STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1900

State of Minnesota,
Respondent,

vs.

Michelle Ann Rehling,
Appellant.

Filed December 2, 2008
Affirmed
Shumaker, Judge

Anoka County District Court
File No. KX-06-11259

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Robert M.A. Johnson, Anoka County Attorney, Robert D. Goodell, Assistant County Attorney, Anoka County Government Center, 2100 Third Avenue, Suite 720, Anoka, MN 55303-5025 (for respondent)

Jeffrey C. DeGree, DeGree Law Office, 212 3rd Avenue North, Suite 545, Minneapolis, MN 55401 (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Shumaker, Judge; and Stauber, Judge.

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

SHUMAKER, Judge

On appeal from her conviction of a fifth-degree controlled-substance crime, appellant argues the district court erred in determining (1) that she lacked standing to challenge the entry and search of the residence in which she was a guest; (2) that the officers had reasonable suspicion to detain her and ask for her identification; and (3) that she voluntarily consented to the search of her purse. Because appellant did not have social-guest status, the officers articulated a reasonable suspicion, and her consent to search was voluntary, we affirm.

FACTS

The facts are uncontested. Deputy Duren of the Anoka County Sheriff's Department requested that Deputy Hunt and two others accompany him to a house in Ham Lake because he had received information that the subject of an arrest warrant could be found there. The deputies arrived at the home and found the garage door open and the garage completely empty. The deputies announced their presence several times, entered the garage and walked up to a door leading to the attached residence. One of the deputies knocked on the door, which "popped open." Deputies saw a male and female standing inside the residence who looked "extremely nervous."

The deputies asked the male if he was the subject of the warrant. He replied that he was not, but he had no proof of identity. The male and female told the deputies that they did not own the home, but were visiting. The deputies asked if they could search the house for the subject, and the two agreed.

The deputies entered other rooms in the home, which was sparsely furnished and had mattresses on the floor. Deputy Hunt testified that the inside of the home looked like a "flop house." The deputies did not find the subject of the warrant, and remained to verify the male's purported identity to ensure he was not truly the subject. Deputy Hunt asked the female, appellant Michelle Ann Rehling, for her identification as well. She said that her identification was in her purse. Deputy Hunt asked Rehling if he could get the identification out for her, and Rehling agreed, informing him that her identification was located in a black wallet. Deputy Hunt opened the purse and saw several black wallets; the first one he opened contained straws, Q-tips, a torch lighter, and a contact lens case. In Deputy Hunt's experience, this was a "meth kit." He then opened the contact lens case and saw a substance that appeared to be methamphetamine.

Deputy Hunt asked Rehling about the contents of the wallet, and she admitted that it contained methamphetamine. Deputy Hunt and Rehling discussed her drug use, and she pulled out a seven-inch glass pipe from underneath the place where she was sitting and gave the pipe to Deputy Hunt. She said that she and the male had smoked methamphetamine before the deputies arrived and that was why they were acting so nervous.

Rehling was charged with possession of a controlled substance in the fifth degree. At the contested omnibus hearing, she argued that the meth kit and methamphetamine should be suppressed because (1) she had no actual or apparent authority to consent to the deputies' entry into the home; (2) there were no exigent circumstances otherwise justifying the warrantless entry; and (3) she was illegally seized without reasonable,

articulable suspicion. The state argued that Rehling had no "standing" to contest the legality of the search of the home; the seizure was supported by reasonable, articulable suspicion; and that Rehling consented to the search of her purse. The district court denied Rehling's motion to suppress, concluding that Rehling had no "standing" to contest the legality of the search; that she was seized when Deputy Hunt asked for her identification; that reasonable, articulable suspicion existed for the seizure; and that she consented to the officer's warrantless search of her purse. Rehling agreed to a court trial as a *Lothenbach* proceeding. The court found her guilty as charged, and she now appeals.

D E C I S I O N

Social-Guest Status

Rehling first argues that the district court erred when it found that she lacked the privacy interest necessary to allow her to contest the deputies' entry into the home she was visiting. Specifically, she claims that she was a "social guest" in the home, and as such is entitled to challenge the validity of the home's search under Article I, section 10, of the Minnesota Constitution, as interpreted by the Minnesota Supreme Court in *In re Welfare of B.R.K.*, 658 N.W.2d 565, 578 (Minn. 2003) (extending traditional Fourth Amendment protections against unreasonable searches and seizures to short-term social guests under the Minnesota Constitution). Standing is a legal determination and the facts are not in dispute. Thus, we independently review the facts to determine if the district court erred as a matter of law. *Id.* at 571.

