STATE V. FARLEY

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
SERRANO FARLEY,
Defendant-Appellant.

No. 34,010

COURT OF APPEALS OF NEW MEXICO

December 17, 2015

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, John A. Dean Jr., District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, Elizabeth Ashton, Assistant Attorney General, Albuquerque, NM, for Appellee

Jorge A. Alvarado, Chief Public Defender, Allison H. Jaramillo, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

JONATHAN B. SUTIN, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge, RODERICK T. KENNEDY, Judge

AUTHOR: JONATHAN B. SUTIN

MEMORANDUM OPINION

SUTIN, Judge.

{1} Defendant Serrano Farley appeals the district court's denial of his motion to suppress evidence discovered as a result of a warrantless police entry into his home.

The district court denied the motion based on conclusions that the warrantless entry was justified under the emergency assistance doctrine. We hold that the warrantless entry into Defendant's apartment was not justified under the emergency assistance doctrine, and we reverse.

BACKGROUND

{2} Officers from the San Juan County Sheriff's Department entered Defendant's apartment without a warrant in response to a 911 call from Defendant's ex-wife, Nadine Farley, in which Ms. Farley reported that Defendant was intoxicated or on drugs and that he had pulled their two-year-old child, who was on the bed, by the arm and dropped him on the floor. Inside the apartment, the officers found methamphetamine on the floor in the entrance to a closet door in the bedroom. Defendant was arrested without a warrant on charges of child abuse, possession of narcotics, and resisting, evading, or obstructing an officer. Later, Defendant was charged by criminal information with the foregoing charges, as well as the additional charges of false imprisonment and battery against a household member.

{3} Defendant filed a motion to suppress any evidence gained as a result of the warrantless entry into his apartment. In its written response to Defendant's motion, the State argued that under the emergency assistance doctrine the officers were justified in their warrantless entry to ensure that the two-year-old child was not harmed. The district court held an evidentiary hearing on Defendant's motion to suppress at which Deputy Kenneth Clarke of the San Juan County Sheriff's Department testified for the State. Following the hearing the district court denied Defendant's motion to suppress on the ground that the emergency assistance doctrine justified the warrantless entry.

{4} In a conditional plea and disposition agreement, Defendant pleaded guilty to one count of possession of a controlled substance and reserved the right to appeal the district court's denial of his motion to suppress. The remaining charges against Defendant were dismissed as part of that agreement.

{5} On appeal, Defendant seeks reversal of the district court's denial of his motion to suppress claiming that the emergency assistance doctrine did not justify warrantless entry into his apartment. We hold that the facts presented at the hearing on Defendant's motion to suppress and found by the district court do not satisfy the requirements of the emergency assistance doctrine, and we reverse the district court's denial of Defendant's motion to suppress.

DISCUSSION

Standard of Review

{6} "Appellate courts review a district court's decision to suppress evidence based on the legality of a search as a mixed question of fact and law." *State v. Ryon*, 2005-NMSC-005, ¶ 11, 137 N.M. 174, 108 P.3d 1032. "[The appellate courts] view the facts in

the light most favorable to the prevailing party and defer to the district court's findings of historical facts and witness credibility when supported by substantial evidence." *Id.* "The legality of a search, however, ultimately turns on the question of reasonableness." *Id.* We review de novo whether the police conduct under the circumstances satisfied the constitutional requirement of reasonableness. *Id.*

The Emergency Assistance Doctrine

{7} "Warrantless searches and seizures inside a home are presumptively unreasonable, subject only to a few specific, narrowly defined exceptions." *Id.* ¶ 23. One such exception, known as the emergency assistance doctrine, allows law enforcement officers to "enter a home without a warrant to respond to a strong sense of an emergency[.]" *Id.* ¶ 29. "Since the privacy expectation is strongest in the home[,] only a genuine emergency will justify entering and searching a home without a warrant[.]" *Id.* ¶ 26.

