STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1594

State of Minnesota,
Respondent,

vs.

Darwin Ingram,
Appellant.

Filed December 9, 2008
Affirmed
Worke, Judge

Ramsey County District Court
File No. K4-07-350

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

Susan Gaertner, Ramsey County Attorney, Mark N. Lystig, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Bridget Kearns Sabo, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Worke, Judge; and Crippen, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

WORKE, Judge

Appellant challenges his conviction of first-degree aggravated robbery, arguing that the district court erred in denying his motion to suppress evidence found after a warrantless entry into the apartment where he was staying. We affirm.

D E C I S I O N

The district court denied appellant Darwin Ingram's motion to suppress after finding that the warrantless entry of the apartment where appellant had been staying was supported by probable cause and exigent circumstances. "When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). "The district court's findings of fact should be reviewed for clear error." *State v. Lemieux*, 726 N.W.2d 783, 787 (Minn. 2007).

The United States and Minnesota Constitutions prohibit a warrantless search of a person's home. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Warrantless searches and seizures are per se unreasonable unless permitted by one of a limited number of exceptions, including the presence of probable cause that an individual has committed a crime and exigent circumstances related to its investigation. *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967); *State v. Othoudt*, 482 N.W.2d 218, 223 (Minn. 1992). The state bears the burden of showing that at least one of the exceptions applies in

order to avoid suppression of the evidence acquired from the warrantless search. *State v. Metz*, 422 N.W.2d 754, 756 (Minn. App. 1988).

In order to establish probable cause, the police must show that they "reasonably could have believed that a crime has been committed by the person to be arrested." *State v. Paul*, 548 N.W.2d 260, 264 (Minn. 1996) (quotation omitted). "The probable-cause standard is an objective one that considers the totality of the circumstances." *State v. Olson*, 634 N.W.2d 224, 228 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001). When more than one officer is involved in an investigation, the collective knowledge of the police force is imputed to the arresting officer for the purpose of determining if sufficient probable cause exists for an arrest. *State v. Riley*, 568 N.W.2d 518, 523 (Minn. 1997). "[T]his court independently reviews the facts to determine the reasonableness of the conduct of police" concerning the existence of probable cause. *Id.*

Exigent circumstances can be established either by a single factor or by the "totality of the circumstances." *State v. Gray*, 456 N.W.2d 251, 256 (Minn. 1990). This court evaluates the facts found by the district court to determine, as a matter of law, whether exigent circumstances existed. *Id.* The following single factors, standing alone, are considered to support exigent circumstances: (1) hot pursuit; (2) imminent destruction or removal of evidence; (3) protection of human life; (4) likely escape of the suspect; and (5) fire. *Id.* Importantly, a warrantless search is permissible "when the delay necessary to obtain a warrant might result in the loss or destruction of the evidence." *State v. Richards*, 552 N.W.2d 197, 203 (Minn. 1996).

Officers were dispatched to a reported robbery and assault of a pizza delivery man. The victim described the suspects as three black males, in their twenties, two wearing dark clothing, one wearing a gray sweatshirt, and one wearing a black "doo-rag" on his head. Within minutes of the call an officer and his K-9 tracked two distinct sets of fresh footprints from the scene of the assault to a window of an apartment building. The condition of the snow below the window indicated that someone had jumped through the window. Another set of footprints went to the front of the apartment building. One officer stayed at the rear of the building. Two other officers went to the front entrance of the apartment building, knocked on the door of the apartment and announced that they were the police. The officers at the front of the building heard movement inside—voices and articles being moved around. The officers continued knocking for two to three minutes during which time the rear-stationed officer radioed that the rear window was opening very slowly but quickly closed in response to hearing the officer's voice. The door to the apartment was eventually opened by someone who fit one of the descriptions given by the victim. Consent was not given to the officers to enter; however, the officers testified that the apartment smelled like fresh pizza, and they entered the apartment. Upon entering, the officers ordered the two males in the apartment to the floor and searched them for weapons. During the initial weapons sweep an officer saw the corner of a pizza box propping open a vanity door. A third suspect was found lying underneath blankets on a bed. The officers also found shoes with tread patterns that matched the two sets of footprints tracked to the apartment, a pizza warmer carrier, and six one dollar bills in the bedroom.

Based on the combined knowledge of the officers, the arresting officer had probable cause to believe that an occupant of the apartment had robbed and assaulted the victim. This cumulative knowledge includes: the K-9 unit tracking the fresh footprints to the apartment window, the imprint of the pizza box left in the snow where a suspect appeared to have fallen, the officer observing the window slowly opening and then quickly closing in response to the officer's voice, the smell of the fresh pizza in the apartment, and the fact that the individual who opened the apartment door matched the description of the suspects provided by the victim.

Appellant argues that the district court erred in finding that this was a hot-pursuit situation sufficient to negate the necessity of obtaining a search warrant. While we agree that this was not a hot-pursuit situation, the undisputed facts support the district court's conclusion that exigent circumstances existed to justify the warrantless entry of the apartment. Specifically, the record supports the warrantless entry and search of the apartment based on the need to prevent the imminent destruction or removal of evidence. The evidence here included the pizza, which could have been eaten; the pizza box and warmer, which could have easily been destroyed or disposed of; and the victim's money, which could have been commingled with one of the suspect's own money. Therefore, the district court did not err in denying appellant's motion to suppress the evidence.

Affirmed.