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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1321**

State of Minnesota,
Respondent,

vs.

Jordan Lee Downwind,
Appellant.

**Filed May 29, 2018
Affirmed
Larkin, Judge**

Yellow Medicine County District Court
File No. 87-CR-16-494

Lori Swanson, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Keith Helgeson, Yellow Medicine County Attorney, Granite Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Allison Lange Garrison, Special Assistant Public Defender, Norton Rose Fulbright US LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Bjorkman, Judge; and Randall, Judge.*

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

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his conviction of unlawful possession of a firearm, arguing that the district court erred by denying his request to suppress evidence obtained during a warrantless search of a vehicle that he had been driving. We affirm.

FACTS

Respondent State of Minnesota charged appellant Jordan Lee Downwind with two counts of felony possession of a firearm based on an officer's discovery of a shotgun in the back seat of a vehicle that Downwind had been driving. Downwind moved to suppress the shotgun, arguing that it was the fruit of an illegal search.

At a hearing on the suppression motion, Upper Sioux Police Officer Shane Dalton testified that on the night of November 3, 2016, he was looking for Downwind because there was a felony warrant for his arrest. An employee at the Prairie's Edge Casino informed Officer Dalton that Downwind was at the casino. Officer Dalton went to the casino and stopped a vehicle that Downwind was driving in the parking lot. Two passengers exited the vehicle, and one ran back to the casino. Officer Dalton handcuffed Downwind and placed him in the back seat of a squad car. The remaining passenger asked Officer Dalton about his sweatshirt, which was in the vehicle. Officer Dalton opened the vehicle's door, retrieved the sweatshirt, and sent the passenger on his way. Officer Dalton obtained the keys to the vehicle and other personal possessions from Downwind and placed them in a bag on the front seat of his squad car.

Officer Dalton determined that the vehicle belonged to Downwind's grandfather. Officer Dalton testified that he did not plan to tow the vehicle and that he and Downwind discussed arrangements for his grandfather to pick up the vehicle from the parking lot. Officer Dalton testified that he intended to release the keys to Downwind's grandfather the next day. But he also testified that he planned to give Downwind's grandfather a few days to pick up the vehicle because it was not busy in the parking lot and the vehicle did not need to be moved right away. Officer Dalton testified that after he explained to Downwind that the keys would be released to his grandfather at the jail, he told Downwind that he was going to make sure the vehicle was locked. Officer Dalton opened the driver's door to lock the vehicle, using a flashlight to illuminate the door panel. When he did so, he observed a metal tube and a plastic tube with a white powder on them in the driver's door panel, which he recognized as drug paraphernalia. Based on this observation, Officer Dalton decided to search the vehicle.

Yellow Medicine County Deputy Sheriff Marshall Doyle testified that he drove to the casino in response to Officer Dalton's call for assistance. After Officer Dalton opened the driver's door to Downwind's vehicle and observed the drug paraphernalia, Deputy Doyle helped him search the vehicle. Deputy Doyle opened the front passenger door and observed shotgun ammunition and a baggie with white residue in the door's side pocket. He informed Officer Dalton of his discovery, and the two officers searched the rest of the vehicle. The officers found a loaded shotgun on the floor by the back seat. They also found a black bag with white powder, butane, and sandwich bags containing white powder and substances made to look like methamphetamine.

As support for his suppression motion, Downwind argued that Officer Dalton did not have a search warrant or enough suspicion of criminal activity to justify searching the vehicle when he opened the vehicle's door and that all of the evidence obtained during the search should be suppressed. The district court denied Downwind's motion to suppress, reasoning, in part, that the officers did not intend to search the vehicle until Officer Dalton discovered drug paraphernalia when he opened the driver's door to lock the car. The district court further reasoned that Officer Dalton's observation of the paraphernalia in plain view supported probable cause to search the vehicle under the automobile exception to the warrant requirement.

Downwind moved the district court to reconsider its ruling, arguing that Officer Dalton could have used the vehicle's keys to lock the car and that the district court's findings were contradicted by video evidence from the squad car. The district court held a hearing on the motion to reconsider. At the hearing, the district court noted that there was no evidence in the record regarding a key fob that could secure the vehicle, and that even if there had been a way to lock the vehicle remotely, that option did not preclude the officers from opening the driver's door to lock the vehicle via the locking mechanism on the door panel.

The district court did not change its ruling, again reasoning that Officer Dalton lawfully opened the door to lock the vehicle and observed drug paraphernalia in plain view, which provided probable cause to search the vehicle. Downwind proceeded to trial, and he was found guilty as charged. The district court sentenced him to serve 60 months in prison. Downwind appeals.

DECISION

The United States and Minnesota Constitutions guarantee “[t]he right of the people to be secure in their persons, houses, papers, and effects” against “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. “Generally, warrantless searches are per se unreasonable.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). Evidence seized in violation of the U.S. or Minnesota Constitutions must be suppressed. *Terry v. Ohio*, 392 U.S. 1, 12-13, 88 S. Ct. 1868, 1875 (1968); *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011).

An appellate court reviews a district court’s ruling on constitutional questions involving searches and seizures de novo. *State v. Anderson*, 733 N.W.2d 128, 136 (Minn. 2007). “When reviewing pretrial orders on motions to suppress evidence, [appellate courts] 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).

