STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1367

State of Minnesota,
Respondent,

vs.

Antone David Davis,
Appellant.

Filed September 9, 2008
Affirmed
Lansing, Judge

St. Louis County District Court
File No. 69VI-CR-06-2511

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

Melanie S. Ford, St. Louis County Attorney, 100 North Fifth Avenue West, Duluth, MN 55802-1298 (for respondent)

Bruce R. Williams, Assistant Sixth District Public Defender, 409 Pierce Street, P.O. Box 705, Eveleth MN 55734 (for appellant)

Considered and decided by Lansing, Presiding Judge; Minge, Judge; and Connolly, Judge.

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

LANSING, Judge

The district court denied Antone Davis's motion to suppress drug evidence, and he waived a jury trial and submitted the case to the district court on stipulated facts consistent with the procedures outlined in *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). Following a determination of guilt on first-degree controlled substance crime for the sale of cocaine, Davis appealed. Because police officers had an arrest warrant and sufficient cause to believe that Davis was in the apartment where he was arrested, we conclude that the search incident to his arrest was reasonable, and we affirm.

F A C T S

A police detective in St. Louis County learned from an informant in October 2006 that Antone Davis was selling cocaine from an apartment in Virginia, Minnesota. After confirming that Davis had an active arrest warrant for third-degree controlled substance crime, the detective went to the apartment with a group of officers and used a sledgehammer to break down the locked door. Inside, the officers arrested Davis and searched him. During the search, the officers found about 22.5 grams of cocaine.

Based on the cocaine found during the search, the state charged Davis with first-degree controlled substance crime for the sale of cocaine and second-degree controlled substance crime for possession of cocaine. In a pretrial motion, Davis argued that the evidence should be suppressed because the officers did not have a search warrant to enter the apartment and because the officers entered without knocking. The district court denied the motion. Davis then waived his right to a jury trial and submitted the case on

stipulated facts, preserving his right to appeal the suppression issue. *See* Minn. R. Crim. P. 26.01, subd. 4 (permitting defendant to stipulate to state's case and preserve review of pretrial motions). The district court found Davis guilty, and he now appeals.

D E C I S I O N

The state and federal constitutions limit unreasonable searches and seizures. U.S. Const. amend. IV, XIV; Minn. Const. art. I, § 10. A search or seizure is reasonable if it is based on a valid warrant. *See State v. Hoven*, 269 N.W.2d 849, 853 (Minn. 1978) (noting that reasonable search must be based on valid warrant or satisfy recognized exception to warrant requirement). Thus, police officers can execute a search if they have a valid search warrant. And officers can arrest a person if they have a valid arrest warrant.

Furthermore, an arrest warrant can, in some circumstances, be used to enter the home of the person named in the warrant to seize the person. *Payton v. New York*, 445 U.S. 573, 603, 100 S. Ct. 1371, 1388 (1980); *State v. Williams*, 409 N.W.2d 553, 555 (Minn. App. 1987). In *Payton*, the United States Supreme Court concluded that police officers could enter the home of the person named in the arrest warrant and make an arrest based on the warrant. 445 U.S. at 603, 100 S. Ct. at 1388. But an arrest warrant does not give police officers the same authority as a search warrant. An arrest warrant can only be used to enter a home if "there is reason to believe the suspect is within." *Payton*, 445 U.S. at 603, 100 S. Ct. at 1388. And, although officers may conduct a search of the suspect incident to the arrest, they may not conduct a search of the residence itself. *Williams*, 409 N.W.2d at 555.

An arrest warrant cannot be used, however, to enter the home of a person other than the person named in the warrant. *Steagald v. United States*, 451 U.S. 204, 216, 101 S. Ct. 1642, 1650 (1981). In *Steagald*, police officers used an arrest warrant for a person other than Steagald to enter Steagald's home. *Id.* at 206-07, 101 S. Ct. at 1644-45. Although the person named in the warrant was not present, the officers found evidence that was used to charge Steagald. *Id.* at 206-07, 101 S. Ct. at 1645. Because the arrest warrant for a person other than Steagald could not be used to enter Steagald's home, the evidence was inadmissible. *Id.* at 222, 101 S. Ct. at 1653.

