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STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1530

State of Minnesota,
Respondent,

vs.

Stephan R. Orsak,
Appellant.

Filed September 16, 2008
Affirmed
Worke, Judge

Hennepin County District Court
File No. 06062241

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Considered and decided by Stoneburner, Presiding Judge; Worke, Judge; and Muehlberg, Judge.[*]

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[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

WORKE, Judge

Appellant challenges his conviction of failing to obey a lawful order, arguing that the district court erred by failing to dismiss the charge for lack of probable cause because the police did not give him a "lawful" order, his conviction is legally inconsistent with his acquittal of additional charges, and the evidence is insufficient to sustain his conviction. We affirm.

D E C I S I O N

Probable Cause

Appellant Stephan R. Orsak argues that the district court erred by declining to dismiss the charge of failing to comply with a lawful order for lack of probable cause. Appellant asserts that the police did not give him a "lawful" order within the meaning of Minn. Stat. § 169.02, subd. 2 (2006), and that the statute applies only to situations of "crowd control." The district court's conclusion that the police issued a "lawful" order is a legal determination that is subject to de novo review. *See State v. Kiminski*, 474 N.W.2d 385, 389 (Minn. App. 1991) (applying de novo standard of review to issue of statutory construction), *review denied* (Minn. Oct. 11, 1991).

In interpreting a statute, we first examine statutory words and phrases to determine if they are ambiguous. *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). If the legislature's intent is clear from the statute's plain and unambiguous language, this court does not resort to principles of statutory construction. *State v. Anderson*, 683 N.W.2d 818, 821 (Minn. 2004). Under Minn. Stat. § 169.02,

subd. 2, "[i]t is a misdemeanor for any person to willfully fail or refuse to comply with any lawful order or direction of any peace officer invested by law with authority to direct, control, or regulate traffic." "Lawful" has been defined as "[n]ot contrary to law; permitted by law." *Black's Law Dictionary* 902 (8th ed. 2004). There is no language in the statute requiring that the police order be issued for purposes of "crowd control." And the Minnesota Supreme Court has held that the order need not be related to traffic. *See City of St. Paul v. Willier*, 304 Minn. 430, 431, 231 N.W.2d 488, 489 (1975) (holding that statute applied to defendant's conduct of refusing to produce his driver's license). Here, airport police directed appellant to move his bicycle from an outbound road to an adjacent road, to walk his bicycle down the adjacent road, and to stop when he began to travel the wrong way down the adjacent road. By its plain language, Minn. Stat. § 169.02, subd. 2 encompasses the police order to appellant to move his bicycle from the outbound road.

Appellant also argues that the police order for him to move his bicycle from the road was not "lawful" because it amounted to a seizure under the Fourth Amendment, and the police had no reasonable, articulable basis to believe that appellant had committed a crime. *See State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000) (stating that a limited stop to investigate suspected criminal activity requires "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion" (quotation omitted)). Appellant maintains that an officer's mistaken belief that a sign prohibited bicycles on the outbound road does not amount to reasonable suspicion sufficient to justify a seizure. *See Anderson*, 683 N.W.2d at 824 (holding that a

"mistaken interpretation of a statute may not form the particular and objective basis for suspecting criminal activity necessary to justify a traffic stop").

Issues of unreasonable searches and seizures under the Fourth Amendment are not commonly raised in this situation, when appellant did not seek to suppress evidence but challenged only the legal definition of the alleged violation. Further, police may issue a "lawful order" under section 169.02 for safety reasons without a reasonable suspicion that a separate crime has been committed. *See Duellman v. Erwin*, 522 N.W.2d 377, 380 (Minn. App. 1994) (stating that police officers are accorded wide discretion to encourage responsible law enforcement), *review denied* (Minn. Dec. 20, 1994). Thus, the police had discretion to issue orders to maintain safety and the free flow of traffic on the heavily traveled airport road, and appellant's presence on a bicycle was sufficient to justify the order to move his bicycle. *See also* Minn. Stat. § 169.222, subd. 4 (c) (2006) ("Persons riding bicycles upon a roadway or shoulder shall not ride more than two abreast and *shall not impede the normal and reasonable movement of traffic* . . . ." (emphasis added)).

