STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0500
A07-0834

Andrea Lyn Lennartson, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent,

and

State of Minnesota,
Respondent,

vs.

Andrea Lyn Lennartson,
Appellant.

Filed April 8, 2008
Affirmed
Poritsky, Judge[*]

Anoka County District Court
File No. C1-06-9903/02-T6-06-27720

Richard S. Eskola, 3989 Central Avenue Northeast, Suite 600, Columbia Heights, MN 55421 (for appellant)

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

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Considered and decided by Kalitowski, Presiding Judge; Connolly, Judge; and Poritsky, Judge.

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

PORITSKY, Judge

Appellant challenges the revocation of her driving privileges and her conviction of fourth-degree driving while impaired. Appellant argues that police violated her state and federal constitutional rights by entering her home, without warrant or consent, to investigate reported drunk-driving conduct and a domestic disturbance. Appellant further contends that police lacked probable cause to believe that she was driving or in physical control of a motor vehicle. Because we conclude (1) that the trial court did not err in finding that appellant gave valid consent for the police to enter her home and (2) that police had sufficient probable cause to arrest appellant, we affirm.

FACTS

Appellant Andrea Lyn Lennartson was arrested inside her residence during the early morning hours of September 2, 2006, for driving while under the influence of alcohol.

At a little before 3 a.m., Coon Rapids police officers Michelle Coffey and Paul Frakie received a report from off-duty Minneapolis Police Sergeant Jeffrey Jindra, who

was following a suspected drunk driver later identified as appellant. Sergeant Jindra witnessed a blond female in her twenties driving a silver Chrysler Sebring, weaving back and forth across lanes of traffic. Jindra followed the driver until she parked, got out of the vehicle, and entered a residence at 2168 128th Lane Northwest in Coon Rapids. Jindra reported his observations to Frakie when Frakie arrived on the scene, and Frakie, in turn, relayed the information to Coffey following her arrival at the residence.

Officer Coffey, Officer Frakie, and a third officer decided to approach the residence to investigate the drunk-driving conduct. As they neared the front door, they heard a female screaming and yelling that she was calling the police to report she had been hit. Officer Coffey knocked on the door, and Lennartson answered. Lennartson was upset and appeared to have been crying. Officer Coffey asked Lennartson if she wanted to talk about the domestic dispute. Lennartson answered "yes," and the officers entered the home.

Shortly after the officers entered, Lennartson's mother and her mother's fiancé, the co-owners of the home, asked the officers if they had a warrant and repeatedly asked the officers to leave. The officers disregarded the homeowners' requests and continued their investigation into the domestic disturbance. The officers learned that Lennartson had been hit by her mother during an argument, but that Lennartson did not want to file a complaint. In the course of the conversation about the domestic disturbance, Officer Coffey noticed that Lennartson's speech was slurred, her eyes were watery and bloodshot, and she had a heavy odor of alcohol on her breath. Lennartson admitted that she had been drinking and that she had recently arrived home in the silver Chrysler. The

officers gave Lennartson a preliminary breath test and arrested her. A subsequent blood-alcohol test showed an alcohol concentration of .16.

Lennartson's driving privileges were subsequently revoked by the Commissioner of the Department of Public Safety pursuant to Minn. Stat. § 169A.52, subd. 4(a) (2006), and Lennartson was criminally charged with fourth-degree driving while impaired (DWI) under Minn. Stat. §§ 169A.20, subd. 1, .27 (2006). Lennartson filed for judicial review of the license revocation. Following a contested December 2006 implied-consent hearing, Anoka County District Court Judge Sharon L. Hall sustained the revocation.

Following Judge Hall's decision, Lennartson and the state agreed to submit the fourth-degree DWI matter to the trial court on stipulated facts pursuant to Minn. R. Crim. P. 26, subd. 3. The case was submitted to Anoka County District Court Judge Jenny Walker Jasper. After reviewing letter briefs, the implied-consent transcript, and Judge Hall's order and memorandum, Judge Jasper found Lennartson guilty of fourth-degree DWI. The primary issues before both judges involved whether Lennartson gave valid consent for officers to enter the residence and whether police had probable cause to make the arrest. Judge Hall and Judge Jasper both answered these questions in the affirmative, although with slightly different findings. These appeal followed, and this court consolidated them.

