STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0792

State of Minnesota,
Respondent,

vs.

Delaney Ledell Johnson,
Appellant.

Filed July 15, 2008
Affirmed
Shumaker, Judge

Ramsey County District Court
File No. K5-06-2498

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Susan Gaertner, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, 50 Kellogg Blvd. West, Suite 315, St. Paul, MN 55102 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Keala C. Ede, Special Assistant State Public Defender, Robins, Kaplan, Miller & Ciresi L.L.P., 2800 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, MN 55402 (for appellant)

Considered and decided by Shumaker, Presiding Judge; Schellhas, Judge; and Muehlberg, Judge.*

* 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

SHUMAKER, Judge

Appellant argues that the district court erred when it denied his motion to suppress evidence of a firearm obtained from an inventory search of his vehicle because the officer unlawfully expanded the scope of that search. Because the evidence was lawfully obtained, we affirm.

FACTS

On July 27, 2006, St. Paul police officers Timothy Bohn and Frank Judge were in their parked squad car at Concordia and Fisk streets, known to the officers as a "hot spot" of criminal activity.

The officers heard loud music and then saw a car pass the squad and brake hard, as if it were speeding through the 30-mile-an-hour zone. Based on both the apparent speeding and the loud music coming from the car—which violated a city ordinance—the officers stopped the car. The driver was appellant Delaney Ledell Johnson.

Johnson admitted that the music was too loud, that he did not have a Minnesota driver's license, and that his Illinois driver's license was under suspension. Officer Bohn decided to give Johnson a citation and have the car towed.

Officer Bohn asked Johnson to step out of the car. The officer then patted Johnson's outer clothing because, considering the area in which the stop was made, the officer wanted to take precautions for his own safety. He placed Johnson in the back seat of the squad while Officer Judge ran a records check.

Because the car was going to be towed, Officer Bohn did an inventory search of it. In doing so, he followed the policy of the St. Paul police department, which directs officers to search impounded vehicles. The policy does not specify the areas permissible or impermissible for searching but does provide that containers may be opened and indicates that "the impoundment must be lawful and not a subterfuge to search a vehicle where other grounds to search are lacking."

During his search of the interior of the driver's area of the car, Officer Bohn noticed that there was a loose cassette-player panel that was missing screws, appeared to be propped up by the ashtray, and "gave the general appearance of having been removed." When Officer Bohn later testified, he stated that, in his experience as a police officer, he has found valuables and contraband hidden behind panels and compartments "countless times." When he removed the panel with his fingers, without tools and without dismantling any part of it, he found a white sock into which a firearm had been stuffed.

Officer Bohn arrested Johnson, who admitted that he was a convicted felon, and the state charged him with possession of a firearm by an ineligible person in violation of Minn. Stat. § 624.713, subd. 1(b) (2004).

Johnson moved to suppress evidence of the firearm, but the district court denied his motion. He then agreed to present the matter to the court under a *Lothenbach* proceeding, after which the court found him guilty. The court denied Johnson's motion for a downward dispositional departure from the sentencing guidelines and imposed an executed sentence of 60 months. This appeal followed.

On appeal, Johnson contends that the district court erred by ruling that Officer Bohn's removal of the cassette panel was a legitimate part of the scope of the unchallenged inventory search.

D E C I S I O N

I.

Johnson contends that the district court erred when it denied his motion to suppress evidence of the firearm found in the inventory search of his vehicle. "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). The legality of a limited investigatory search and reasonable suspicion are questions of law, which we review de novo. *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003). In such a review, we examine the district court's findings of fact for clear error and give due weight to inferences drawn from those facts by the district court. *State v. Lee*, 585 N.W.2d 378, 383 (Minn. 1998). This court also defers to the district court's assessment of witness credibility. *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *review denied* (Minn. July 15, 2003).

Subject to exceptions, warrantless searches and seizures are unreasonable and prohibited by both the United States and Minnesota constitutions. U.S. Const. amend. IV; Minn. Const. art. I, § 10; *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999). An inventory search is a well-established exception to the warrant requirement. *South*

Dakota v. Opperman, 428 U.S. 364, 371, 96 S. Ct. 3092, 3098 (1976); *City of St. Paul v. Myles*, 298 Minn. 298, 300, 218 N.W.2d 697, 699 (1974).

