

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

File No. 62-CR-16- [REDACTED]

State of Minnesota,

Plaintiff,

vs.

ORDER GRANTING  
DEFENDANT'S MOTION  
TO SUPPRESS

[REDACTED]

Defendant.

The above-entitled matter came on for a contested hearing before the Honorable [REDACTED] Judge of District Court, on March [REDACTED] 2017.

Assistant Ramsey County Attorney [REDACTED] appeared representing the State of Minnesota. Defendant appeared in person with his attorney Ryan Garry.

Defendant is charged in a two count criminal complaint with Violation of the Controlled Substance Law in the Fifth Degree -- Possession of Marijuana with Intent to Sell, in violation of Minn. Stat. § 152.025, subd. 1(a)(1), and Violation of the Controlled Substance Law in the Fifth Degree -- Possession of Marijuana, in violation of Minn. Stat. § 152.025, subd. 2(a)(1).

Defendant moved to suppress evidence of a quantity of marijuana recovered from his home by Ramsey County Sheriff's Deputies. Specifically, Defendant claims that: (1) the deputies' initial entry into the home violated his constitutional right to be free from unreasonable searches and seizures; (2) the deputies' initial search of the home exceeded the permissible scope of a protective sweep, and; (3) a subsequent warrantless confirmatory search violated the prohibition against unreasonable searches and seizures.

At the contested hearing, the court heard testimony from three witnesses: (1) Ramsey County Sheriff's Deputy [REDACTED]; (2) Ramsey County Sheriff's Deputy [REDACTED]; and (3) [REDACTED], Defendant's father.

Following the hearing, the court allowed both parties the opportunity to submit written briefs, and both parties submitted timely written briefs. Upon receipt of the briefs, the court took this matter under advisement.

The court, having reviewed all the files and records herein, having heard the testimony of the witnesses, having heard the arguments of counsel, and being fully informed, now makes the following:

ORDER

1. Defendant's motion to suppress evidence is GRANTED.
2. The attached Memorandum shall be incorporated into this Order.

DATE

July 11, 2017

[REDACTED]  
[REDACTED]  
[REDACTED]  
JUDGE OF DISTRICT COURT

Memorandum

On February 1, 2016, Ramsey County Sheriff's Deputy [REDACTED] was on duty when he received a call for assistance from Deputy [REDACTED] who had responded to a residential alarm at [REDACTED], Shoreview, Minnesota, Ramsey County. Upon arriving, Deputy [REDACTED] spoke with Deputy [REDACTED] who told him that she had already walked the perimeter of the home and did not observe any footprints in the snow or other signs of a possible forced entry. The front door of the home was shut, but unlocked. The deputies did not hear an audible alarm and at the hearing Deputy [REDACTED] testified that most alarm calls he had responded to in the past were false alarms. However, because the deputies did not receive any indication the alarm had been inadvertently triggered, they entered the home to make sure a burglary had not occurred.

Once inside the home the deputies identified themselves and shouted that anyone in the home should exit, but no one appeared. The main floor of the house consisted of a kitchen and a living room. Deputy [REDACTED] observed that the living room was well kept, but that the kitchen was slightly messy and could have been consistent with the scene of a burglary because there were many items on the kitchen counter and table. After the deputies determined there was no one on the home's main level, they descended a flight of stairs to the first of two lower levels and continued the search for any potential burglars. Deputy [REDACTED] detected an odor of marijuana as he walked down the stairs and observed a security camera in the stairwell, and later identified a monitor on the first basement level with a feed from the security camera. When Deputy [REDACTED] entered a bathroom on the first basement level, the odor of marijuana intensified. Using his flashlight to illuminate the dark bathroom, Deputy [REDACTED] observed a bong and some mason jars on the floor that contained a green leafy substance he suspected was marijuana. Deputy [REDACTED] also observed additional mason jars containing marijuana in a plastic bag on the floor of the bathroom.

Deputy [REDACTED] testified that he had not personally observed such a large quantity of marijuana in his career and that he assumed the marijuana was not for personal use. On top of a cooler in a shower that lacked a door, Deputy [REDACTED] also observed an open notebook which appeared to contain names and numbers he suspected represented prices and weights of marijuana. Deputy [REDACTED] did not have to open any drawers or manipulate any items to make these initial observations, nor did he open any of the jars or seize any evidence. However, before leaving the bathroom, Deputy [REDACTED] opened the cooler in the shower and determined it also contained additional jars of suspected marijuana. Before resuming the search for intruders, Deputy [REDACTED] photographed the marijuana and notebook he observed in the bathroom.

While Deputy [REDACTED] checked the first basement level, Deputy [REDACTED] checked the second basement level. After determining there was no one on either basement level, the deputies also checked the upper level of the home and ultimately concluded no one was in the house. Deputy [REDACTED] notified the narcotics unit of the Sheriff's Department because of the quantity of marijuana he observed in the basement bathroom. Deputy [REDACTED] responded to the home to conduct further investigation.

