STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0747

State of Minnesota,
Respondent,

vs.

Waldys Taveras,
Appellant.

Filed September 9, 2008
Affirmed
Lansing, Judge

Becker County District Court
File No. K0-06-1154

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

Michael Fritz, Becker County Attorney, Joseph Evans, Assistant County Attorney, P.O. Box. 476, Detroit Lakes, MN 56502-0476 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for respondent)

Considered and decided by Worke, Presiding Judge; Lansing, Judge; and Stoneburner, Judge.

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

LANSING, Judge

Security guards for a music festival on private property in Detroit Lakes found cocaine inside Waldys Taveras's tent. The state subsequently charged Taveras with two counts of first-degree controlled substance crime. On appeal from his conviction, Taveras argues that the cocaine should have been suppressed. We conclude, however, that the law and facts support the district court's decision under the federal constitution that the search of Taveras's tent did not involve state action, and we also conclude that the Minnesota Constitution does not require the application of a separate functional-approach standard to analyze state action. Accordingly, we affirm.

F A C T S

Waldys Taveras was arrested in July 2006 while attending the 10,000 Lakes Festival, a music festival held in Detroit Lakes. Security guards employed by the festival saw Taveras approach a man they suspected of selling cocaine. Three security guards followed Taveras to his tent and eventually requested permission to search the tent. Taveras reportedly "said he didn't mind." The guards searched the tent and found ninety grams of cocaine. The security guards handed Taveras over to the Becker County Sheriff's Department.

Taveras was charged with two counts of first-degree controlled substance crime based on the sale and possession of cocaine. He moved to suppress the cocaine, arguing that the security guards should be treated as agents of the state and that they did not obtain consent to search. The district court concluded that the search did not involve

state action and did not reach the consent issue. After a jury trial, Taveras was found guilty of both charges and he was sentenced to seventy-five months. He now appeals.

D E C I S I O N

The Fourth Amendment to the United States Constitution prohibits unreasonable searches. U.S. Const. amend. IV. The prohibition applies only to searches that involve an exercise of sovereign authority. *Burdeau v. McDowell*, 256 U.S. 465, 475, 41 S. Ct. 574, 576 (1921). In other words, the search must involve state action.

The central issue in this case is whether the search of Taveras's tent involved an exercise of sovereign authority. When a search is conducted by a state official, a determination on the source of the authority is relatively simple. If the officer is acting in the scope of official duties, then the search is an exercise of sovereign authority. *See New Jersey v. T.L.O.*, 469 U.S. 325, 333-37, 105 S. Ct. 733, 738-40 (1985) (holding that search by school officials involved state action).

But when the search is conducted by a private party, the inquiry is more difficult. Even if a person is not a state official, a person can be deputized to exercise sovereign authority for limited purposes. Thus, the Fourth Amendment applies "if the private party acted as an instrument or agent of the [g]overnment." *Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602, 614, 109 S. Ct. 1402, 1411 (1989). In determining whether a private party exercised sovereign authority, Minnesota courts stress "two 'critical factors': (1) whether the government knew of and acquiesced in the search and (2) whether the search was conducted to assist law enforcement efforts or to further the private party's own end." *State v. Buswell*, 460 N.W.2d 614, 618 (Minn. 1990) (citing

United States v. Walther, 652 F.2d 788, 792 (9th Cir. 1981)), *cert. denied*, 499 U.S. 906 (1991). The ultimate question of whether the search involved state action entails questions of fact, which we review for clear error. *Id.*

I

The district court found that the search of Taveras's tent did not involve state action, and therefore, the cocaine obtained during the search was admissible.

As part of its ultimate finding that the search was private, the district court made intermediate findings that the two critical factors—government knowledge and acquiescence and governmental purpose—were not present. *See id.* (listing critical factors in state-action determination). We conclude that the district court's findings were not clearly erroneous.

First, the district court's findings indicate that the government did not know of or acquiesce in the search. The district court found that the "Becker County Sheriff's Department did not have a role in the hiring of the security firms, nor did it have control over the security firms." In addition, the district court found that "the [s]heriff did not know of, nor did he request, searches being performed inside the [f]estival." The district court noted that there "is nothing in the record to indicate that law enforcement took any kind of initiative or steps to promote searches in general within the [f]estival grounds, or a search of this specific [d]efendant." These findings and the record indicate that the government did not know of or acquiesce in the search and thus support the district court's conclusion that the search did not involve state action. *See id.* (describing

government knowledge of and acquiescence in search as critical factor in state-action determination).

Second, the district court's findings and the record indicate that the search was conducted for private purposes. The district court noted that the "[f]estival occurred on private property and the [f]estival provided it[s] own security." Thus, the purpose of the guards was to provide security, not to enforce laws. Furthermore, although the sheriff did request that searches be conducted at the *entrance* to the festival, this "request was made due to a concern of [nitrous oxide] present at past festivals and the resultant hospitalization of attendees." Thus, the entrance searches—which were separate from the search of Taveras—were motivated in part by a desire to avoid hospitalizations. Presumably, the security guards who conducted the entrance searches and the search of Taveras were motivated—at least in part—by a desire to shield the festival from liability. Thus, the purpose of the search also supports the district court's conclusion that the search did not involve state action. *See id.* (describing purpose of search as critical factor in state-action determination).

Taveras argues, however, that the record shows that the Becker County Sheriff directed "all operations" at the festival. Although the record shows that the sheriff was involved in decisions relating to the festival, it does not support the view that the sheriff was in control of the security guards. The district court specifically rejected this finding when it concluded that the "Becker County Sheriff's Department did have a 'command center' at the festival but this was separate from and distinct from the security firms' operations." This finding is supported by the record. Thus, the record and the district

court's findings support the conclusion that the state did not direct the search and that the search was conducted for private purposes. Therefore, we perceive no basis for concluding that the district court committed clear error when it determined that the search had a private purpose. We accordingly conclude that the district court did not clearly err when it found that the search did not involve state action.

II

In addition to arguing that the district court's conclusion was clearly erroneous, Taveras argues that the Minnesota Constitution requires courts to apply a different state-action standard. Taveras argues that we should adopt a functional approach to state action. Under Taveras's proposal, the prohibition against unreasonable searches and seizures should apply to private parties functioning as police officers.

We conclude that we have no basis for adopting Taveras's proposal. In the context of free speech, the Minnesota Supreme Court has refused to adopt a functional approach to state action under the state constitution. *See State v. Wicklund*, 589 N.W.2d 793, 802-03 (Minn. 1999) (rejecting argument that, because public financing was used to develop Mall of America and because of public nature of mall's interior, limitation of speech in mall involved state action). Thus, it would be incongruous to apply a functional approach in the criminal context.

Furthermore, a functional approach to state action is not necessary to protect against the increased use of private security guards. In many cases, when the actions of private security guards involve state action, the security guards will qualify as state officials and be subject to Fourth Amendment prohibitions. In other cases, when state

action is not present, there is no danger that the government will engage in unconstitutional searches. Thus, citizens have adequate protection against Fourth Amendment violations, and we are unpersuaded that Minnesota should adopt a new interpretation of its state constitution.

Finally, the state argues that even if the search involved state action, the conviction should be affirmed because Taveras consented to the search. The existence of consent, however, involves a question of fact. *State v. Dezso*, 512 N.W.2d 877, 880 (Minn. 1994). Because the district court made no finding on consent and Taveras's conviction was proper, we do not reach the state's argument on the issue of consent.

Affirmed.