STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1743

State of Minnesota,
Respondent,

vs.

Robert Wayne Kanniainen,
Appellant.

Filed August 10, 2010
Affirmed
Shumaker, Judge

Renville County District Court
File No. 65-CR-08-474

Lori Swanson, Attorney General, Tibor M. Gallo, Assistant Attorney General, St. Paul, Minnesota; and

David J. Torgelson, Renville County Attorney, Olivia, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Bridget Kearns Sabo, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Shumaker, Judge; and Larkin, 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 conclusions after a bench trial that he committed domestic assault by strangulation and the crimes of possession of drugs and

drug paraphernalia. He claims that the drug-related charges were based on an illegal search and that the credible evidence does not support the domestic-assault-by-strangulation conviction. We affirm.

FACTS

After a bench trial, the district court found appellant Robert Kanniainen guilty of domestic assault by strangulation, possession of a controlled substance, and possession of drug paraphernalia. On appeal from the judgment of conviction, Kanniainen argues that the drug-related convictions were the result of an illegal search and that there was insufficient evidence to support the domestic-assault-by-strangulation conviction.

J.S. and Kanniainen were not married but they lived together in a rented house in Buffalo Lake. For about two months prior to the incident at issue, the couple argued a lot, and J.S. called the police several times. On September 28, 2008, an argument escalated into a physical altercation in which J.S. slapped Kanniainen, who, in return, pushed J.S. against a cupboard and choked her. Kanniainen then left the house and went into the detached garage. J.S. called the police and reported the domestic assault. Deputy sheriff Douglas Best and Hector police officer Adam Crain responded and drove to the Buffalo Lake residence.

Deputy Best spoke with J.S. She described the altercation and said that Kanniainen was probably in the garage, indicating that is where he "does his dope." As Best and Crain approached the garage, Kanniainen was standing in the doorway of a closed service door, and then he began to walk toward the officers. The officers arrested Kanniainen and placed him in a squad car.

Deputy Best then returned to the house and obtained J.S.'s permission to search the garage. He testified that, before his search, he "asked if Mr. Kanniainen was on the lease or if he paid rent," and J.S. replied "that he was not on the lease and that she received no rent from him." He did not ask to see the lease nor did he ask Kanniainen to verify J.S.'s statement. J.S.'s statement was untrue. Kanniainen was listed as a co-tenant on the lease, although J.S. had obtained the landlord's agreement to remove him from the lease beginning in October 2008.

During the search, the officers found a black coat with a black pouch protruding from a pocket. They searched inside the pouch and found drug paraphernalia and a substance that later was determined to be methamphetamine. J.S. told the officers that the coat belonged to Kanniainen.

The district court denied Kanniainen's motion to suppress the drug-related evidence and it was admitted at trial, as was J.S.'s testimony about the choking incident.

D E C I S I O N

Search and Seizure

Kanniainen challenges the district court's pretrial denial of his motion to suppress the drug-related evidence. Because the facts respecting the search and seizure are undisputed, we review the facts to determine whether the district court erred as a matter of law in denying the motion. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

Although Kanniainen acknowledges that J.S. had common authority with him over the garage, he argues that her "consent was not sufficient to justify a warrantless search where he, the co-tenant, was present and involved in the investigation." The district court

ruled that Kanniainen "was nearby (in the squad car) and did not object to the consent provided by [J.S.] to the search of the garage." In support of its ruling, the district court cited *Georgia v. Randolph*, 547 U.S. 103, 120, 126 S. Ct. 1515, 1526 (2006), and *State v. Por Hue Vue,* 753 N.W.2d 767, 770 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). Each case deals with a search of a dwelling following consent by a co-tenant.

Randolph states the basic rule:

> The Fourth Amendment recognizes a valid warrantless entry and search of premises when police obtain the voluntary consent of an occupant who shares, or is reasonably believed to share, authority over the area in common with a co-occupant who later objects to the use of evidence so obtained.

547 U.S. at 106, 126 S. Ct. at 1518 (citing *Illinois v. Rodriguez*, 497 U.S. 177, 110 S. Ct. 2793 (1990); *United States v. Matlock*, 415 U.S. 164, 94 S. Ct. 988 (1974)).

But the Court in *Randolph* recognized an exception to the general rule: "We hold that . . . a physically present co-occupant's stated refusal to permit entry prevails, rendering the warrantless search unreasonable and invalid as to him." 547 U.S. at 106, 126 S. Ct. at 1519. The essence of the exception is that the co-occupant is both physically present and objects to the search, for the Supreme Court had previously held that a warrantless search to which a co-occupant consented is valid as against an absent, nonconsenting co-occupant. *Matlock*, 415 U.S. at 170, 94 S. Ct. at 993.

