STATE OF MINNESOTA
IN COURT OF APPEALS
A11-141

State of Minnesota,
Respondent,

vs.

Antoine Jones,
Appellant.

Filed August 8, 2011
Affirmed
Shumaker, Judge

Stearns County District Court
File No. 73-CR-10-6229

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

Jenny Chaplinski, Special Assistant State Public Defender, St. Cloud, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Shumaker, Judge; and Wright, Judge.

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

SHUMAKER, Judge

On appeal from his convictions of fifth-degree controlled-substance crime, possession of a dangerous weapon (metal knuckles), possession of drug paraphernalia,

and obstruction of legal process, appellant argues that the two searches of his person were illegal. Because appellant voluntarily consented to the first search and because the second search was proper as the result of a legal arrest, we affirm.

FACTS

While on patrol in St. Cloud on July 19, 2010, investigators Lucas Dingmann and Ryan Broich noticed a speeding car and began to follow it. Investigator Dingmann also saw an object hanging from the car's rearview mirror. The investigators made a traffic stop.

Investigators Dingmann and Broich approached the vehicle and observed appellant Antoine Jones, who was visibly upset, in the driver's seat, and two children in the back seat. When informed that the reason for the traffic stop was the object hanging in the rearview mirror, appellant yanked the object—an air freshener—from the mirror and threw it out the passenger-side window, nearly hitting Investigator Broich.

Investigator Dingmann, concerned for officer safety because of appellant's aggressive behavior, decided to continue the traffic stop at the back of the car. He asked appellant to step out of the car. Once outside the car, appellant yelled at the officers and continued to put his hands in his pockets after repeatedly being told to leave them out. Thinking that appellant was putting his hands in his pockets because he had a weapon, Investigator Dingmann placed appellant in handcuffs. Appellant then stated that the reason he had his hands in his pockets was that he was going to empty them for the officers.

Investigator Dingmann noticed a cylindrical bulge in appellant's pocket and, concerned it might be a weapon, performed a pat-down search on the outside of appellant's clothing. Investigator Dingmann determined that the bulge was a pill bottle. By this time, appellant had calmed down. After removing the handcuffs, Investigator Dingmann asked appellant to empty his pockets, and appellant complied. In his pockets were a pill bottle with no label, containing 15 pills stamped with "Watson 349" (later determined to be hydrocodone/acetaminophen, a schedule III narcotic); small knives; and glass pipes, which the investigators recognized as devices used to smoke illegal drugs.

While emptying his pockets, appellant again became hostile and tried to destroy the glass pipes by stomping on them. Again concerned for officer safety and attempting to save the evidence from being destroyed, Investigator Dingmann decided to handcuff appellant. A struggle ensued, with the officers eventually taking appellant to the ground and handcuffing him. Appellant was arrested for obstructing legal process and he was searched. The search yielded metal knuckles and one pill, stamped with "M357" (later determined to be hydrocodone/acetaminophen, a schedule III narcotic).

Appellant was charged with two counts of fifth-degree controlled-substance crime; possession of a dangerous weapon (metal knuckles); possession of drug paraphernalia; and obstruction of legal process. He moved to suppress evidence as the result of an allegedly illegal search in violation of Article I, Section 10, of the Minnesota Constitution, and to dismiss the two counts of controlled-substance crime for lack of probable cause. The district court denied both motions.

Appellant waived his right to a jury trial and agreed to a judicial determination of the case based on stipulation to the prosecution's case in order to obtain review of the district court's pretrial ruling. *See* Minn. R. Crim. P. 26.01, subd. 4. The district court found appellant guilty on all counts. He now appeals the district court's denial of his motion to suppress.

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). But "the [district] court's factual findings are subject to a clearly erroneous standard of review." *State v. Critt*, 554 N.W.2d 93, 95 (Minn. App. 1996), *review denied* (Minn. Nov. 20, 1996).

There were two searches here: (1) the emptying of appellant's pockets; and (2) the search of his person incident to his arrest.

