owner and gave the officers his home phone number. An officer left a message on Bahneman's answering machine, warning that if Bahneman refused to open the door within one minute, the officers would enter the residence. After one minute passed with no response, the officers entered Bahneman's residence and arrested him. No one else appeared to be inside.

Officer Seboe smelled the odor of alcohol on Bahneman's breath. A subsequent breath test at the police station disclosed an alcohol concentration of .12. Bahneman was charged with fleeing a peace officer in a motor vehicle, a felony violation of Minn. Stat. § 609.487, subd. 3 (2004); and two counts of second-degree driving while impaired (DWI), a violation of Minn. Stat. §§ 169A.20, subd. 1, 169A.25 (2004). In a motion to suppress evidence, Bahneman challenged the constitutionality of the warrantless entry into his residence. Following an evidentiary hearing, the district court denied the motion to suppress, concluding that the entry was justified by exigent circumstances—specifically, hot pursuit.

The state agreed to amend the felony charge of fleeing a peace officer to misdemeanor obstructing legal process, a violation of Minn. Stat. § 609.50, subd. 1 (2004). And Bahneman pleaded guilty to this offense. With respect to the DWI charges, Bahneman waived his right to a jury trial and stipulated to the facts supporting conviction. *See supra* n.1 (describing nature of trial procedure). This appeal followed.

D E C I S I O N

Bahneman challenges the district court's determination that the "hot pursuit" exception to the warrant requirement justified the officers' warrantless entry into his residence. On appeal from the denial of a motion to suppress evidence when, as here, the facts are undisputed, we review the district court's decision de novo. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

Both the United States and Minnesota constitutions prohibit "unreasonable" searches and seizures. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. To establish that the warrantless entry of a person's residence was reasonable, the state must demonstrate that the entry was either pursuant to a valid consent or supported by the existence of probable cause and exigent circumstances. *State v. Baumann*, 616 N.W.2d 771, 774 (Minn. App. 2000). That Bahneman did not consent is undisputed. Thus, our analysis focuses on whether both probable cause and exigent circumstances existed when the warrantless entry occurred.

Bahneman concedes that he was speeding, but he asserts that he "did not . . . otherwise commit any violations of which [Officer Seboe] had knowledge." Our review of the record establishes that there was probable cause to believe that Bahneman

had committed a felony in Officer Seboe's presence when the police officers entered his residence. A driver's flight or attempted flight from a police officer acting in the lawful discharge of an official duty is a felony offense. Minn. Stat. § 609.487, subd. 3 (2004). Under section 609.487, a driver "flees" when, after being given a signal to stop by an officer, the driver intentionally attempts to elude the officer by refusing to stop. *Id.*, subd. 1 (2004). To be criminally liable for this offense, the driver must either know or have reason to know that the person signaling is a police officer. *Id.*, subds. 1, 3.

Officer Seboe lawfully attempted to stop Bahneman for speeding, but Bahneman continued driving until he pulled into his garage and shut the door behind him. In challenging the probable-cause determination, Bahneman argues that there is no evidence that he was aware of Officer Seboe's presence. But whether Bahneman intended to flee is not relevant to an analysis of whether the officer had probable cause to believe that he was doing so. *See Scott v. United States*, 436 U.S. 128, 137, 98 S. Ct. 1717, 1723 (1978) (emphasizing that "reasonableness" of police intrusion is judged objectively from officer's perspective).

Probable cause is a flexible, common-sense standard. *State v. Skoog*, 351 N.W.2d 380, 381 (Minn. App. 1984). The stipulated facts in this case establish ample objective evidence from which a person of ordinary care and prudence would "entertain an honest and strong suspicion that a crime has been committed." *Id.* (quotation omitted). Officer Seboe testified that she "got right behind" Bahneman's vehicle and activated the flashing lights of her squad car. Although Bahneman emphasizes that Officer Seboe did not turn on her siren, Officer Seboe could reasonably assume that Bahneman saw the lights in his

rearview mirror—it was dark, she was directly behind him, and her vehicle was equipped with both grill lights and lights on the roof. Moreover, Officer Seboe followed two car lengths behind Bahneman for approximately one-half mile with her lights continuously flashing.

Based on these facts, Officer Seboe was required to ascertain from "reasonable inferences drawn from surrounding circumstances" whether Bahneman was fleeing. *See State v. Johnson*, 374 N.W.2d 285, 288 (Minn. App. 1985) (noting that subjective intent is typically established circumstantially), *review denied* (Minn. Nov. 18, 1985). An officer's use of flashing lights while closely following a vehicle "likely would signal to a reasonable person that the officer is attempting to seize the person for investigative purposes." *See State v. Hanson*, 504 N.W.2d 219, 220 (Minn. 1993) (discussing possible messages conveyed by flashing lights). When, rather than stopping his vehicle, Bahneman not only continued to drive but also pulled into his garage and closed the door, Officer Seboe reasonably inferred that Bahneman's failure to stop was an attempt to elude her.

The stipulated facts also establish that there were exigent circumstances when the police entered Bahneman's house without a warrant. Under the doctrine of hot pursuit, "a suspect may not defeat an arrest which has been set in motion in a public place . . . [by] escaping to a private place." *United States v. Santana*, 427 U.S. 38, 43, 96 S. Ct. 2406, 2410 (1976). If when an officer lawfully attempts to stop a motor vehicle, the driver fails to stop, the officer may pursue the fleeing driver into a dwelling without a

warrant. *See Baumann*, 616 N.W.2d at 775 (permitting warrantless entry into garage on this basis).

Bahneman correctly observes that Officer Seboe was unaware of the driver's appearance or identity before the police entered his residence. But this does not preclude a determination that the officers were in hot pursuit when they entered. Regardless of the driver's identity, Officer Seboe observed the driver whom she was pursuing enter the garage and close the door. Moreover, there is nothing in the record to suggest that the police officers arrested the wrong person. Indeed, from the vehicle's license-plate number, the officers identified Bahneman as the vehicle's owner and a resident of the house before they entered it. In addition, they ensured that whoever entered the house could not exit from another door. And when they entered the residence, Bahneman was the only person inside. Because the police could reasonably infer that the unidentified driver had fled into the residence, the warrantless entry was justified by the hot-pursuit doctrine. *See State v. Koziol*, 338 N.W.2d 47, 48 (Minn. 1983) (noting that "in a hot pursuit situation the police do not need a warrant before entering a dwelling which the fleeing suspect has entered").

Finally, Bahneman's argument that hot pursuit did not exist because he did not speed away also is unavailing. That this was a "meandering" low-speed pursuit rather than a high-speed chase is not determinative of whether the hot-pursuit doctrine applies. *State v. Paul*, 548 N.W.2d 260, 265 (Minn. 1996). The hot-pursuit doctrine "applies whether police officers engage in a high-speed chase of the suspect . . . or merely approach a suspect who immediately retreats into a house." *Id.*

In sum, the district court correctly concluded that the officers' warrantless entry into Bahneman's residence did not violate state or federal constitutional protections because it was justified by the hot-pursuit exception to the warrant requirement.

Affirmed.