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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1797

Linette Lynn Cadwell, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed August 31, 2020
Reversed
Reyes, Judge

Hubbard County District Court
File No. 29-CV-19-590

Barry L. Hogen, Minneapolis, Minnesota (for appellant)

Keith Ellison, Attorney General, Stephen D. Melchionne, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Reyes, Judge.

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

REYES, Judge

Appellant challenges the district court's order sustaining the revocation of her driving privileges based on its conclusion that the emergency-aid exception to the warrant requirement justified an officer's warrantless entry into her garage to arrest her for driving while impaired (DWI). We reverse.

FACTS

Just before midnight on March 22, 2019, a sergeant of the Hubbard County Sheriff's Department and Park Rapids Police Department responded to a 911 call reporting a suspected impaired driver, later identified as appellant Linette Lynn Cadwell. Respondent commissioner of public safety issued appellant a notice of license revocation under the Minnesota Implied Consent Law because she refused to submit to a breath test upon the sergeant's probable cause to believe that she had been driving while impaired. *See* Minn. Stat. §§ 169A.50-.53 (2018). Appellant filed a petition for judicial review.

At her implied-consent hearing, the sergeant testified that police dispatch informed him that a pickup truck had been "weaving" and "crossed a line." He testified that he responded to the registered address of the vehicle and saw a truck matching its description backing out of a garage attached to the residence, which he found unusual for a vehicle arriving home. He verified the address, pulled into the driveway, and got out of his vehicle to approach appellant. The truck stopped briefly, then began to pull back into the garage, hitting items on the inside of the garage or the garage frame as it did so. The truck appeared to try to "push its way into the garage at a very slow speed" as its tires were spinning.

Appellant parked the truck, and the sergeant approached it, announced his presence, and said "hello" as appellant exited the truck. Appellant responded, "hello." The sergeant then entered the garage. He told appellant that he was there to check and make sure she was okay. He then noticed indicia of intoxication. The sergeant further testified that the driving behavior the 911 caller reported is "often associated with impaired driving" from alcohol use, drug use, or a medical condition, such as diabetes.

Appellant argued that the sergeant violated her Fourth Amendment rights by entering her garage without a warrant, which she argued required suppression of the evidence of her impairment that he obtained thereafter. The district court denied appellant's petition based on its determination that the emergency-aid exception to the warrant requirement applied to the sergeant's warrantless entry into the garage. This appeal follows.

D E C I S I O N

Appellant argues that her driver's-license revocation should be rescinded because any evidence of her intoxication resulted from an unconstitutional warrantless entry into her garage, and the emergency-aid exception does not apply. We agree.

We will not set aside the district court's factual findings unless clearly erroneous, and we give "due regard" to its assessment of witness credibility. Minn. R. Civ. P. 52.01; *see also State v. Fleck*, 777 N.W.2d 233, 236 (Minn. 2010). We review de novo whether a license revocation is based on a lawful search or whether an exception to the warrant requirement applies. *Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 920 (Minn. App. 2010) (stating we review questions of law de novo); *State v. Halla-Poe*, 468 N.W.2d 570, 572 (Minn. App. 1991) (stating we determine whether officer's warrantless entry is justified as matter of law).

The commissioner must revoke the license of a person who either refuses to submit to or fails a breath test that law enforcement requests upon probable cause to believe that the person has been driving while impaired. Minn. Stat. § 169A.52, subds. 3-4. A person may challenge an implied-consent license revocation by challenging whether a police

officer "lawfully placed [the person] under arrest for violation of section 169A.20." Minn. Stat. § 169A.53, subd. 3(b)(2); *see also* Minn. Stat. § 169A.20 (2018).

Police must have a warrant to enter a constitutionally protected area, subject to limited exceptions. U.S. Const. amend. IV; Minn. Const. art. I, § 10; *Haase v. Comm'r of Pub. Safety*, 679 N.W.2d 743, 746 (Minn. App. 2004). "If police enter a constitutionally protected area without a warrant, that entry is presumed to be unreasonable, and evidence obtained as a result must be suppressed[]" if no exception applies. *Id.* at 747. Constitutionally protected areas include a home's curtilage. *State v. Chute*, 908 N.W.2d 578, 583 (Minn. 2018). A home's garage is within its curtilage. *State v. Crea*, 233 N.W.2d 736, 739 (Minn. 1975).

The emergency-aid exception to the warrant requirement applies when (1) police "'have 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)] 'there [is] some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.'" *Ries v. State*, 920 N.W.2d 620, 632 (Minn. 2018) (quoting *State v. Lemieux*, 726 N.W.2d 783, 788 (Minn. 2007)).[1] The exception allows officers to "enter a home without a warrant to render emergency assistance to an injured occupant or to protect one from imminent injury." *State v. McClain*, 862 N.W.2d 717, 721 (Minn. App. 2015). The officer must have an objective basis for the need to render aid. *Ries*, 920

[1] The Minnesota Supreme Court recently clarified that this test no longer includes a prong that had required that an officer "not be primarily motivated by the intent to arrest and seize evidence." *Ries*, 920 N.W.2d at 632 n.6.

