STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1369

State of Minnesota,
Respondent,

vs.

Daniel Scott Iannazzo,
Appellant.

Filed May 11, 2010
Affirmed
Johnson, Judge

Hennepin County District Court
File No. 27-CR-07-100109

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

Jason T. Hutchison, Steiner and Curtiss, P.A., Hopkins, Minnesota (for respondent)

Samuel A. McCloud, Carson J. Heefner, McCloud & Heefner, P.A., Shakopee, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Hudson, Judge; and Johnson, Judge.

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

JOHNSON, Judge

Daniel Scott Iannazzo was found guilty of a misdemeanor offense based on two statements that he made to law-enforcement officers. He made the first statement at his

residence; he made the second statement at the police station after being arrested and given a *Miranda* warning. Iannazzo moved to suppress both statements, but the district court denied the motion. On appeal, Iannazzo argues that the first statement should be suppressed because it was obtained in violation of his Fourth Amendment rights and that the second statement should be suppressed because it was "fruit of the poisonous tree." We affirm.

FACTS

This case arises from an incident that occurred on July 13, 2007, which is explained below. After police officers obtained two statements from Iannazzo, the state charged him with one count of fifth-degree misdemeanor domestic assault, in violation of Minn. Stat. § 609.2242, subd. 1(1) (2006), and one count of disorderly conduct, in violation of Minn. Stat. § 609.72, subd. 1 (2006).

Iannazzo moved to suppress evidence of the two statements he provided to police officers. The record does not reveal the details of Iannazzo's statements. The district court conducted a hearing on Iannazzo's motion in September 2007. At the hearing, the parties stipulated that the following facts, as stated by Iannazzo's counsel, are relevant to the motion to suppress:

> On July 13th there was an alleged incident of domestic assault involving a [K.D.], is the complainant's name. And of course the defendant's name you already know. Apparently she went to the Red Roof Inn and registered in a room. And about five hours after the alleged incident she contacted the police, and they went to the Red Roof Inn and interviewed her.
>
> Based on her statement that she was assaulted by Mr. Iannazzo, they went to his address. And they knocked on the door, and then they looked in the patio door to see if there was any movement.

> A white male was walking down the stairs from the upstairs, down to where they could see him from the patio door. Officer Kreiling opened the door and asked the white male to identify himself. Which he did. Eventually the police officers took a non-Mirandized statement from him that was not recorded. They relayed what the contents were. But that is not material to your decision.
>
> The police placed Mr. Iannazzo under formal arrest and took him to the police station. At the police station, he was read his Miranda rights and they took a recorded statement from him.
>
> So those are the facts that we're going to argue about as to whether or not what comes into evidence. I have nothing further.

Four months after the hearing, the district court issued a two-page order in which it denied the motion to suppress. The district court made the following findings of fact:

> On July 13, 2007, an alleged incident of domestic assault was reported to Hopkins Police. Following a statement by the complaining witness, police officers went to Defendant's residence in Hopkins. The officers had no warrant. Officer Kreiling knocked on the patio door of the residence and saw a man walking down from the upstairs. Officer Kreiling slid open the patio door and asked the man to identify himself. The man identified himself as Daniel Iannazzo. Several statements by Defendant to Hopkins Police followed this interaction.

The district court analyzed the parties' legal arguments by stating that the police officer's

> act of sliding open a patio door is not an entry under the Fourth Amendment. While more invasive than looking through a window of a residence, the act of opening a door without crossing the threshold of the home is not an entry under the Fourth Amendment. The Court finds that Officer Kreiling's actions required no warrant.

Accordingly, the district court denied the motion to suppress.