{8} For the emergency assistance doctrine to apply, the State must establish the three elements set forth in *Ryon*. *Id.* ¶ 29. First, the officers "must have reasonable grounds to believe that there is an emergency" that requires their immediate assistance, that is, they must have "a strong perception that action is required to protect against imminent danger to life or limb[.]" *Id.* ¶¶ 29, 31 (internal quotation marks and citation omitted). Second, the officers' primary motivation in entering the home must be to protect "human life . . . in imminent danger . . . rather than the desire to apprehend a suspect or gather evidence for use in a criminal proceeding." *Id.* ¶¶ 29, 36 (internal quotation marks and citation omitted). Third, "there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched." *Id.* ¶ 29 (alteration, internal quotation marks, and citation omitted).

Deputy Clarke's Testimony

{9} Deputy Clarke, the only witness at the evidentiary hearing on Defendant's motion to suppress, testified as follows. Officers received a call from dispatch to respond to a "domestic violence situation." Deputy Clarke came into contact with Ms. Farley, whom he described as "the victim" in the situation. Ms. Farley was visibly upset, crying, and very emotional, and she told Deputy Clarke that she had been in an altercation with her ex-husband (Defendant), that he had been drinking and doing methamphetamine, and that "as she was getting ready to leave [Defendant] had the [child] by the arm and pulled [the child] off the bed and [the child] went onto the floor possibly injuring [the child], she wasn't sure." As Ms. Farley was getting ready to leave, Defendant stepped in front of the door, took her by the arms, and told her that she was not going to leave, that "nothing had happened in the past so nothing was going to happen" and that this continued for "a little bit," until Defendant said "visiting hours are over" and told her to leave the house. Ms. Farley left the house and someone, Deputy Clarke did not know whether it was Ms. Farley or Defendant, called 911 "for assistance."

{10} Based on the foregoing information, Deputy Clarke and other officers, who were acting as "backup," went to Defendant's apartment and spent five to seven minutes banging on the doors, walls, and windows of Defendant's apartment trying to get his attention. Deputy Clarke testified that the officers' main concern was "concern for the [child] because [the child] was still in the residence." He testified further that the officers "weren't sure if [the child] was injured or not. We knew [the child] was in the house." The officers also knew, from dispatch, that the 911 caller had reported that the child did not need an ambulance.

{11} When Defendant did not answer them, the officers considered kicking in the front door of his apartment but upon learning how to contact Defendant's landlord, they decided that they would call the landlord to bring a key so that they did not have to damage the property in order to enter the apartment. Deputy Clarke did not recall whether the officers had discussed getting a warrant before entering Defendant's apartment.

{12} The officers got the key from the landlord, and three officers entered Defendant's apartment. Once inside Defendant's apartment, Deputy Clarke's main concern was "to locate the child and check on his well being." Two officers went into the kitchen and living room area, and Deputy Clarke went around the corner and looked down the hall, and he saw Defendant. Deputy Clarke called Defendant to come out toward him, Defendant complied, and two officers immediately "took control of" Defendant by handcuffing him and putting him in the living room. Deputy Clarke then went down the hallway to check on the child. Deputy Clarke found the child uninjured and asleep on the bed.

Application of the *Ryon* Test

{13} In regard to the first element of *Ryon*, the district court concluded that "[t]he welfare of [the] child in the care of a reportedly intoxicated or drugged adult who was unresponsive to knocking on the door and windows gave the officers reasonable grounds to believe that the situation was emergent and that there was an immediate need for assistance for the protection of the child inside the home." We do not agree with the district court's reasonableness determination.

{14} In order to satisfy the first *Ryon* element, the State was required show that the officers had "a strong perception that action [was] required to protect against imminent danger to life or limb[.]" *Id.* ¶ 31. In considering whether the State met this burden, we consider "the purpose and nature of the dispatch, the exigency of the situation based on the known facts, and the availability, feasibility[,] and effectiveness of alternatives to the type of intrusion actually accomplished." *Id.* ¶ 32 (internal quotation marks and citation omitted). To place these concepts in context, we review our Supreme Court's application of them in the *Ryon* case.

{15} In *Ryon*, the officers knew that the defendant, a suspect in a stabbing incident, might be headed home, and they were directed to the home to locate him. *Id.* ¶ 40.

From the dispatch, the officers knew that the defendant "*might* have been injured" and that the injury was "possibly a head injury[.]" *Id.* (internal quotation marks omitted). The officers knocked on the defendant's door, which was slightly ajar, but they did not receive any response. *Id.* Our Supreme Court concluded that because the officers "did not know the nature or extent of the injury" and "did not even know whether he was injured" their warrantless entry into the defendant's home was based upon generalized, nonspecific information, and was not justified. *Id.* ¶¶ 43-44. The Court held that "[i]n the absence of an obvious life-threatening emergency," law enforcement is required "to corroborate generalized information before they risk intruding into a home." *Id.* ¶ 44.

