STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0195

State of Minnesota,
Respondent,

vs.

Randall Scott Seelye,
Appellant.

Filed February 3, 2020
Affirmed
Smith, Tracy M., Judge

Cass County District Court
File No. 11-CR-17-2171

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Benjamin T. Lindstrom, Cass County Attorney, Walker, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and Smith, John, Judge.*

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

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

SMITH, TRACY M., Judge

On appeal from his conviction for first-degree possession of a controlled substance, appellant argues that the district court erred by not suppressing evidence found in a warrantless search of his bag. We affirm.

FACTS[1]

On November 29, 2017, law enforcement officers pulled over a red Jeep after noticing that the Jeep did not make a complete stop at a stop sign. After pulling the vehicle over, the officer asked the driver for his driver's license. Neither the driver, nor appellant Randall Scott Seelye, who was a passenger in the Jeep, had a valid driver's license. The officer asked if anyone in the vehicle had a weapon, and both occupants answered in the negative. While the officer was checking the status of the driver's licenses of the Jeep's occupants, however, the officer's partner noticed a knife on Seelye's right hip. The partner told Seelye that he needed to remove the knife for safety reasons, and the partner removed the knife without incident. During the traffic stop, a suspicious vehicle drove by twice at slow speeds, but otherwise no traffic went by.

Because there were no legal drivers for the car, the officer had both the driver and Seelye step out of the vehicle. Seelye got out of the car, holding a black bag. The officer asked him to either let the officers check the bag for weapons or leave the bag in the Jeep. Seelye chose to leave the bag in the car. The officer then did a pat-down search of Seelye

[1] The facts are based on officer testimony taken at a contested omnibus hearing.

for any weapons on his person but found only a phone charger and felt what the officer thought was a large amount of cash. The officer also informed Seelye that he had called for a tow truck because there were no legal drivers and he was concerned about where the vehicle was parked.

While the officers and the two men waited for the tow truck, according to one of the officers, Seelye's phone was ringing nonstop. Seelye eventually answered it and began walking away while speaking on the phone. The officer assumed that Seelye was speaking with someone about coming to pick him up. As Seelye was walking away, the officer began to search the contents of the black bag. Inside the bag, the officer found a digital scale and other bags that he believed contained drugs. The officer then arrested Seelye and brought him back to the squad car. When the tow truck arrived, the officer opened the smaller bags and found that they contained small plastic bags of a white, crystalline substance. The officer believed that the substance was methamphetamine, which was confirmed by field testing.

The state charged Seelye with first-degree possession of a controlled substance.[2] Seelye moved the district court to suppress the evidence obtained from the search of his bag. The district court denied the motion. Seelye then waived his right to a jury trial and stipulated to the state's evidence pursuant to Minn. R. Crim. P. 26.01, subd. 4, preserving his right to appeal the suppression ruling.

[2] Other counts, not relevant here, were ultimately dismissed by the state.

The district court determined that, based upon the stipulated evidence, Seelye was guilty of first-degree possession of a controlled substance and sentenced him to 90 months' imprisonment.

This appeal follows.

D E C I S I O N

Seelye argues that the search of his bag was an illegal warrantless search. Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "In general, warrantless searches and seizures are unreasonable in the absence of a legally recognized exception to the warrant requirement." *State v. Horst*, 880 N.W.2d 24, 33 (Minn. 2016). There was no warrant authorizing the police to search Seelye's bag. Therefore, unless an exception to the warrant requirement applies, the search was unconstitutional. *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001). It is the state's burden to demonstrate that an exception to the warrant requirement applies. *Id.*

Seelye does not claim that the traffic stop was invalid. Instead, he argues that the state was not authorized to search his bag. Specifically, Seelye argues that an inventory search was not justified because the impoundment of the Jeep was not warranted and that no safety rationale justified requiring him to keep his bag in the car and subjecting it to a search. The state counters that the search of Seelye's bag was permitted as a valid inventory search of an impounded vehicle and that officer safety justified not returning the bag to Seelye unsearched. When evaluating a district court's pretrial order on a motion to

suppress, appellate courts review the district court's factual findings for clear error and its legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