In June 2008, Iannazzo pleaded guilty to the charge of disorderly conduct. The remaining charge of fifth-degree misdemeanor domestic assault was tried to the district court pursuant to Minn. R. Crim. P. 26.01, subd. 4 (2009).[1] At trial, the parties stipulated to the following evidence, as stated by Iannazzo and his counsel:

> MR. McCLOUD: So, with regard to this particular domestic abuse charge, are you willing to stipulate that on [July 13th], 2007, in Hennepin County, city of Hopkins, you were having an argument, a heated argument with [K.D.], isn't that correct?
>
> THE DEFENDANT: Yes.
>
> MR. McCLOUD: And during that argument you intentionally caused her to have fear of immediate bodily harm, is that correct?
>
> THE DEFENDANT: Yes.
>
> MR. McCLOUD: And, you understand that that's the essence of the domestic abuse charge?
>
> THE DEFENDANT: Yes.

Based on this evidence, the district court found Iannazzo guilty of fifth-degree misdemeanor domestic assault. The district court stayed adjudication on the convictions of disorderly conduct and domestic assault for one year and two years, respectively, subject to certain

[1] In *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980), the supreme court approved a procedure similar in function to a conditional guilty plea, which may be used if a defendant, among other things, "waive[s] his right to a jury trial." *Id.* at 857; *see also State v. Rasmussen*, 749 N.W.2d 423, 426 (Minn. App. 2008). Since April 1, 2007, the *Lothenbach* procedure is reflected in Minn. R. Crim. P. 26.01, subd. 4, which is captioned "Stipulation to Prosecution's Case to Obtain Review of a Pretrial Ruling." Rule 26.01, subdivision 4 "supersedes [*Lothenbach*] as to the procedure for stipulating to the prosecution's case to obtain review of a pretrial ruling." Minn. R. Crim. P. 26.01, subd. 4 cmt.

conditions. In July 2009, however, the district court revoked the stay with respect to the domestic-assault charge because Iannazzo violated several conditions of the stay. The district court then imposed an executed sentence of 90 days in the workhouse, of which 45 days were stayed. Iannazzo appeals.

D E C I S I O N

Iannazzo argues that the district court erred by denying his motion to suppress evidence of the two statements he provided to police officers on July 13, 2007. We will separately analyze Iannazzo's arguments concerning the two statements.

A. First Statement

Iannazzo first argues that the district court erred by denying his motion to suppress evidence of the first statement, which he provided to police officers at his residence. Iannazzo contends that the first statement was obtained in violation of his Fourth Amendment rights because he "had a reasonable expectation of privacy in his home" and the officer's "act of opening the door to his residence without a warrant or an exception thereto was unconstitutional." "When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing -- or not suppressing -- the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and

> particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV; *see also* Minn. Const. art. I, § 10. The United States Supreme Court has stated that the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States v. United States Dist. Court*, 407 U.S. 297, 313, 92 S. Ct. 2125, 2134 (1972). Thus, as a general rule, a warrant is required before a law enforcement officer may conduct a search of a person's home. *State v. Lohnes*, 344 N.W.2d 605, 610 (Minn. 1984); *State v. Morin*, 736 N.W.2d 691, 695 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007). "The requirement of a warrant duly issued by a magistrate upon probable cause . . . reflects the principle of English Common Law that a person's home is his or her castle." *Lohnes*, 344 N.W.2d at 610. The warrant requirement also ensures that "no state authority may intrude [into a home] without first having convinced an impartial magistrate that probable cause exists that the person has committed a crime and that other reasons exist justifying the intrusion." *Id.*

Accordingly, a warrantless search of a person's home is "presumptively unreasonable." *Payton v. New York*, 445 U.S. 573, 586, 100 S. Ct. 1371, 1380 (1980). In the absence of consent, the presumption of unreasonableness can be rebutted only if the warrantless search is supported by, first, probable cause, and second, "exigent circumstances." *Coolidge v. New Hampshire*, 403 U.S. 443, 474-75, 91 S. Ct. 2022, 2042-43 (1971); *In re Welfare of D.A.G.*, 484 N.W.2d 787, 789-92 (Minn. 1992). If a warrantless search is conducted without exigent circumstances, any evidence obtained in the warrantless

search must be suppressed. *Wong Sun v. United States*, 371 U.S. 471, 484, 83 S. Ct. 407, 415-16 (1963); *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992).

