STATE OF MINNESOTA
IN COURT OF APPEALS
A08-707

State of Minnesota,
Appellant,

vs.

Lloyd Robert Desjarlais,
Respondent.

Filed October 21, 2008
Affirmed
Worke, Judge

Hubbard County District Court
File No. 29-CR-07-1083

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

Donovan D. Dearstyne, Hubbard County Attorney, Hubbard County Courthouse, 301 Court Avenue, Park Rapids, MN 56470 (for appellant)

Bradford S. Delapena, Special Assistant State Public Defender, P.O. Box 40418, St. Paul, MN 55104 (for respondent)

Considered and decided by Worke, Presiding Judge; Klaphake, Judge; and Peterson, Judge.

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

WORKE, Judge

In this pretrial appeal, the state argues that the district court erred in suppressing evidence in the possession of the Cass County Sheriff that was seized by Hubbard County

officers. Because the district court did not err in finding that respondent did not abandon his shoes when he was released from custody, we affirm.

D E C I S I O N

Critical Impact

The state argues that the district court erred in suppressing the evidence and that exclusion of the evidence has a critical impact on the state's ability to prosecute respondent Lloyd Robert Desjarlais. When appealing an order regarding the suppression of evidence, "the state must clearly and unequivocally show both that the [district] court's order will have a critical impact on the state's ability to prosecute the defendant successfully and that the order constituted error." *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998) (quotation omitted). The state can show critical impact not only when excluding the evidence "completely destroys" the state's case, but also when excluding the evidence "significantly reduces the likelihood of a successful prosecution." *State v. Joon Kyu Kim*, 398 N.W.2d 544, 551 (Minn. 1987). Critical impact is intended to be a "demanding standard." *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995). But excluded evidence that is "particularly unique in nature and quality is more likely to meet the critical impact test." *In re Welfare of L.E.P.*, 594 N.W.2d 163, 168 (Minn. 1999). "Whether [exclusion] of a particular piece of evidence will significantly reduce the likelihood of a successful prosecution depends in large part on the nature of the state's evidence against the accused." *Zanter*, 535 N.W.2d at 630. Therefore, in determining whether exclusion of a particular piece of evidence will have a critical impact on the state's ability to successfully prosecute, this court must consider the state's evidence as a

whole. *Id.* at 631. "Critical impact is a threshold issue and in the absence of critical impact we will not review a pretrial order." *State v. McLeod*, 705 N.W.2d 776, 784 (Minn. 2005) (quotation omitted).

The state contends that it has met the critical-impact test because without the evidence the state's theory of the case cannot stand. The record shows that on July 21, 2007, Hubbard County officers responded to a report of an assault. Upon arrival, officers found the victim unconscious and bloody. The officers learned that the previous evening, the victim had been drinking with respondent and the two went to the victim's home. The officers also discovered that the victim's vehicle was missing. That same night, Leech Lake Tribal officers received a report of an intoxicated male covered in blood driving a vehicle matching the description of the victim's vehicle. Respondent was arrested on a charge unrelated to the assault and transported to the Cass County Jail. At the jail, an officer noticed that respondent's shoes had what appeared to be dried blood spattered on them. The officer put respondent's shoes in a separate bag and stored them in a secure property room. On July 24, when respondent was released, the jailers could not locate his shoes and he left without them. On July 26, an agent from the Bureau of Criminal Apprehension (BCA), who was assisting the Hubbard County officers in the assault investigation, contacted the jail because he wanted to interview respondent. The agent learned that respondent had been released but that the jail still had his shoes and that they might have blood on them. The agent told the jailers to secure the shoes, and the same day, went to the jail and collected respondent's shoes.

Respondent was charged with first-degree assault and theft of a motor vehicle. At the omnibus hearing, respondent argued that the evidence seized at the Cass County Jail should be suppressed because the agent did not have a warrant for his shoes. The district court suppressed the evidence, finding that respondent did not abandon his shoes and, therefore, they were seized without a properly executed warrant. The state's theory of the case is that respondent kicked the victim, resulting in the blood spatter on respondent's shoes. Respondent contends that the state has other evidence connecting him to the crime scene, suggesting that the victim's truck had various blood samples that were never processed. But there is no evidence of this in the record.[1] While we do not know the extent of the state's evidence, we do know that officers learned that respondent had been drinking with the victim the evening prior to the assault, respondent was at the victim's home, and that officers arrested respondent while he was driving a vehicle matching the description of the victim's vehicle. Respondent's shoes are the strongest evidence connecting him to the assault. Thus, the state has met the critical-impact test because without the shoes the state's theory of the assault is substantially weakened.

