

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2006).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2373**

State of Minnesota,
Respondent,

vs.

Harold L. Spletter,
Appellant.

**Filed March 25, 2008
Affirmed
Worke, Judge**

Kandiyohi County District Court
File No. CR-05-1397

Lori Swanson, Attorney General, Kelly O'Neill Moller, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Boyd Beccue, Kandiyohi County Attorney, P. O. Box 1126, Willmar, MN 56201 (for respondent)

John M. Stuart, State Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Toussaint, Chief Judge; Hudson, Judge; and Worke, Judge.

UNPUBLISHED OPINION

WORKE, Judge

On appeal from a conviction of first-degree controlled-substance crime, appellant argues that his Fourth Amendment rights were violated when officers executed a search

warrant at his home outside the approved daytime hours and without following the required knock-and-announce procedures. Because we conclude that the execution of the search warrant was within approved daytime hours and did not violate knock-and-announce procedures, we affirm.

D E C I S I O N

“When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence.” *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). An appellate court reviews the district court’s factual findings under the clearly erroneous standard, but independently reviews the district court’s legal determination. *State v. Wiernasz*, 584 N.W.2d 1, 3 (Minn. 1998).

On August 12, 2005, at 7:58 p.m., officers executed a search warrant at the home of appellant Harold L. Spletter. Due to a discrepancy on an incident report form indicating that officers were dispatched to appellant’s residence at 8:33 p.m., appellant argues that the district court clearly erred in finding that the search warrant was executed before 8:00 p.m.

A search warrant may be served only between the hours of 7:00 a.m. and 8:00 p.m. unless the court determines on the basis of facts stated in the affidavits that a nighttime search outside those hours is necessary to prevent the loss, destruction, or removal of the objects of the search or to protect the searchers or the public.

Minn. Stat. § 626.14 (2004). The statute is not violated when the search begins during daytime hours but continues into the night. *State v. Stephenson*, 310 Minn. 229, 233, 245 N.W.2d 621, 624 (1976).

The district court finding that the search warrant was executed at 7:58 p.m. is supported by the record. One officer testified that he looked at his clock when the warrant was executed at 7:58 p.m.; the same time is noted in his report. Another officer testified that the officers arrived at the residence approximately 10 to 15 minutes before 8:00 p.m., and that the warrant was executed at 7:58 p.m. Further, while the incident report form shows that the officers were dispatched to appellant's residence at 8:33 p.m., the same report notes that the officers arrived at appellant's residence at 7:58 p.m. Finally, during the taped interview of appellant's wife shortly after officers executed the warrant, the date and time is stated as, "Today's date is uh, eight twelve oh five, time is twenty-twenty hours." The district court's findings that the search warrant was executed before 8:00 p.m. and that its execution did not violate the nighttime-search statute are not clearly erroneous.

Appellant next argues that the district court clearly erred in finding that the entry into appellant's residence was reasonable given the circumstances arising at the scene. Police officers generally must knock and announce their identity and purpose before attempting entry. *Wilson v. Arkansas*, 514 U.S. 927, 936, 115 S. Ct. 1914, 1919 (1995). "[P]olice must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit

the effective investigation of the crime by, for example, allowing the destruction of evidence.” *State v. Wasson*, 615 N.W.2d 316, 320 (Minn. 2000) (quotation omitted).

As officers arrived at residence, they saw appellant standing outside. When appellant saw the officers, he ran toward the house. Officers ordered appellant to stop and stated that they had a search warrant. Appellant complied and was handcuffed. An officer testified that he then proceeded to the house and knocked on the door of the home for approximately 10 to 15 seconds before another officer ordered him to enter. Another officer testified that he advised the entry immediately and that they did not wait for anybody inside to open the door because he believed anyone in the house would have heard what occurred in the driveway. Upon opening the door, the officers announced that they were from the sheriff’s office and that they had a search warrant. The district court found that the officers announced their presence before approaching the house. The district court also found that “[t]he officers had a concern that a third person was unaccounted for; the officers were concerned about the use of caustic substances against them; [appellant] had run for the house upon seeing the approach of the officers; and the officers had a concern that contraband could be quickly destroyed.” The district court’s finding that the entry into appellant’s residence was reasonable given the circumstances arising at the scene was not clearly erroneous.

Affirmed.

