STATE OF MINNESOTA
IN COURT OF APPEALS
A04-2072

State of Minnesota,
Respondent,

vs.

Scott Allen Amundson,
Appellant.

Filed September 16, 2008
Affirmed in part, reversed in part, and remanded
Minge, Judge

Nobles County District Court
File No. K7-03-679

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Dennis J. Rutgers, 305 South Elm Street, P.O. Box 39, Rushford, MN 55971 (for appellant)

Considered and decided by Minge, Presiding Judge; Toussaint, Chief Judge; and Ross, Judge.

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

MINGE, Judge

This appeal from a conviction of and sentence for first- and fifth-degree controlled-substance offenses has been remanded by the supreme court for consideration

in light of three recent supreme court decisions. The supreme court vacated this court's published opinion, which held that the evidence seized from appellant Scott Amundson's house should have been suppressed because the no-knock and nighttime-execution provisions in the search warrant were based in part on information acquired in a warrantless entry that was not supported by the emergency-aid exception. *State v. Amundson*, 712 N.W.2d 560, 566 (Minn. App. 2006), *review granted* (June 28, 2006). We affirm in part, reverse in part, and remand.

FACTS

Amundson was charged with first- and fifth-degree controlled-substance offenses, along with conspiracy and possession of a small amount of marijuana, based on evidence seized from Amundson's house on September 29, 2003. On September 27, 2003, Nobles County law enforcement obtained a search warrant for the house based on a series of events over the 10-day period preceding September 27. *See id*. at 563-64 (summarizing facts of the case).

The first event, and the one on which this appeal focuses, was a warrantless entry into Amundson's house that occurred on September 17, 2003, when police were looking for an injured driver who they were told was at Amundson's house. The second event occurred on September 24, when Amundson's estranged wife reported that Amundson had thrown a rock at her house and had committed other acts of harassment. The third event occurred when Amundson's estranged wife was granted an order for protection (OFP), which police then attempted to serve on Amundson at his house. In the course of attempting to serve the OFP, the officer saw a rifle inside the front door of the house.

The fourth and final event occurred on September 27, 2003, when police stopped a vehicle driven by an acquaintance of Amundson's. That person told the officer that he was going to Amundson's house to pick up Amundson's dog because Amundson believed "he was in trouble with the law."

The search-warrant application recited this series of events. When it came to justifying the request for no-knock and nighttime provisions in the warrant, the application stated:

> Based on the above information (Scott Amundson's current charges of assault, his threats against his estranged wife, the rock through her window, Ms. Amundson's fear of retaliation for reporting the threats to police, the presence of numerous and loaded guns in the residence, Scott Amundson telling others that he was in trouble with the law, and his hiding in the residence when law enforcement has come to the residence in the past) and your affiant's training and experience, your affiant believes an unannounced entry is required for officer safety. Your affiant also requests a nighttime search warrant because, based on the numerous amounts of guns and ammunition located in the residence, the secluded nature of the residence, Scott Amundson's apparent knowledge of him being in trouble with the law, and your affiant's training and experience, law enforcement officers will need to use the cover of night to approach the residence.

The search-warrant was executed at about 1:20 a.m. on September 29. Police officers seized a number of guns and knives, along with drug paraphernalia, suspected controlled substances, and what appeared to be a portable meth lab. Amundson moved to suppress the evidence.

At the omnibus hearing, State Trooper Nordseth testified about the September 17 warrantless entry and the accident-scene investigation that prompted it. Nordseth

testified that at the accident scene he talked to a man he later identified as R.A., who told him that a man later identified as C.S. had knocked on his door, that C.S. was "bleeding from the head," that C.S. asked R.A. for a ride to Amundson's house, and that R.A. took C.S. to that location.

Nordseth testified that he then drove to the Amundson residence, followed by an ambulance. Nordseth testified that he knocked loudly on the doors at both entrances to the house and no one answered. In testing the doors, Nordseth determined that the storm door at one of the entrances was locked from the inside with a latch and that the door at the other entrance also appeared to be "hooked from the inside." Nordseth testified that he asked the ambulance personnel if they thought, based on their observations at the scene, that the driver could have suffered injuries that would prevent him from answering the door. They responded that it was "quite possible."

