STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0206

State of Minnesota,
Respondent,

vs.

Gerald Peter Haus,
Appellant,

Charles Louie Haus,
Appellant.

Filed May 13, 2008
Reversed and remanded
Poritsky, Judge[*]

Washington County District Court
File Nos. T2-06-6587/T3-06-6615

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

Doug Johnson, Washington County Attorney, Andrew J. Jarmuz, Assistant County Attorney, 14949 62nd Street North, P.O. Box 6, Stillwater, MN 55082 (for respondent)

Samuel A. McCloud, Carson J. Heefner, McCloud & Heefner, P.A., Circle K, Suite 1000, P.O. Box 216, Shakopee, MN 55379 (for appellants)

Considered and decided by Shumaker, Presiding Judge; Willis, Judge; and Poritsky, Judge.

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[*] 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

PORITSKY, Judge

Appellants Gerald Peter Haus and Charles Louie Haus challenge the district court's pretrial evidentiary ruling and subsequent guilty verdict, arguing that (1) the district court erred in admitting evidence obtained as the result of an unconstitutional seizure; and (2) the evidence is not sufficient to support their convictions. Because appellants did not raise the issue of an unconstitutional seizure in the district court, we decline to reach that issue. But because the district court did not obtain a personal trial-rights waiver from each of the appellants before accepting their case for trial on stipulated facts, we reverse their convictions and remand for further proceedings.

FACTS

On February 20, 2006, Minnesota DNR Conservation Officer Brett Oberg ("Oberg") cited appellants for fishing with more than two lines on the St. Croix River, in violation of Minn. Stat. § 97C.315 (2004). The state later amended the complaint to add the charge of fishing with an extra line on a Minnesota boundary water, in violation of Minn. R. 6266.0500, subp. 4 (2005). Appellants then moved to exclude evidence obtained by Oberg during his encounter with appellants on the ground that Oberg's entry into and search of the ice-fishing house was unconstitutional.

The district court held an evidentiary hearing on that motion. At the hearing, Oberg testified that on February 20, 2006, he was patrolling the St. Croix River by ATV in the vicinity of Bayport, Minnesota. While on patrol, Oberg approached appellants' ice-fishing house, and as he approached he saw through a window that someone was

fishing inside. He knocked on the door and said, "Game warden, I'm checking licenses." After a pause, someone inside said, "Come on in," and opened the door. Oberg entered the ice-fishing house and observed that appellants were using eight ice-fishing lines, one more each than allowed.[1] He identified the men as appellants and cited each for fishing with too many lines.

Appellant Gerald Haus testified that he did not tell Oberg that he could enter the ice-fishing house and that Oberg had barged in uninvited when Haus cracked the door open to speak with the officer.

At the conclusion of the hearing, the district court credited Oberg's testimony, found that appellants gave Oberg explicit consent to enter the ice-fishing house, and concluded that the officer's observations following entry into the house were admissible. Appellants' attorney then told the court that appellants wished to submit the matter to the district court for a stipulated-facts trial to preserve the issue of Oberg's entry and search of the ice-fishing house for appeal. The district court found appellants guilty of both counts and fined them for violating Minn. R. 6266.0500. This appeal follows.

D E C I S I O N

I.

Appellants argue to this court that Oberg seized them when he knocked on their ice-fishing house door and said, "Game warden, I'm checking licenses" and that this seizure was not supported by reasonable, articulable suspicion. The state counters that

[1] Appellants were fishing with Wisconsin fishing licenses, which allowed each man to fish with three ice-fishing lines.

appellants did not raise this argument in the district court and that they therefore waived the argument here. Reviewing courts "generally will not decide issues which were not raised before the district court, including constitutional questions of criminal procedure." *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

