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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-737**

State of Minnesota,
Respondent,

vs.

John Manuel Hines,
Appellant.

**Filed April 23, 2012
Affirmed
Randall, Judge***

Nicollet County District Court
File No. 52-CR-10-221

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

Michelle Zehnder Fischer, Nicollet County Attorney, James P. Dunn, Chief Deputy
County Attorney, St. Peter, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jessica Benson Merz Godes,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Johnson, Chief Judge; and
Randall, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

RANDALL, Judge

On appeal from his convictions arising from the possession of counterfeit checks and check forgery, appellant argues that the district court erred by (1) denying his motion to suppress evidence obtained from a vehicle inventory search, and (2) admitting in evidence the hearsay statements of an unidentified bank employee. We affirm.

FACTS

On August 31, 2010, Minnesota State Patrol Trooper Paul Dunkel stopped a vehicle for speeding on Highway 14 in Nicollet County. Dunkel identified the vehicle's driver as appellant John Manuel Hines, and the vehicle's passenger identified herself as J.E. Dunkel learned that appellant's driver's license had expired, the vehicle had been leased to a third party, the lease had expired, and the lease agreement prohibited the vehicle from leaving the state of Texas. Dunkel contacted the leasing agency, and a representative of the leasing agency advised him to impound the vehicle. Appellant also advised Dunkel that he possessed \$9,000 in cash, leading Dunkel to suspect that appellant may have been involved in trafficking controlled substances.

As a result of an inventory search of the vehicle that followed, police recovered blank and partially completed uncut personal checks bearing the name "Chris Baley." Trooper Dunkel suspected that the personal checks were fraudulent and obtained a search warrant for the vehicle, which led police to recover additional uncut personal checks. Police arrested appellant and J.E. and obtained a statement from J.E., who admitted that the "Chris Baley" checks were counterfeit. J.E. also advised police that appellant hid a

falsified identification card in the interior lining of the vehicle they had been using. Based on this information, police recovered a Louisiana driver's license bearing appellant's picture and identifying him as "Chris Baley."

Appellant was charged with possession or sale of a stolen or counterfeit check, a violation of Minn. Stat. § 609.528, subd. 2 (2010); check forgery, a violation of Minn. Stat. § 609.631, subd. 3 (2010); conspiracy to commit possession or sale of a stolen or counterfeit check, a violation of Minn. Stat. §§ 609.175, subd. 2(3), .528, subd. 2 (2010); conspiracy to commit check forgery, a violation of Minn. Stat. §§ 609.175, subd. 2(3), .631, subd. 3 (2010); and possession of a fictitious driver's license, a violation of Minn. Stat. § 171.22, subd. 1(1) (2010). Appellant moved to suppress evidence obtained during the inventory search of the vehicle, arguing that it was unconstitutionally conducted solely in furtherance of an investigation. After a contested omnibus hearing, the district court found that the inventory search was proper and denied appellant's motion.

A jury trial followed, and the jury found appellant not guilty of possessing a fictitious driver's license and guilty of all other counts. The district court subsequently sentenced appellant to 17 months' imprisonment, stayed the sentence, and placed appellant on probation. This appeal followed.

DECISION

I.

Appellant challenges the district court's denial of his motion to suppress evidence found in the vehicle. "When reviewing pretrial orders on motions to suppress evidence, [an appellate court] 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). We review the district court’s factual findings for clear error, *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007), and defer to the trier of fact on credibility assessments. *State v. Doren*, 654 N.W.2d 137, 141 (Minn. App. 2002), *review denied* (Minn. Feb. 26, 2003).

Appellant argues that police conducted the inventory search of the vehicle based on an improper impoundment of the vehicle. The United States and Minnesota constitutions prohibit “unreasonable” searches and seizures. U.S. Const. amend. IV; Minn. Const. art I, § 10. A warrantless search is per se unreasonable and therefore unconstitutional. *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999). But certain exceptions permit warrantless searches. *Geer v. State*, 406 N.W.2d 34, 35 (Minn. App. 1987), *review denied* (Minn. July 15, 1987). An inventory search of an impounded vehicle is an exception to the warrant requirement and does not require probable cause. *State v. Holmes*, 569 N.W.2d 181, 186 (Minn. 1997). Inventories conducted prior to a vehicle’s impoundment have been found to be justified as necessary to protect the owner’s property, to insure against claims of loss, and to guard the police from potential danger. *Colorado v. Bertine*, 479 U.S. 367, 372, 107 S. Ct. 738, 741 (1987).