When Deputy Roloff arrived at Amundson's house, he forced one of the doors open. Inside, the officers saw several guns, including a shotgun, and an open box of shells. Nordseth testified that because the officers feared for their safety, they immediately left the house. Soon after, Amundson appeared outside the house. The officers handcuffed him and re-entered the house. Nordseth testified that he saw a shotgun leaning against a wall. He picked up the gun and determined that it was loaded and that the safety was off. The officers did not find C.S. and Amundson told the officers that C.S. was not there.

Deputy Kruger testified that he went to Amundson's house a week later to serve the OFP. A woman answered the door and said that Amundson was not home. While the door was open, Kruger saw a rifle leaning up against a wall inside the house.

Deputy Gertsema, the officer who prepared the search-warrant application, testified that he had information about a traffic stop on September 27, at which Officer Kempema was told by the driver that Amundson had said "he was in trouble with the law." Amundson had been charged earlier with controlled-substance offense and fifth-degree assault.

There was little testimony about the execution of the search warrant. But a police report that was made a part of the *Lothenbach* stipulated-facts record stated that before executing the warrant, the police surveillance team saw lights on inside the residence and observed two cars arrive at the residence and one person approach the house, knock, and ask for "Scott."

The district court issued an order denying Amundson's motion to suppress the evidence seized pursuant to the search warrant. The court concluded that the September 17 warrantless entry was lawful:

> The police were not "searching" the residence on the 17th in connection with any criminal investigation but, rather, were looking for an injured person. The police had been informed by the person who provided a ride to the injured motorist, Mr.[C.S.], that he appeared to be seriously injured with a head injury. The police repeatedly knocked on the door, and, after receiving no response, entered the house looking for [C.S.]. The Court believes the "emergency exception" to the warrant requirement justified the police'[s] entry into the house on the 17th.

This court's opinion reversed the district court, holding that the emergency-aid exception did not apply so as to justify the September 17 warrantless entry. *Amundson*, 712 N.W.2d at 566. The supreme court granted Amundson's petition for further review and reversed and remanded for consideration in light of *State v. Lemieux*, 726 N.W.2d 783 (Minn. 2007), *State v. Bourke*, 718 N.W.2d 922 (Minn. 2006), and *State v. Jackson*, 742 N.W.2d 163 (Minn. 2007).

D E C I S I O N

Our basic task on reconsideration is to determine whether the district court erred in upholding the September 27, 2003 search warrant, thus refusing to suppress the evidence obtained as a result of the search pursuant to the warrant. Because the validity of the warrant depends on the adequacy of the facts supporting its issuance, we examine the underlying factual information. A crucial part of that information is the September 17, 2003 discovery at Amundson's residence of several guns, including one that was loaded with its safety off.

I.

The first issue is whether the September 17 warrantless entry was justified by the emergency-aid exception to the warrant requirement. When reviewing an order deciding a motion to suppress evidence, this court reviews the district court's factual findings for clear error and the court's legal determinations de novo. *See State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007).

The supreme court remanded this appeal for consideration based, in part, on *Lemieux*, 726 N.W.2d at 787-88, an opinion applying the emergency-aid exception.

Lemieux involves facts quite different from the facts in this case, which fall into the not-uncommon scenario of the injured motorist being traced to a residence right after the accident. *Compare State v. Othoudt*, 482 N.W.2d 218, 223 (Minn. 1992) (holding there was no emergency where police were told no help was needed and could see emergency aid being provided on the porch of the house); *with State v. Halla-Poe*, 468 N.W.2d 570, 573 (Minn. App. 1991) (holding emergency justified entry into defendant's apartment after victim had been brought home in immobile state, and witness and neighbor were worried about her condition).

