STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1119

State of Minnesota,
Respondent,

vs.

Jamie A. Olmscheid,
Appellant.

Filed August 26, 2008
Affirmed
Kalitowski, Judge

Morrison County District Court
File No. K2-05-1229

Lori Swanson, Attorney General, Kelly O'Neill Moller, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Brian Middendorf, Morrison County Attorney, 213 Southeast First Avenue, Little Falls, MN 56345 (for respondent)

John D. Ellenbecker, 803 West St. Germain Street, P.O. Box 1127, St. Cloud, MN 56301 (for appellant)

Considered and decided by Johnson, Presiding Judge; Kalitowski, Judge; and Shumaker, Judge.

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

KALITOWSKI, Judge

Following her conviction of conspiracy to commit a first-degree controlled substance crime, appellant Jamie A. Olmscheid challenges the denial of her pretrial motion to suppress evidence discovered during a search of her car. Appellant argues that her consent to the search was involuntary and that the evidence was the product of an illegal seizure. We affirm.

D E C I S I O N

When reviewing pretrial orders on motions to suppress evidence, we independently review the facts to 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). If the facts are disputed, the district court's findings are upheld unless shown to be clearly erroneous. *City of St. Louis Park v. Berg*, 433 N.W.2d 87, 89 (Minn. 1988).

I.

"Both the Minnesota and United States constitutions protect against 'unreasonable' searches and seizures by the state." *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999) (citing U.S. Const. amend. IV; Minn. Const. art. I, § 10). If a search is conducted pursuant to consent, it is not unreasonable and "neither probable cause nor a warrant is required." *State v. Pilot*, 595 N.W.2d 511, 519 (Minn. 1999). In order for consent to be valid, the state must prove that it was given "freely and voluntarily"—that

is, that the consent was not the product of coercion. *State v. George*, 557 N.W.2d 575, 579 (Minn. 1997).

Appellant challenges the district court's finding that she voluntarily consented to a search of her car by a police officer. In a thorough and well-reasoned decision, the district court found that "[t]he presence and actions of the officers did not overcome [appellant]'s free will," and that "there was consent to the search, and that consent was voluntary."

"The question of whether consent is voluntary is a question of fact, and is based on all relevant circumstances." *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 227, 93 S. Ct. 2041, 2047-48 (1973)). In disputing the district court's finding regarding the voluntariness of her consent, appellant points to the following circumstances, which she argues were "inherently coercive": (1) while sitting in her parked car at a rural Morrison County residence, appellant watched police officers arrest two men who were standing outside the residence, Robert Virnig and Robert Wilson; (2) during the arrest, the officers drew their weapons and ordered the two men to the ground; (3) following the arrest, the officers searched a nearby Cadillac Escalade; and (4) following the search of the Escalade, an officer ordered appellant out of her car and asked for consent to search the car. We reject appellant's additional assertion that "the officers park[ed] their squad cars in such a manner as to block [her] from leaving" because the assertion is not supported by the facts as found by the district court, and appellant has not demonstrated clear error in these findings.

Appellant's remaining contentions, including the fact that the officers drew their weapons while arresting Virnig and Wilson, are consistent with the district court's findings. But courts do not infer involuntary consent "simply because the circumstances of the encounter are uncomfortable for the person being questioned. Rather, it is at the point when an encounter becomes coercive, when the right to say no to a search is compromised by a show of official authority, that the Fourth Amendment intervenes." *State v. Dezso*, 512 N.W.2d 877, 880 (Minn. 1994).

Here, a single officer approached appellant and requested consent to search her car. There is no indication that any weapons were displayed at the time the officer requested consent. Appellant was not handcuffed or placed under arrest. And appellant was specifically informed by the officer that she had the right to revoke her consent to the search at any time. While the encounter may have been uncomfortable for appellant, she has not pointed to any evidence in the record indicating that actual coercion occurred or that her right to refuse consent was compromised by the officers. On this record, we conclude that the district court's finding that appellant voluntarily consented to the search is not clearly erroneous.

II.

Appellant also argues that, even if she consented to the search, her consent is invalid because it was obtained during an illegal seizure. *See State v. Syhavong*, 661 N.W.2d 278, 282 (Minn. App. 2003) (stating that consent that is the product of an illegal detention is invalid and evidence discovered during the subsequent search must be

suppressed). The district court concluded that an investigative detention of appellant "was proper" following the arrest of Virnig and Wilson. We agree.

"A police officer may stop and temporarily seize a person to investigate that person for criminal wrongdoing if the officer reasonably suspects that person of criminal activity." *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995). The officer's suspicion must be based on specific, articulable facts and can include inferences drawn from the totality of the circumstances. *Id.* But the detention may last "only as long as reasonably necessary to effectuate the purpose of the stop." *State v. Blacksten*, 507 N.W.2d 842, 846 (Minn. 1993).

Here, the record indicates that the police officers were at the property to arrest Robert Virnig. Appellant argues that after the officers has arrested Virnig, "the officer's original purpose [of the investigation] had been accomplished . . . and there was nothing to indicate that appellant was engaged in any criminal activity." We disagree. This argument fails to address the district court's findings as to what occurred between the time of the officers' arrival at the scene and their request for consent to search appellant's car.

The record indicates that while approaching Virnig and Wilson, the officers noticed that Wilson was standing awkwardly and suspected that he might be hiding something under his arm. Wilson asked the officers if he could go to appellant's car. The officers discovered that Wilson was concealing a loaded handgun and a sawed-off shotgun. The officers also discovered illegal drugs and drug paraphernalia in the Escalade. Based on Wilson's possession of the concealed weapons, the drugs, and his

desire to go to appellant's car when the officers first approached, the officers suspected that appellant may have been involved in the criminal activity and that there may have been additional weapons in her car. This suspicion was reasonable, was based on articulable facts, and satisfies the "very low" threshold for justifying an investigative stop. *See State v. DeRose*, 365 N.W.2d 284, 286 (Minn. App. 1985). Thus, we conclude that appellant's consent was not the product of an illegal seizure.

Affirmed.