STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1969

State of Minnesota,
Respondent,

vs.

Ryan Alan Peterson,
Appellant

Filed September 16, 2019
Reversed
Klaphake, Judge[*]

Anoka County District Court
File No. 02-CR-17-8248

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Anthony C. Palumbo, Anoka County Attorney, Robert I. Yount, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Bjorkman, Judge; and Klaphake, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

KLAPHAKE, Judge

Appellant Ryan Alan Peterson challenges the district court's denial of his pretrial motion to suppress evidence obtained by an allegedly illegal entry, arrest, and search. After stipulating to the state's case under Minn. R. Crim. P. 26.01, subd. 4, the district court found Peterson guilty of fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(1) (2016). Because we conclude that the police officers could not have arrested Peterson based on their observation of petty misdemeanors, the arrest of Peterson and the evidence obtained through the search incident to his arrest was in violation of Peterson's Fourth Amendment rights. Accordingly, we reverse.

D E C I S I O N

We review a pretrial order on a motion to suppress evidence by independently reviewing the "facts to determine whether, as a matter of law, the district court erred in suppressing or not suppressing the evidence." *See State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004). Both the United States and Minnesota Constitutions protect against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. A warrantless search is "presumptively unreasonable." *State v. Stavish*, 868 N.W.2d 670, 675 (Minn. 2015). But "that presumption may be overcome if a recognized exception to the warrant requirement applies." *Ries v. State*, 920 N.W.2d 620, 627 (Minn. 2018). "The state bears the burden of establishing an exception to the warrant requirement." *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001).

I. Emergency-aid exception

The emergency-aid exception to the warrant requirement permits warrantless entry into a home when police have (1) "reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property"; and (2) "some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched." *Ries*, 920 N.W.2d at 632. "[I]t does not matter if officers have reason to believe some criminal activity is afoot as long as they are objectively motivated by the need to give aid." *Id.* But "the warrantless search must be limited by the type of emergency involved." *Id.* (quotation omitted).

Here, officers were responding to an open-line 911 call. The caller did not speak with dispatch, but dispatch heard two voices speaking in the background. As officers neared Peterson's home, dispatch informed them that it could hear "profanity" and that "it sounded like somebody was getting upset or frustrated because they couldn't find something." When the officers arrived at Peterson's home, they could see a bonfire in the backyard. Officers proceeded directly to the bonfire to investigate the 911 call.

Peterson argues that the officers lacked reasonable grounds to believe an emergency was at hand because there were no signs of an emergency at the house as officers approached. Peterson ignores the importance of the 911 call received by dispatch. By its very nature, a 911 call implies a request for immediate assistance from emergency personnel. The presumption that an emergency is occurring is not dispelled simply because a 911 caller does not speak to dispatch. There are a myriad of reasons, such as fear or incapacity, why a 911 caller does not, or cannot, speak to dispatch.

When officers observed the bonfire in the backyard, they determined that the emergency was most likely occurring there. Given the immediacy of an emergency call, the officers' determination was reasonable. On these facts, the entry into Peterson's backyard was justified under the emergency-aid exception to the warrant requirement.

II. Search incident to arrest

The search-incident-to-arrest exception to the warrant requirement permits an officer to "conduct a full search of the person who has been lawfully arrested." *State v. Bernard*, 859 N.W.2d 762, 767 (Minn. 2015) (quotation omitted), *aff'd sub nom. Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016). To search incident to an arrest, officers must have probable cause to arrest. *See State v. Albino*, 384 N.W.2d 525, 528 (Minn. App. 1986). "To establish probable cause, the police must show that they reasonably could have believed that a crime has been committed by the person to be arrested." *State v. Riley*, 568 N.W.2d 518, 523 (Minn. 1997) (quotation omitted). "Probable cause requires something more than mere suspicion but less than the evidence necessary for conviction." *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011).

As officers approached Peterson in his backyard, they saw a "marijuana dugout" in his hand. Officers asked Peterson for the "dugout," and he complied. Officers then asked Peterson if he had "anything else on him," and Peterson handed over a marijuana pipe. Officers asked Peterson again if he "had anything else." Peterson admitted that he had a hypodermic needle in his pocket. Officers handcuffed Peterson, searched him, and found a small bag of methamphetamine. Officers then arrested Peterson.

The parties agree that all of Peterson's offenses, before the discovery of methamphetamine, were petty misdemeanors. And the state concedes that these petty misdemeanors, in and of themselves, did not permit officers to arrest Peterson. *See State v. Martin*, 253 N.W.2d 404, 406 (Minn. 1977) ("[A]n officer ordinarily may not arrest a person without a warrant for a petty misdemeanor.") (footnote omitted). The state contends, instead, that the officers' observation of the drug-related petty misdemeanors gave officers probable cause to arrest Peterson for felony possession of a controlled substance. We disagree.

The officers here did not testify to facts that would lead a reasonable person to believe that Peterson possessed a felony amount of a controlled substance. Beyond observation of the petty misdemeanors, the officers articulated nothing supporting a determination that they reasonably believed Peterson was committing any offense other than the petty misdemeanors. While the petty offenses might have given officers a *suspicion* that Peterson possessed a felony amount of a controlled substance, mere suspicion is inadequate to arrest. *Williams*, 794 N.W.2d at 871. The state has cited no case holding that observation of multiple drug-related petty misdemeanors, nor possession of a hypodermic needle, gives officers probable cause to arrest for felony possession of a controlled substance. We conclude that the officers lacked probable cause to arrest Peterson and search him incident to arrest. Accordingly, we reverse.

Reversed.