In *Lemieux*, police were called to the scene of an apparent homicide in Duluth. 726 N.W.2d at 784. While at the scene, they saw the defendant riding by in a taxi (it is not clear whether they recognized the defendant at the time). *Id.* at 785. The police then learned of a nearby residence that may have had some connection to the homicide. *Id.* When officers went to that residence, they saw that the screen on a window was torn loose and the front door was slightly open. *Id.* They heard music playing inside and the CD skipping. *Id.* There was no answer to their knocking, although a neighbor indicated that he had heard someone inside shortly before. *Id.*

In holding that the emergency-aid exception applied, the *Lemieux* opinion noted that police suspected a burglary at the residence in question, and that burglary is not purely a property offense. *Id.* at 789. The supreme court then cited cases from other jurisdictions that held that a suspected burglary could provide grounds for an emergency warrantless entry. *Id.* at 789-90. The supreme court noted that the suspected burglary site was close to the scene of a brutal homicide. *Id.* at 790. Although the supreme court

did not explain the significance of this, presumably it allowed the police to suggest the burglary was related to the homicide, and, therefore, possibly more serious. The supreme court then noted that the warrantless search was "limited to the scope of the emergency," and police left immediately after determining that the residence was unoccupied. *Id.*

As the supreme court noted in *Lemieux*, the state has the burden to establish that the emergency-aid exception applies. *Id.* at 788. And "an objective standard should be applied to determine the reasonableness of the officer's belief that there was an emergency." *Id.*

As we have stated previously, the facts of this case fit the not-uncommon scenario of police tracing an injured motorist to a residence soon after an accident. The suspicion of an emergency in *Lemieux* was based on facts apparent at the scene of the warrantless entry, including a torn window screen, open front door, music playing inside but no one answering. Here, some of the facts from which an emergency was suspected were observed elsewhere—the single-car accident, the state of the vehicle, the witness who said he had transported the injured driver to Amundson's house, the suspected seriousness of his injury. At Amundson's house, police discovered the doors were locked, and no one answered their repeated knocking. Police inferred that the motorist was inside and too badly injured to answer the door. This court's earlier opinion concluded, based largely on the fact that the doors were locked, that this was not a reasonable inference. *Amundson*, 712 N.W.2d at 566.

We conclude that the facts of *Lemieux* present a weaker basis for entry than the facts in this case. As a result, the officers in this case had adequate basis for entering. In

Lemieux, the police pieced together circumstantial evidence at the scene to conclude that there was possibly a burglary in progress and that such a situation created an exigent circumstance that justified an immediate entry. The justification for the search was based on multiple inferences. Although the suspected emergency, a possible burglary in the vicinity of a homicide, may have been more serious than the unattended head injury in this case, the showing of reasonable suspicion is less complete.

Both *Othoudt* and, to a lesser extent, *Halla-Poe* involve a similar scenario of the motorist, known to be or suspected of being injured, who has repaired to a residence, possibly preferring avoidance of police scrutiny to medical attention. In *Othoudt*, in which police were told that medical help was not needed and then saw it being administered on the porch of the house, the warrantless entry was held not to be justified. 482 N.W.2d at 223. In *Halla-Poe*, in which the driver was not only injured but possibly unconscious and neighbors were concerned about her condition, this court reached the opposite conclusion. 468 N.W.2d at 573. The issue is not the subjective motivation of the motorist, but the objective judgment of police in determining that the motorist reasonably appears to be in need of emergency assistance.

Here, there was a direct report of R.A., an eyewitness, that he had brought C.S., an injured motorist, to appellant's residence. In our initial opinion, we concluded that the locked door was a fact that was incompatible with the suspicion of a seriously injured person being inside who was incapable of responding to a knock. *Amundson*, 712 N.W.2d at 566. But there was testimony at the omnibus hearing that the ambulance crew that came to appellant's house recognized that the locked door was not necessarily

incompatible with serious injuries. We also recognize that the driver of a vehicle involved in a single-car accident may be attempting to hide from law enforcement officers despite being injured and needing medical assistance. He could stumble into a house and lock the door, but not be able to later answer the door because of his deteriorating condition. Although officers may have been seeking to locate an errant driver to determine intoxication before too much time passed, that investigatory interest does not outweigh the exigent circumstance of the injured person needing medical aid and the officers' commitment to providing emergency health care.

Because the direct, eyewitness report that the injured C.S. was at Amundson's residence outweighs the more speculative inferences to be drawn from the locked door, we conclude that the emergency-aid justification of providing medical assistance applies to the September 17, 2003 forced entry in this case, and that the officer's resulting knowledge of the presence of guns (including one that was loaded with the safety off) at Amundson's residence could properly be considered by the district court in issuing a search warrant.

II.