Upon arriving, Deputy [REDACTED] entered the home without a warrant and verified the observations Deputy [REDACTED] made inside the bathroom of the first basement level. At the hearing Deputy [REDACTED] clarified that he did not doubt what Deputy [REDACTED] told him he had seen in the home. Deputy [REDACTED] did not conduct an additional search of the home beyond confirming what Deputy [REDACTED] had seen. As Deputy [REDACTED] exited the home, Defendant arrived and identified himself as R [REDACTED] I [REDACTED]. After Defendant told Deputy [REDACTED] he lived at the house, Deputy [REDACTED] frisked Defendant. Deputy [REDACTED] found marijuana in his coat pocket. Deputy [REDACTED] obtained a warrant

to search [REDACTED]. The application for the search warrant contained the sworn affidavit of Deputy [REDACTED] which stated:

On 02- [REDACTED] 2016 at approx. 1400 hours your affiant received information from Ramsey County Patrol Deputies that they responded to a residential alarm call from the address of [REDACTED] Shoreview, MN. Responding deputies located an unlocked front door. Deputies proceeded to enter the residence in order to search and secure the premise in order to ensure no criminal activity had taken place. While conducting a search of the residence, deputies observed in plain view, in various locations throughout the residence, large amounts of marijuana. Deputies also observed closed circuit security cameras and monitor both in the interior and exterior of the residence.

Upon securing the residence, deputies on scene contacted your affiant and briefed your affiant of the findings. Your affiant responded to the scene and verified their observations.

While exiting the residence, your affiant observed a dark colored vehicle, MN lic [REDACTED] pull into the driveway. A young white male (sole occupant) exited the vehicle and verbally identified himself as R [REDACTED] I [REDACTED] L [REDACTED] stated to your affiant that he and his father reside at the residence. Based upon the observations inside the residence I [REDACTED] was detained. Your affiant searched I [REDACTED] and located in his coat pocket a small amount of marijuana as well as a sandwich bag containing an unidentified suspected controlled substance.

Exhibit 1.

The Fourth Amendment and Article I, Section 10 of the Minnesota Constitution guarantee individuals the right to be free from unreasonable searches and seizures by the government. Searches of home without a warrant are presumptively unreasonable. *Payton v. New York*, 445 U.S. 573, 586 (1980). The warrant requirement is subject to certain limited exceptions, and in pursuing a community-caretaking function law enforcement officers "may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006); see also *State v. Othoudt*, 482 N.W.2d 218, 223 (Minn.1992). This exception is commonly known as the emergency-aid exception.

In Minnesota, courts apply a three prong test to determine whether the emergency-aid exception negates the requirement that officers obtain a warrant before searching a home. *State v. Lemieux*, 726 N.W.2d 783, 787 (Minn. 2007). The test requires that the State demonstrate that:

- (1) The police have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property;
- (2) The search must not be primarily motivated by intent to arrest and seize evidence; and
- (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.

*Id.* at 788.

The court finds that the State was unable to demonstrate that the facts established reasonable grounds for the deputies to believe that there was an ongoing emergency that required their immediate assistance to protect life or property. At the hearing, Deputy [REDACTED] testified that when he arrived at [REDACTED], his intention was to make sure a burglary had not occurred. Deputy [REDACTED] was notified of the alarm by dispatch at approximately 1:30 p.m., but did not arrive at [REDACTED] until around 1:45 p.m. Upon arriving at the home, Deputy [REDACTED] learned that Deputy [REDACTED] had already been at the location for enough time to walk the perimeter of the home and determine that there were no footprints in the snow along its perimeter and that she observed no signs of any forced entry. Deputy [REDACTED] did not state that she saw anyone enter or exit the home, that she heard any noises, voices, or cries for help coming from the home, or that she observed anything corroborative of any criminal conduct whatsoever. There was also no audible alarm sounding and the front door to the home was shut. At that point, instead of calling the alarm company to conduct further investigation, the deputies entered the home without a warrant to conduct a protective sweep that resulted in the observation of a significant quantity of marijuana.

In reaching the conclusion that the State failed to demonstrate the deputies had reasonable grounds to believe there was an ongoing emergency that required a warrantless entry into the home, Deputy [REDACTED]'s testimony that in his experience most residential alarms are false cast significant doubt upon reasonableness of the concern for life and property in these circumstances. Given the deputy's experience that most residential alarms do not involve threats to life or property, there is nothing in the record to suggest that what the deputies observed at [REDACTED] indicated this alarm call was anything other than a routine false alarm. Although the court is required to apply an objective standard to determine the reasonableness of the deputy's beliefs that there was an emergency, a deputy's training and experience are the lens through which the fact-finder must evaluate the reasonableness of that belief. *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011)(citing *State v. Olson*, 436 N.W.2d 92 (Minn. 1989)).

Given Deputy [REDACTED]'s training and experience, the court finds it was unreasonable to assume a burglary was in progress. Beyond the alarm call itself, the deputies observed nothing that indicated a burglary had occurred or that there was an emergency that required intervention. This case is clearly distinguishable from *Lemieux*, where the Minnesota Supreme Court found that the emergency aid exception did permit a warrantless entry where the facts established that upon arriving at a residence, officers became concerned that a burglary had occurred because that the window screen was torn loose, the window was pushed up, the door was unlatched, they could hear music skipping inside the home, they knew that someone had been in the residence the prior night, and the residence was in close proximity to a brutal and seemingly random homicide. 726 N.W.2d at 785. Clearly the scene at [REDACTED] did not resemble what the officers in *Lemieux* encountered. Under these facts, the reasonable action would have been to call dispatch or the alarm company to further investigate the alarm given that neither deputy observed anything

consistent with a burglary. Had either Deputy taken this action they would have determined the alarm had already been called off by a resident and that it was in fact a false alarm. Because the State was unable to prove that the emergency aid exception permitted the deputies to enter the home without a warrant, the court need not assess Defendant's claim the Deputy [REDACTED]'s confirmatory search requires exclusion of the seized marijuana.

For the forgoing reasons Defendant's motion to suppress evidence is granted. This matter shall be set for a hearing on August [REDACTED] 2017 at 9:00 a.m. at the Ramsey County Courthouse, 15 Kellogg Boulevard West, St. Paul, Minnesota 55102.

[REDACTED]