D E C I S I O N

The Fourth Amendment to the United States Constitution and Article I of the Minnesota Constitution proscribe unreasonable searches by the government of "persons, houses, papers and effects." U.S. Const. amend. IV; Minn. Const. art. I, § 10; *State v.*

Paul, 548 N.W.2d 260, 264 (Minn. 1996). The United States Supreme Court has ruled that the Fourth Amendment "prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest." *Payton v. New York*, 445 U.S. 573, 576, 100 S. Ct. 1371, 1375 (1980). A valid and voluntary consent to enter, however, may be followed by a warrantless in-home arrest. *United States v. Briley*, 726 F.2d 1301, 1303 (8th Cir. 1984); *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992).

I.

The first issue is whether Lennartson gave valid consent for officers to enter her home to investigate a domestic disturbance, thereby excusing the warrantless entry that eventually revealed evidence leading to Lennartson's arrest.

Consent is valid if given voluntarily and without coercion. *Othoudt*, 482 N.W.2d at 222. Furthermore, consent does not have to be verbal, but may be implied from conduct or gesture. *Id.* Mere acquiescence following a claim of police authority or submission in the face of force, however, is not enough to show voluntary consent. *State v. Howard*, 373 N.W.2d 596, 599 (Minn. 1985). A "totality of circumstances" test is applied in determining whether consent is voluntary. *State v. Hanley*, 363 N.W.2d 735, 739 (Minn. 1985). The state carries the burden of showing that consent was freely and voluntarily given. *Othoudt*, 482 N.W.2d at 222; *Bumper v. North Carolina*, 391 U.S. 543, 548, 88 S. Ct. 1788, 1792 (1968).

The voluntariness of consent is a question of fact. *Othoudt*, 482 N.W.2d at 222. The issue is reviewed under a clearly erroneous standard. Minn. R. Civ. P. 52.01

("Findings of fact . . . shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."). If an entry is made without consent or probable cause and exigent circumstances, its fruit must be suppressed. *See Wong Sun v. United States*, 371 U.S. 471, 484, 83 S. Ct. 407, 415-16 (1963).

Lennartson argues that she did not consent to the police entry into the home. Neither trial judge found that Lennartson gave direct verbal permission for the officers to enter the home. But both trial court judges found that Lennartson's non-verbal conduct indicated consent. Judges Hall and Jasper found that, as the officers approached Lennartson's residence to investigate the drunk-driving conduct, they heard a female screaming and voices arguing loudly inside the home. The officers heard the female yelling that she was calling police to report that she had been hit. Judge Hall found that Coffey knocked on the front door and rang the doorbell. Lennartson opened the door. Coffey asked Lennartson about the disturbance inside the home. Lennartson stated that her mother had hit her during an argument. Officer Coffey asked Lennartson if she was willing to talk about the domestic dispute. After Lennartson said "yes," Officer Coffey opened the outside screen door. Lennartson stepped back and let the officers walk into the home without objection.

Judge Jasper made similar findings. Judge Jasper found that Lennartson initially opened both an inner door and an outer screen door while talking to Coffey. After Lennartson verbally agreed to speak with the officers about the domestic dispute, she

voluntarily "stepped away, backed up from the door," and cleared a path for the officers to enter the residence.

We acknowledge that the findings of Judge Hall and Judge Jasper differ slightly. Judge Hall found that Lennartson spoke to the officers through a closed screen door and, after Lennartson consented to further discussion about the domestic dispute, Officer Coffey opened the screen door and stepped inside the home. Judge Jasper found that Lennartson opened both the inner and outer doors, and Officer Coffey walked through the open doors after Lennartson assented and stepped back.