The second issue is whether, with the evidence acquired in the September 17 entry, there was reasonable suspicion justifying the no-knock and nighttime-execution provisions.

A no-knock warrant provision must be supported by reasonable suspicion that knocking and announcing the police presence would threaten officer safety or would inhibit the investigation by, for example, allowing the destruction of evidence. *State v.*

Wasson, 615 N.W.2d 316, 320 (Minn. 2000). Similarly, a nighttime-execution provision must be supported by a "reasonable suspicion that a nighttime search is necessary to preserve evidence or to protect officer or public safety." *Jackson*, 742 N.W.2d at 168. This court independently reviews the facts to determine whether the district court erred in its suppression ruling. *Bourke*, 718 N.W.2d at 927. The district court's factual findings are reviewed for clear error. *Id.* In *Bourke*, the supreme court determined that the reasonable-suspicion standard was met when police knew that the defendant or his accomplices could destroy the evidence if police were to execute the warrant during daytime hours. *Id.* at 928-29.

Amundson points to his intervening "peaceful encounters" with police, as did this court's prior opinion, as dispelling any suspicion arising from the September 24 sighting of a gun inside Amundson's house. Although these encounters may have been stressful for Amundson, they did not involve the intrusiveness of police entry into Amundson's home to execute a search warrant. The September 17 encounter occurred with an accompanying ambulance crew, Amundson did not initially appear and may not have had access to his guns at the time of the forcible entry, and the officers did not know of the gun-related risks. Amundson could have harbored some anger toward police for that intrusion. The service of the OFP also presented a potentially tense situation. However, Amundson was not home, service was effected at a neighbor's, and such a service of process is not as intrusive or threatening as law enforcement announcing its presence to execute a search warrant.

Although these two earlier "peaceful encounters" support Amundson's claims on appeal, the search-warrant application shows that recently he had had a loaded gun with the safety off close at hand in his residence, that a week later a gun was again observed in the house, that he was currently charged with assault, and that he had been threatening his estranged wife. The risk of danger to officers executing a search warrant was real. We therefore conclude that the information we have summarized, which was set forth in the search-warrant application, provides reasonable suspicion supporting the district court's decision to authorize a no-knock, nighttime search warrant.

The supreme court also remanded for consideration in light of *Jackson*, 742 N.W.2d at 178, which held that suppression was an appropriate remedy for an invalid nighttime search. Having concluded that the search warrant was valid, as to both the no-knock and nighttime provisions, we need not reach the issue of the appropriate remedy.

III.

The last issue is whether the sentence was imposed in violation of Amundson's Sixth Amendment rights under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004). The district court sentenced Amundson to 36 months in prison for the first-degree controlled-substance offense (attempted manufacture of methamphetamine) based on the mandatory minimum sentence provided in the firearms-enhancement statute,

Minn. Stat. § 609.11, subd. 5(a) (2002).[1] The district court imposed the enhanced sentence based on its own findings.

The sentencing occurred on July 29, 2004, after the Supreme Court released its *Blakely* decision recognizing the right to a jury determination of any factors that are relied on to enhance a sentence. Amundson admitted, as part of the *Lothenbach* stipulation, that section 609.11, subdivision 5(a) applied to him. But he did not enter any waiver of his right to a jury determination of the facts on which the enhanced sentence was based.

A defendant is entitled to a jury determination of facts that would increase his sentence under Minn. Stat. § 609.11 (2002). *State v. Barker*, 705 N.W.2d 768, 773 (Minn. 2005). And Amundson's admission to the applicability of section 609.11, subdivision 5(a) does not, without a valid waiver of his right to a jury determination, constitute a waiver of that right. *See State v. Dettman*, 719 N.W.2d 644, 650-51 (Minn. 2006) (holding "that a defendant must expressly, knowingly, voluntarily, and intelligently waive his right to a jury determination of facts supporting an upward sentencing departure"). Therefore, Amundson's sentence is reversed and remanded for further proceedings consistent with *Blakely*.

Affirmed in part, reversed in part, and remanded.

Dated:

[1] The district court calculated the presumptive sentence as being 13 months, stayed. The basis for this calculation is unclear, and the presentence investigation is not in the file. The district court may reconsider the calculation of the presumptive sentence on remand.