Under the Fourth Amendment of the United States Constitution and Article I, section 10, of the Minnesota Constitution, citizens are protected from unreasonable searches and seizures in their homes *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992). The right to be free from unreasonable searches and seizures is personal, and must be asserted by the individual whose rights were violated. *Minnesota v. Carter*, 525 U.S. 83, 88, 119 S. Ct. 469, 472 (1998). To challenge an entry or a search, an individual must have had a reasonable expectation of privacy in the area searched. *State v. Carter*, 596 N.W.2d 654, 658 (Minn. 1999). Rehling is entitled to the protection of these laws only if she has demonstrated that she had a subjective expectation of privacy, and that expectation is one that society is prepared to recognize as reasonable. *State v. Sletten*, 664 N.W.2d 870, 876 (Minn. App. 2003) (citing *Katz v. U.S.*, 389 U.S. 347, 361, 88 S. Ct. 507, 516 (1967) (Harlan, J. concurring)), *review denied* (Minn. Sept. 24, 2003).

Rehling claims the district court should have found that she was a social guest under the Minnesota Supreme Court's decision in *B.R.K.*, 658 N.W.2d at 576 (holding short-term social guests have a reasonable expectation of privacy in a host's home). She contends that the following facts support her argument that she displayed a subjective expectation of privacy: (1) she was completely inside the home and left her purse on the couch in the living room; (2) she responded assertively that the subject of the warrant was not in the home (showing her personal knowledge of the interior); (3) she had recently smoked methamphetamine in the home (showing she felt "safe" there); and (4) she "stored personal property" there in the form of a glass pipe.

In assessing whether there was a subjective expectation of privacy, courts "should focus their inquiry on the individual's conduct and whether the individual '[sought] to preserve [something] as private.'" *B.R.K.*, 658 N.W.2d at 571 (quoting *Bond v. United States*, 529 U.S. 334, 338, 120 S. Ct. 1462, 1465 (2000)). In *B.R.K.*, the appellant attended a party hosted by an acquaintance. 658 N.W.2d at 568. The court found that B.R.K. had displayed a subjective expectation of privacy in his friend's home because, when the police came, he sought to conceal his presence in the home and helped his host lock doors and turn off the lights. *Id.* at 572. Here, Rehling was inside a house, but the garage door was wide open, and the entry door to the house from the garage was not only unlocked but was not closed tightly so that it swung open when the deputies knocked on it. She told the deputies that she was merely visiting the home, but gave no information about whose house she was in or the circumstances of her alleged visit. She did not object to the deputies entering the premises. Rehling's mere presence in the home and the fact that she had her purse containing drugs in full view in one of the rooms do not show that she had a subjective expectation of privacy.

Rehling claims that the district court erred in its application of *B.R.K.* because the district court only stated that she did not live in the home. She misconstrues the court's order. The court concluded that Rehling was not a social guest because she did not meet her burden of showing that she had an expectation of privacy in the home. "[I]t is the burden of the party seeking suppression to show *his* [or *her*] fourth amendment rights were violated." *State v. Robinson*, 458 N.W.2d 421, 423 (Minn. App. 1990) (citation omitted), *review denied* (Minn. Sept. 14, 1990). The court stated, "[h]er connection to

the premises remains unknown. The record permits only the conclusion that she did not live there." Rehling reads this statement as the court's conclusion that Rehling was not a social guest *because* she did not live there. But the district court was plainly commenting on the lack of information regarding the nature and circumstances of Rehling's presence in the home, and was explaining that it could not find that Rehling was a social guest because she had presented no evidence that she *was* a social guest. The only conclusion that the district court could draw from the record was that Rehling did not live at the home.

