STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2339

State of Minnesota,
Respondent,

vs.

Benjamin D. Mikkalson,
Appellant.

Filed December 16, 2008
Affirmed
Halbrooks, Judge

Stearns County District Court
File No. T6-06-5015

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

Jan F. Petersen, St. Cloud City Attorney, Renee N. Courtney, Assistant City Attorney, 400 Second Street South, St. Cloud, MN 56301 (for respondent)

Peter D. Mikkalson, 111 – 11th Avenue South, South St. Paul, MN 55075 (for appellant)

Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

HALBROOKS, Judge

Appellant challenges his convictions of disorderly conduct and obstruction of legal process on the ground that the district court erred in determining that his warrantless arrest in the threshold of his doorway did not violate his Fourth Amendment rights. Because we conclude that the district court did not err in its trial-related rulings and did not abuse its discretion by denying appellant's motion for new trial, we affirm.

FACTS

On March 2, 2006, at 2:22 a.m., Officer Lucas Dingmann and Sergeant Lloyd Orth of the St. Cloud Police Department were dispatched to the 600 block of 8th Street South in response to a report of a large group of people fighting in the road. When Sgt. Orth arrived on the scene, he took a statement from two males, who appeared to be injured. The two males indicated that two other individuals who were involved in the fight had run into appellant Benjamin D. Mikkalson's residence. At the same time, Officer Dingmann spoke to a female, who also directed him to appellant's residence.

Officer Dingmann went to appellant's residence and knocked on the door. There was a dispute between the parties as to who opened the door of the residence. But the district court, following a contested evidentiary hearing, found that appellant answered the door. During the conversation between Officer Dingmann and appellant, appellant refused to identify himself. Sgt. Orth could hear an individual, later identified as appellant, yelling profanities at Officer Dingmann. Eventually, appellant asked to speak to Officer Dingmann's supervisor; as a result, Sgt. Orth approached. Sgt. Orth testified

that when he approached appellant's residence, the front door was open, and appellant was "standing in the threshold of the doorway." Sgt. Orth noted that appellant appeared to be drunk and had bruises on his face. Sgt. Orth testified that he subsequently arrested appellant for disorderly conduct and that appellant was standing at the threshold of his residence when the arrest occurred. On cross-examination, Sgt. Orth defined the threshold as the "[d]oorway, entry area on the threshold of the door" and extending "about a foot" into the residence. Sgt. Orth then transported appellant to a hospital at appellant's request. After appellant's injuries were treated, he was cited for disorderly conduct and released.

Appellant moved to dismiss the charge and void his arrest, claiming that the warrantless arrest was improper. The district court held an evidentiary hearing and subsequently denied appellant's motion. The district court ruled that the warrantless arrest was proper because appellant was arrested in a public place and because appellant committed an offense in an officer's presence. Before trial, the state amended the complaint to add obstruction of legal process.

At trial, appellant attempted to raise before the jury the issue of whether his arrest was proper. The state objected, and the district court sustained the objection, finding that it had already ruled on the validity of the arrest. Appellant was convicted of both counts. Appellant moved for a new trial based on the following reasons:

> 1) In the interest of justice, 2) Irregularity in the proceedings of the court, jury and prosecution such that [appellant] was deprived of a fair trial, 3) Accident or surprise which could not have been prevented by ordinary prudence, 4) Errors of law occurring at trial and objected to at the time or, if no

> objection was required, assigned in this motion, and 5) The verdict or finding of guilty is not justified by the evidence, or is contrary to law.

Following a hearing, the district court denied the motion. This appeal follows.

D E C I S I O N

Appellant argues on appeal that the district court erred in its determination that his arrest was proper. The district court's application of statutory criteria to the facts is a question of law subject to de novo review. *See State v. Bunde*, 556 N.W.2d 917, 918 (Minn. App. 1996) (reviewing legality of arrest outside officer's jurisdiction). When reviewing a "district court's finding that a police officer had probable cause to arrest, we make 'an independent review of the facts to determine the reasonableness of the police officer's actions.' Absent clear error, the district court's finding that the officer had probable cause to arrest will not be disturbed." *State v. Prax*, 686 N.W.2d 45, 48 (Minn. App. 2004) (quoting *State v. Olson*, 436 N.W.2d 92, 94 (Minn. 1989), *aff'd,* 495 U.S. 91, 110 S. Ct. 1684 (1990)), *review denied* (Minn. Dec. 14, 2004). "We review the denial of a motion for a new trial for an abuse of discretion." *State v. Green*, 747 N.W.2d 912, 917 (Minn. 2008).

