STATE OF MINNESOTA
IN COURT OF APPEALS
A09-425

State of Minnesota,
Respondent,

vs.

Michael Patrick Morin,
Appellant.

Filed March 23, 2010
Affirmed
Klaphake, Judge

Koochiching County District Court
File No. 36-CR-08-0207

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Philip K. Miller, Koochiching County Attorney, Jeffrey S. Naglosky, Assistant County Attorney, International Falls, Minnesota (for respondent)

Tara Reese Duginske, Briggs and Morgan, P.A., Minneapolis, Minnesota; and

David W. Merchant, Chief Appellate Public Defender, Theodora K. Gaitas, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Klaphake, Judge; and Stoneburner, Judge.

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

KLAPHAKE, Judge

Appellant Michael Morin was convicted of second-degree controlled substance crime (possession) in violation of Minn. Stat. § 152.022, subd. 2(1), 3(a) (2006), and 609.05, subd. 1 (2006), for possessing methamphetamine with a total weight of six grams or more. Police obtained evidence to support the conviction during execution of a search warrant on March 7, 2008. The warrant permitted police to search the Little Fork residence of Colin Cook, a vehicle operated by Andrew Holler, and the persons of Cook, Holler, and appellant. Appellant challenges the district court's conclusion that he lacked standing to challenge whether there was probable cause to support issuance of the warrant to search the Cook residence. We affirm because we conclude, based on the totality of the circumstances, that appellant lacked a sufficient privacy interest in the Cook residence to challenge whether the search of the residence was supported by probable cause.

D E C I S I O N

Appellant claims that officers violated his Fourth Amendment rights by conducting the search of the Cook residence. In order to make this argument, appellant must have the right to object to the search because his own constitutional privacy rights were thereby violated. The district court found that appellant did not have "standing"[1]

[1] In *State v. Stephenson*, 760 N.W.2d 22, 25 n.2 (Minn. App. 2009), this court recognized that the proper framing of this issue is not whether a person has standing to challenge a premises search, but rather whether the person has a reasonable expectation of privacy in the premises. *See Minnesota v. Carter*, 525 U.S. 83, 87, 119 S. Ct. 469, 472 (1998)

because he was not at the Cook premises at the time of the search, and even if he had been present, he would have been at the residence for the sole purpose of manufacturing methamphetamine, a commercial endeavor, and was therefore not entitled to assert a privacy interest.

The United States and Minnesota Constitutions protect an individual from unreasonable searches of their "persons, houses, papers, and effects." U.S. Const. amend. IV; Minn. Const. art. I, § 10. "To establish a protected interest, a defendant must demonstrate (1) a subjective expectation of privacy and (2) that this expectation was reasonable in light of longstanding social customs that serve functions recognized as valuable by society." *Stephenson*, 760 N.W.2d at 25 (quotations omitted). The Fourth Amendment right to be free from unreasonable searches and seizures is personal, and must be asserted by the individual whose rights were violated. *Carter*, 525 U.S. at 88, 119 S. Ct. at 472; *State v. Carter*, 596 N.W.2d 654, 658 (Minn. 1999); *State v. Reynolds*, 578 N.W.2d 762, 764 (Minn. App. 1998). A person may not assert a violation of the Fourth Amendment rights of a third party. *Id.*; *see State v. McBride*, 666 N.W.2d 351, 360 (Minn. 2003) (stating that Fourth Amendment rights "are not triggered unless an individual has a legitimate expectation of privacy in the invaded space") (quotation omitted).

(rejecting traditional standing analysis in favor of analysis of Fourth Amendment rights); *Rakas v. Illinois*, 439 U.S. 128, 138-40, 99 S. Ct. 421, 428 (1978) (same); *State v. Robinson*, 458 N.W.2d 421, 423 (Minn. App. 1990) (same), *review denied* (Minn. Sept. 14, 1990).