Lennartson asks this court to adopt Judge Hall's findings while reversing Judge Hall's ultimate determination. Lennartson claims that she consented only to speak with the officers through the screen door, not inside the house. We conclude that the discrepancy between the judges' findings is immaterial. Whether or not the outer screen door was open, both judges found that Lennartson's non-verbal conduct expressed consent to the officers' entry, and we defer to those factual findings. Lennartson acknowledged at oral argument that, when examining whether consent in a given situation is voluntary, the trial court reviews the totality of the circumstances and reaches a factual determination, which this court does not set aside unless clearly erroneous.

Here, the record supports both trial court findings that Lennartson's non-verbal conduct indicated consent to the officers' entry into the home. Lennartson verbally agreed to speak with the officers, stepped aside without objection as the officers entered, and voluntarily began discussing the domestic dispute. Neither judge found that Lennartson was coerced or that she merely acquiesced in the face of a show of police

authority or force. Our review of the record leads us to the conclusion that the trial courts' findings were not clearly erroneous.

Accordingly, we conclude that the trial courts did not err by ruling that Lennartson gave valid consent to the officers' entry into the home.

II.

Lennartson further argues that, even if she did give consent to the officers to enter her home, her consent was effectively revoked and negated by the immediate objection of the homeowners.

Valid consent for police entry of a dwelling may be given by a third party possessing common authority over the premises. *State v. Hummel*, 483 N.W.2d 68, 73 (Minn. 1992). The United States Supreme Court has stated that common authority

> rests on the "mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.

U.S. v. Matlock, 415 U.S. 164, 172, 94 S. Ct. 988, 993 n.7 (1974). Where common authority does not actually exist, consent to entry is still valid where, under an objective standard, an officer reasonably believes the third party has authority over the premises and could give consent to enter. *See Illinois v. Rodriguez*, 497 U.S. 177, 188, 110 S. Ct. 2793, 2801 (1990).

After the officers entered the home, appellant's mother and her fiancé, the joint owners of the home, repeatedly asked the officers if they had a warrant and demanded

that they leave. Lennartson contends that, even if she gave consent to the officers' entry, her interest in the home was inferior to that of the homeowners, and any permission she might have given the officers to continue their investigation inside the home was immediately limited or revoked. Lennartson cites *State v. Hatton*, 389 N.W.2d 229 (Minn. App. 1986), *review denied* (Minn. Aug. 13, 1986), for the proposition that a mere guest may not provide consent for a search.

This contention is without merit because the record provides no support for a finding that Lennartson was simply a guest or lacked common authority over the premises. Although Lennartson was not the record owner, she was the adult daughter of one of the homeowners. She had lived at the address for approximately 12 years prior to this incident. Additionally, Lennartson used the address of the home as her permanent address, she received mail there, and she had her automobile registration and driver's license reflect the address as her residence. There was no indication in the record that Lennartson's stay was temporary or that she lived at an alternate address. We therefore conclude that Lennartson held common authority over the premises to grant valid consent to the police entry.

Moreover, even if Lennartson lacked common authority over the premises, consent to the police entry would still have remained valid because it was objectively reasonable for the officers to believe that Lennartson held such authority. *See Rodriguez*, 497 U.S. at 188, 110 S. Ct. at 2801. Minneapolis officer Jindra had followed Lennartson to the home and had seen her enter it at 3 a.m. Lennartson's vehicle was registered to the same address, and she answered the door when the police knocked. Accordingly, we

conclude that even if Lennartson did not hold common authority over the premises to grant consent, it was reasonable for the police to rely on Lennartson's permission to enter the home.

Lennartson also cites the recent United States Supreme Court decision in *Georgia v. Randolph*, 547 U.S. 103, 126 S. Ct. 1515 (2006), to support her argument that police lose authority to continue a search or seizure when a present homeowner objects to the consent given by another resident. In *Randolph*, the United States Supreme Court addressed the question of "whether one occupant may give law enforcement effective consent to search shared premises, as against a co-tenant who is present and states a refusal to permit the search." 547 U.S. at 108, 126 S. Ct. at 1520. The Supreme Court stated that such an evidentiary seizure was unlawful and held that "a warrantless search of a shared dwelling for evidence over the express refusal of consent by a physically present resident cannot be justified as reasonable *as to him* on the basis of consent given to the police by another resident." *Id.* at 120, 126 S. Ct. at 1526 (emphasis added).