In challenging the police conduct in this case, Davis argued that under *Steagald* the arrest warrant could not be used to justify the entry into the apartment, which Davis identifies as his cousin's home but for which he asserts a privacy interest based on his status as an overnight guest and temporary resident. In rejecting this argument, the district court did not resolve the question of whether Davis lived in the apartment and had a reasonable expectation of privacy within the apartment. Instead, the district court recognized that there were two possibilities: Either Davis had a reasonable expectation of privacy in the apartment or he did not. The only basis for finding that Davis had a reasonable expectation of privacy was Davis's claim that the apartment was his temporary residence. Thus, if Davis had a reasonable expectation of privacy in the apartment, then he lived in the apartment and the arrest warrant could be used to enter the apartment under *Payton*. If Davis did not have a reasonable expectation of privacy within the apartment, then Davis—unlike the homeowner in *Steagald*—would not have standing to challenge the search. *See Rakas v. Illinois*, 439 U.S. 128, 148-49, 99 S. Ct.

421, 433 (1978) (holding that defendant can assert Fourth Amendment rights only if defendant had legitimate expectation of privacy in area searched).

On appeal, Davis makes a three-step challenge to the district court's refusal to suppress the evidence found during his arrest. First, he argues that he had standing to challenge the entry into the apartment because he had a reasonable expectation of privacy within the apartment. Second, he argues that under *Payton* police officers cannot enter the home of a person named in an arrest warrant unless they have probable cause to believe that the named person is in the home. *Payton* requires that police officers must have "reason to believe the [person named in the search warrant] is within" before entering a home based on the arrest warrant. 445 U.S. at 603, 100 S. Ct. at 1388. Davis argues that the "reason to believe" language is equivalent to "probable cause." Third, Davis argues that the officers did not have probable cause to believe he was in the apartment and therefore argues that the search was illegal.

These issues, however, are more simply resolved on the basis framed by the district court. Davis's three-step analysis adds only the question of whether the proper standard for entry into the home of the person named in the arrest warrant is the higher standard of probable cause to believe that the person named in the warrant is within the home or a lower standard identified as "reason to believe." On the undisputed facts, the higher standard of probable cause is readily met. Consequently, even if we accepted Davis's claim of standing and his claim that probable cause is required, he would not be entitled to suppression of the drug evidence.

In Minnesota, probable-cause determinations are based on the totality of the circumstances. *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995). Probable cause to search exists if there is a "fair probability" that the object of the search will be found in a particular place. *See State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005) (discussing probable cause to search for evidence of crime). To determine whether an informant's tip can establish probable cause, we consider the informant's reliability and the informant's basis of knowledge. *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983). The determination of probable cause is made on the totality of the circumstances. *Id.* The existence of probable cause involves a question of law, which we review de novo. *Chafoulias v. Peterson*, 668 N.W.2d 642, 651 (Minn. 2003). But we review the district court's underlying factual determinations for clear error. *Id.*

In this case, the district court found that "law enforcement received a tip from a Confidential Reliable Informant (CRI) that [Davis] was located" at the apartment. The record clearly supports this finding and establishes that the informant was reliable and had first-hand knowledge that Davis was in the apartment. An officer testified, without contradiction, that the informant had provided accurate information in the past and that, on the day of the arrest, the informant "had visually seen" Davis at the apartment and knew that "he was at the residence, he was there." In addition, the informant told the officer that Davis was selling cocaine to make money for bail in case he was arrested, and the officer testified that this information was consistent with the officer's knowledge of how Davis worked. Because the informant was reliable and had first-hand knowledge, the tip established a fair probability that Davis would be in the apartment. Thus, the

officers had—as a matter of law—probable cause to believe that Davis was in the apartment.

Therefore, we need not decide whether police officers need probable cause to enter the home of a person named in an arrest warrant to search for that person. Regardless of whether probable cause or some lesser standard—such as reasonable, articulable suspicion—is required, the standard was satisfied in this case. Accordingly, the search incident to the arrest was reasonable, and Davis is not entitled to suppression of the evidence.

Affirmed.