The state has the burden of showing the applicability of an exception to the warrant requirement. *See State v. Fitzgerald*, 562 N.W.2d 288, 288 (Minn. 1997) (finding that the state bears the burden of establishing the existence of an emergency justifying a warrantless entry under the emergency exception to the warrant requirement). But an inventory search requires neither a warrant nor probable cause. *Illinois v. Lafayette*, 462 U.S. 640, 643-44, 103 S. Ct. 2605, 2608 (1983). Under the inventory exception, police are permitted to search a vehicle if the officers: (1) follow standard procedures in performing the search; and (2) perform the search, at least in part, for the purpose of obtaining an inventory of property in the vehicle and not solely to investigate. *State v. Holmes*, 569 N.W.2d 181, 188 (Minn. 1997). The courts have deemed "such searches to be reasonable because police are performing administrative or caretaking functions designed to serve two distinct interests: the protection of the owner's property inside the vehicle, and the protection of the police from claims that they lost or damaged property within their control." *Id.* at 186.

Johnson asserts that Officer Bohn's search of his car, taken in context with the officer's pat-down search, exceeded the legal scope of an inventory search and that the district court erred in concluding otherwise.

Officer Bohn testified that he was familiar with the St. Paul police department's written policy regarding inventory searches of vehicles and that he had received training in inventory searches. It is standard policy of a St. Paul police officer to take a detailed

inventory of the contents of a car before it is impounded; but as the officer stated, the policy only addresses searching in containers and does not specify where an officer may look for property. Officer Bohn testified that he has found contraband, weapons, narcotics, valuables, and other items hidden in panels, compartments, and air vents in vehicles "countless times." The purpose of the policy, he stated, was to search "for anything that could be hazardous to us, the tow truck driver, the impound personnel at the lot; also, anything of value that needs to be recorded [or taken] by us and inventoried in our headquarters for safekeeping." His testimony, ostensibly found reliable by the district court, demonstrates that he performed the search under standard procedures commonly followed by St. Paul police officers in conducting vehicle inventory searches. *See id.* at 188 (stating an officer must first perform any inventory search per standard procedure); *see also Miller*, 659 N.W.2d at 279 (noting that the appellate court must defer to the district court's assessment of witness credibility). Johnson does not challenge the district court's credibility determinations. Furthermore, because Officer Bohn testified that the purpose of the inventory search was to find valuables as well as hazardous items, it was reasonable for Officer Bohn to conclude that some such items might likely be hidden behind the loose cassette player.

As to the second prong of a valid inventory search, namely that it be conducted at least in part for the purpose of making an inventory, the district court found that there were valid inventory-search factors present. *See Holmes*, 569 N.W.2d at 188 (stating an officer may not search a car under the inventory exception solely for investigatory purposes). The court found that, as long as the car was to be towed, this search was an

inventory done as required by policy to account for items in the car. It did not find evidence in the record from which to infer that the search was a pretext for an investigation for contraband. In *State v. Ture*, the Minnesota Supreme Court stated that "an inventory search need only be conducted *in part* for the purpose of obtaining an inventory" when it upheld, based on the officer's testimony, the propriety of the officer's inventory search of a car which turned up evidence used at appellant's trial. 632 N.W.2d 621, 629 (Minn. 2001). The court in *Ture* found that "given [the officer's] undisputed testimony that it was standard procedure to perform inventory searches of impounded cars, there is no basis for concluding that the purported investigatory motive was the sole purpose behind the inventory." *Id.* Similarly, Officer Bohn testified that the standard procedure of St. Paul officers is to conduct an inventory search before a car was impounded. There is no evidence to the contrary contained in the record.