And even if we were to consider appellant's Fourth-Amendment argument, we would conclude that appellant was not seized with the initial police order. A seizure occurs when "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he or she was neither free to disregard the police questions nor free to terminate the encounter." *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995). Appellant testified that the police initially told him only to "get off the road" because he was "blocking traffic." At this point, with the squad cruising alongside appellant's bicycle, a reasonable person would believe only that the police were issuing

an order for appellant to clear the shoulder of the road during a period of heavy traffic. This order, standing alone, does not amount to a show of authority that would communicate to a reasonable person in appellant's position that the police wished to detain him. *See id.* (stating reasonable person standard is objective). Thus, the police conduct does not amount to a seizure.

Because the police had authority to issue a lawful order to appellant to move his bicycle without identifying a specific statutory violation, it is irrelevant whether an officer mistakenly believed that a sign was posted prohibiting bicycle traffic on the outbound road. We agree that the officers later seized appellant by moving their squad car to block him and ordering him to stop when he began to ride away. But the jury could have convicted appellant of failing to comply with a lawful order based on his refusal to comply with the initial police order.

Inconsistent Verdicts

Appellant argues that his conviction of failing to comply with a lawful order should be reversed because it is inconsistent with his acquittal of additional charges of obstructing legal process, riding a bicycle opposite adjacent vehicle traffic, and traveling the wrong way on a one-way road. "Whether verdicts are legally inconsistent is a question of law reviewed de novo." *State v. Laine*, 715 N.W.2d 425, 434-35 (Minn. 2006).

Logical inconsistencies between verdicts do not entitle a defendant to a new trial. *State v. Leake*, 699 N.W.2d 312, 326 (Minn. 2005). The Minnesota Supreme Court has "suggested that verdicts are *legally* inconsistent if 'a necessary element of each

offense . . . was subject to conflicting findings.'" *Id*. at 325 (quoting *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989)). But the supreme court also noted that *Moore* has been applied only when a defendant "alleged inconsistencies between multiple *guilty* verdicts" and that "the majority of states do not reverse inconsistent verdicts when there is one acquittal and one conviction." *Id*. at 326. Because appellant was convicted of one count and acquitted of the other counts, he is not entitled to relief on the theory of inconsistent verdicts.

Sufficiency of Evidence

Finally, appellant argues that the evidence is insufficient to support his conviction. When reviewing a claim of insufficient evidence, this court views the evidence in the light most favorable to the verdict, assuming that the jury believed the state's witnesses and disbelieved any contrary evidence, and determines whether the evidence was sufficient to permit the jury to reach the verdict that it did. *State v. Webb,* 440 N.W.2d 426, 430 (Minn. 1989); *Moore*, 438 N.W.2d at 108. This court "will not disturb the verdict if the jury, acting with due regard for the presumption of innocence" and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988). "[W]eighing the credibility of witnesses is a function exclusively for the jury." *State v. Pippitt*, 645 N.W.2d 87, 94 (Minn. 2002).

Appellant argues that the evidence does not support his conviction because he did, although reluctantly, comply with the order to stop riding his bicycle on the outbound road. Appellant also argues that when he started riding away on the other road, the

officer did not order him to stop, but simply grabbed him. An officer testified that he asked appellant four times to stop riding his bicycle on the outbound road, and that appellant repeatedly replied that he could ride there because no signs prohibited it. The officer testified that appellant did not respond to additional orders: to walk his bicycle going the correct way on an adjacent less-traveled road, and then, to stop when appellant started riding away on that road. The parties agree that when appellant did not dismount from his bicycle, an officer used a taser to assist in appellant's arrest.

Appellant's version of events differed substantially from that of the officer's, and the jury acquitted appellant of additional charges relating to the incident. But the jury had the responsibility to assess witness credibility in making its decision to convict. Based on the record, and viewing the evidence in the light most favorable to the verdict, the jury could have reasonably determined that appellant failed to comply with a lawful order.

Affirmed.