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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0881**

State of Minnesota,
Respondent,

vs.

James Howard Klein,
Appellant.

**Filed May 5, 2014
Affirmed and remanded
Chutich, Judge**

Scott County District Court
File No. 70-CR-11-21848

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

Patrick J. Ciliberto, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
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Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant
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appellant)

Considered and decided by Smith, Presiding Judge; Connolly, Judge; and Chutich,
Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Appellant James Howard Klein challenges his convictions, contending that the district court erred by ruling that the warrantless entry into his hotel room was lawful. Klein also asserts that his warrant of commitment contains a clerical error. Because we hold that the emergency-aid and exigent-circumstances exceptions apply to the warrantless entry, we affirm and remand to correct the erroneous warrant of commitment.

FACTS

On the night of October 6, 2011, Klein's girlfriend, S.G., called a friend to ask for his help in escaping from Klein. The friend then met S.G. at a Walmart parking lot. He saw fresh bruises on S.G.'s arms, which concerned him because he knew that Klein had previously broken her ribs and hit her in the face. S.G. told him that she needed help leaving Klein, but she departed with Klein when he emerged from the store.

S.G.'s friend reported Klein's abuse of S.G. to a Shakopee police officer, adding that he believed that Klein was staying at the Mystic Lake Casino Hotel. The officer attempted to call S.G. on her cell phone, but was unable to reach her. He next attempted to locate S.G. at Klein's residence, but was unable to find it. Because the Mystic Lake Casino Hotel is owned by a registered Indian tribe and the tribe has exclusively designated the Prior Lake Police Department as its liaison with all outside law enforcement agencies, the Shakopee officer then contacted the Prior Lake Police Department to determine whether Klein was staying at the Mystic Lake Casino Hotel. The hotel confirmed that Klein and S.G. were on the hotel registry.

The Shakopee police officer, accompanied by a Prior Lake police officer and several Mystic Lake private security officers, went to Klein's hotel room. A Mystic Lake employee knocked on the door. Klein opened the door, but positioned himself to block entry. Klein then tried to close the door. After a brief verbal exchange, Mystic Lake security officers pushed the door open, and police and security officers entered the hotel room.

Klein and S.G. were in the hotel room. The Shakopee police officer spoke with S.G., who reported that Klein had physically assaulted her. The officer observed bruises on her arms and legs. While talking to Klein, the Prior Lake police officer observed a glass pipe, small plastic baggies, a large amount of money, and a digital scale. Inside the baggies, the officer saw a substance that he suspected was methamphetamine.

Mystic Lake security officers searched the room and discovered a plastic grocery bag containing an ammunition magazine for a handgun. When the Prior Lake police officer asked Klein where the matching gun was, Klein said it was not in the room, and he added that he had a different gun in a duffel bag in the room. The officer searched the bag, found the gun, determined that it was loaded, and secured it. Klein admitted that the drugs, paraphernalia, and weapon were his. He also admitted that some of the money was counterfeit and that it belonged to him.

Based on the evidence discovered in the room, the state charged Klein with fifth-degree possession of marijuana, possession of a firearm by a prohibited person, possession of counterfeit currency, second-degree possession of methamphetamine, and domestic assault. Klein moved to suppress the evidence discovered in the hotel room and

his own statements, and, after contested omnibus hearings, the district court held that the evidence and statements were admissible.

On the first day of trial, the state dismissed the domestic assault charge. A jury convicted Klein of the remaining charges. The district court sentenced Klein to 80 months in prison on the second-degree drug possession conviction and 60 months in prison on the firearm conviction, to be served consecutively. This appeal followed.

D E C I S I O N

I. Warrantless Entry

Klein contends that the district court should have excluded evidence from his hotel room because the police lacked any basis to justify a warrantless entry. Because we hold that the emergency-aid and exigent-circumstances exceptions to the warrant requirement apply to the entry of Klein's hotel room, we affirm Klein's convictions.

When reviewing a district court's pretrial suppression order, "we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009) (quotation omitted). We independently review the reasonableness of police conduct. *State v. Riley*, 568 N.W.2d 518, 523 (Minn. 1997). Persons have a right to be free from unreasonable searches under both the United States and Minnesota Constitutions. U.S. Const. amend. IV; Minn. Const. art. I, § 10; *see also* 25 U.S.C. § 1302(a)(2) (2006) (applying the Fourth Amendment to Indian tribes exercising powers of self-government).

Warrantless searches of a home are presumptively unreasonable. *State v. Othoudt*, 482 N.W.2d 218, 221–22 (Minn. 1992). This protection also extends to hotel rooms.

State v. Hatton, 389 N.W.2d 229, 232 (Minn. App. 1986), *review denied* (Minn. Aug. 13, 1986). If a warrantless entry is made, evidence discovered must be suppressed unless an exception to the warrant requirement applies. *Othoudt*, 482 N.W.2d at 222. The burden lies with the state to establish that an exception applies. *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001).

A. *Emergency-Aid Exception*

Police “may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.” *State v. Lemieux*, 726 N.W.2d 783, 787–88 (Minn. 2007) (quotation omitted); *see also Othoudt*, 482 N.W.2d at 223 (“The police may enter a dwelling without a warrant if they reasonably believe that a person within is in need of emergency aid.”). To justify a warrantless entry, an officer’s belief that a person was in need of emergency aid must have been objectively reasonable under the circumstances. *Othoudt*, 482 N.W.2d at 223.