Iannazzo contends that Officer Kreiling made a warrantless entry into his home, without exigent circumstances, when he opened the door to the home. More specifically, Iannazzo asserts that "the moment the officer opened the . . . door without consent of Appellant, they were no longer acting in a manner, or in a place, where visitors or the public are permitted to go." In response, the state contends that "[t]he act of sliding open an exterior . . . door does not constitute an entry into the residence, and thus, is not a violation of either the Fourth Amendment to the U.S. Constitution or Article I, Section 10, of the Minnesota Constitution." There is a surprising lack of legal authority on the question whether an officer must have a warrant if he or she opens an external door to a home but does not step over the threshold into the home. The parties have not cited caselaw directly on point, and the caselaw we have found is inconclusive.

As a starting point, we note that whether a warrantless entry has occurred usually depends on whether the threshold of the doorway of a home has been crossed: "In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn *a firm line at the entrance to the house*. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Payton*, 445 U.S. at 590, 100 S. Ct. at 1382 (emphasis added). The Supreme Court also has held that an external doorway to a residence is a public place for Fourth Amendment purposes, which means that a law-enforcement officer may conduct a search or seizure there without a warrant. *United States v. Santana*, 427 U.S. 38, 42, 96 S. Ct. 2406, 2409 (1976); *State v. Alayon*, 459 N.W.2d 325,

328 (Minn. 1990). In addition, the Supreme Court has stated in *dicta* that "any physical invasion of the structure of the home, 'by even a fraction of an inch,' [is] too much and there is certainly no exception to the warrant requirement for the officer who barely cracks open the front door." *Kyllo v. United States*, 533 U.S. 27, 37, 121 S. Ct. 2038, 2045 (2001) (citation omitted) (quoting *Silverman v. United States*, 365 U.S. 505, 512, 81 S. Ct. 679, 683 (1961)). The state did not cite these cases in its brief, but the premise of its argument is that an officer does not need a warrant if the officer does not cross the threshold of a home when effecting a search or a seizure.

Two opinions of our supreme court considered facts that are similar, though not identical, to the facts of this case. In *State v. Patricelli*, 324 N.W.2d 351 (Minn. 1982), the supreme court held that there was no "entry" when the defendant was arrested at the threshold of his residence after he voluntarily came to the door with knowledge that a police officer wanted to talk to him. *Id.* at 354. Likewise, in *State v. Howard*, 373 N.W.2d 596 (Minn. 1985), the supreme court stated that the Fourth Amendment "does not prohibit a nonexigent warrantless arrest initiated at the threshold of a suspect's residence if the suspect voluntarily opens the door in response to knocking by the police." *Id.* at 598. The facts of this case, however, are different from those of *Howard* and *Patricelli* because Iannazzo did not open the door; Officer Kreiling opened the door.

A review of caselaw from other jurisdictions suggests that the state's argument may extend beyond what the Fourth Amendment caselaw presently allows. An officer may violate the Fourth Amendment by opening a door to a home if doing so allows the officer to see inside the home in a way that would have been impossible without opening the door.

See United States v. Winsor, 846 F.2d 1569, 1572 (9th Cir. 1988) (en banc) (recognizing that search can occur when "officers gain[] visual access to the interior of a dwelling without physically entering it"); *see also Kyllo*, 533 U.S. at 37, 121 S. Ct. at 2045 (stating that "[i]n the home, . . . *all* details are intimate details, because the entire area is held safe from prying government eyes"). In this case, however, it appears that Officer Kreiling may not have seen more of the inside of Iannazzo's home by opening the door.

In addition, an officer's act of opening a door to a home may be unreasonable if it causes a person inside the home to suffer a disturbance of his or her privacy. If a person inside a home is aware that a door to the home has been opened, the person is, as a practical matter, forced to interrupt whatever he or she is doing and go to the door to stop a potential intruder or to close the door. *Cf. Illinois v. Wardlow*, 528 U.S. 119, 125, 120 S. Ct. 673, 676 (2000) (recognizing individual's "right to ignore the police and go about his business" in context of investigatory stop); *United States v. Berkowitz*, 927 F.2d 1376, 1387 (7th Cir. 1991) (discussing "person's right to choose to close his door on and exclude people he does not want within his home," which is "one of the most -- if not the most -- important components of a person's privacy expectation in his home").