"A warrantless arrest by police in a home or similar area in which a suspect has a privacy interest is per se unreasonable unless exigent circumstances exist." *State v. Gray*, 456 N.W.2d 251, 255–56 (Minn. 1990) (citing *Payton v. New York,* 445 U.S. 573, 586, 589–90, 100 S. Ct. 1371, 1380–82 (1980)). But when an individual is in a public space, an officer can arrest the individual without a warrant if probable cause exists. *United States v. Watson*, 423 U.S. 411, 423–24, 96 S. Ct. 820, 828 (1976). In addition to the

warrant requirement, Minn. Stat. § 629.34, subd. 1(c)(1) (2004), and Minn. R. Crim. P. 6.01 provide further restrictions on warrantless arrests of individuals on misdemeanor charges.[1] Minn. Stat. § 629.34, subd. 1(c)(1), provides that a peace officer may arrest an individual without a warrant for a misdemeanor if that individual has committed or attempted to commit a public offense in the peace officer's presence. Rule 6.01 provides that an officer may make a warrantless arrest of a person for a misdemeanor only if "it reasonably appears to the officer that arrest or detention is necessary to prevent bodily harm to the accused or another or further criminal conduct, or that there is a substantial likelihood that the accused will fail to respond to a citation." Thus, in order to make a warrantless arrest of an individual for a misdemeanor, the individual must be in a public place, must commit the offense in the presence of an officer, and must meet one of the elements of rule 6.01.

A. Appellant was arrested in a public place.

Here, appellant was arrested at the threshold of his residence, which is a public place for Fourth Amendment purposes. In *United States v. Santana*, the Supreme Court held that a valid arrest initiated in a public place cannot be defeated by retreating into a residence. 427 U.S. 38, 43, 96 S. Ct. 2406, 2410 (1976). The officers in *Santana* saw the defendant "standing in the doorway" and approached her yelling "police" and displaying

[1] In *State v. Askerooth*, the Minnesota Supreme Court found that there was tension between rule 6.01 and Minn. Stat. § 629.34 (2002), but declined to rule on how the two should be resolved. 681 N.W.2d 353, 363 n.6 (Minn. 2004). This court has applied both the rule and the statute when deciding misdemeanor-arrest cases. *See State v. Richmond*, 602 N.W.2d 647, 653 (Minn. App. 1999), *review denied* (Minn. Jan. 18, 2000).

their badges. *Id.* at 40, 96 S. Ct. at 2408. The officers then followed the defendant into her house. *Id.* The Supreme Court held:

> While it may be true that under the common law of property the threshold of one's dwelling is "private," as is the yard surrounding the house, it is nonetheless clear that under the cases interpreting the Fourth Amendment Santana was in a "public" place. She was not in an area where she had any expectation of privacy. What a person knowingly exposes to the public, even in his own house or office, is not a subject of Fourth Amendment protection. She was not merely visible to the public but was as exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house.

Id. at 42, 96 S. Ct. at 2409 (quotation and citation omitted).

The Minnesota Supreme Court has followed *Santana*, holding that a warrantless arrest initiated at the threshold of a residence is valid. *See State v. Alayon*, 459 N.W.2d 325, 328 (Minn. 1990); *State v. Howard*, 373 N.W.2d 596, 598–99 (Minn. 1985); *State v. Patricelli*, 324 N.W.2d 351, 354 (Minn. 1982).[2] Based on these cases, an arrest is considered to have occurred in a public space for Fourth Amendment purposes when the arrest was initiated at the threshold of the residence. Although "threshold" is not explicitly defined, the facts in these cases indicate that the "threshold" extends from the frame of the door to a short distance inside the house. *See Alayon*, 459 N.W.2d at 329 n.1 (stating that the defendant, who was leaving the house and closing the door and ordered to lie down, lay down "on the threshold"); *Howard*, 373 N.W.2d at 599 (stating

[2] Both *Patricelli*, 324 N.W.2d at 353–54, and *Miller*, 316 N.W.2d at 30, suggest that deception by the police to bring the defendant to the threshold of the doorway could invalidate an otherwise valid warrantless arrest. But because appellant has not argued that the police used deception to bring appellant to the threshold of the doorway, we decline to address this issue.

that defendant was arrested after he opened the door fully and stepped back); *Patricelli*, 324 N.W.2d at 352, 354 (stating that the defendant answered the door).

Sgt. Orth testified that appellant was standing "[p]robably about a foot" into the house. During the exchange, appellant was exposed to public view, speech, hearing, and touch, giving him no expectation of privacy. *See Howard*, 373 N.W.2d at 599 ("The arrest would have been valid under *Patricelli* and *Santa[]na* even if petitioner had slammed the door on the officers."). Because appellant was at the threshold of his residence, he was in a public space for Fourth Amendment purposes, and Sgt. Orth did not need a warrant to arrest him.