Suppression of Evidence

We must now determine whether the district court erred in suppressing the evidence. *See State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999) ("When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts

[1] Respondent relies on a lab report but this report was not presented to the district court and, therefore, is not a part of the record on appeal and cannot be considered by this court.

and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence.").

The United States and Minnesota Constitutions provide protection against unlawful searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Warrantless searches are presumed to be unreasonable unless an exception to the warrant requirement applies. *State v. Search*, 472 N.W.2d 850, 852 (Minn. 1991). There is no dispute that this was a warrantless search. Thus, unless an exception to the warrant requirement applies, the district court did not err in suppressing the evidence. The state argues that respondent abandoned his property or that the seizure was justified as part of a jail-house search.

Abandoned Property

An unlawful seizure does not occur when an officer appropriates abandoned property. *Abel v. United States*, 362 U.S. 217, 241, 80 S. Ct. 683, 698 (1960). The question of abandoned property, under search-and-seizure law, "is whether the defendant has, in discarding the property, relinquished his expectation of privacy with respect to the property so that neither search nor seizure is within the proscription of the fourth amendment." *State v. Oquist*, 327 N.W.2d 587, 590 (Minn. 1982). "In essence, what is abandoned is not necessarily the defendant's property, but his reasonable expectation of privacy therein." *Id.* (quotation omitted).

Generally, the issue of abandoned property is raised in the context of garbage. The Minnesota Supreme Court has recognized that "a householder may ordinarily have some expectation of privacy in the items he places in his garbage can." *Id.* at 591.

However, when an officer searches garbage placed on the curb for routine pickup, without trespassing on the premises, no illegal search has occurred. *State v. Dreyer*, 345 N.W.2d 249, 250 (Minn. 1984).

The Minnesota Supreme Court has also had to determine whether a defendant abandoned an eyeglass case containing narcotics paraphernalia when he placed it under a counter at a dry-cleaning establishment where he ran while being pursued by police officers. *City of St. Paul v. Vaughn*, 306 Minn. 337, 340, 237 N.W.2d 365, 367-68 (1975). The court stated:

> Abandonment is primarily a question of intent, and intent may be inferred from words spoken, acts done, and other objective facts. . . . All relevant circumstances existing at the time of the alleged abandonment should be considered. . . . Police pursuit or the existence of a police investigation does not of itself render abandonment involuntary. . . . The issue is not abandonment in the strict property-right sense, but whether the person prejudiced by the search had voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search.

Id. at 345, 237 N.W.2d at 370 (quotation omitted). The supreme court ruled that the defendant abandoned the property because he discarded the case in a public place where he could not reasonably have any continued expectation of privacy in the discarded property. *Id.* at 346-47, 237 N.W.2d at 371.

Here, respondent did not abandon his shoes when he left the jail without them. The officer at the jail testified that when respondent was released from custody he had a right to have all of his property returned to him. The officer also testified that respondent

did not give the jail permission to keep his shoes. The officer stated that it was "just a mistake [that respondent's shoes] weren't found." The officer further testified that when a released inmate leaves property behind, the jail attempts to contact the individual in order to have the property picked up. But in this case, the officer stated that he never called respondent and was not aware of anyone else attempting to contact respondent informing him that he could pick up his shoes. The officer also testified that the jail's policy is to hold onto unclaimed property for 30 days; here, the agent seized respondent's shoes after two days.

Respondent testified that he asked for his shoes and was told that they had been lost. Respondent and an officer looked for his shoes in the property room, but could not locate them. Respondent waited 20 minutes before leaving without his shoes. Respondent testified that he never gave the jail or the BCA permission to keep his shoes and that the jail never contacted him when his shoes were located. According to respondent, he even called the jail on either July 26 or 27 and asked about his shoes. The record shows that respondent did not voluntarily discard his shoes and, thus, he did not abandon his shoes and a warrant was required.

Jail-House Search

The state also argues that the seizure was justified as a jail-house search. The Minnesota Supreme Court held that "it is not unreasonable for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures." *State v. Rodewald*, 376 N.W.2d 416, 421 (Minn. 1985) (quotation omitted). But respondent's

shoes were seized after he was released; it was not "part of the routine procedure incident to *incarcerating* an arrested person." *Id.* (emphasis added). Therefore, the seizure of respondent's shoes cannot be justified as a jail-house search.

Affirmed.