STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1040

State of Minnesota,
Respondent,

vs.

Darrell Eugene Johnson,
Appellant.

Filed March 25, 2013
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-VB-11-10637

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

Steven M. Tallen, Tallen & Baertschi, Minneapolis, Minnesota (for respondent)

Darrell E. Johnson, Long Lake, Minnesota (pro se appellant)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Rodenberg, Judge.

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

LARKIN, Judge

Appellant challenges his public-nuisance convictions, arguing that the governing municipal ordinance is unconstitutional. We affirm.

FACTS

Appellant Darrell Eugene Johnson was charged with three violations under Medina, Minn., City Code § 330.05, subd. 14 (2009), which generally prohibits unlicensed motor vehicles in the city.

Prior to trial, Johnson moved the district court to dismiss because "the authorizing Medina City Code is illegal under the State of Minnesota Constitution and Statutes," arguing that "[t]he City of Medina does not have the power of taxation authority to require remittance of a vehicle registration tax payable to a third party." Johnson also argued that one of his vehicles was not visible from the road and therefore moved the district court to dismiss on the ground that "the condition of a nuisance cited violates basic thought like freedoms guaranteed by the United States Constitution and specific human rights of personal liberty and freedom of thought." Johnson also argued that the identity of the anonymous caller who complained about the vehicles should be revealed. Citing the Minnesota Government Data Practices Act, Johnson moved the district court to compel the City of Medina "to publicly reveal the identity of all heretofore and hereafter anonymous complainers and uncompensated informants" and "[i]n the specific instance of the anonymous complainer whose complaint resulted in issuance of these citations, their name and address is to be printed in the next available *The Medina Message* publication." The district court denied all of Johnson's motions.

The three cases were consolidated and tried to a jury. The state dismissed one of the charges during trial. The jury found Johnson guilty of the other two charges. The

district court sentenced Johnson to serve ten days in jail and stayed execution of the sentence for one year. Johnson challenges his convictions.

D E C I S I O N

Under the Medina City Code, it is a public nuisance "to permit, maintain, cause, deposit, or harbor,"

> *[a]ny motor vehicle which is not currently licensed in Minnesota or any other state*, or which is not in operable condition, or which is partially dismantled, or which is used for the sale of parts, or as a source of repair or replacement parts for other vehicles, or which is kept for scrapping or dismantling or salvage of any kind, or any abandoned vehicle as that term is defined in Minn. Stat. Section 168B.011, subd. 2.

Medina, Minn., City Code § 330.05, subd. 14 (emphasis added).

Johnson contends that the

> Medina Code requirement to purchase and apply current monthly series license tax tabs to unused motor vehicles is a violation of State of Minnesota law as requiring the payment of a non-uniform extension of the more onerous annual Minnesota state vehicle license property tax, which is not authorized in the Constitution of Minnesota nor allowed in Minnesota State statutes.

Essentially, Johnson argues that because the ordinance includes vehicles that are "not currently licensed" within its definition of proscribed nuisances, the ordinance effectively requires payment for vehicle registration and thus imposes a motor-vehicle tax. Johnson further argues that "[t]he City of Medina does not have the constitutional authority to impose payment of a vehicle license tax on motor vehicles" and that even the

legislature's authority to tax motor vehicles is limited to those "motor vehicles *using the public streets and highways*."

The constitutionality of an ordinance is a question of law that this court reviews de novo. *State v. Botsford*, 630 N.W.2d 11, 15 (Minn. App. 2001), *review denied* (Minn. Sept. 11, 2001). A municipal ordinance is generally presumed to be constitutional, and a challenger has the burden to prove a constitutional violation beyond a reasonable doubt. *Thul v. State*, 657 N.W.2d 611, 618 (Minn. App. 2003), *review denied* (Minn. May 28, 2003).

Under the Minnesota Constitution, "[t]he legislature by law may tax motor vehicles using the public streets and highways on a more onerous basis than other personal property. Any such tax on motor vehicles shall be in lieu of all other taxes thereon, except wheelage taxes imposed by political subdivisions solely for highway purposes." Minn. Const. art. XIV, § 9. The legislature has provided, in relevant part, that

> [t]he owner of a motor vehicle that during any calendar year . . . is not operated on a public highway is exempt from the provisions of this chapter requiring registration, payment of tax, and penalties for tax nonpayment, but only if the owner of the vehicle first files a verified written application with the registrar, correctly describing the vehicle and certifying that it has not been operated upon a public highway.

Minn. Stat. § 168.012, subd. 7(a) (2010).

Johnson's argument appears to be two-fold. He argues that the municipal ordinance violates article XIV, section 9, of the Minnesota Constitution because it imposes a motor-vehicle tax and only the legislature can impose such a tax. He also argues that the ordinance violates Minnesota Statutes section 168.012 because it imposes

a tax on vehicles that are not operated on a public highway even though such vehicles are exempt from taxation, so long as the proper application is filed. But the ordinance does not impose a motor-vehicle tax. It merely prohibits one from "permit[ing], maintain[ing], caus[ing], deposit[ing], or harbor[ing]" a "motor vehicle which is not currently licensed." *See State v. Stewart*, 529 N.W.2d 493, 496 (Minn. App. 1995) ("Words in a statute are to be construed in their plain and common usage."). Therefore, the ordinance is not in conflict with article XIV, section 9, of the Minnesota Constitution or Minnesota Statutes section 168.012, subdivision 7(a).

