STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0310, A09-0449, A09-0450

State of Minnesota,
Respondent,

vs.

Wade Kenneth Engblom,
Appellant.

Filed February 2, 2010
Affirmed
Shumaker, Judge

Isanti County District Court
File No. 30-CR-07-1226

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

Jeffrey R. Edblad, Isanti County Attorney, Cambridge, Minnesota (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Shumaker, Judge; and Connolly, Judge.

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

SHUMAKER, Judge

Appellant challenges the district court's order denying his motion to suppress evidence of stolen goods, arguing that the search of his father's shed was unlawful. Because the search was proper, we affirm.

FACTS

We are asked to decide whether the district court erred when it denied appellant Wade Kenneth Engblom's motion to suppress evidence of stolen goods made on the grounds that the police obtained the evidence in an illegal search.

At about 1:00 a.m. on September 2, 2007, P.F.'s wife alerted him that she had seen lights shining near their pole shed. P.F. went outside to investigate and encountered a man, later identified as Engblom, removing items from the shed. P.F. grabbed him and told him to put the items back, but Engblom pulled away from him and sped off in his car. P.F. noted the license number, called the police, and gave a description of Engblom and the license number of his car, as well as a description of chainsaws that were missing from the shed.

The police determined that the car was registered to Engblom, and they immediately drove to his residence. When they arrived, they saw the car parked there, and they noted that the hood was very hot, suggesting that the car had been recently operated. The police looked through the windows of the car and noticed sawdust on the backseat. From prior involvement with the family, police sergeant Greg Kranz knew that Engblom's father owned the residence as well as an adjacent lot that was vacant except

for a storage shed. Kranz knocked repeatedly on the door of the residence but no one answered. Then he drove his squad to the driveway of the vacant lot to see if he might locate Engblom there. He got out of his car and he noticed what appeared to be fresh tracks leading up to the shed. The shed door was unlocked, and Kranz pushed the door open with his flashlight. Inside the shed he saw numerous power tools, some of which matched the description of those taken from P.F.'s shed. Engblom was not inside the shed.

The police then telephoned the residence, and Engblom answered. He agreed to come outside. The police brought Englbom to P.F.'s residence, and he positively identified Engblom as the person he had encountered near his shed.

Later that day, Kranz spoke with Engblom's father, who had been away on a camping trip. Engblom's father inspected the shed and informed the police of several other items of stolen property. Additionally, Engblom's father found more stolen property in a hollowed-out roof near the shed and in an unattached garage.

The state charged Engblom with third-degree burglary. He moved to suppress the evidence of all allegedly stolen property on the grounds that it was obtained through an illegal search of the shed or as a result of the constitutionally tainted consent his father gave for the second search of the shed and the garage. Ruling that Engblom had no expectation of privacy in a shed that was not within the curtilage of his residence and that his father's consent to a subsequent search was valid, the district court denied Engblom's motion. This appeal followed.

D E C I S I O N

Although the district court ruled that Engblom had no reasonable expectation of privacy in a shed that was not within the curtilage of his residence, the state also argued below, and argues on appeal, that the police acted lawfully because they were in fresh (or hot) pursuit of Engblom. We agree with this argument and base our holding on it.

People have a constitutional right to be free from unreasonable searches of their property. U.S. Const. amend. IV; Minn. Const. art I, § 10. A search without a warrant supported by probable cause is presumptively unreasonable. *Payton v. New York*, 445 U.S. 573, 586, 100 S. Ct. 1371, 1380 (1980). There are exceptions to this rule. If, for example, exigent circumstances exist, a warrantless search even of a person's residence is permissible. *State v. Shriner*, 751 N.W.2d 538, 541 (Minn. 2008). An exigency can take the form of fresh, or hot, pursuit of the suspect of a crime by the police. *United States v. Santana*, 427 U.S. 38, 42-43, 96 S. Ct. 2406, 2409-10 (1976). In determining the existence of an exigency, we "consider the totality of the circumstances surrounding the entry and the seizure." *State v. Lohnes*, 344 N.W.2d 605, 611 (Minn. 1984). There is no rigid test to apply, but the so-called *Dorman* factors "may be helpful as guidelines to determine whether exigent circumstances do exist." *Id.* (applying *Dorman v. United States*, 435 F.2d 385 (D.C. Cir. 1970)). The factors are whether (1) a grave offense is involved; (2) the suspect is believed to be armed; (3) there is a clear showing of probable cause to believe the suspect committed the crime; (4) there are strong reasons to believe the suspect is on the premises; (5) there is a likelihood the suspect will escape if not swiftly apprehended; and (6) the entry is made peaceably. *Dorman*, 435 F.2d at 392-93.

The core constitutional protection is against *unreasonable* searches and seizures. Thus, when applying any test or factors, we must remain alert to determining the reasonableness of police conduct. In making that determination, the *Dorman* factors are not mandates but rather discretionary guidelines. *Lohnes*, 344 N.W.2d at 611. Nor is the determination limited to only those six factors. *Id.*

No matter what guidelines are used in a search-and-seizure analysis, the focus needs always to be on the reasonableness or unreasonableness of police conduct. The absence of one or more of the discretionary *Dorman* factors is not determinative of an issue but rather is information to consider together with all other facts in the case. So, *Dorman* may contract or expand depending on the circumstances of the case. Furthermore, a rigid application of discretionary guidelines as if they are mandates could impede the quest for a just determination of the issue of reasonableness.

The facts here make the search of Engblom's father's shed reasonable. The police had strong probable cause to believe that Engblom committed a burglary of P.F.'s property and to believe that he was either inside his residence or hiding in the shed on an adjacent lot. Beginning with a clear description of Engblom and of his car, the police engaged in a classic pursuit of a felony suspect, tracing him clue by clue to his destination. Prudently, the police did not enter Engblom's residence but, believing he was not there and might be in an isolated shed on a vacant lot, a belief augmented by footprints leading to that place, the police pushed an unlocked door open and looked in.

Although Engblom's crime was not one of violence, it was a felony, and it is arguable that had the police relented in their pursuit Engblom might have escaped

apprehension. Other than invoking the admittedly important search-and-seizure provisions of the federal and state constitutions, Engblom has not identified a way in which this police search was unreasonable. The totality of the circumstances shows that it was reasonable.

Affirmed.