{16} Here, as in *Ryon*, there was no obvious life-threatening emergency. Based on the information the officers had received from dispatch and from Ms. Farley, the officers knew that the child had been pulled by the arm and onto the floor and that the child did not need an ambulance. The officers "weren't sure if [the child] was injured or not," but the child's mother had reported to the dispatcher that she did not believe the child needed medical care and there was no mention of any injuries that were life-threatening. There was nothing in Deputy Clarke's testimony to suggest that the officers had grounds to believe that Defendant posed an imminent threat to the child or that there was an imminent danger to the child's "life or limb" if the officers did not enter the residence immediately. *See id.* ¶ 31 ("The emergency assistance doctrine requires an emergency, a strong perception that action is required to protect against imminent danger to life or limb, an emergency that is sufficiently compelling to make a warrantless entry into the home objectively reasonable[.]").

{17} We do not believe, even with the fact that Defendant was "unresponsive" to the officers' knocking and other attempts to get his attention, that the officers' warrantless entry was justified. There was no evidence that the officers believed or had reason to believe that Defendant's unresponsiveness was, itself, an indicator of an urgent or life-threatening emergency. And, since the officers did not have a warrant, Defendant was under no obligation to open the door of his home to them. *See State v. Jean-Paul*, 2013-NMCA-032, ¶ 12, 295 P.3d 1072 ("In a free society, the mere presence of police does not require an individual to throw open the doors to his house . . . . Until the police announce that they have a warrant, the occupants have no reason to believe . . . that they must answer the door if they wish to avoid a forcible breach." (internal quotation marks and citation omitted)).

{18} The second element of the *Ryon* test focuses on the primary motivation underlying the warrantless entry. 2005-NMSC-005, ¶ 36. In regard to *Ryon*'s second element, the district court concluded that the officers' "entry into . . . Defendant's home was motivated by an intention to secure the safety of the child who was locked inside." The district court's conclusion contains an implicit finding that Deputy Clarke was credible in his testimony that the officers' "main concern" was the child. While we defer to the district court's credibility finding, we nevertheless conclude that the officers were not justified in their warrantless intrusion into Defendant's home, under the circumstances here. *See id.* ¶ 11 (stating that we defer to the district court's findings regarding witness credibility when they are supported by substantial evidence).

{19} That said, the second element of the *Ryon* test is not satisfied "unless the entry is motivated by the perceived need to act immediately in order to save a life." *Id.* ¶ 35. A "good-faith generalized concern" for a person's welfare will not justify a warrantless entry. *Id.* ¶ 45. Under the circumstances of this case, where there was no evidence that the officers believed or had reason to believe that the child's life or health was in imminent danger, the district court's finding that the officers were "motivated by an intention to secure the safety of the child" does not rise to the level of perceived urgency required to satisfy the second element of the *Ryon* test. Without information to suggest that their intervention was required to protect against imminent danger to human life or property, the officers' concern for the child did not justify their warrantless entry.

{20} The third element of the *Ryon* test, which requires "some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched[,]" is not at issue in this appeal. *Id.* ¶ 29 (internal quotation marks and citation omitted). There was no question in this case as to whether the child was inside Defendant's apartment during the relevant time period nor was there any "emergency" as that term is used in the context of the emergency assistance doctrine associated with Defendant's apartment.

{21} In sum, we hold that the evidence presented at the hearing on Defendant's motion to suppress did not show that the officers had a strong perception that action was required to protect against imminent danger to the child or that the officers' entry was motivated by their perceived need to act immediately in order to save a life. As such, their warrantless entry was not justified by the emergency assistance doctrine. Because the district court concluded otherwise, we reverse its order denying Defendant's motion to suppress and remand this matter to the district court for further proceedings.

CONCLUSION

{22} We reverse.

{23} IT IS SO ORDERED.

JONATHAN B. SUTIN, Judge

WE CONCUR:

MICHAEL E. VIGIL, Chief Judge

RODERICK T. KENNEDY, Judge