Furthermore, in some circumstances, a warrantless arrest may be unreasonable even if an officer does not cross the threshold of a doorway to a home but causes a resident of the home to step outside. For example, in *United States v. Morgan*, 743 F.2d 1158 (6th Cir. 1984), the court held that a "constructive entry" occurred when several police officers flushed the defendant out of his home by surrounding it, shining spotlights on it, and summoning him with a bullhorn. *Id.* at 1161, 1166-67; *see also United States v. Saari*, 272

F.3d 804, 806-07, 809 (6th Cir. 2001) (holding that constructive entry occurred when officers pointed weapons at defendant and instructed him to come outside, which was "such a show of authority that Defendant reasonably believed he had no choice but to comply"). One federal appellate court has summarized these cases by stating that the line identified in *Payton* "can be breached by conduct other than physical entry" and that "officers need not physically enter the home for *Payton* to apply." *United States v. Reeves*, 524 F.3d 1161, 1165 (10th Cir. 2008). Consistent with these cases is the Supreme Court's general statement that "the Fourth Amendment protects people, not places." *Katz v. United States*, 389 U.S. 347, 351, 88 S. Ct. 507, 511 (1967).

These principles are somewhat difficult to apply in this case because, as stated above, they do not speak directly to the precise issue raised by Iannazzo's argument. But the caselaw is especially difficult to apply in this case because the factual record is poorly developed. The known facts are the minimal facts to which the parties stipulated at the suppression hearing; they are quoted above in full. The pertinent portion of the stipulated facts -- in essence, the first three sentences of the third paragraph quoted above -- is lacking in many significant details. We do not know, for example, whether Iannazzo walked down the stairs in response to Officer Kreiling's knocking on the patio door or whether Officer Kreiling coincidentally began knocking on the door as Iannazzo was walking down the steps. We do not know whether or how Iannazzo reacted to Officer Kreiling's knocking; Iannazzo may have walked toward the door to answer it, or he may have walked away from the door, or he simply may not have responded. We also do not know where Iannazzo and Officer Kreiling were standing when Iannazzo made his first statement; he may have

stepped outside, or Officer Kreiling may have stepped inside, or the two men may have talked over the threshold. A complete legal analysis is impossible without additional factual details.

Nonetheless, we need not perform a complete legal analysis of this issue in order to decide this case. For reasons that are explained below in part C, the question whether Officer Kreiling's opening of the patio door constitutes a warrantless entry of Iannazzo's home -- and, thus, whether there was an unreasonable search or seizure in violation of the Fourth Amendment -- need not be answered. We assume without deciding that Officer Kreiling obtained the first statement from Iannazzo following a warrantless entry of Iannazzo's home in violation of the Fourth Amendment.

B. Second Statement

Iannazzo next argues that the district court erred by denying his motion to suppress evidence of the second statement, which he provided to police officers at the police station. Iannazzo contends that the second statement must be suppressed because it was obtained as a result of an unreasonable search of his home and, thus, is "fruit of the poisonous tree." *See Wong Sun*, 371 U.S. at 488, 83 S. Ct. at 417 (quotation omitted). In response, the state contends that the second statement is admissible because the police had "probable cause to arrest Appellant when they arrived at his home" and that "the intervening arrest of Appellant, transport to the Hopkins Police Department, and *Miranda* warning removes any taint of illegality from Appellant's subsequent statement."

In *Wong Sun*, the Supreme Court held that evidence obtained because of an unreasonable search or seizure is considered "fruit of the poisonous tree" and is generally

inadmissible. *Id*. (quotation omitted). For "fruit of the poisonous tree" evidence to be admitted, the state must prove that the evidence was obtained "by means sufficiently distinguishable to be purged of the primary taint." *Id*. (quotation omitted).