Before evaluating the validity of the impoundment and the inventory search, we first address the issue of why the bag was in the Jeep when the car was impounded. Seelye argues that the officer did not have a legal basis to demand that he choose between consenting to a search and leaving his bag in the Jeep. The state responds that requiring Seelye to choose was permissible because, if Seelye had kept the bag on his person, the officer could have searched the bag based on the *Terry* exception to the warrant requirement and the reasonable suspicion that Seelye had weapons in his bag.

The *Terry* exception stems from the United States Supreme Court's holding in *Terry v. Ohio*, which permits police to "stop and frisk a person when (1) they have a reasonable, articulable suspicion that a suspect might be engaged in criminal activity and (2) the officer reasonably believes the suspect might be armed and dangerous." *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (citing *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968)), *aff'd*, 508 U.S. 366, 113 S. Ct. 2130 (1993). This frisk is a search that does not require a warrant under the Fourth Amendment. *Id.* When determining whether reasonable, articulable suspicion exists, appellate courts consider the totality of the circumstances, including that police officers' specialized training may allow them to "make inferences or deductions that might elude an untrained person." *State v. Flowers*, 734 N.W.2d 239, 251-52 (Minn. 2007). "The touchstone of the Fourth Amendment is reasonableness . . . ." *State v. Johnson*, 813 N.W.2d 1, 5 (Minn. 2012) (quotation omitted).

A stop that is initially valid may become unconstitutional "if it becomes intolerable in its intensity or scope." *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (quotation omitted). As such, "each incremental intrusion during a traffic stop [must] be tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in *Terry*." *Id.* at 365. "Furthermore, the basis for the intrusion must be individualized to the person toward whom the intrusion is directed." *Id.*

Seelye argues that officers did not have a reasonable suspicion that he was armed and dangerous. It is true that Seelye was compliant with all of the officers' requests and that the Jeep was pulled over for a nonviolent traffic violation. Nevertheless, Seelye told officers that he did not have a weapon, even though he had a knife on his hip. While the officer's testimony indicates that Seelye allowed the officer to take the knife when he was asked to do so, this does not change the fact that one of the officers discovered that Seelye had a weapon despite saying that he did not.

Seelye's apparent misrepresentation provided officers with an individualized basis to suspect that he may have had another weapon in the bag. It was thus reasonable for the officer to require Seelye to leave his bag in the Jeep as a precautionary measure. Leaving the bag in the vehicle addressed the officer's safety concerns and, at least for a time, also allowed Seelye to maintain his privacy interest in the contents of the bag.

The officer also gave Seelye the option of keeping the bag on his person if he consented to a search of it. The Fourth Amendment permits warrantless searches based on voluntary consent. *Johnson*, 813 N.W.2d at 14 (citing *Schneckloth v. Bustamonte*, 412 U.S.

218, 219, 93 S. Ct. 2041, 2043-44 (1973)). This alternative approach would have also addressed the officer's safety concerns, and it would have permitted Seelye to keep the bag on his person if he so chose. Seelye instead chose to put the bag in the vehicle.

We conclude that the officer acted within constitutional bounds when he gave Seelye a choice between putting the bag in the vehicle and permitting officers to search the bag. While the bag was subsequently searched when the vehicle was impounded, that is an independent step of the analysis, separate from Seelye's decision to put his bag in the Jeep rather than permit officers to search his bag.