The First Search

"The right of the people to be secure . . . against unreasonable searches and seizures shall not be violated." U.S. Const. amend. IV; Minn. Const. art. I, § 10. Warrantless searches are per se unreasonable, with limited exceptions. *State v. Othoudt*, 482 N.W.2d 218, 221-22 (Minn. 1992). One such exception is a search conducted with consent, in which case "neither probable cause nor a warrant is required." *State v. Pilot*, 595 N.W.2d 511, 519 (Minn. 1999). The state bears the burden of proving by a preponderance of the evidence that consent was freely and voluntarily given. *State v.*

Diede, 795 N.W.2d 836, 846 (Minn. 2011). Voluntariness of consent to search is a question of fact, so we review the district court's finding concerning this issue under a clearly erroneous standard. *State v. Dezso*, 512 N.W.2d 877, 880 (Minn. 1994); *Critt*, 554 N.W.2d at 95. "Findings of fact are clearly erroneous if, on the entire evidence, [the appellate court is] left with the definite and firm conviction that a mistake occurred." *Diede*, 795 N.W.2d at 846-47.

The district court held on reconsideration that appellant voluntarily consented to the first search. Voluntariness of consent is shown by looking at "the totality of the circumstances, including the nature of the encounter, the kind of person the defendant is, and what was said and how it was said." *Dezso*, 512 N.W.2d at 880. The question is "whether a reasonable person would have felt free to decline the officer[']s requests or otherwise terminate the encounter." *Id.* (alteration in original) (quotation omitted).

There is sufficient evidence to support the district court's finding that the first search was voluntary. Appellant offered to remove the items from his pockets before the investigator asked him to do so, and later he acquiesced to the investigator's request to empty his pockets. In addition, appellant acquiesced to the request to empty his pockets after being asked only once, and he did not refuse at any time. *See Diede*, 795 N.W.2d at 847-48 (concluding that defendant did not voluntarily consent to a search when she initially refused to consent but acquiesced after officers made multiple requests). Furthermore, appellant was no longer in handcuffs when he was asked to empty his pockets.

Although appellant was not informed that he had a right to decline the request to empty his pockets, that knowledge is not a prerequisite to voluntary consent. *See Dezso*, 512 N.W.2d at 881 ("[T]he Fourth Amendment does not require for a voluntary search that the defendant know or be told that he has a right to refuse.").

Nor is the fact that the police were armed and had previously handcuffed appellant enough to show that his consent was not voluntary. *See id.* at 880 ("[I]nvoluntariness of a consent to a police request is not to be inferred simply because the circumstances of the encounter are uncomfortable for the person being questioned."); *Harris*, 590 N.W.2d at 104 (stating that "[c]onsent is not involuntary merely because the person giving the consent has been seized"). Officers may conduct a pat-down search if they have a reasonable suspicion that a person presents a danger to them. *Harris*, 590 N.W.2d at 104. They may also briefly handcuff a person without it turning into an arrest. *See State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999). Here, appellant's aggressive behavior and his refusal to refrain from putting his hands in his pockets after the investigators repeatedly told him not to do so made the investigators concerned for their own safety, providing justification for handcuffing and pat-searching appellant.

Viewing the totality of the circumstances, the record supports the district court's finding that appellant voluntarily consented to the search of his pockets. Therefore, the district court's determination that appellant consented to the first search was not clearly erroneous, and the court did not err in denying the motion to suppress the contraband found during the first search.

The Second Search

The second search took place after appellant physically struggled with police officers and was arrested for obstructing legal process. If an arrest is valid, police may conduct a warrantless search of the arrestee's person without any additional justification. *State v. Walker*, 584 N.W.2d 763, 766 (Minn. 1998). Appellant does not dispute the validity of his arrest for obstruction of legal process. Because the second search was valid as a search incident to appellant's legal arrest, the single pill and the metal knuckles found on appellant's person during the second search were also lawfully seized, and the district court did not err in denying the motion to suppress the evidence.

Affirmed.