STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0281

State of Minnesota,
Respondent,

vs.

Xang Yang,
Appellant.

Filed June 3, 2008
Reversed
Shumaker, Judge

Ramsey County District Court
File No. K4-06-855

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Susan Gaertner, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, 50 W. Kellogg Blvd., Suite 315, St. Paul, MN 55102 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Michael F. Cromett, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Toussaint, Chief Judge; Willis, Judge; and Shumaker, Judge.

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

SHUMAKER, Judge

Appellant Xang Yang challenges his convictions of possession of a firearm by an ineligible person and possession of methamphetamine, a fifth-degree controlled-substance offense, arguing that the district court erred in denying his motion to suppress evidence obtained as a result of a warrantless entry, that the district court erred by limiting the testimony of defense witnesses, that the prosecutor committed misconduct constituting plain error during closing arguments, and that the conviction of possession of a firearm by an ineligible person violated his right to due process. Because we conclude the evidence obtained as a result of the warrantless entry should have been suppressed, we reverse. It is not necessary to reach the other issues.

FACTS

Around 6:00 a.m. on January 2, 2006, two St. Paul police officers, Mark Farrington and Dominic Dzik, were on routine patrol when they stopped a car for a traffic violation. A passenger in the car pointed at a garage at 136 East Magnolia Street and told officers that there were numerous men and a woman smoking methamphetamine in that garage. He told police that one of the men had a gun, described that man to them, and told the officers that he was afraid a woman inside the garage would be raped. When police asked how he knew what was happening in the garage, the passenger declined to provide more details. Officer Dzik apparently knew the passenger, but the passenger did not want to be identified, and the record does not show anything further about this individual or the basis of the officer's acquaintance with him.

Officer Farrington testified that, based on the passenger's tip and his own training and experience, he also was concerned about the possibility of rape. The officers decided that a welfare check on the garage would be appropriate. They did not call for backup because they intended to conduct a "knock and talk" to check on the woman's welfare.

The officers parked their marked squad car and approached the detached garage. Because they were concerned about the alleged presence of a firearm, one officer carried a shotgun and the other had drawn his service revolver.

The officers stood next to the garage and listened; they could hear male and female voices coming from inside. The officers did not recall seeing any windows on the garage. The garage door was closed, as was the side access door. When they looked at the bottom of the access door, they could see a light coming from inside the garage.

Officer Farrington went to the access door and tried to put his ear against it to listen to what was going on inside. As he did so, he bumped against the garage door. A man opened the door, but stepped back when he saw the officers. Once the door was open, Officer Farrington could see a large van with dark tinted windows and three men inside the garage, but he could not see the entire garage from the outside.

Immediately after the door opened and before they spoke to anyone inside, the two officers stepped into the garage, announcing, "St. Paul police," as they crossed the threshold. As they entered the garage, Officer Farrington heard the sound of glass hitting the floor. He turned and saw a narcotics pipe on the ground. Near the pipe, he also saw a small plastic bag, which contained a white powder that looked like methamphetamine.

There were nine people in the garage, including two women and Yang. Yang and the two women were standing near the pipe and the suspected methamphetamine.

The officers ordered everyone in the garage to get on the ground. Yang told officers that the garage belonged to him. The officers arrested Yang for possession of the methamphetamine because he was closest to the suspected methamphetamine and owned the garage. Subsequent testing revealed that the white substance was in fact methamphetamine.

When Officer Dzik searched Yang incident to his arrest, he found a .22-caliber semiautomatic handgun in Yang's pocket. The gun was loaded, and additional ammunition for the .22 and for a shotgun was found inside the garage.

After Yang's arrest, Sergeant James Gray interviewed him. Yang told the sergeant that he and the others in the garage had all pitched in to buy the methamphetamine and that they had all smoked it. He also admitted that he bought the handgun found in his pocket for $300 on the street a week earlier.

Ultimately, based on these facts, Yang was charged with possession of a firearm by an ineligible person and possession of methamphetamine, a fifth-degree controlled-substance offense.

At an omnibus hearing, Yang moved to suppress the evidence obtained as a result of the officers' warrantless entry into his garage. After an evidentiary hearing at which Officers Farrington and Dzik testified, the district court denied the motion, ruling that the officers' entry was reasonable under the circumstances to ensure the woman's safety.

Following a jury trial in September 2006, Yang was found guilty as charged. The court sentenced him to concurrent executed terms of 60 months on the firearms charge and 12 months and one day for the drug offense. This appeal followed.