We conclude that the officers’ belief that S.G. was in danger was objectively reasonable under the circumstances. Her friend reported to police that S.G. expressed fear and a desire to get away from Klein, S.G. appeared bruised, and Klein had physically assaulted S.G. in the past. The friend told police that S.G. had specifically asked for help in escaping from Klein. This information gave the police officer an objectively reasonable basis to find S.G. and to determine whether she might need emergency aid or whether she was being held against her will. This situation differs from one where police officers responded to a vague reference that a potential victim might need help. *See State v. Fitzgerald*, 562 N.W.2d 288, 288 (Minn. 1997) (holding that the emergency-aid

exception did not apply when an unidentified informant told police that a potential victim “may need help”). By contrast, the information that S.G.’s friend communicated to the police included a report of specific injuries as well as S.G.’s explicit request for help. We therefore hold that the emergency-aid exception to the warrant requirement applies here.

Klein asserts that the Shakopee police officer’s actions to investigate, communicate with other law enforcement agencies, and travel to the hotel without using his police lights or siren show that no emergency existed. But each of the Shakopee police officer’s actions was directed towards promptly responding to the emergency. He attempted to call S.G. and tried to find her at Klein’s residence. His call to the Prior Lake Police Department was also a necessary step in trying to find S.G. because the Prior Lake Police Department was the exclusive liaison with Mystic Lake’s sovereign owner. The police officer took necessary and reasonable steps to locate a possible victim to respond to a request for help. Accordingly, the emergency-aid exception applies to the warrantless entry.

B. Exigent-Circumstances Exception

In addition, another exception to the warrant requirement was met here. Police officers may enter a home without a warrant to arrest a person if they have probable cause to believe that a felony was committed and exigent circumstances exist. *Othoudt*, 482 N.W.2d at 223–24 (“Neither this court nor the United States Supreme Court has ever held that exigent circumstances would permit a warrantless entry into a home to arrest for an offense of lesser magnitude than a felony.”). “The test of probable cause to arrest is whether the objective facts are such that under the circumstances a person of ordinary

care and prudence would entertain an honest and strong suspicion that a crime has been committed.” *State v. Johnson*, 314 N.W.2d 229, 230 (Minn. 1982) (quotation omitted). “[M]ere suspicion is clearly insufficient.” *State v. Lohnes*, 344 N.W.2d 605, 612 (Minn. 1984) (quotation omitted).

The police officers here had strong reason to believe that Klein committed a felony. S.G.’s friend reported seeing fresh bruises on her body. More importantly, S.G.’s friend reported to police that S.G. told him that Klein had recently broken her ribs and hit her in the face. This report is sufficient to establish probable cause that Klein committed felony assault. *See* Minn. Stat. § 609.223, subd. 1 (2010). Based on this record, we conclude that police had probable cause to believe that Klein committed a felony.

Before conducting a warrantless entry under this exception, however, police must also have exigent circumstances. Police officers may justify a warrantless entry using either single-factor exigency or a totality-of-the-circumstances test. *In re Welfare of B.R.K.*, 658 N.W.2d 565, 579 (Minn. 2003). Exigency under a totality-of-the-circumstances test is assessed using the factors set out in *Dorman v. United States*, 435 F.2d 385, 392–93 (D.C. Cir. 1970):

(a) whether a grave or violent offense is involved; (b) whether the suspect is reasonably believed to be armed; (c) whether there is strong probable cause connecting the suspect to the offense; (d) whether police have strong reason to believe the suspect is on the premises; (e) whether it is likely the suspect will escape if not swiftly apprehended; and (f) whether peaceable entry was made.

State v. Hummel, 483 N.W.2d 68, 72–73 (Minn. 1992).

Applying these factors here, we conclude that the record supports a finding of exigency under the totality-of-the-circumstances test. Assault is a “grave or violent offense.” *Cf. B.R.K.*, 658 N.W.2d at 579 (“While a serious offense, underage drinking is not a ‘grave or violent’ offense like robbery or assault.”). The police officers had no information that Klein was armed, but they knew that S.G. feared that she would be further harmed by Klein. S.G.’s expressed fear combined with her friend’s knowledge of a recent assault against her by Klein creates “strong probable cause” that an assault has occurred. *See Hummel*, 483 N.W.2d at 72–73. S.G.’s friend’s statement, confirmed by the hotel records and Klein’s actual presence when a Mystic Lake employee knocked on his hotel room door, gave police officers a “strong reason to believe [Klein was] on the premises.” *See id.* The police officers did not initially have reason to believe Klein might flee, but it was reasonable to believe he would flee once he became aware of the police officers’ interest in locating him. Finally, the police officers entered the hotel room without drawing their weapons or kicking in the door, following the Mystic Lake security personnel through the door that Klein initially opened. For these reasons, we hold that the *Dorman* factors support a finding of exigent circumstances sufficient to justify an exception to the warrant requirement.

II. Clerical Error

Klein asks this court to correct a clerical error on his warrant of commitment. Minnesota Rule of Criminal Procedure 27.03, subdivision 10, states, “Clerical mistakes in a judgment, order, or in the record arising from oversight or omission may be corrected by the court at any time, or after notice if ordered by the court.” The record reflects that

Klein was convicted under Minnesota Statutes section 152.025, subdivision 2(a)(1) (2010), but Klein's warrant of commitment incorrectly cites section 152.025, subdivision 2(a)(2) (2010). We affirm and remand to the district court to modify the warrant of commitment to reflect a conviction under section 152.025, subdivision 2(a)(1) instead of section 152.025, subdivision 2(a)(2).

Affirmed and remanded.