Turning to the issue of the inventory search, the state justifies the officer's search of Seelye's bag as an inventory search of an impounded vehicle. Law enforcement officers perform inventory searches on impounded vehicles "to protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger." *Colorado v. Bertine*, 479 U.S. 367, 372, 107 S. Ct. 738, 741 (1987). A warrant is not required to perform an inventory search. *Gauster*, 752 N.W.2d at 502. To determine if an inventory search of an impounded vehicle is reasonable, appellate courts examine "the propriety of the impoundment, since the act of impoundment gives rise to the need for and justification of the inventory." *State v. Goodrich*, 256 N.W.2d 506, 510 (Minn. 1977). If impoundment was unnecessary, then the resulting inventory search is unreasonable. *Id.*

For impoundment of a vehicle to be proper, "the [s]tate must have an interest in impoundment that outweighs the individual's Fourth Amendment right to be free of unreasonable searches and seizures." *State v. Rohde*, 852 N.W.2d 260, 264 (Minn. 2014)

(quotation omitted). Under this test, impoundment is appropriate to "remove from the streets vehicles impeding traffic or threatening public safety and convenience." *Id.* (quotation omitted).

The district court concluded that the officers reasonably believed that the vehicle, as parked, was a safety risk because "it was nighttime, the vehicle was parked on a sharp curve, and [Seelye's] vehicle was taking up most of the traffic lane." Seelye argues that the district court's factual findings were not supported by the record and that there was not a reasonable belief in a safety hazard warranting impoundment.

Regarding the district court's factual findings, Seelye argues that testimony from one of the officers stated that the vehicle was parked "near" a curve, not "on" it; that it was only 5:30 p.m. so it was not nighttime; and that there was no testimony about the density of traffic in the area or whether there was insufficient room to pass the stopped Jeep. Seelye also argues that he should have been permitted to get his sister or his own tow company to move the vehicle.

Based on the record evidence, the district court's factual findings are not clearly erroneous. The record shows that the stopped Jeep was in the path of potential traffic, as the testimony established that there was no shoulder on the road and the squad car video showed the stopped Jeep taking up most of the traffic lane. The evidence also established that it was already dark and there was a sharp curve in the road near where the vehicle was stopped, so the vehicle also would have been difficult for other drivers to see. While it was perhaps evening instead of nighttime, and the vehicle was "near" the curve instead of "on"

the curve, these minor inconsistencies do not render the district court's factual findings clearly erroneous.

And these factual findings support the conclusion that a reasonable concern of a safety hazard justified impoundment. The fact that it was dark and the vehicle was taking up most of the traffic lane make this case distinguishable from other inventory-search cases where the Minnesota Supreme Court concluded that impoundment was not warranted because there was no safety hazard. *See Rohde*, 852 N.W.2d at 262, 265 (holding that there was nothing in the record that showed that a vehicle pulled over on a residential street was interfering with traffic, blocking access to any property, or otherwise causing a threat to public safety); *Gauster*, 752 N.W.2d at 504 (holding that it was not clearly erroneous for the district court to determine that leaving a vehicle on the shoulder of a rural road in the middle of the afternoon was not a safety hazard). While Seelye points out that the record does not show that there was a high density of traffic on the road in question, the density of traffic is not the only consideration when evaluating if a stopped vehicle poses a safety hazard.

The officers' reasonable determination that the stopped Jeep was a safety hazard also justifies their decision to immediately impound the vehicle rather than let Seelye call his sister or his own tow company to move the vehicle. It is true that, when the driver has not been arrested, law enforcement cannot generally take responsibility for a vehicle under its caretaking function and impound it without allowing the driver to make their own arrangements. *See Rohde*, 852 N.W.2d at 266. Here, however, officers did not impound the vehicle as part of law enforcement's caretaking function, but instead did so because they

determined the vehicle was a safety hazard. It was not unreasonable for the officers to immediately impound an unattended vehicle once they determined that the vehicle was a safety hazard.

In sum, the officers' decision to impound the Jeep was reasonable under the Fourth Amendment because the car presented a safety hazard. Because the impoundment was reasonable, the subsequent inventory search of Seelye's bag was valid. The district court did not err by not suppressing evidence resulting from the search.

Affirmed.