STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1569

State of Minnesota,
Respondent,
vs.

Ana Danira Hernandez-Maldonado,
Appellant.

Filed October 6, 2009
Reversed and remanded
Collins, Judge[*]

Kandiyohi County District Court
File No. 34-CR-08-198

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

Boyd Beccue, Kandiyohi County Attorney, Dain Olson, Assistant County Attorney, 415 Southwest Sixth Street, Willmar, MN 56201 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Sharon E. Jacks, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Chief Judge Toussaint, Jr., Presiding Judge; Stoneburner, Judge; and Collins, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

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

COLLINS, Judge

Appellant challenges her conviction of aggravated forgery, arguing that the district court erred by denying her motion to suppress and by admitting evidence obtained as products of the unconstitutional search of her home. We reverse and remand.

FACTS

In April 2007, Immigration and Customs Enforcement (ICE) agents searched the home of Ana Danira Hernandez-Maldonado. According to Hernandez-Maldonado, "[w]hen the agents arrived, they knocked on the front door, which was locked, and no one opened the door for them. They went around to the back door . . . which was unlocked. They did not knock on the door, they simply opened the door and walked right in." Although ICE agents noted that she consented to the search, Hernandez-Maldonado denies consenting and maintains that agents never showed her a valid search warrant.

During the search of the upstairs bedrooms, an ICE agent discovered immigration-related documents. Thereafter, Hernandez-Maldonado was handcuffed and interrogated. During the interrogation, the ICE agent referred to the documents he had discovered. Hernandez-Maldonado then admitted that she (1) paid a smuggler $6,000 to assist her in entering the United States, (2) goes by the name of Yashira Yamiret Rivera del Valle, and (3) purchased her fake identification from a co-worker. The ICE agent retrieved copies of Yashira Yamiret Rivera del Valle's Minnesota Driver's License/Identification Card application, birth certificate, social security card, application for employment, a completed I-9 employment eligibility verification form, and a completed W-4 form.

Days later, Willmar police investigator Tom Manuel requested "the driver's license\ID application and supporting documents for" Yashira Yamiret Rivera del Valle. Officer Manuel received a copy of Yashira Yamiret Rivera del Valle's Minnesota Driver's License/Identification Card application, birth certificate, and social security card. Then, in late January 2008, ICE agent James Grizzell emailed Willmar police officer Chad Nelson, requesting that the Willmar police department check their "local systems to see if [their] department has had any contact with [Hernandez-Maldonado] in the past[.]" Attached to the email were employment documents from Jennie-O, including (1) Yashira Yamiret Rivera del Valle's application for employment, (2) a completed I-9, employment eligibility verification form, (3) a photocopy of Yashira Yamiret Rivera del Valle's Minnesota identification card and social security card, and (4) a completed W-4 form. After receiving Agent Grizzell's email and attached documents, Willmar police arrested Hernandez-Maldonado and charged her with three counts of aggravated forgery, in violation of Minn. Stat. § 609.625, subd. 1(1) (2006); and one count of forgery, in violation of Minn. Stat. §§ 609.625, subd. 1(1), .63, subd. 1(1) (2006).

At an omnibus hearing, Hernandez-Maldonado challenged local law enforcement's "acquisition of [the] identification evidence as the fruit of [the ICE] 'raid'" and the constitutionality of the aggravated forgery statute, seeking suppression of the illegally seized evidence and dismissal of the complaint. The district court denied Hernandez-Maldonado's motion to suppress and motion to dismiss, finding that even *assuming* that ICE agents illegally entered Hernandez-Maldonado's home and violated her constitutional rights, (1) the record was insufficient to establish that the aggravated

forgery statute is unconstitutional beyond a reasonable doubt;[1] (2) "[t]he information obtained by ICE agents served merely as a tip [to local law enforcement]. There was sufficient evidence obtained by [local law enforcement's] independent investigation through alternative sources to constitute probable cause for [Hernandez-Maldonado's] arrest[;]" and (3) there is sufficient evidence in the record to preclude granting Hernandez-Maldonado's motion for a directed verdict of acquittal. Hernandez-Maldonado waived her right to a jury trial and the parties agreed to proceed with a trial on stipulated evidence pursuant to Minn. R. Crim. P. 26.01, subd. 4, for one count of aggravated forgery. Hernandez-Maldonado was found guilty of aggravated forgery and received a stayed sentence of one year and one day, and she was placed on probation for five years. This appeal followed.

D E C I S I O N

The United States and Minnesota constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Under the exclusionary rule, evidence seized in violation of the constitution generally must be suppressed. *State v. Jackson*, 742 N.W.2d 163, 178 (Minn. 2007). Whether the exclusionary rule prohibits the admission of evidence in a particular case is a question of law, which we review de novo. *State v. Doughty*, 472 N.W.2d 299, 303-08 (Minn. 1991). When reviewing a pretrial order denying a motion to suppress evidence, we may independently review the facts and determine whether, as a matter of law, the district court erred by not

[1] On appeal, Hernandez-Maldonado does not challenge the district court's ruling on the constitutionality of the aggravated forgery statute.

suppressing the evidence. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004). But we review de novo whether, based on the facts, a seizure meets the constitutional standards. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005).