Johnson next asserts that "[p]rosecution of the City Ordinance by Medina Police is pressed to an unreasonable degree," arguing that one of the citations is based on "an unused vehicle regardless that it was impossible to see, taste, smell, hear, or touch the tab from any public vantage point." Johnson questions "how anything that cannot be physically sensed could possibly be legislated as a public nuisance." He contends that such a restriction is "senseless and unreasonable" and that "[t]here can be no valid public interest in criminalizing something that cannot be seen, heard, etc. Since the public interest is not involved, consequently the ordinance does not come within the police power of the city." He returns to this argument in his reply brief stating, "the City Ordinance is unreasonable as requiring current license tabs to be displayed on an unused vehicle which cannot be seen or sensed in any public manner and therefore has no substantial relationship to the public health, safety, morals, or general welfare."

Johnson's argument on this issue sounds in constitutional law. But because he does not cite any constitutional provision or other authority to support the argument, it is

arguably waived. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (concluding that claims in a pro se supplemental brief were waived because the brief contained no argument or citation to legal authority supporting the claims); *State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) ("An assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection." (quotation omitted)), *aff'd*, 728 N.W.2d 243 (Minn. 2007). Nonetheless, because the state addressed the constitutionality of the Medina ordinance in its brief, we will consider Johnson's argument. *See Black v. Rimmer*, 700 N.W.2d 521, 527 (Minn. App. 2005) (stating that "some accommodations may be made for pro se litigants" although they "are generally held to the same standard as attorneys" (quotation omitted)), *review dismissed* (Minn. Sept. 28, 2005).

It is established that

> [municipal] ordinances are presumptively constitutional. The party challenging the provision bears the burden of proving that the ordinance is unreasonable and unconstitutional. A showing of unreasonableness requires that the challenging party prove that the ordinance has *no* substantial relationship to public health, safety, morals, or general welfare. Courts decline to interfere with a [municipality's] legislative discretion if the reasonableness of the ordinance is debatable.

State v. Reinke, 702 N.W.2d 308, 311 (Minn. App. 2005) (quotation and citations omitted).

The state contends that "[k]eeping unlicensed . . . vehicles from being parked in residential areas is certainly a legitimate governmental function." Johnson counters that the state

> could more appropriately phrase [its] argument as 'Keeping vehicles which do not display current licenses from existing in Medina is certainly a legitimate governmental function.' Such a statement however, would be clearly incorrect since state vehicle laws specifically provide that unused vehicles are exempt from licensing registration, payment of tax, and penalties for tax nonpayment.

Johnson's argument misses the mark. Just because the state does not require registration or taxation of certain vehicles that are withdrawn from use on public highways, it does not follow that a municipality has no constitutionally reasonable interest in regulating the presence of such vehicles within its boundaries. Although it is fair to ask whether prohibiting any and all unlicensed vehicles within the city limits under all circumstances is a reasonable way to regulate the public health, safety, morals, or general welfare, ultimately, Johnson has the burden to prove that the restriction is unconstitutional. *See City of St. Paul v. Kekedakis*, 293 Minn. 334, 336, 199 N.W.2d 151, 153 (1972) ("[O]rdinances as well as statutes are presumed to be valid, and are not to be set aside by the courts unless their invalidity is clear." (quotation omitted)). We conclude that Johnson has failed to meet that burden.

Finally, Johnson argues that "[t]he City of Medina should be admonished to comply with State of Minnesota Statutes Chapter 13--Government Data Practices 13.82 Comprehensive Law Enforcement Data" and that "[t]he City of Medina Police Department must classify heretofore anonymous complainers name and address as well as similar prior and future data as Public Government Information." Johnson explains that the "purpose of the motion is to support possible future civil harassment actions as

well as publicly stop the anonymous complaint program from legally allowing one neighbor from harassing another by proxy of the Medina Police."

Although Johnson requested that the identity of the person who reported his violation be disclosed in the criminal proceeding in district court, his request to this court is for prospective relief—he does not argue that his conviction should be reversed based on the nondisclosure. In fact, he does not allege or explain how the district court's denial of his disclosure request prejudiced him in the criminal proceeding. Thus, even if we were to assume that the district court erred by refusing to disclose the reporter's identity, the error would not provide a basis for reversal. *See* Minn. R. Crim. P. 31.01 ("Any error that does not affect substantial rights must be disregarded."). Moreover, Johnson's request for prospective relief is civil or administrative in nature and beyond the scope of his challenge to his convictions in this appeal. *See* Minn. Stat. § 13.08, subd. 4(a) (2010) ("Actions to compel compliance may be brought either under this subdivision [of civil remedies] or section 13.085 [administrative remedy].").

Affirmed.