Appellant relies principally on the unpublished case in *State v. Huber*, No. A06-1408, 2007 WL 48884 (Minn. App. Jan. 9, 2007), which he contends is directly analogous. At the outset, we note that "[u]npublished opinions of the Court of Appeals are not precedential." Minn. Stat. § 480A.08, subd. 3 (2006). In *Huber*, this court affirmed a district court's order to suppress evidence uncovered in a vehicle by police officers conducting an inventory search. 2007 WL 48884, at *1. In determining that the search was not a valid inventory search, this court found that the policy did not allow an officer to search behind a stereo speaker, which is where the contraband was eventually found. *Id.* at *4. This court stated that, according to the policy in place, "An officer is permitted to search the passenger compartment; the glove compartment; the trunk; and

any containers, such as boxes or suitcases, unless locked, found in the vehicle. The policy does not permit an officer to search behind a speaker that is slightly detached." *Id.* In *Huber*, a stereo speaker was slightly detached and was on the driver's side doorway; arguably not a likely area to be used as a container. *Id.* at *1. In fact, we noted, "It is not reasonable to believe that an officer would expect to find the same type of personal belongings behind a loose speaker that would be found in a glove compartment, trunk, box or suitcase." *Id.* at *4.

In contrast to *Huber*, it was reasonable for Officer Bohn to expect to find something relevant to the inventory search behind this loose panel, which the state accurately characterized as a "homemade glove compartment." We also find instructive the definition of "container" set forth in *New York v. Belton*, which the Supreme Court characterized as "any object capable of holding another object." 453 U.S. 454, 461 n.4, 101 S. Ct. 2860, 2864 n.4 (1981). The definition "include[d] closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like." *Id.* This definition fairly encompasses a "homemade glove compartment."

Although there can be many "compartments" within the interior of a motor vehicle, at least some of them are reachable only by the mechanical removal of a cover or some other dismantling procedure. Our holding is not intended to reach searches of those types of containers but rather is confined to the unique facts of this case. To a trained police officer, this loose and readily removable panel appeared likely to be concealing something within the domain of a proper and necessary inventory search. The scope of

this search did not exceed that which was proper, and the district court properly denied Johnson's motion to suppress the firearm.

II.

Johnson raises additional arguments in his pro se supplemental brief. He argues that the police did not have a valid reason for stopping his vehicle and instead stopped him because of racial profiling. Johnson suggests that the police stopped him only because his vehicle had flashy 20-inch rims and that the two white officers were profiling him because of his race and his proximity to the VFW hall. But the district court found that a city ordinance disallows music that is audible from 50 feet away from any motor vehicle. Johnson concedes that he violated the ordinance when he stated in his supplemental brief that he "did admit to the stereo being loud." The threshold for justifying an investigatory stop is quite low. *State v. Claussen*, 353 N.W.2d 688, 690 (Minn. App. 1984). A vehicle may be stopped if an officer has a suspicion that an ordinance has been violated. *See Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732-33 (Minn. 1985) (upholding stop where officer observed facts justifying inference that driver ran stop sign). The facts of the stop, which include Johnson's admission that he violated the law, demonstrate unquestionably that the stop was made for a legitimate reason.

Johnson also contends that officers failed to issue him a citation for the traffic misdemeanor because they could not have known he was speeding as they did not have a radar reading. However, Minnesota courts have upheld stops based on observed estimations of speed. In *Sazenski v. Comm'r of Pub. Safety*, the court of appeals

concluded that an officer's visual estimation of speed "amply supports the trial court's determination that the stop was proper." 368 N.W.2d 408, 409 (Minn. App. 1985). Officer Bohn's estimation of speed was simply an additional reason to stop Johnson's car, and the officer decided not to issue a citation because the officer arrested Johnson for a suspected felony. Furthermore, we are aware of no rule that requires an officer to cite a driver after a proper traffic stop has been made.

Johnson finally suggests that he received ineffective assistance of counsel at trial. He makes this claim because his counsel did not challenge the basis for the stop. But his claim lacks merit because he admitted his music was too loud, which confirmed the officers' suspicion of his violation of a city ordinance. The claimant bears the burden of proof when bringing an ineffective-assistance-of-counsel claim. *State v. Miller*, 666 N.W.2d 703, 716 (Minn. 2003). Ordinarily the claimant "must demonstrate that counsel's representation fell below an objective standard of reasonableness, and that a reasonable probability exists that the outcome would have been different but for counsel's errors." *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998). Johnson has not shown that his counsel acted in an objectively unreasonable manner, nor has he shown what prejudice he suffered because of his counsel's actions.

Affirmed.