STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1273

State of Minnesota,
Respondent,

vs.

Grant Jason Bresnahan,
Appellant.

Filed September 22, 2009
Affirmed
Ross, Judge

Ramsey County District Court
File No. 62-K4-07-004320

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

Susan Gaertner, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102-1657 (for respondent)

Melissa Sheridan, Assistant State Public Defender, 1380 Corporate Center Curve, Suite 320, Eagan, MN 55121 (for appellant)

Considered and decided by Larkin, Presiding Judge; Ross, Judge; and Schellhas, Judge.

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

ROSS, Judge

Grant Bresnahan challenges his convictions of first-degree burglary and fourth-degree criminal sexual conduct stemming from an escalating dispute with his neighbor that turned violent. He complains that two of the district court's evidentiary decisions were erroneous. Because the district court's decisions were sound, we affirm.

FACTS

Bresnahan was charged and convicted after a December 2007 incident in which he forced his way into his next-door neighbor's home and molested her. He had a long-standing feud with his neighbor; each had obtained restraining orders against the other. On December 13, Bresnahan stood in his driveway and yelled for his neighbor to come outside. She responded to him as though she would come out, but she had no intention to. Bresnahan pounded on her front door. She was wearing only a bathrobe and opened the door only a crack. But Bresnahan forced his way in and pushed her against the entryway wall. He then licked her face, made derogatory statements, and touched her breasts and vagina under her robe.

The victim saw that Bresnahan had two knives, one with a yellow sheath and one with a brown sheath. She eventually persuaded Bresnahan to leave her house. Another neighbor called police.

When St. Paul police arrived, they arrested Bresnahan, who appeared to be drunk. Officer Stephen Bobrowski asked if Bresnahan had any knives. Bresnahan responded that he did not, but he added that everyone on the east side has a knife and that the police

could search his house if they wanted. The police accepted the invitation and searched his house. They found one knife in a yellow sheath and an empty brown sheath.

At a pretrial suppression hearing Bresnahan moved to suppress evidence of the knife and sheaths, arguing that officers did not obtain his actual consent to search his house. Specifically, he argued that he was too intoxicated to consent. The district court refused to suppress the evidence, concluding that Bresnahan consented to the search.

During trial, Bresnahan sought to introduce evidence that the victim and her family had previously assaulted him. He intended to use the evidence to establish that the victim was biased against him and therefore incredible. The district court refused to admit the evidence. It did so because Bresnahan did not timely notify the prosecutor of his intent to present the evidence after the parties had agreed not to introduce evidence of specific instances related to the long-standing dispute between Bresnahan and his neighbors, because the evidence was only marginally relevant, and because the evidence would not contribute to the case.

Bresnahan appeals, challenging the district court's two evidentiary rulings.

D E C I S I O N

I

Bresnahan argues that the consent he gave to search his house was not valid because it was "obtained in an inherently coercive atmosphere." He also argues that his intoxication "weighs against a finding of voluntary consent." Neither contention is persuasive.

When asked to review a pretrial suppression decision, this court may independently review the evidence and determine whether suppression was warranted as a matter of law. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). A person may consent to a warrantless search as long as the consent was given "without coercion or submission to an assertion of authority." *State v. Dezso*, 512 N.W.2d 877, 880 (Minn. 1994). Whether consent to search was valid depends on a review of the totality of the circumstances, "including the nature of the encounter, the kind of person the defendant is, and what was said and how it was said." *Harris*, 590 N.W.2d at 102 (quotation omitted). The state has the burden to show that the consent was voluntary. *Id.*

The circumstances of Bresnahan's consent were tense. When police encountered Bresnahan, he was belligerent, used derogatory language to refer to his neighbor, and appeared to be intoxicated. The officers expected that Bresnahan may have been armed with knives, which are instruments of deadly force, so they drew their firearms and instructed him to lie on his stomach. He did not immediately comply. After he was directed twice, Bresnahan finally lay on his stomach and was handcuffed. Officer Bobrowski asked if Bresnahan had a knife on his person. According to the testimony of Officer Michael Matsen, Bresnahan responded by saying no, but that everyone on the east side has a knife, so "go ahead and search my house if you want."

Bresnahan cites two cases in support of his contention that his consent was not freely given. Both cases can be distinguished. *State v. George* and *State v. Bell* are cases in which the state failed to prove that a defendant's consent was voluntary. *George*, 557 N.W.2d 575, 581 (Minn. 1997); *Bell*, 557 N.W.2d 603, 608 (Minn. App. 1996). In both

cases, the police asked the defendant for permission to search after the defendant had been seized. The operative issue in those cases was whether the defendant would feel free to refuse the request in light of the circumstances. In this case, Officer Bobrowski asked Bresnahan if he had a knife on him, and Bresnahan responded by *volunteering* that the officers could search his house. He was not asked for his consent to search his home, so there is no issue about whether he felt free to refuse a request. *George* and *Bell* are therefore materially dissimilar to our case.

Under all the circumstances surrounding the encounter, we have no ground to criticize the district court's refusal to suppress the evidence. There was nothing so coercive about the atmosphere as to press from Bresnahan his voluntary non sequitur, challenging police to search his house when he was asked only whether he had a knife on his person. They did nothing to provoke the blurted invitation to search; Bresnahan offered it willingly. The circumstance might have made Bresnahan uncomfortable, but the arrest was not designed to coerce his consent. Bresnahan's unsolicited offer was not one that the police had to ignore simply because Bresnahan may have been intimidated by his arrest.

We are also not persuaded that Bresnahan was so intoxicated that his inebriation influenced his will and that he therefore unwillingly consented to a search of his house. He was sufficiently sober to discuss the situation and profess his innocence to police. We conclude that Bresnahan's consent to search was voluntarily given and that the district court therefore correctly admitted the evidence produced by the search. *See State v.*

Smallwood, 594 N.W.2d 144, 155 (Minn. 1999) (concluding that despite evidence of intoxication, totality of circumstances demonstrated valid consent).

II

Bresnahan also contends that the district court should not have excluded evidence that the victim previously assaulted him. The district court excluded the evidence on various grounds, including that it was cumulative. The district court may exercise its discretion when ruling on evidentiary matters, and on appeal a defendant has the obligation to show that the district court abused its discretion and, in doing so, prejudiced the defense. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Relevant evidence may be excluded if it is cumulative. Minn. R. Evid. 403. Because we agree that the evidence was cumulative, we do not disturb the district court's ruling.

Bresnahan asked to introduce evidence of the prior assault late in the trial. His purpose was to establish that the victim was biased against him. The district court concluded that the record already contained evidence sufficient to establish the victim's bias. It reasoned that the mutual restraining orders already in evidence sufficiently showed the victim's bias against Bresnahan. It explained that "the very reason that the harassment restraining . . . orders were agreed to be admitted" was to "avoid getting into specific instances . . . without end of problems between these two families." Bresnahan offered no additional basis for admitting the evidence. Because the victim's bias against Bresnahan was already established without the details of specific incidents between them, the district court had a reasonable basis to exclude the details as unduly cumulative or

confusing. The district court's evidentiary ruling therefore represents a proper exercise of its discretion.

Affirmed.