B. Appellant committed an offense in the officer's presence as required by Minn. Stat. § 629.34.

The Minnesota Supreme Court has defined "presence" to mean becoming "aware of the acts as a result of . . . sensory perception, and . . . infer[ring] that the acts constitute an offense." *Smith v. Hubbard*, 253 Minn. 215, 221, 91 N.W.2d 756, 762 (1958). The "presence" requirement can be satisfied by the combined perceptions of two officers. *State v. Jensen*, 351 N.W.2d 29, 31–32 (Minn. App. 1984). Probable cause to arrest "exists where the facts would lead a person of ordinary care and prudence to entertain an honest and strong suspicion that the person under consideration is guilty of a crime." *State v. Carlson*, 267 N.W.2d 170, 173 (Minn. 1978). Minn. Stat. § 609.50, subd. 1 (2004), provides that a person is guilty of obstruction of the legal process if he or she "obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties." Under *State v. Krawsky*, this statute "may be used to

punish 'fighting words' or any other words that by themselves have the effect of physically obstructing or interfering with a police officer in the performance of his duties." 426 N.W.2d 875, 877–78 (Minn. 1988).

Appellant has not provided us with a complete trial transcript; instead, he has presented this court with a partial transcript that consists of testimony from the pretrial evidentiary hearing, arguments by the attorneys regarding whether appellant should be able to place Fourth Amendment issues before the jury, and appellant's trial testimony. The record provided lacks the testimony by all of the state's witnesses, most significantly the testimony of the police officers. It is appellant's duty to order a transcript "of those parts of the proceedings not already part of the record which are deemed necessary for inclusion in the record." Minn. R. Civ. App. P. 110.02, subd. 1(a). "[A] criminal defendant cannot obtain a new trial on appeal by establishing that error occurred in the conduct of the trial unless he provides this court with a complete transcript or an appropriate stipulation concerning what would be disclosed by a complete transcript." *State v. Anderson*, 351 N.W.2d 1, 2 (Minn. 1984).

But regardless of the limited transcript, there is sufficient evidence to show that appellant's conduct constituted obstruction of the legal process. At the pretrial evidentiary hearing, Sgt. Orth testified that while Officer Dingmann was investigating the fight that had occurred, Sgt. Orth could hear appellant talking to Officer Dingmann in a "[l]oud and profane" manner. In addition, Sgt. Orth stated that appellant was "yelling and hollering at Officer Dingmann using profanities." This is sufficient evidence to establish probable cause to arrest because "a person of ordinary care and prudence" could

reasonably conclude that the manner of appellant's speech and the profanity that he used may well physically interfere with Officer Dingmann's ability to perform his official duties of investigating the fight that had just occurred. There is no dispute that this conduct occurred within the officers' presence. Therefore, the requirement of Minn. Stat. § 629.34 that the offense be committed in the officer's presence is satisfied.

C. The arrest of appellant was valid under Minn. R. Crim. P. 6.01.

Minn. R. Crim. P. 6.01, subd. 1(1)(a), provides:

> (a) By Arresting Officers. Law enforcement officers acting without a warrant, who have decided to proceed with prosecution, shall issue citations to persons subject to lawful arrest for misdemeanors, unless it reasonably appears to the officer that arrest or detention is necessary to prevent bodily harm to the accused or another or further criminal conduct, or that there is a substantial likelihood that the accused will fail to respond to a citation. The citation may be issued in lieu of an arrest, or if an arrest has been made, in lieu of continued detention. If the defendant is detained, the officer shall report to the court the reasons for the detention. Ordinarily, for misdemeanors not punishable by incarceration, a citation shall be issued.

Here, the officers complied with rule 6.01 when they arrested appellant. First, "it reasonably appear[ed] to the officer that arrest or detention [was] necessary to prevent bodily harm to the accused or another or further criminal conduct." Minn. R. Crim. P. 6.01, subd. 1(1)(a). Appellant had just been in a fight and appeared to be injured. It would have been reasonable for the officers to have believed that another fight could ensue after they left, making the arrest necessary to prevent bodily harm and further criminal conduct. Second, "there [was] a substantial likelihood that the accused w[ould] fail to respond to a citation." *Id.* Appellant refused to identify himself to Officer

Dingmann. Under those circumstances, it would have been difficult to issue a citation to appellant, and there was a substantial likelihood that he would have failed to respond to the citation.

Because appellant was arrested in a public place after he committed an offense in the officers' presence, we conclude that the district court did not err in its determination that appellant's arrest was proper or abuse its discretion in denying appellant's motion for a new trial.

Affirmed.