The district court concluded that because "any violation by ICE agents only resulted in a tip to local law enforcement who then conducted a separate, independent investigation obtaining documents from other sources," the exclusionary rule does not apply. The exclusionary rule extends to the indirect products of unlawful searches as well as to direct products: under the fruit-of-the-poisonous-tree doctrine, evidence is inadmissible if has been come at by the exploitation of unlawfully acquired evidence. *Wong Sun v. United States*, 371 U.S. 471, 488, 83 S. Ct. 407, 417 (1963). However, evidence is not "fruit of a poisonous tree" if evidence is too attenuated from the original illegality, or if police had an "independent source" for the discovery. *Segura v. United States*, 468 U.S. 796, 805, 104 S. Ct. 3380, 3385 (1984). Although the exact point at which the taint dissipates sufficiently to no longer make it fruit of a poisonous tree is unclear, *see* 6 Wayne LaFave, *Search & Seizure: A Treatise on the Fourth Amendment* § 11.4(a) at 260 (4th ed. 2004) (stating that "there is not now and doubtless never will be any litmus-paper test for determining when there is only an 'attenuated connection' between a Fourth Amendment violation and certain derivative evidence"), "[t]he notion of the 'dissipation of the taint' attempts to mark the point at which the detrimental consequences of illegal police action become so attenuated that the deterrent effect of the exclusionary rule no longer justifies its cost." *Brown v. Illinois*, 422 U.S. 590, 609, 95 S. Ct. 2254, 2264 (1975) (Powell, J., concurring). Similarly, the "independent source"

doctrine permits introduction of evidence which was "obtained for the first time during an independent lawful search," and "also to evidence initially discovered during, or as a consequence of, an unlawful search, but later obtained independently from activities untainted by the initial illegality." *Murray v. United States*, 487 U.S. 533, 537, 108 S. Ct. 2529, 2533 (1988); *see also State v. Martinez*, 579 N.W.2d 144, 148 (Minn. App. 1998) (holding that the independent source doctrine permits the admission of evidence obtained during an unlawful search if the police could have retrieved the evidence on the basis of information obtained independent of their illegal activity), *review denied* (Minn. July 16, 1998). Because it is impossible to "get the genie back into the bottle," the difficulty becomes when, if ever, after illegally obtained evidence points the finger of suspicion at a certain individual and police later undertake an investigation of that individual, the entire investigation is tainted by the prior illegality. Wayne LaFave, 6 *Search & Seizure*, § 11.4(a) at 262-63.

Here, ICE agents obtained information during a search of Hernandez-Maldonado's home that indicated that Hernandez-Maldonado may be using a false name. The district court found that in January 2008, "ICE emailed Officer Chad Nelson of the Willmar Police Department asking if the local police had had any contact with the defendant. The email provided the defendant's name, address, and date of birth. The email also provided an alias for the defendant, . . . and a photograph . . . taken by ICE agents." And although the district court found that only after Officer Nelson referred the matter to Detective Del Wagner were records received from the department of public safety and Jennie-O, the record indicates that Officer Manuel requested the information from the department of

public safety on April 19, 2007, long before the January 29, 2008 email from Agent Grizzell to Officer Nelson. Moreover, the only evidence that conclusively links the Willmar police department with Hernandez-Maldonado's Jennie-O employment records is the January 29, 2008 email from Agent Grizzell in which he attaches those documents. Thus, the district court erred by concluding that "any violation by ICE agents only resulted in a tip to local law enforcement who then conducted a separate, independent investigation obtaining documents from other sources." Therefore, we reverse the district court's determination that the exclusionary rule does not apply.[2]

Additionally, the district court assumed, without analysis, that the search of Hernandez-Maldonado's home was unconstitutional. Although we review de novo whether, based on the facts, a seizure meets the constitutional standards, we cannot make factual findings. *See State v. Anderson*, 396 N.W.2d 564, 565 (Minn. 1996) (remanding to district court to make findings necessary to determine whether confession was voluntary). There is conflicting evidence in the record as to whether Hernandez-Maldonado consented to the search of her home, which is a credibility determination for the district court to make. *See State v. Blacksten*, 507 N.W.2d 842, 847 (Minn. 1993) (holding that consent is a credibility issue). Because the district court made no findings on this issue, we are unable to determine whether the search violated Hernandez-

[2] Respondent also argues that the "identity" or "biographical" exception to the exclusionary rule applies. Because we reverse on other issues, we need not address the applicability of the "identity" or "biographical" exception. However, this court recently held that biographical evidence obtained in violation of constitutional protection is subject to the exclusionary rule. *State v. Maldonado-Arreaga*, ___ N.W.2d ___ (Minn. App. Sept. 15, 2009).

Maldonado's constitutional rights. And because application of and exceptions to the exclusionary rule necessarily require a determination regarding the constitutionality of the search, we remand to the district court to make findings on whether Hernandez-Maldonado consented to the search of her house, and for such further proceedings as the district court deems necessary.

Reversed and remanded.