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). "The district court's findings of fact should be reviewed for clear error." *State v. Lemieux*, 726 N.W.2d 783, 787 (Minn. 2007).

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "This constitutional protection extends to all places where an individual has a reasonable expectation of privacy, including the home and its curtilage." *Haase v. Comm'r of Pub. Safety*, 679 N.W.2d 743, 746 (Minn. App. 2004). The Minnesota Supreme Court has held that the curtilage of a home includes the garage. *State v. Crea*, 305 Minn. 342, 345, 233 N.W.2d 736, 739 (1975). It is well established that "evidence discovered by exploiting previous illegal conduct is inadmissible." *State v. Olson*, 634 N.W.2d 224, 229 (Minn. App. 2001) (citing *Wong Sun v. United States*, 371 U.S. 471, 488, 83 S. Ct. 407, 417 (1963)), *review denied* (Minn. Dec. 11, 2001).

"[S]earches conducted outside the judicial process are *per se* unreasonable, subject to a few exceptions." *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992) (citing *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967)). For instance, police may

enter and search a home or its curtilage without a warrant if they have either "(1) consent or (2) probable cause and exigent circumstances." *State v. Taylor*, 590 N.W.2d 155, 157 (Minn. App. 1999), *review denied* (Minn. May 18, 1999). Here, neither party argues that the officers had consent to enter the garage or that probable cause and exigent circumstances existed to justify the warrantless entry.

Rather, on appeal, the state argues that the warrantless entry into the garage was lawful under the emergency-aid exception to the warrant requirement. Under this exception, "law enforcement officers, in pursuing a community-caretaking function, 'may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from *imminent* injury.'" *Lemieux*, 726 N.W.2d at 787-88 (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S. Ct. 1943, 1947 (2006)) (emphasis added); *see also Othoudt*, 482 N.W.2d at 223 ("The police may enter a dwelling without a warrant if they reasonably believe that a person within is in need of emergency aid.").

> In applying the emergency-aid exception to the warrant requirement, two principles must be kept in mind: first, that the burden is on the state to demonstrate that police conduct was justified under the exception; and second, that an objective standard should be applied to determine the reasonableness of the officer's belief that there was an emergency.

Lemieux, 726 N.W.2d at 788. To determine whether the actions of law enforcement meet the objective standard of reasonableness, courts should ask whether a person of reasonable caution, faced with the facts available to the officers at the time of the search, would believe that the action taken was appropriate. *Othoudt*, 482 N.W.2d at 223; *see also Lemieux*, 726 N.W.2d at 788 n.2 ("[T]he question is whether the officers would have

been derelict in their duty had they acted otherwise.") (citing 3 Wayne R. LaFave, *Search and Seizure* § 6.6(a), at 452-53 (4th ed. 2004)). In addition, "[a]ny search of a residence following a warrantless entry must be limited by the type of emergency involved. It cannot be used as the occasion for a general voyage of discovery unrelated to the purpose of the entry." *Lemieux*, 726 N.W.2d at 788 (quotation omitted). Although "[t]he need to protect or preserve life or avoid serious injury is justification for what would otherwise be illegal absent an exigency or emergency," the "police do not have the option to go into people's homes carte blanche whenever they claim they hear that there is a weapon inside and that someone's safety may be in question." *State v. Bunce*, 669 N.W.2d 394, 400 (Minn. App. 2003) (quotation marks omitted), *review denied* (Minn. Dec. 16, 2003).

Pointing to the informant's tip and the officers' corroboration of some of the information prior to their entry into the garage, the state argues that the facts of this case support the conclusion that an emergency existed. *See State v. Davis*, 732 N.W.2d 173, 182-83 (Minn. 2007) (indicating that Minnesota courts "presume that tips from private citizen informants are reliable," particularly where the informant can be readily located by police if necessary); *State v. Wiley*, 366 N.W.2d 265, 269 (Minn. 1985) (stating that corroboration of even minor details can "lend credence" to confidential informant's information); *State v. Cook*, 610 N.W.2d 664, 668 (Minn. App. 2000) (indicating that informant's reliability should be evaluated by "consideration of the quantity and quality of detail in the [informant's] report and whether police independently verified important details of the informant's report"), *review denied* (Minn. July 25, 2000). But those

circumstances are not, in this case, sufficient to justify a warrantless search under the emergency-aid exception.

