STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0710

State of Minnesota,
Respondent,

vs.

Carl W. McPhillips,
Appellant.

Filed June 10, 2008
Affirmed
Crippen, Judge*

Dakota County District Court
File No. K5-05-2777

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

James C. Backstrom, Dakota County Attorney, Jessica A. Bierwerth, Assistant County Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings, MN 55033 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Rochelle R. Winn, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Peterson, Judge; and Crippen, Judge.

* Retired judge of the Minnesota Court of Appeals, serving 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

CRIPPEN, Judge

Appellant Carl McPhillips challenges the district court order finding that he consented to an officer's search of items in his car and denying his motion to suppress the fruits of that search. Because the findings on the issue of consent are not clearly erroneous, we affirm.

FACTS

In September 2005, police received a report of suspicious activity in the city of Farmington. The complainant reported seeing two individuals removing two containers from a residence, placing them in a white Cadillac, and driving away along a bike path. While responding, an officer saw a white Cadillac being driven in the area and followed it into the lot of a SuperAmerica store. Appellant, the passenger, began pumping gas and the driver, Michael Schmitt, entered the store. The officer briefly questioned both appellant and Schmitt and also called the complainant for more information regarding the suspicious individuals. The officer discovered that the Cadillac was registered to appellant and that Schmitt, who had been driving, had a suspended driver's license. The complainant indicated that the individuals were two white males and described one of the containers as a blue bin.

Having seen a blue bin in the Cadillac, the officer asked who owned the bin, and Schmitt replied that it was his. The officer then asked Schmitt for permission to search the bin, and Schmitt consented. The officer approached the car and attempted to open the door in order to access the bin, but the door was locked. Appellant stated that he was

having trouble with the car's electric locks, opened another door of the vehicle, and used the electric lock mechanism to unlock the other doors. As the officer was searching the bin inside the car, he saw the barrel of a gun sticking out from under the bin. The officer then arrested appellant, and the state later charged him with first- and second-degree burglary, felon in possession of a firearm, and transporting uncased firearms in a motor vehicle.

Before trial, appellant moved to suppress items found in his car on the ground that they were the fruits of an unlawful search. The district court denied appellant's motion, concluding that "Schmitt consented to a search of the bin" and that appellant, "by voluntarily unlocking the door, . . . consented to a search of the bin in the vehicle." Appellant was subsequently convicted of first-degree burglary and now challenges the denial of his suppression motion.

D E C I S I O N

"When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). If the facts are disputed at a pretrial hearing, we uphold the district court's findings unless clearly erroneous. *City of St. Louis Park v. Berg*, 433 N.W.2d 87, 89 (Minn. 1988).

"Both the Minnesota and United States constitutions protect against 'unreasonable' searches and seizures by the state." *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999); *see* U.S. Const. amend. IV; Minn. Const. art. I, § 10. Ordinarily,

police must have probable cause to support a search and obtain a warrant authorizing the search before it is considered reasonable. *In re Welfare of G.M.*, 560 N.W.2d 687, 692 (Minn. 1997). But if the search is conducted pursuant to consent, it is not unreasonable and "neither probable cause nor a warrant is required." *State v. Pilot*, 595 N.W.2d 511, 519 (Minn. 1999). In order for consent to be valid, the state must prove that it was given freely and voluntarily—that is, that the consent was not the product of coercion. *State v. George*, 557 N.W.2d 575, 579 (Minn. 1997). Consent does not have to be oral; it may be implied from conduct. *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992). "The question of whether consent is voluntary is a question of fact, and is based on all relevant circumstances." *Id.* (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 227, 93 S. Ct. 2041, 2047-48 (1973)).

The district court found that appellant voluntarily consented to the search of the bin inside his vehicle by unlocking the door to the car with the vehicle's electric lock mechanism. Appellant argues that the consent was invalid because "a reasonable person in appellant's position would not have felt free to decline [the officer]'s implied command," and "[a]ppellant's subsequent act of unlocking the door constituted mere submission to [the officer]'s authority, not consent." *See Florida v. Royer*, 460 U.S. 491, 497, 103 S. Ct. 1319, 1324 (1983) (stating that "mere submission to a claim of lawful authority" is not valid consent). But the district court found that appellant unlocked the door without any command by the officer and that appellant did so voluntarily.

Appellant points to nothing in the record demonstrating that the district court's findings are clearly erroneous. And at the suppression hearing, when appellant was asked

whether he thought he "had a right to not let [the officer] in your automobile," appellant testified, "I thought I did." By voluntarily unlocking the car door, appellant consented to the officer's search of the bin inside the vehicle. *See State v. Howard*, 373 N.W.2d 596, 599 (Minn. 1985) ("Looked at in the light of his prior contacts with the police and his continuing voluntary cooperation with them, petitioner's act of opening the inner door completely and then stepping back as if to make room for the officers to enter can only be interpreted as constituting limited consent to enter.").

In addition to arguing that he did not voluntarily consent to the search in his car, appellant also asserts that Schmitt's third-party consent and the plain-view exception failed to justify the search. In light of our holding on appellant's consent, we have no occasion to address these additional arguments.

Affirmed.