Here, appellant had left the Cook residence by the time that law enforcement conducted a search of the premises, but he claims that as a social guest, he had a privacy interest in the Cook residence. Under federal law, an overnight guest has a reasonable expectation of privacy in the home of another, based on the "everyday expectations of privacy." *Minnesota v. Olson*, 495 U.S. 91, 98, 110 S. Ct. 1684, 1689 (1990). At the other extreme, a person who is merely permitted on the premises of another has no legitimate privacy interest. *Carter*, 525 U.S. at 91, 119 S. Ct. at 474 (ruling that persons who visited lessee's apartment for the first time for about 2-1/2 hours to package cocaine and who did not previously know lessee did not have a reasonable expectation of privacy in the apartment and could not challenge police search of the apartment). With regard to the commercial aspect of the drug activity in *Carter*, the Supreme Court stated, "An expectation of privacy in commercial premises . . . is different from, and indeed less than, a similar expectation in an individual's home." *Id.*, 525 U.S. at 90, 119 S. Ct. at 474 (quotation omitted).

Analyzing both *Olson* and *Carter*, the Minnesota Supreme Court held that interpretation of Minnesota's constitution requires greater protection of a homeowner's privacy interests such that even a short-term social guest has a reasonable expectation of privacy in the home of another. *In re Welfare of B.R.K.*, 658 N.W.2d 565, 574 (Minn. 2003) (permitting teenage party guest who had social connection with home's host/resident to claim privacy interest in home when police conducted search of home while guest was present). In *B.R.K.*, the supreme court noted that "[t]he animating principle behind *Carter* is that an individual's expectation of privacy in commercial

premises is less than an individual's expectation in a private residence, not that short-term social guests do not have a reasonable expectation of privacy." *Id.* at 575.

Soon after *B.R.K.*, this court decided *State v. Sletten*, 664 N.W.2d 870 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2001), in which we distinguished the degree of privacy interests held by social guests and commercial guests and concluded that a guest of a hotel guest did not share the privacy interest of the hotel guest when the guest was present in the hotel room only for the commercial purpose of selling drugs. *Id.* at 879-80.

The facts of this case do not fit neatly within the analysis set forth in prior caselaw. Appellant and Cook were acquaintances, and appellant had been to Cook's outbuilding on the day before the search to work on a snowmobile, although it is unclear whether he entered Cook's residence on that day or merely participated in a joint commercial venture. The record does not further elaborate on their relationship, although appellant offered no evidence that he kept any personal belongings at the Cook residence. Cook testified that appellant insisted that they use Cook's residence to manufacture methamphetamine on March 7, that he openly disagreed with this plan, but that he eventually acquiesced to appellant's mandate and agreed to permit his home to be used for manufacturing methamphetamine. According to Cook, it was a "50-50" deal.

As to the commercial aspect of appellant's visit to the Cook residence, the record also shows that appellant remained at the Cook residence on March 7 for only sufficient time to manufacture methamphetamine. While appellant argues that the methamphetamine they produced on March 7 was of insufficient quality for commercial sale and that they intended to manufacture methamphetamine only for their personal use, the state

argues that the commercial purpose of the methamphetamine is shown by the parties' conduct in manufacturing it, not whether it was of sufficient quality for sale. *See Sletten*, 664 N.W.2d at 877 (holding that defendant did not have legitimate privacy interest in hotel room to which he was not registered when hotel room "was nothing more than a convenient processing station for the packaging and distribution of drugs" and noting that "what little expectation of privacy he may have had was extinguished in light of the commercial nature of his visit").

Based on all of these circumstances, we conclude that appellant did not show that he had a legitimate privacy interest in the Cook residence. Appellant had left the Cook residence at the time of the execution of the search warrant. Further, his link to the residence was primarily to manufacture methamphetamine—an activity that could be classified as a commercial or, in this case, a nonsocial activity. His contact with Cook on March 7 indicates that appellant was merely permitted on the property by Cook and was not a true social guest. *See Carter*, 525 U.S. at 91, 119 S. Ct. at 474.

For these reasons, we affirm the district court's ruling that appellant lacked a privacy interest in the Cook residence. Because this issue is dispositive, we do not address the other arguments raised by appellant concerning the search of the vehicle or search of the Cook residence.

Affirmed.