Matlock provides insight into the concept of "absent co-occupant." In that case, Matlock was suspected of robbing a bank. *Id.* at 166, 94 S. Ct. at 991. Law-enforcement officers went to a home in which Matlock rented a bedroom with his girlfriend. *Id.* The officers arrested Matlock in the front yard of the home and detained him in a squad car

while they went into the home and obtained Matlock's girlfriend's consent to search the couple's room. *Id.* The officers did not seek Matlock's consent; neither, apparently, did they tell him they were going to search his room. *Id.* The Court viewed Matlock as an absent co-occupant. *Id.* at 170, 94 S. Ct. at 988.

The fact that a co-occupant with the right to object was not present at the place to be searched but was nearby gave the Supreme Court concern in *Randolph.* *Randolph*, 547 U.S. at 121, 126 S. Ct. at 1527. The Court resolved its concern by drawing what it characterized as a "fine line": "[I]f a potential defendant . . . is in fact at the door and objects, the co-tenant's permission does not suffice for a reasonable search, whereas the potential objector, nearby but not invited to take part in the threshold colloquy, loses out." *Id.* This is so, however, only if "there is no evidence that the police have removed the potentially objecting tenant from the entrance for the sake of avoiding a possible objection." *Id.*

Under the approaches of *Matlock* and *Randolph*, Kanniainen, having been detained in a squad car before the officers sought permission to search, was an absent co-occupant. And J.S.'s consent to the search was valid against Kanniainen unless the officers placed him in the squad car to prevent his objection to the search.

The undisputed facts show that, when the officers arrived at the premises, J.S. described a physical attack by Kanniainen in which she alleged that he choked her. If that allegation proved to be true, Kanniainen would be guilty of the felony of domestic assault by strangulation. Minn. Stat. § 609.2247, subd. 2 (2008). Thus, the officers had probable cause to make a felony arrest of Kanniainen well before any search occurred

and before the officers sought J.S.'s permission to search. The strong, reasonable inference to be drawn from the facts is that Kanniainen's arrest and detention were necessitated by the alleged domestic-assault felony he committed and were not motivated by the officers' desire to prevent him from objecting to a search for evidence of an unrelated crime. The district court apparently drew the proper inference because it found that "[a]s a result of [J.S.'s] statements, the officers immediately arrested [Kanniainen] and placed him in the squad car." We hold that the district court did not err in denying Kanniainen's motion to suppress the drug-related evidence.

Sufficiency of the Evidence

Kanniainen challenges the sufficiency of the evidence to support his conviction of domestic assault by strangulation and the dismissed charge of domestic assault, arguing that J.S.'s testimony "was fundamentally incredible."[1]

On review, this court is to determine whether the evidence, viewed in a light most favorable to the conviction, is sufficient to allow the fact-finder to reach the result it reached. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). Generally, "judging the credibility of witnesses is the exclusive function of the [trier of fact]." *Dale v. State*, 535 N.W.2d 619, 623 (Minn. 1995).

Kanniainen urges that J.S. "was hardly a credible witness." He notes that she lied to the police about whether he was listed on the lease; that she had an outstanding warrant for her arrest; and that she had a motive to lie so as to have him excluded from the

[1] The domestic-assault charge was only dismissed because it arose from the same criminal act as the domestic-assault-by-strangulation charge, and therefore appellant argues that the evidence does not support either charge.

residence. He also notes that J.S. acknowledged that he had broken his arm in the summer of 2008, and that "creates doubts about [his] physical ability to injure her in the way she reported."

There was corroborating evidence of a physical assault. Deputy Best saw red marks on J.S.'s neck, J.S. was crying and nearly hysterical when the officers arrived, and she related consistent information about choking to two different officers.

As to J.S.'s alleged lie about the lease, the district court could have treated that as a mistake. J.S. testified that the landlord said he would remove Kanniainen from the lease starting in October. The assaults occurred on September 28. It is plausible that J. S. thought Kanniainen's name was off the lease in time for the October rental period to begin. As to the alleged outstanding arrest warrant for J.S., it is not clear how that relates to her credibility. Finally, J.S. clearly had a motive to have Kanniainen removed from the residence, but the district court was in the best position to determine how much weight to give to the testimony. *State v. Hughes*, 749 N.W.2d 307, 312 (Minn. 2008).

The district court in this bench trial knew that it necessarily had to assess credibility to perform its fact-finding function. The court was present to see and hear the witnesses. While arguably there may have been reasons to doubt J.S.'s credibility, we defer to the fact-finder on this record. We hold that the evidence was sufficient to support the domestic-assault-by-strangulation conviction, noting that the district court dismissed the domestic-assault charge.

Affirmed.