In determining whether an inventory search is reasonable, the threshold inquiry involves the propriety of impounding the vehicle because the act of impoundment gives rise to the need for and justification of the inventory search. *State v. Goodrich*, 256 N.W.2d 506, 510 (Minn. 1977). “The state’s interest in impounding must outweigh the individual’s Fourth Amendment right to be free of unreasonable searches and seizures.”

Id. If the impoundment is not necessary, then the search is unreasonable. *Id.* “The police will generally be able to justify an inventory when it becomes essential for them to take custody of and responsibility for a vehicle due to the incapacity or absence of the owner, driver, or any responsible passenger.” *City of St. Paul v. Myles*, 298 Minn. 298, 304, 218 N.W.2d 697, 701 (1974). But an impoundment is unreasonable if police assume custody of the vehicle “for no legitimate state purpose other than safekeeping, and where defendant had arranged for alternative means, not shown to be unreasonable, for the safeguarding of his property.” *Goodrich*, 256 N.W.2d at 507; *see also State v. Gauster*, 752 N.W.2d 496, 507-08 (Minn. 2008) (concluding that specific arrangements for removing vehicle are unnecessary if driver is not arrested and thus is *available* to make proper arrangements, even if driver cannot lawfully drive the vehicle).

Appellant relies on *Goodrich* and *Gauster*, arguing that he “was *available to and specifically requested* to make arrangements” for towing the vehicle to the leasing agency. But in both *Gauster* and *Goodrich*, there was evidence that the defendant was the vehicle’s owner. *Gauster*, 752 N.W.2d at 499; *Goodrich*, 256 N.W.2d at 508. The defendant in *Gauster* advised police that he owned the vehicle—a fact that does not appear to have been disputed on appeal. *Gauster*, 752 N.W.2d at 499. In *Goodrich*, although the defendant had recently purchased the vehicle and had not yet registered it, the Minnesota Supreme Court rejected the state’s argument that the lack of registration justified impounding the vehicle because the record did not demonstrate that the officer believed the vehicle was stolen. *Goodrich*, 256 N.W.2d at 511.

By contrast, in the instant case Trooper Dunkel knew that appellant was neither the owner nor the lessee of the vehicle. Appellant provided Trooper Dunkel with the lease agreement, which indicates that neither of the vehicle's occupants was the lessee, only the lessee was authorized to drive the vehicle, the vehicle was not to leave the state of Texas, and *the lease had expired four or five days earlier*. Based on this information, Trooper Dunkel contacted the leasing agency, and a representative of the leasing agency directed him to impound the vehicle and remove the occupants "onsite." Trooper Dunkel testified that, because neither appellant nor J.E. were the owner or lessee of the vehicle, he conducted an inventory search to separate appellant's, J.E.'s, and the leasing agency's valuables and properly document them. The record also establishes that Trooper Dunkel's actions conformed to the Minnesota State Patrol's policy regarding inventory searches of impounded vehicles. This record adequately supports the impoundment and subsequent inventory search of the vehicle.

Appellant also contends that the inventory search was a pretext to search the vehicle and confirm Trooper Dunkel's suspicion of controlled-substance activity. "To be invalid, the investigatory motive must be the *sole* purpose behind the search, meaning that the search would not have occurred but for the investigatory motive." *State v. Ture*, 632 N.W.2d 621, 629 (Minn. 2001). Here, the record establishes that Trooper Dunkel had an adequate basis to impound the vehicle and articulated a basis for conducting an inventory search unrelated to his suspicion of criminal activity; namely, the need to separate valuables belonging to appellant, J.E., and the leasing agency for the purposes of safekeeping, proper documentation, and the return of those valuables to their rightful

owners. Thus, an investigatory motive was not the sole purpose behind Trooper Dunkel's inventory search.

The district court did not err by denying appellant's motion to suppress evidence. Appellant is not entitled to relief on this ground.

II.

Appellant also argues that his Confrontation Clause rights were violated when the district court admitted in evidence hearsay statements of an unidentified bank employee through the testimony of Nicollet County Sheriff's Investigator Marc Chadderdon. Specifically, Investigator Chadderdon testified that an employee of a bank listed on some of the "Chris Baley" checks told him that he could not find a valid account held by a Chris Baley, no relevant account number or name appeared in the bank's records, and he believed that the checks were counterfeit. Appellant did not object to this evidence at trial.

The Confrontation Clause of the Sixth Amendment to the United States Constitution prohibits the use in a criminal prosecution of a testimonial out-of-court statement that was not subject to cross-examination if the declarant is not available to testify at trial. *Crawford v. Washington*, 541 U.S. 36, 53-54, 59, 124 S. Ct. 1354, 1365, 1369 (2004). A testimonial statement is any statement "made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527, 2531 (2009) (quotation omitted). Here, Investigator Chadderdon questioned the unidentified bank employee as a part of his investigation. Thus, any out-of-court statements that the

bank employee made were testimonial, and the Sixth Amendment affords appellant the right to be confronted by that bank employee. *See id.* at 2532; *see also Crawford*, 541 U.S. at 53-54, 124 S. Ct. at 1365, 1368.