In light of the circumstances of this case, Iannazzo's second statement is not fruit of the poisonous tree. The Supreme Court has held that if "the police have probable cause to arrest a suspect, the exclusionary rule does not bar the State's use of a statement made by the defendant outside of his home." *New York v. Harris*, 495 U.S. 14, 21, 110 S. Ct. 1640, 1644 (1990). In *Harris*, the defendant made statements to police officers at his residence after the officers conducted a routine felony arrest by making a nonconsensual, warrantless entry of his home. *Id.* at 16, 110 S. Ct. at 1642. Harris was taken to the police station and given a *Miranda* warning, after which he signed a written inculpatory statement. *Id.* The Supreme Court considered only whether the second statement, the written statement made at the police station, should have been suppressed. *Id.* at 16-17, 110 S. Ct. at 1642-43. The Supreme Court declined "to apply the exclusionary rule . . . because the rule in *Payton* was designed to protect the physical integrity of the home; it was not intended to grant criminal suspects . . . protection for statements made outside their premises where the police have probable cause to arrest the suspect for committing a crime." *Id.* at 17, 110 S. Ct. at 1643. The facts of *Harris* are remarkably similar to the facts of this case.

Iannazzo contends that *Harris* does not apply for two reasons. First, he contends that the police officers did not have probable cause to arrest him. But Iannazzo acknowledges that police officers obtained a statement from K.D., who stated that Iannazzo had assaulted her within the previous five hours. In light of the information provided by K.D., the officers

had probable cause to arrest Iannazzo. *See State v. Wynne*, 552 N.W.2d 218, 221 (Minn. 1996) (quotation omitted). Thus, in light of the limited evidentiary record, Iannazzo cannot avoid the *Harris* rule on the ground that police officers lacked probable cause to arrest him.

Second, Iannazzo contends that the *Harris* rule does not apply to this case because of *State v. Bailey*, 677 N.W.2d 380 (Minn. 2004), in which the supreme court held that

> where a suspect is apprehended under coercive circumstances, is subjected to lengthy custodial interrogation before being given a *Miranda* warning, does not have the benefit of a significant pause in the interrogation after the *Miranda* warning is given, and essentially repeats the same inculpatory statements after the *Miranda* warning as before, the statements made after the *Miranda* warning are inadmissible.

Id. at 392. Iannazzo's contention is not supported by the factual record, which, as we have explained, is lacking in detail. The facts to which the parties stipulated make no mention of a lengthy interrogation or any coercive circumstances in connection with Iannazzo's arrest. Based on the limited evidentiary record, Iannazzo cannot establish that *Bailey* applies to this case to the exclusion of *Harris*.

In sum, based on the parties' stipulated facts, we conclude that Iannazzo's second statement, which he made at the police station after being given a *Miranda* warning, is not inadmissible as fruit of the poisonous tree, even if Officer Kreiling made a warrantless entry into Iannazzo's home in violation of the Fourth Amendment.

C. Appellate Remedy

The next question is whether Iannazzo is entitled to reversal of the district court's denial of his motion to suppress in light of our assumption that the first statement is inadmissible and our conclusion that the second statement is admissible. The district court

did not expressly consider that question because it did not rule on each statement independently. Rather, the district court denied Iannazzo's motion in its entirety because it concluded that there was no violation of the Fourth Amendment.

We have sought to identify with specificity the substance of each of Iannazzo's two statements. The district court record is not helpful in that regard. At oral argument, Iannazzo's counsel informed the court that Iannazzo's two statements were, more or less, the same. When asked the substance of those statements, Iannazzo's counsel answered that the two statements were, more or less, identical to the evidence to which the parties stipulated at trial. We have recited that evidence above in its entirety.[2] *See supra* pp. 4-5.

