STATE OF MINNESOTA
IN COURT OF APPEALS
A10-740

State of Minnesota,
Respondent,

vs.

James Kelly Meyer, Sr.,
Appellant.

Filed May 9, 2011
Affirmed
Kalitowski, Judge

Ramsey County District Court
File No. 62-CR-09-15776

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

John Choi, Ramsey County Attorney, Afsheen D. Foroozan, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, G. Tony Atwal, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and Collins, Judge.*

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

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant James Kelly Meyer Sr. challenges his conviction of possession of a firearm by an ineligible person, arguing that the district court erred by denying his motion to suppress the firearm. We affirm.

DECISION

"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).

Here, two officers of the St. Paul Police Department initiated a traffic stop after observing a vehicle with a cracked windshield make a turn without signaling. Appellant concedes that the traffic stop was justified at its inception by the traffic violations. *See State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) (stating that an officer's observation of a traffic violation, "however insignificant," provides the officer with an objective basis for conducting a brief investigatory stop of the vehicle); *see also* Minn. Stat. §§ 169.19, subd. 5 (requiring the use of turn signals), 169.71, subd. 1(1) (prohibiting driving with a cracked windshield that limits or obstructs proper vision) (2008).

The vehicle had three occupants: (1) the driver; (2) the front passenger; and (3) appellant, who sat behind the driver. One of the officers testified that when he spoke to the driver about the traffic violations, he smelled "unburnt marijuana." The other officer also detected the odor of marijuana emanating from the vehicle. In addition, one

of the officers saw a marijuana plant in the back seat and noticed that appellant was not wearing a seat belt. The officers then asked appellant to exit the vehicle and identify himself. Police conducted a pat-down search of appellant, placed him in handcuffs, and performed a warrants check. The check revealed an outstanding felony warrant for appellant's arrest. Police then searched the vehicle and found (underneath a jacket covering the rear passenger-side seat) a handgun and a box of ammunition.

After a *Rasmussen* hearing, the district court denied appellant's motion to suppress the handgun. Appellant waived his jury-trial rights, and the parties submitted the case for a court trial pursuant to Minn. R. Crim. P. 26.01, subd. 4. The district court found appellant guilty, denied his motion for a downward dispositional or durational departure, and sentenced him to 60 months in prison.

Appellant argues that the police unlawfully removed him from the vehicle and asked him to identify himself. We disagree.

The scope of a traffic stop "must be strictly tied to and justified by the circumstances that rendered the initiation of the investigation impermissible." *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). Here, the original scope of the stop was limited to investigating and processing the traffic violations. But during the traffic stop, in addition to smelling marijuana and seeing what they believed was a marijuana plant, the officers saw that appellant was not wearing a seat belt. *See* Minn. Stat. § 169.686, subd. 1 (Supp. 2009) (requiring an adult passenger to wear a seat belt and imposing a fine on the passenger for a violation). This observation alone allowed the officers to ask appellant to identify himself. *See State v. Schinzing*, 342 N.W.2d 105, 109 (Minn. 1983)

(holding that police can request identification to investigate a traffic violation). And an officer may order a driver or passenger to exit a vehicle during a lawful traffic stop "as a matter of course." *State v. Krenik*, 774 N.W.2d 178, 183-84 n.1 (Minn. App. 2009), *review denied* (Minn. Jan. 27, 2010).

Appellant also argues that the search of the vehicle was illegal. But upon detecting the odor of marijuana emanating from a lawfully stopped vehicle, police are entitled to search the vehicle's passenger compartment. *State v. Schultz*, 271 N.W.2d 836, 837 (Minn. 1987) (affirming warrantless search of passenger compartment when officer had probable cause of criminal possession of marijuana); *State v. McGrath*, 706 N.W.2d 532, 544-45 (Minn. App. 2005) (holding that "small, noncriminal amounts of marijuana" can establish probable cause for a search), *review denied* (Minn. Feb. 22, 2006). The district court therefore did not err by denying appellant's motion to suppress the handgun.

Affirmed.