“A constitutional error does not mandate reversal and a new trial if . . . the error was harmless beyond a reasonable doubt.” *State v. Caulfield*, 722 N.W.2d 304, 314 (Minn. 2006); *see also State v. Swaney*, 787 N.W.2d 541, 555 (Minn. 2010) (applying harmless-error analysis to Confrontation Clause violation.). But if a defendant fails to object to a Confrontation Clause violation at trial, we review the admission of the evidence for plain error. *State v. Tscheu*, 758 N.W.2d 849, 863 (Minn. 2008); *State v. McClenton*, 781 N.W.2d 181, 192-93 (Minn. App. 2010), *review denied* (Minn. June 29, 2010), *cert. denied*, 131 S. Ct. 530 (2010). The plain error standard requires the defendant to show (1) error, (2) that is plain, and (3) that affects substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). An error is plain if it is “clear” or “obvious,” *State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002) (quotation omitted), or if it “contravenes case law, a rule, or a standard of conduct,” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). And an error affects substantial rights if it “was prejudicial and affected the outcome of the case.” *Griller*, 583 N.W.2d at 741. If all three *Griller* factors are met, we must determine whether we “should address the error to ensure fairness and the integrity of the judicial proceedings.” *Id.* at 740.

As addressed above, the admission of a bank employee’s out-of-court statements was a clear violation of appellant’s Confrontation Clause rights. Appellant also argues that the admission of hearsay constitutes plain error under the rules of evidence. Hearsay

is “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). The state contends that the challenged evidence does not constitute hearsay because it was not offered to prove the truth of the statement; rather, it provided an explanation of, or foundation for, Investigator Chadderdon’s investigation. We disagree. A “police officer testifying in a criminal case may not, under the guise of explaining how [the] investigation focused on defendant, relate hearsay statements of others.” *State v. Litzau*, 650 N.W.2d 177, 182 (Minn. 2002) (alteration in original) (quotation omitted). Even limited elicitation of such testimony for non-hearsay purposes is unjustified because the potential of the evidence being used for an improper purpose outweighs its limited probative value, and the context and background of an investigation can properly be established without admission of hearsay statements that point directly to the defendant’s guilt of the charged offense. *Id.* at 182-83. Here, Investigator Chadderdon could have testified that he spoke with a bank employee and was unable to verify the existence of an account matching the “Chris Baley” checks without relaying hearsay statements. Accordingly, the admission of these statements in evidence constitutes plain error on both constitutional and evidentiary grounds.

But under the third *Griller* factor, the admission of the testimonial statement did not affect appellant’s substantial rights. Although the challenged hearsay statements were relevant to proving an essential element of the charged offenses—namely, that the checks that appellant possessed or offered were forged or counterfeit—the challenged evidence was relatively brief, comprising less than two transcript pages of the 22-page

direct examination of Investigator Chadderdon. The entire two-day trial comprised five state witnesses and more than 150 transcript pages. In addition, the state did not emphasize or dwell on the hearsay testimony and, contrary to assertions in appellant's brief, the hearsay testimony was not directly referenced in the state's closing argument.

The challenged hearsay statements are cumulative of testimony that had already been given by other witnesses, which weighs in favor of concluding that the error likely did not affect the outcome of the case. Specifically, J.E. testified that she and appellant had been using counterfeit personal checks and that appellant used an identification card falsely identifying himself as the account holder of the counterfeit checks; a Wal-Mart investigator testified that fraudulent checks were used by a "Chris Baley" to purchase goods at several Wal-Mart stores; Investigator Chadderdon testified that the "Chris Baley" personal checks recovered from the vehicle in appellant's possession exhibited characteristics of fraud¹; and the Louisiana driver's license bearing appellant's picture and identifying him as "Chris Baley" was admitted in evidence.

On this record, the erroneously admitted testimony was not seriously prejudicial, if at all. Appellant is not entitled to relief on this ground.²

Affirmed.

¹ Specifically, Investigator Chadderdon testified that the checks were uncut, lacked certain personal identifying information, displayed the same or similar designs despite purporting to originate from many different banks, and constituted more personal checking accounts than an average person would possess.

² Appellant also argues that the state committed prosecutorial misconduct by intentionally eliciting inadmissible hearsay testimony from Investigator Chadderdon. But our careful review of the record has found no indication that the state's elicitation of hearsay testimony was intentional.