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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1886**

State of Minnesota,
Respondent,

vs.

Mario Eugene Johnson,
Appellant.

**Filed November 18, 2013
Affirmed
Peterson, Judge**

Ramsey County District Court
File No. 62-CR-11-5457

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

John Choi, Ramsey County Attorney, Kaarin Long, Assistant County Attorney, St. Paul,
Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Lydia Maria Villalva Lijo,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and
Stoneburner, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a conviction of prohibited person in possession of a firearm,
appellant challenges the district court's denial of his pretrial motion to suppress evidence

that police obtained while executing a search warrant, arguing that the record evidence does not support the district court's conclusion that the search warrant was executed before 8:00 p.m. and that the district court erroneously issued a warrant to conduct a nighttime search. We affirm.

FACTS

St. Paul Police officer Steven Petron submitted a search-warrant application on July 7, 2011, to search the house at "284 Topping Ave., St. Paul" for controlled substances, drug paraphernalia, and related articles, and to search the person of "Rio." The warrant application included a description of "Rio" and asserted that, during the 72 preceding hours, "Rio" had sold crack cocaine to a confidential reliable informant at the house. The warrant application also stated that the house had come to the attention of police when they received a complaint on April 6, 2011, about noise, traffic coming "in and out of the house at all hours of the night," numerous people living at the house, "the behavior of the children," and the possibility that narcotics were being sold from the house. Police then watched the house on several occasions and observed people and vehicles making brief stops at the house. Based on this information, Petron suspected "narcotics activity" at the house. The search-warrant application sought authority for an unannounced, nighttime search "to prevent the loss, destruction or removal of the objects of the search or to protect the searchers or the public" because the controlled buy and most of the narcotics activity occurred at night. The district court found that there was probable cause to issue a warrant to search "Rio" and for an unannounced search of the house in either the day or nighttime.

Police executed the search warrant on July 14. As Petron and other officers approached the house at about 7:45 p.m., they apprehended appellant Mario Eugene Johnson, whose street name is “Rio,” after he left the house on foot. Police then went to the house, where they knocked and entered after a child answered the door. During the search of the house, they found a nine-millimeter pistol in the lining of a jacket, and the jacket pockets or lining contained mail addressed to appellant. Appellant later admitted that the pistol belonged to him.

Appellant was charged with being a prohibited person in possession of a firearm in violation of Minn. Stat. § 609.165, subd. 1b(a) (2010). Appellant pleaded not guilty and moved to suppress the evidence obtained during the search. Petron testified at the pretrial hearing on the motion, and when asked what time the search warrant was executed, Petron said, “According to the records, it was 8 o’clock p.m.” When asked if the search warrant was executed a little before or a little after 8:00 p.m., Petron stated,

When we do search warrants, generally, we serve the warrants, make entry into the house, secure the residence and all the people inside, and then, we call for the case number. And the time that we call for the case number on this case it was -- it was 8 o’clock.

When Petron was reminded on cross-examination--incorrectly--that the police report stated that execution of the search warrant occurred at 8:01 p.m.¹ and was asked what time the search warrant was actually executed, Petron said, “I believe – the actual time, I’m not sure. It was probably before 8, though.”

¹ The police report states that the search warrant was executed “[a]t about 2000 hrs.”

The district court upheld the validity of the search warrant and its execution. As to what time the search warrant was executed, the court found that appellant “was taken in custody approximately fifteen minutes before the search of 284 Topping was conducted,” and that

[o]fficers already had entered and secured the home before Petron called for a case number, which generated the time stamp at 8:00 PM. The police report indicates ‘2000 hours’ as the time the search warrant was executed. Petron noted that the time stamp is generated on the paperwork at the point when a case number is requested.

Appellant agreed to a court trial under Minn. R. Crim. P. 26.01, subd. 4, because the parties agreed that the court’s pretrial evidentiary ruling was dispositive. The district court found appellant guilty, and this appeal followed.

D E C I S I O N

The United States and Minnesota Constitutions require that a search warrant must be supported by probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. “When reviewing pretrial orders on motions to suppress evidence, [an appellate court] review[s] the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.” *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007) (plurality).

Appellant argues that the district court erred in concluding that the search was executed before 8:00 p.m. The district court concluded that “the officers initiated the search before dark, shortly prior to 8:00 PM.” The district court found that when Petron called for a case number, the time stamp of “2000 hours,” or 8:00 p.m., was generated.

The district court credited Petron's explanation that the call for the case number was made after police had entered and secured the house. This court defers "to the trier of fact on credibility assessments and [will] reverse only if the trier has committed clear error." *State v. Doren*, 654 N.W.2d 137, 141 (Minn. App. 2002), *review denied* (Minn. Feb. 26, 2003). Because the evidence reasonably supports the district court's finding that the search began before 8:00 p.m., the finding was not clearly erroneous. *See State v. Colvin*, 645 N.W.2d 449, 453 (Minn. 2002) (stating that "[f]indings of fact are not clearly erroneous if there is reasonable evidence to support them").

Because the search began before 8:00 p.m., we need not address whether the district court erred by issuing a warrant for a nighttime search. Authorization for a nighttime search is not needed when a search warrant is served between the hours of 7:00 a.m. and 8:00 p.m. Minn. Stat. § 626.14 (2012). And when the execution of a warrant commences before 8:00 p.m., the privacy concerns reflected in the statutory requirement that search warrants must be executed "between the hours of 7:00 a.m. and 8:00 p.m." are satisfied. *Id.* In *State v. Stephenson*, 310 Minn. 229, 233, 245 N.W.2d 621, 624 (1976), the supreme court ruled that a search that begins in the daytime is reasonable, "even though it continues into the nighttime."

Affirmed.