N.W.2d at 632. "The officer's subjective motivation is irrelevant." *Id.* at 630-31 (quoting *Brigham City v. Stuart*, 547 U.S. 398, 404, 126 S. Ct. 1943, 1948 (2006)). The state bears the burden of demonstrating that the exception applies. *Lemieux*, 726 N.W.2d at 788.

In reviewing this objective standard, we consider if, "with the facts available to the officer at the moment of the seizure or search, [] a person of reasonable caution [would] believe that the action taken was appropriate." *See State v. Othoudt*, 482 N.W.2d 218, 223 (Minn. 1992) (concluding emergency-aid exception does not apply when "officer has been specifically told that help was not needed, and can see that medical aid is already being provided"). It is the "rare case[]" in which the emergency-aid exception applies. *County of Hennepin v. Law Enf't Labor Servs., Inc., Local No. 19*, 527 N.W.2d 821, 826 (Minn. 1995). This is not that rare case.

Here, the district court found that the sergeant had concerns about the driver's impairment "by alcohol or other substance or [] a medical issue." It also found that the sergeant "entered the garage for the sole purpose of conducting [an] investigation" and that appellant did not have an opportunity to shut the garage door before the sergeant entered. The district court then determined that the driving conduct that the 911 caller reported and the sergeant observed at the residence made it "objectively reasonable that [the] Sergeant [] believed that [appellant] was suffering from a medical issue."

Appellant appears to challenge only the first prong of the emergency-aid exception. *See Ries*, 920 N.W.2d at 632. As an initial matter, she argues that the exception requires an officer to have "evidence approximating probable cause" that there is an immediate need to protect life or property. But, as the state notes, the "probable cause" language from *Ries*,

920 N.W.2d at 632, and *Lemieux*, 726 N.W.2d at 788, relates to the second prong of the test, regarding the location of the emergency. The first prong requires only that there be objectively "reasonable grounds" to believe there is an emergency and an "immediate need" for assistance to protect life or property. *See Ries*, 920 N.W.2d at 632.

Emergency-aid-exception cases generally involve a person who is nonresponsive or with whom officers otherwise cannot communicate. *See, e.g.*, *State v. Lopez*, 698 N.W.2d 18, 23 (Minn. App. 2005) (applying exception to officer's welfare check of driver sleeping or unconscious at wheel to ensure driver "does not require additional medical assistance"); *see also, e.g.*, *Ries*, 920 N.W.2d at 623-24 (applying exception when subject of warrantless search intoxicated and asleep on couch with gun); *Lemieux*, 726 N.W.2d at 789-90 (applying exception when no response from resident of home). In contrast, in *Othoudt*, the supreme court concluded that the exception did not apply in part because the intended subject of the aid stated that she did not need help. *See* 482 N.W.2d at 223.

Here, appellant's affirmative response to the sergeant of "hello" indicates that she had the ability to accept or decline assistance. The sergeant could see appellant, appellant could exit her truck, and she could respond to the sergeant. Nevertheless, the sergeant entered the garage before appellant could accept or decline any assistance. While officers may work in a "protective capacity" within the exception to prevent injury or violence, the sergeant's subjective speculation that he "may be dealing with a medical situation" based solely on appellant's driving conduct does not provide an objectively reasonable basis to believe that an emergency and an "immediate need" to provide aid existed. *See Ries*, 920 N.W.2d at 624, 630-32.

The state compares the facts here to those in *Halla-Poe*. 468 N.W.2d 570. In *Halla-Poe*, we concluded that the emergency-aid exception applied when a witness called 911 and reported that a driver had been speeding, swerved sharply, hit the median curb multiple times, and stopped in a driving lane. *Id.* at 571-73. The witness stopped to help the driver and drove her home based on an address he found on a check. *Id.* at 572. The witness informed police that the driver could not walk on her own or talk and of his concern that she could not take care of herself. *Id.* Not only is this driving conduct more severe than appellant's, but the witness in *Halla-Poe* also reported on the condition of the driver, including her inability to walk or talk. These circumstances are not present here.

Finally, in *Haase*, we stated that the appellant's "driving offense, though serious, does not supply *exigent circumstances* that justify a warrantless entry into a constitutionally protected area." 679 N.W.2d at 747 (emphasis added). *Haase* involved a report that the appellant's vehicle "had crossed the center line several times," and law enforcement arrived at the appellant's residence to find him pulling into his driveway. *Id.* at 745. Although we did not specifically address the emergency-aid exception in *Hasse*, that exception is "a subset of the exigent-circumstances exception to the warrant requirement." *Ries*, 920 N.W.2d at 631 (describing that courts have traditionally applied exigent-circumstances exception in instances of "hot pursuit" or "imminent destruction of evidence," but that it includes emergency aid as well (quotations omitted)). Applying the emergency-aid exception here based only on appellant's driving conduct could expand the exception to reach any driving conduct indicative of impaired driving, including that in *Haase*. This

would cause the exception to apply in much more than the "rare case[]." *Law Enf't Labor Servs., Inc.*, 527 N.W.2d at 826.

Reversed.