In *In re Welfare of R.J.E.*, 642 N.W.2d 708 (Minn. 2002), a juvenile was convicted of fifth-degree criminal sexual conduct in part because of a statement he made to a police officer. *Id.* at 710. The district court refused to suppress the statement. *Id.* This court held

[2]We note that counsel for the parties and the district court did not comply with the provisions of rule 26.01, subdivision 4. The current formulation of the rule (which has been amended for style but is substantively the same as at the time of trial) states, "The defendant and the prosecutor must acknowledge that the pretrial issue is dispositive, or that a trial will be unnecessary if the defendant prevails on appeal." Minn. R. Crim. P. 26.01, subd. 4(c) (2010). Neither party made this acknowledgment. In addition, the current version of the rule also states, "The defendant must also acknowledge that appellate review will be of the pretrial issue, but not of the defendant's guilt, or of other issues that could arise at a contested trial." Minn. R. Crim. P. 26.01, subd. 4(f) (2010). Iannazzo also did not make this acknowledgment. Furthermore, the rule contemplates that a defendant will stipulate to the state's evidence. Minn. R. Crim. P. 26.01, subd. 4(e) (2010). But the prosecutor did not present the state's evidence; Iannazzo's counsel presented the stipulated facts in a colloquy with Iannazzo that resembles common practice in guilty-plea hearings. The supreme court has made clear, however, that a *Lothenbach* proceeding -- and, by extension, a proceeding conducted pursuant to rule 26.01, subdivision 4 -- is *not* a guilty plea. *See Lothenbach*, 296 N.W.2d at 857-58. We reiterate our prior statements that counsel should adhere closely to the procedural requirements of the rule and the *Lothenbach* line of cases. *See, e.g.*, *State v. Antrim*, 764 N.W.2d 67, 69-71 (Minn. App. 2009); *State v. Knoll*, 739 N.W.2d 919, 921-22 (Minn. App. 2007); *State v. Verschelde*, 585 N.W.2d 429, 431-32 (Minn. App. 1998).

that the statement should have been suppressed but that the district court's erroneous denial of the suppression motion was harmless. *In re Welfare of R.J.E.*, 630 N.W.2d 457, 462-63 (Minn. App. 2001), *rev'd*, 642 N.W.2d at 713. The supreme court considered the question "whether matters tried on stipulated facts for the purpose of preserving pretrial issues for appeal," *i.e.*, matters tried in a *Lothenbach* proceeding, "are subject to review for harmless error." 642 N.W.2d at 710. The supreme court noted that "[t]he purpose of review for harmless error is to relieve the courts and the public of the needless expense of retrying cases in which the result would be the same after the error had been corrected." *Id.* at 711 (quotation omitted). The court concluded that harmless-error was inappropriate in that case, in part because the state's evidence was not contested. *Id.* at 712, 713. The court further reasoned that the sufficiency of the state's admissible evidence is not dispositive because "it does not signify necessarily that the verdict rendered was surely unattributable to the error." *Id.* at 713.

This case is different from *R.J.E.* in important ways. If the district court had suppressed Iannazzo's first statement (consistent with our assumption that the statement was obtained in violation of the Fourth Amendment), Iannazzo would have been in precisely the same position he was in following the district court's complete denial of the motion. In either scenario, Iannazzo's second statement is admissible and part of the trial record, and, as far as we know, the second statement is identical to the first statement. Thus, Iannazzo cannot reasonably argue that, if the district court had suppressed his first statement but not his second statement, he would not have agreed to submit the case to the district court pursuant to rule 26.01, subdivision 4. In *R.J.E.*, in contrast, a proper ruling by the district

court would have been consequential because it would have made some evidence unavailable at trial and, thus, would have given R.J.E. a meaningful alternative to the stipulated-facts bench trial that actually occurred. 642 N.W.2d at 710-13. Accordingly, the rationale of *R.J.E.* does not apply to this case.

Even if we assume that Iannazzo's first statement was obtained in violation of the Fourth Amendment and should have been suppressed, Iannazzo's second statement, which is identical to his first statement, is admissible. Therefore, any error in the district court's analysis of the admissibility of the first statement would be harmless error.

Affirmed.