While social guests enjoy some Fourth Amendment protection, "a guest who is merely permitted on the premises is not entitled to Fourth Amendment protection like an overnight guest, or like a guest with long-standing ties to the premises." *Sletten*, 664 N.W.2d at 876 (citing *Minnesota v. Olson*, 495 U.S. 91, 100, 110 S. Ct. 1684, 1690 (1990) (overnight guest entitled to Fourth Amendment protection)); *see also State v. Reynolds*, 578 N.W.2d 762, 765 (Minn. App. 1998) (recognizing that reasonable expectation of privacy extends to persons other than overnight guests if they provide evidence of long-term connections to the premises).

In *B.R.K.*, the court noted the following in finding that B.R.K. was a social guest: (1) his presence at the party was consented to by his host; (2) he engaged in social interaction with his host; (3) he and his host knew each other socially before the party; and (4) his host shared his privacy expectation with B.R.K. by allowing him to participate in locking doors, turning off lights, and hiding behind the furnace. 658 N.W.2d at 574. No similar circumstances exist here. In *Sletten*, we held that appellant Sletten had not

met his burden of showing he had a reasonable expectation of privacy when he "failed to demonstrate that he was the guest of Denver whose social relationship, if any, with [Sletten] was not readily apparent from the record. Moreover, there is no evidence in the record that Denver gave [Sletten] permission to stay in the room even as a social guest." 664 N.W.2d at 877. As in *Sletten*, Rehling's connection to her host was "nebulous, at best." *Id.* at 880. The record provides no evidence of Rehling's purpose for being on the premises, other than her bare assertion that she was visiting. *Id.* (recognizing that business guests do not receive the same privacy interests as social guests). Rehling must do more than simply assert that she is legitimately on the premises in another's home to argue standing as a social guest. She must offer the court some evidence that she was a social guest, or in other words, that she had some connection to the premises that society is prepared to recognize as a reasonable expectation of privacy.

Here, the objective evidence shows that Rehling and a friend were smoking methamphetamine in what appeared to be an abandoned home. There was no evidence presented at the omnibus hearing of the home's ownership, no evidence of any alleged "host," and no evidence that Rehling was there with permission of the owner. The only evidence, indeed, was that Rehling did not live in the home. This does not suffice to confer social-guest status upon her, and the district court did not err in determining that she had no standing to contest the search.

Reasonable Suspicion

Next, Rehling contends that she was seized without reasonable, articulable suspicion and, therefore, the district court should have suppressed all the evidence

resulting from that seizure. The state does not dispute that Rehling was seized when Deputy Hunt asked for her identification. The court found that Deputy Hunt had reasonable, articulable suspicion to seize Rehling at that time. Determinations of reasonable suspicion are based on the totality of the circumstances and reviewed de novo. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

The United States and Minnesota Constitutions prohibit "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. If Rehling's seizure was not justified by reasonable suspicion, then she was illegally seized and all the evidence gathered thereafter must be suppressed. *State v. Harris*, 590 N.W.2d 90, 97 (Minn. 1999). The brief seizure of a person for investigatory purposes is permissible if there is a "particularized and objective basis for suspecting the particular person [seized] of criminal activity." *Id.* at 99 (quotation omitted). This standard is satisfied if the seizure "was not the product of mere whim, caprice or idle curiosity, but was based upon specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004) (quotation omitted). The standard for showing reasonable, articulable suspicion is "not high." *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quoting *Richards v. Wisconsin*, 520 U.S. 385, 394, 117 S. Ct. 1416, 1422 (1997)).

Deputy Hunt testified to his reasons for asking Rehling to identify herself. He said he noticed that she and her companion were nervous and claimed to be "visiting" someone in what appeared to be an abandoned home. Rehling contends that her nervousness and the appearance of the home are insufficient to support a reasonable,

articulable suspicion. Nervousness alone is not sufficient to support reasonable suspicion, but it may contribute to reasonable suspicion when it is supported by other objective, particularized facts. *State v. Syhavong*, 661 N.W.2d 278, 282 (Minn. App. 2003).

Here, Deputy Hunt's observation of Rehling's nervous demeanor was coupled with objective facts, including (1) the home appeared in disarray and looked, in the deputy's experience, like a "flop house"; (2) Rehling claimed to be "visiting," but there was no one present in the home who claimed to be a "host"; and (3) a wanted felon was purportedly "staying or hiding there." These facts, coupled with Rehling's nervousness, gave Deputy Hunt an objective basis to believe Rehling might be trespassing on the premises or hiding the subject of the arrest warrant. It was proper for Deputy Hunt to ask her for her identification to allay these suspicions. The court did not err in determining that Deputy Hunt had a reasonable, articulable suspicion for detaining Rehling.