We assume, as did the trial court, that the Supreme Court picks its words carefully. Judge Hall quoted the Court and noted that *Randolph* involved the "straightforward application of the rule that a physically present inhabitant's express refusal of consent to a police search is *dispositive as to him*, regardless of the consent of a fellow occupant." *Id.* at 122-23, 126 S. Ct. at 1528 (emphasis added). Although Lennartson's mother and her fiancé did object to the officers' continued presence in the home, Lennartson did not. Thus, had the evidence been offered against the mother or her fiancé, *Randolph* would have operated to exclude such evidence. But here, the evidence was not offered against

her mother or the fiancé, but against Lennartson,. Accordingly, we conclude that the homeowners' objection to the police entry did not supersede or revoke the consent given by Lennartson, and *Randolph* does not bar introduction of the evidence leading to Lennartson's license revocation and DWI conviction in this appeal.

III.

The final issue is whether the police had sufficient probable cause to arrest Lennartson for driving, operating, or being in "physical control" of a motor vehicle while under the influence of alcohol. Motorists are prohibited from driving, operating, or being in physical control of a vehicle while impaired, Minn. Stat. § 169A.20, subd. 1, and the question of what constitutes physical control of a motor vehicle is one that the legislature intended be given "the broadest possible effect." *State Dept. of Pub. Safety v. Juncewski*, 308 N.W.2d 316, 319 (Minn. 1981).

An officer has probable cause to arrest a person for driving while impaired when, "based on the totality of the circumstances, there is a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing that the person was in physical control" while impaired. *Shane v. Comm'r of Pub. Safety*, 587 N.W.2d 639, 641 (Minn. 1998) (quotation omitted). This court reviews a determination of probable cause as a question of law. *Id.* "When more than one officer is involved in an investigation, Minnesota uses the 'collective knowledge' approach to determine whether probable cause existed." *State v. Riley*, 568 N.W.2d 518, 523 (Minn. 1997).

Lennartson argues that there is no link establishing her to driving or being in physical control of her motor vehicle because the off-duty officer who directly witnessed her driving conduct did not testify at trial.[1] As noted above, however, the knowledge of all officers involved in an investigation is pooled to determine whether probable cause exists. *Riley*, 568 N.W.2d at 523.

Here, an off-duty officer related his direct observations of appellant's driving conduct to the investigating officers on the scene. After receiving this information, the investigating officers approached Lennartson's residence with the knowledge that (1) a blond female in her twenties driving silver Chrysler Sebring swerved back and forth across traffic lanes, and (2) she parked the car and entered the same residence to which the vehicle was registered. Lennartson was quickly identified when she opened the door and, as the officers discussed the domestic disturbance with her, they noticed that Lennartson had bloodshot and watery eyes, her speech was slurred, and she had a heavy odor of alcohol on her breath. Moreover, Lennartson admitted that she drank at a bar earlier in the evening and that she had only recently arrived home in the silver Chrysler. Based on this information, Officer Coffey administered a preliminary breath test and arrested appellant. A subsequent blood-alcohol test revealed an alcohol concentration of .16.

[1] Lennartson's argument on appeal rests, in part, on her contention that any evidence obtained following the warrantless entry must be suppressed, and the evidence gathered prior to the officers' entry provided insufficient probable cause to support an arrest. Because we have determined that the officers' entry was valid pursuant to Lennartson's consent, we consider all of the circumstances surrounding Lennartson's arrest.

Our review of the totality of the circumstances surrounding the officers' contact with Lennartson leads us to the conclusion that the officers had a reasonable suspicion that Lennartson operated a motor vehicle while impaired. Accordingly, we conclude that the trial court did not err in ruling that the officers had probable cause to arrest Lennartson, and we affirm the revocation of Lennartson's driving privileges and her conviction of fourth-degree driving while impaired.

Affirmed.