We note that the facts in this case are distinguishable from other cases in which Minnesota courts have held that the emergency-aid exception applied. The Minnesota Supreme Court applied the emergency-aid exception recently in *Lemieux*. In that case, officers arrived at a residence to investigate a nearby brutal and seemingly random homicide. The officers testified that they went to the house to do a "knock and talk" or "welfare check," with instructions not to enter the house without authorization. 726 N.W.2d at 789. Once there, however, they

> noted that the window screen was torn loose, the window was pushed up, the door was unlatched, and there was music inside that was skipping; the officers announced their presence, pounded loudly on the door and yelled for someone to answer the door, and they learned that someone had been in the residence that night.

Id. They then were concerned about a "forced entry situation or burglary." *Id.* They entered the house and conducted a sweep-search for victims or intruders and then left immediately once they found the house unoccupied. *Id.* at 790. During the search, the officers saw the murder victim's electronic-benefit-transfer card in plain view. *Id.* at 785-86. In light of that information, the officers were able to obtain a search warrant to further search the house and found more incriminating evidence inside the house. *Id.* at 786.

On these facts, the Minnesota Supreme Court concluded that the warrantless entry into the house was justified, holding

> that the police entry of the residence in close proximity to a brutal and seemingly random homicide was justified under the emergency-aid exception to the warrant requirement because the officers had reasonable grounds to believe that a burglary was in progress or had recently occurred, the entry was motivated primarily to look for possible victims, and the scope of the search was limited to the emergency.

Id. at 790.

The facts supporting the warrantless entry in *Lemieux*, such as the nearby, brutal crime and the physical evidence indicating a crime might have occurred inside the residence to be searched, gave officers reasonable grounds to believe someone inside the house could be injured or in danger of imminent injury. But similar facts do not exist here.

Rather, this case is more akin to *State v. Fitzgerald*, 562 N.W.2d 288 (Minn. 1997), in which the Minnesota Supreme Court concluded that officers' warrantless entry into a residence was not justified by any emergency. In that case, an unidentified informant told police that an occupant of the residence "may need help." *Id.* at 288. This kind of report, explained the court, "certainly does not suggest the kind of emergency that would justify a warrantless entry." *Id.* Moreover, the informant had waited a day after making his observations to call the police, thus suggesting that no emergency in fact existed. *Id.*

Although the facts here indicate that the information provided was more timely than the information given in *Fitzgerald*, the officers still only had the vague tip indicating that someone inside the garage might be in danger, without specifics as to the reason for the alleged danger. They had received a tip about the use of drugs, presence of

a handgun, and learned that their informant was fearful that a woman might be raped. *Cf. In re Welfare of B.R.K.*, 658 N.W.2d 565, 578-80 (Minn. 2003) (concluding exigent circumstances did not exist to justify warrantless entry and search of a house where officers suspected that teenagers were drinking alcohol, knew that guns were present in the house, and saw that the house was dark and quiet when they arrived). Although officers were able to confirm that several people, including males and females, were inside the garage, they had no information and made no observations indicating that anyone inside was in any kind of distress or in danger of imminent injury. Without more that plausibly supports an inference of *imminent* danger, we cannot conclude that their warrantless entry into Yang's garage was justified by the emergency-aid exception.

The information from the tip, some of which had been corroborated before the officers entered the garage, was not sufficient to cause a person exercising reasonable caution to believe immediate entry without consent was required, although it surely merited further investigation. Other than the informant's alleged "fear" that a woman might be raped and the officers' experience that rape can occur where people are smoking methamphetamine, there was simply nothing to indicate that someone inside the garage was in danger of imminent injury.

This case illustrates the difficulty police officers can face in attempting to perform their duties in good faith and how they might be inclined to choose a better-safe-than-sorry approach. But the logical extension of the state's argument is that a citizen's tip about the possibility of an injury occurring inside a building justifies a warrantless entry if some facts contained within the tip can be corroborated. This overlooks the core

requirement of the exception, namely, that there be an objective basis for concluding that an injury is imminent if emergency aid and protection are not given. The corroboration here stops short of the essential requirement of imminence.

Because the emergency-aid exception does not apply to the officers' warrantless entry into the garage and because the facts do not show that any other exception to the warrant requirement would apply, we conclude that the officers' entry violated the Fourth Amendment protection against unreasonable searches. Thus, the evidence obtained as a result of the entry should have been suppressed.

Because this issue is dispositive in this case, we need not consider the other issues Yang raises on appeal.

Reversed.