We agree with the state that appellants did not properly raise the issue of the officer's *seizure* of appellants in the court below. Appellants' motion papers before the district court stated that the motion was grounded in a claim that the evidence was "obtained as a result of the Officers violation of the Defendants Minnesota and Federal right prohibiting unreasonable *searches* without a warrant." (Emphasis added.) And at the pretrial hearing on their motion to suppress, appellants argued that Oberg's entry into and search of the ice-fishing house were unconstitutional. The few challenges that appellants made to Oberg's authority to check their licenses were made in reference to the constitutionality of Oberg's entry into and search of the ice-fishing house. The specific issue of Oberg's seizure of appellants came up only in a passing reference made in the state's closing argument, following appellants' argument on the constitutionality of the search of the ice-fishing house. Understandably, as the issue had not been raised, the district court did not rule on the issue of seizure: the court's ruling was that Oberg's "entry" into the ice-fishing house was lawful. Moreover, even as late in this proceeding as the filing of the Statement of the Case by appellants, they stated the issue as, "Whether the entry into Appellant's ice fishing house was in violation of the Fourth Amendment to the United States Constitution and its Minnesota counterpart?"

We acknowledge that we have the discretion to consider issues not properly raised in the district court in the interest of justice, but we decline to do so on this issue for two reasons. A ruling that a seizure occurs whenever a conservation officer asks for a license would have a critical impact on the state's ability to enforce game and fish laws, and for that reason the issue should have been more fully briefed both in district court and this court. Moreover, such a ruling would necessarily call into question the constitutionality of Minn. Stat. § 97A.405, subd. 2(b) (2004) which requires a person to display a license on demand of a conservation officer. Other statutes in chapter 97A provide for criminal penalties for failure to comply with an officer's demand, and the constitutionality of those statutes would likewise be in question. We will not rule on the constitutionality of a statute when the issue was not raised or ruled upon at the trial level. *State v. Kager*, 357 N.W.2d 369, 370 (Minn. App. 1984).

We therefore conclude that appellants failed to raise the issue of the seizure in the district court and that their failure to do so waives the issue here.

II.

At oral argument, appellants' counsel argued that the district court did not secure a proper waiver of trial rights from appellants before considering the case on stipulated facts. Appellants neither briefed this claim nor raised it in district court. This issue is not properly before this court, and, as we have indicated above, we do not generally consider issues that were not raised to, and considered by, the district court. *Roby*, 547 N.W.2d at 357. But we may review any matter "as the interests of justice may require." Minn. R. Crim. P. 28.02, subd. 11. Because the rights that are being waived are constitutional

rights, strict compliance with the waiver procedure is required. S*tate v. Knoll*, 739 N.W.2d 919, 921 (Minn. App. 2007). For these reasons, we will review appellants' claim.

In order to submit a defendant's case to the court for a stipulated-facts trial, the procedural requirements set forth in Minn. R. Crim. P. 26.01, subd. 3, must be satisfied. *Knoll*, 739 N.W.2d at 921 (concluding that procedural requirements in rule 26.01, subd. 3, apply to all stipulated-facts trials to ensure that the defendant's trial rights are knowingly and voluntarily waived). Minn. R. Crim. P. 26.01, subd. 3, provides: "Before proceeding [with a stipulated-facts trial], the defendant shall acknowledge and waive the rights to testify at trial, to have the prosecution witnesses testify in open court in the defendant's presence, to question those prosecution witnesses, and to require any favorable witnesses to testify for the defense in court." *Id.* The waiver must be given in writing or orally on the record. *Id.* If the district court does not secure a personal, knowing waiver from a defendant prior to proceeding with a stipulated-facts trial, the conviction must be reversed. *Knoll*,739 N.W.2d at 921.

The record shows that appellants did not personally waive any of their trial rights as set forth in Minn. R. Crim. P. 26.01, subd. 3. Because the district court must "strictly comply" with the trial-rights-waiver provision in rule 26.01, appellants' conviction, without any personal or specific waiver by appellants, "must be reversed." *Knoll*, 739 N.W.2d at 921 (citing *State v. Halseth*, 653 N.W.2d 782, 786-87 (Minn. App. 2002) (granting new trial when defendant did not give an express waiver before stipulated-facts

trial)). Accordingly, we reverse the appellants' convictions and remand to district court for further proceedings consistent with this opinion.

Reversed and remanded.