Consent to Search

Finally, Rehling contends that the court erred in finding that she voluntarily consented to Deputy Hunt's search of her purse. The Fourth Amendment to the U.S. Constitution and Article I, section 10, of the Minnesota Constitution proscribe unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Under the Fourth Amendment, searches conducted outside the judicial process are *per se* unreasonable, subject to a few exceptions. *Othoudt*, 482 N.W.2d at 221-22. Voluntary consent is such an exception. *Id.* at 222. Whether consent is voluntary is a question of fact to be decided on the totality of the circumstances. *Id.* (citing *Schneckloth v.*

Bustamonte, 412 U.S. 218, 227, 93 S. Ct. 2041, 2047-48 (1973)). If Rehling's consent was not voluntary, the fruit of the warrantless search must be suppressed. *Id.*

When examining the totality of the circumstances, courts consider "the nature of the encounter, the kind of person the defendant is, and what was said and how it was said." *State v. Dezso*, 512 N.W.2d 877, 880 (Minn. 1994). Essentially, the question is whether a reasonable person in the circumstances would feel free to decline the officer's request. *Id.* The burden is on the state to demonstrate by a preponderance of the evidence that the defendant's consent was voluntary. *Harris*, 590 N.W.2d at 102. A district court's finding that consent to search was given voluntarily is a finding of fact reviewed for clear error. *State v. Alayon*, 459 N.W.2d 325, 330 (Minn. 1990). We defer to the district court's assessment of witness credibility. *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *review denied* (Minn. July 15, 2003).

Rehling argues that her consent was involuntary because it was requested in the presence of officers of the law, three of whom were armed and in uniform. Deputy Hunt testified that he and the other deputies were "in command presence. We weren't relaxed or standing around." However, "[c]onsent is not involuntary merely because the person giving consent is seized." *Harris*, 590 N.W.2d at 104. While the presence of the officers may have been intimidating to Rehling, it was not so much so that her free will was overridden. *Dezso*, 512 N.W.2d at 880.

> [I]nvoluntariness of a consent to a police request is not to be inferred simply because the circumstances of the encounter are uncomfortable for the person being questioned. Rather, it is at the point when an encounter becomes coercive, when the

> right to say no to a search is compromised by a show of official authority, that the Fourth Amendment intervenes.

Id. There is no evidence that the deputies were hovering around Rehling, or using their bodies to indicate an urgent desire to obtain her identification. Rather, the officers were in "command presence," or on their guard, because they had not yet determined whether her companion was the subject of the arrest warrant; at least one of the deputies was busy checking out the unidentified male's information outside in a squad car.

Rehling also notes that she was not informed of her right to refuse the search. While this is a factor to consider in the totality of the circumstances, "the Fourth Amendment does not require for a voluntary search that the defendant know or be told that [s]he has a right to refuse." *Id.* at 881 (citing *Bustamonte*, 412 U.S. at 227, 93 S. Ct. at 2047).

Finally, the court found that Rehling readily consented to the deputy's single request to search. This contrasts with the "official and persistent" questioning in *Dezso*. 512 N.W.2d at 881 (holding consent was involuntary where "officer's questions, though couched in nonauthoritative language, were official and persistent, and were accompanied by the officer's body movement in leaning over towards the defendant seated next to him."). Rehling quotes *State v. Howard* for the proposition that the failure to object is not the same as consent. 373 N.W.2d 596, 599 (Minn. 1985) ("Mere acquiescence on a claim of police authority or submission in the face of a show of force is . . . not enough." (citation omitted)). However, she did not silently or equivocally acquiesce to the deputy's question; she unequivocally responded in the affirmative.

From the very beginning, Rehling was helpful to the deputies. She volunteered the information that her identification was in a black wallet, and after the "meth kit" was discovered, she voluntarily produced the glass pipe from under her seat. The court properly considered the totality of the circumstances and found Deputy Hunt's testimony to be credible evidence of Rehling's consent. We defer to the court's finding of witness credibility in absence of evidence to the contrary. No evidence was offered to show anything to the contrary. The court did not clearly err in determining that Rehling voluntarily consented to the search of her purse.

Affirmed.