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STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2113

State of Minnesota,
Respondent,

vs.

Cheryl A. Bettin,
Appellant.

Filed January 20, 2009
Affirmed
Klaphake, Judge

Hennepin County District Court
File No. CR-07-33121

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

Michael O. Freeman, Hennepin County Attorney, J. Michael Richardson, Assistant County Attorney, C-2000 Government Center, 300 S. 6th Street, Minneapolis, MN 55487 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Theodora K. Gaitas, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104; and

Michael E. Keyes, Michael Gravink, Oppenheimer, Wolff & Donnelly, 45-7th Street South, Suite 3300, Minneapolis, MN 55402 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Lansing, Judge; and Huspeni, 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

KLAPHAKE, Judge

Appellant Cheryl A. Bettin challenges her conviction for fifth-degree possession of a controlled substance, Minn. Stat. § 152.025, subds. 2(1), 3(a) (2006), arguing that the district court erred by refusing to suppress evidence discovered during a warrantless search and seizure that followed an investigatory stop.

Because (1) police had an objective basis for stopping the automobile in which appellant was a passenger; (2) the search of the automobile in which appellant was a passenger was lawful either as a search incident to arrest or as an inventory search; and (3) no evidence was obtained as a result of appellant's seizure; we affirm.

D E C I S I O N

In an appeal of a pretrial order on a motion to suppress, we independently review the facts and determine as a matter of law whether the district court erred in its order. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). This court accepts the district court's factual findings unless the findings are clearly erroneous. *State v. Williams*, 535 N.W.2d 277, 286 (Minn. 1995). "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made. If there is reasonable evidence to support the trial court's findings of fact, a reviewing court should not disturb those findings." *State v. Gomez*, 721 N.W.2d 871, 883 (Minn. 2006) (quotations omitted).

Validity of the Stop

Appellant contends that the district court's conclusion that the stop of the car was valid was based on clearly erroneous factual findings. A review of the record reveals that Minneapolis police officers Carlson and Judkins were driving in the right lane of two traffic lanes when the driver of the car, Steven Johnson, swerved suddenly from the left lane into the right lane without signaling. Both officers testified that Judkins had to brake sharply to avoid impact. Judkins testified that Johnson repeated this action as the two cars pulled away from a stoplight and that Johnson then spontaneously pulled his car to the curb, prompting the officers to investigate. An officer has an objective basis for stopping a vehicle if the officer observes a traffic law violation, even an insignificant one. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). Here, the officers' observation of a minor traffic violation provided a basis for a brief investigatory stop.

Automobile Search

Police may search the passenger compartment of a vehicle when the occupant has been lawfully arrested. *State v. Ture*, 632 N.W.2d 621, 628 (Minn. 2001); *see New York v. Belton*, 453 U.S. 454, 460, 101 S. Ct. 2860, 2864 (1981) (establishing "bright line rule" permitting contemporaneous search of vehicle incident to lawful arrest). The rationale for permitting an automobile search incident to arrest is not only to preserve evidence but also to remove potential weapons. *Ture*, 632 N.W.2d at 628.

Here, the officers discovered that the driver, Johnson, had no valid license and had an outstanding arrest warrant; there is no question that Johnson's arrest was lawful. A search incident to arrest can take place after the suspect is arrested and removed from the

car. *See id*. at 625 (approving search conducted after suspect arrested and placed in squad car). The district court did not err by concluding that this was a valid search incident to arrest.

Equally, police may make an inventory search of a vehicle if (1) they are following standard procedures, and (2) the search is performed at least in part for the purpose of obtaining an inventory and not for the sole purpose of investigation. *Id.* at 628. An inventory search is permissible because it is considered to have an administrative or caretaking function of protecting the property of a driver whose vehicle has been impounded, while shielding the police from claims that property was lost or destroyed. *State v. Volkman*, 675 N.W.2d 337, 342 (Minn. App. 2004).

At the moment of the search, the driver of the car, Johnson, was lawfully under arrest and the passenger, appellant, did not have a valid driver's license. The officers initiated procedures for towing the car in accordance with departmental policy. The state submitted excerpts from the department manual that set forth that policy: officers must impound a vehicle if the driver is booked and there is no valid driver to whom the vehicle can be released, and officers must inventory and safely store personal property found in vehicles.

Appellant contends that this was not a valid inventory search because the owner of the car appeared before the officers completed the towing paperwork. This does not affect the validity of the inventory search, which occurred before the owner arrived at the scene.

Seizure of Appellant

Appellant contends that she was unlawfully seized, arguing that she was not free to leave the scene because the officers retained her identification and separated her from her purse. The district court concluded that appellant was seized but that the seizure was reasonable under the circumstances.

For purposes of the Fourth Amendment, a seizure occurs when a person is detained during even a brief investigatory traffic stop. *State v. Johnson*, 645 N.W.2d 505, 508 (Minn. App. 2002). Such a stop is permissible if reasonable under the circumstances. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004). Reasonableness is determined by the totality of the circumstances. *State v. Burbach*, 706 N.W.2d 484, 488 (Minn. 2005).

Police may ask for identification during the course of an investigative stop. *State v. White*, 489 N.W.2d 792, 793 (Minn. 1992). Here, police asked for appellant's driver's license because they hoped to release the car to her. *See Johnson*, 645 N.W.2d at 508 (concluding police had right to ask for passenger's identification to determine if driver with a learner's permit was accompanied by person over 18 with a valid license).

After learning that appellant's license was canceled, the officers concluded that the car would have to be towed and asked appellant to step out of the car so they could search it. Appellant asserts that the officers retained her identification and her purse, so that she did not feel that she was free to leave and was therefore unlawfully seized. *See id.* at 510. We agree. But unlike *Johnson*, no evidence was recovered as a result of this seizure. The drug evidence here was recovered as the result of a lawful search of the car, independent of appellant's seizure. Once methamphetamine was discovered underneath

the passenger seat where appellant was sitting, the officers had an independent basis to place appellant under arrest. The incriminating statements appellant made to Johnson while seated in the squad car were obtained after this lawful arrest.

Because the stop and search of the car were lawful and because appellant's detention did not lead to discovery of evidence, we conclude that the district court did not err by refusing to suppress the evidence.

Affirmed.