STATE OF MINNESOTA
IN COURT OF APPEALS
A11-13

State of Minnesota,
Respondent,

vs.

Sin Santo Bad,
Appellant.

Filed January 17, 2011
Affirmed
Peterson, Judge

Sherburne County District Court
File No. 71-CR-09-1655

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Kathleen A. Heaney, Sherburne County Attorney, Timothy A. Sime, Assistant County Attorney, Elk River, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Theodora K. Gaitas, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

Appellant argues that his first-degree-burglary conviction must be reversed because his apprehension and all of the evidence flowing from his apprehension were the

result of a search performed by using a hidden GPS tracking device that law-enforcement officers placed on appellant's employer's truck without first obtaining a warrant. We affirm.

FACTS

Appellant Sin Santo Bad worked full time for a potato-processing company in Sherburne County. Appellant's job duties included using a pick-up truck to pick up supplies and to haul away scrap metal and garbage. The title for the truck was in the name of the company and one of two owners of the company, and the truck was insured by the company. Two sets of keys for the truck were kept in the company office. Appellant was not issued a set of keys for the truck, he did not store any personal property in the truck, and he did not use the truck for personal errands, although a company owner testified that he would have allowed appellant to use the truck for personal errands if appellant had asked.

Appellant's personal vehicle had personalized license plates that said "BAD SIN." In 2009, appellant became a suspect in several residential burglaries in Sherburne County after a witness reported seeing a suspicious vehicle with the license plate "BAD SIN." Sherburne County sheriff's deputies requested and received permission from one of the company's owners and from the company's office manager to place a GPS tracking device on the company pick-up truck to monitor the truck's movements. The device allowed officers to monitor the truck's location and movements but did not transmit conversations from inside the truck or show the truck's contents.

A sheriff's deputy received a call from the office manager stating that appellant would be using the truck for work-related business that day. Officers drove a sheriff's vehicle to the company's location and watched appellant get into the truck with one of the owners and drive away. The officers followed the truck and maintained sight of appellant while appellant dropped the owner off at his home and brought garbage to a landfill. The officers continued to follow the truck when it left the landfill and traveled down a highway. When the truck entered a residential neighborhood, the officers stopped following it and used the GPS device to monitor the truck's movements. The truck pulled into a residential driveway and stayed there for about one minute. The truck then traveled a short distance down the road and pulled into a second driveway where it stayed for about one minute.

The truck pulled into a third driveway and stayed there without moving for about two minutes. Two officers conducting visual surveillance drove past the driveway and saw the unoccupied truck parked there. The officer monitoring the GPS told the other officers that the truck had moved a short distance but that it was believed to still be in the same driveway. The officers conducting visual surveillance approached the residence and saw the truck parked in a place that was not visible from the road.

The officers entered the residence and found appellant inside. Appellant was standing near an open safe and had $4,300 in cash in his pants pocket. Several pieces of jewelry were lying on the floor nearby. The officers saw minor damage to a lock mechanism on a sliding glass door, which indicated a possible forced entry. Several

firearms were lying on a sheet near the sliding glass door. The upstairs bedrooms were very messy, and drawers and closets appeared to have been rifled through.

The homeowner did not know appellant and had not given appellant permission to enter the residence or take any property. The homeowner stated that about $4,500 in cash, some jewelry, and a pistol had been removed from the safe and that guns had been moved from upstairs in the house to the patio door.

Appellant was arrested and charged with one count of first-degree burglary. He moved to suppress the state's evidence, arguing that the use of the GPS device was an illegal search, and to dismiss the charge against him for lack of probable cause. The district court denied the motion. The parties submitted the case to the district court for decision on stipulated facts, and the district court found appellant guilty as charged and sentenced him to an executed term of 132 months in prison. This appeal followed.

D E C I S I O N

I.

"When reviewing pretrial orders on motions to suppress evidence, we independently review the facts to determine whether, as a matter of law, the [district] court erred in its ruling." *State v. Jackson*, 742 N.W.2d 163, 168 (Minn. 2007).

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. To determine whether the constitutional prohibition against unreasonable searches and seizures has been violated, this court examines the specific police conduct at issue. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). "The Minnesota Constitution protects

citizens against unreasonable government intrusions upon areas where there is a legitimate expectation of privacy." *State v. Davis*, 732 N.W.2d 173, 178 (Minn. 2007). The defendant has the burden of showing that the police intruded on an area in which he had a legitimate expectation of privacy. *Id.*

Appellant argues that because he had a legitimate expectation of privacy while in the truck, surreptitiously tracking the truck using the GPS tracking device is a search under the Minnesota Constitution that required a warrant. Minnesota's appellate courts have not addressed whether using a GPS device is a search under the Fourth Amendment to the United States Constitution or under Article I, Section 10, of the Minnesota Constitution. But we need not decide this issue in this case because, before attaching the GPS device to the truck, law-enforcement officers obtained the consent of the truck's owner.

A valid consent to search is a well-established exception to the warrant requirement under the United States and Minnesota Constitutions. *State v. Thompson*, 578 N.W.2d 734, 740 (Minn. 1998). A third party has actual authority to consent to a search if that person has "common authority over or other sufficient relationship to the premises or effects sought to be inspected." *United States v. Matlock*, 415 U.S. 164, 171, 94 S. Ct. 988, 993 (1974). This principle of common authority rests on mutual use of the property by persons who, for most purposes, have joint access or control. *Id.* at 171 n.7, 94 S. Ct. at 993 n.7. Although *Matlock* involves a search of a home, its principles apply equally to the search of a vehicle. *State v. Frank*, 650 N.W.2d 213, 217 (Minn. App. 2002).

The company owner and the office manager consented to police installing the GPS device on the truck. The truck was titled in the name of the company and one of the company's owners, the company maintained control over the truck, and appellant used the truck only for work and did not have his own set of keys for the truck. The only information that police obtained from the GPS device was the truck's location. Under these circumstances, the company owner and the office manager had authority to consent to placing the GPS device on the truck. Because the officers obtained their consent before placing the GPS device on the truck, no warrant was required, even if using the GPS device was a search. The district court did not err in denying appellant's pre-trial motion to suppress evidence.

II.

The burglary statute states:

> Whoever enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building, either directly or as an accomplice, commits burglary in the first degree . . . if: . . .
>
> (b) the burglar possesses, when entering or at any time while in the building, any of the following: a dangerous weapon, any article used or fashioned in a manner to lead the *victim* to reasonably believe it to be a dangerous weapon, or an explosive.

Minn. Stat. § 609.582, subd. 1 (2008) (emphasis added).

Citing the word "victim" in the burglary statute, appellant argues in his pro se brief that the "statutory requirement of possession of a dangerous weapon should

be construed strictly to require that the offender have immediate and ready access to a person or victim." This argument is contrary to the statute's plain language, which requires only that the burglar possess any one of three different items "at any time while in the building." The statute is violated if the burglar possesses (1) a dangerous weapon, (2) any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or (3) an explosive.

When used in the burglary statute,

> "[d]angerous weapon" means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm.

Minn. Stat. § 609.02, subd. 6 (2008). The firearms that appellant obtained and possessed while in the victim's home are within the definition of dangerous weapon. Therefore, appellant violated the statute by possessing a dangerous weapon.

Affirmed.