Downwind contends that “[t]he ‘search’ began, for Fourth Amendment purposes, at the moment the officers entered [his] vehicle, i.e. invaded his reasonable expectation of privacy.” More specifically, Downwind argues that the “start of the search” was the point at which Officer Dalton first opened the driver’s door to the vehicle and that “Officer Dalton ‘searched’ [his] vehicle when he opened the driver-side door.” We therefore focus on Officer Dalton’s act of opening the door.

Whether a police intrusion constitutes a search is an issue of law that we determine de novo. See *State v. Wiegand*, 645 N.W.2d 125, 129 (Minn. 2002) (stating that whether

a dog sniff was a search presented a constitutional question, which was subject to de novo review). A search occurs when an officer intrudes upon an area where a person has a reasonable expectation of privacy. *State v. Wiggins*, 788 N.W.2d 509, 514 (Minn. App. 2010), *review denied* (Minn. Nov. 23, 2010).

Minnesota courts apply a two-step analysis to determine whether a defendant has a legitimate expectation of privacy in a particular area. At the first step, we ask whether the defendant exhibited an actual subjective expectation of privacy in a particular place. At the second step, we ask whether that expectation of privacy is reasonable.

State v. Luhm, 880 N.W.2d 606, 612 (Minn. App. 2016) (quotation and citation omitted).

Generally, a person has a reasonable expectation of privacy in his vehicle's interior. *State v. Goodrich*, 256 N.W.2d 506, 510 (Minn. 1977). However, "the physical characteristics of an automobile and its use result in a lessened expectation of privacy therein." *New York v. Class*, 475 U.S. 106, 112, 106 S. Ct. 960, 965 (1986). Moreover, a person's conduct may demonstrate objectively that he did not have a legitimate expectation of privacy in his vehicle's interior. *State v. Tunland*, 281 N.W.2d 646, 650 (Minn. 1979).

"When determining whether a person has exhibited a subjective expectation of privacy, courts should focus their inquiry on the individual's conduct and whether the individual sought to preserve something as private." *State v. Barajas*, 817 N.W.2d 204, 213 (Minn. App. 2012) (quotation omitted), *review denied* (Minn. Oct. 16, 2012). "[E]ven a reasonable expectation of privacy may be waived if a defendant's conduct, objectively viewed in light of the totality of the circumstances, mandates the conclusion that any

expectation of privacy was unreasonable.” *State v. Perkins*, 588 N.W.2d 491, 493 (Minn. 1999) (quotation omitted).

The circumstances of this case support a conclusion that Downwind did not have a reasonable expectation of privacy in the vehicle’s interior door panels, where locking mechanisms are normally found. Downwind had been arrested on a felony warrant. He and Officer Dalton discussed leaving the vehicle that Downwind had been driving at the time of his arrest in a casino parking lot so its owner could retrieve it. Officer Dalton explained that he intended to release the keys to the vehicle to its owner at the jail the next day. Given that the vehicle was going to be left unattended in the casino parking lot overnight, Officer Dalton had good reason to lock the vehicle and opened the vehicle’s door solely for that purpose. *See State v. Ferrise*, 269 N.W.2d 888, 890-91 (Minn. 1978) (determining that an officer’s act of opening a vehicle’s passenger door to talk to a passenger was reasonable, noting that the officer “had a good reason” for doing so).

Given Downwind’s arrest and resulting inability to secure his grandfather’s vehicle, as well as his intent to leave the vehicle in a casino parking lot, he could not reasonably have expected to maintain the expectation of privacy that is normally associated with a vehicle’s interior. Surely, he must have expected that the police would lock the vehicle before leaving it unattended in the casino parking lot as discussed. Alternatively, he must have anticipated the risk that someone would enter the unlocked vehicle while it was unattended in the parking lot. Either way, Downwind’s expectation of privacy in the vehicle’s interior was compromised, and we cannot conclude that his lessened expectation of privacy reasonably extended to the door’s interior panels such that the police intruded

on a constitutionally protected area by opening the driver's door to the vehicle to lock it. Because Officer Dalton did not intrude upon an area in which Downwind had a reasonable expectation of privacy, his act of opening the vehicle door and illuminating the door panel for the purpose of locking the vehicle did not constitute a search and did not violate the Fourth Amendment.

Once the door was open, Officer Dalton observed drug paraphernalia in plain view in the door's interior panel. "The seizure of property in plain view involves no invasion of privacy and is presumptively reasonable, assuming that there is probable cause to associate the property with criminal activity." *Payton v. New York*, 445 U.S. 573, 587, 100 S. Ct. 1371, 1380 (1980). Moreover, "[w]hen probable cause exists to believe that a vehicle contains contraband, the Fourth Amendment permits the police to search the vehicle without a warrant." *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). Officer Dalton's observation of drug paraphernalia provided probable cause to believe the vehicle contained contraband and to search the vehicle without a warrant. *See State v. Munoz*, 385 N.W.2d 373, 376-77 (Minn. App. 1986) ("Upon observing [glassine envelopes in plain view on the passenger side front floor mat], a warrantless search of the remainder of the passenger compartment [was] justified.")

In conclusion, any expectation of privacy that Downwind had in the vehicle's interior yielded to the extent necessary for Officer Dalton to open the door to lock the vehicle, consistent with the plan to leave the vehicle in the casino parking lot for its owner. Officer Dalton's act of opening the driver's door was therefore not a search, and it did not violate the Fourth Amendment. Once the door was open, Officer Dalton's observation of

drug paraphernalia in the door panel provided probable cause to believe the vehicle contained contraband and justified the ensuing warrantless search.¹ We therefore affirm.

Affirmed.

¹ Downwind asserts that the district court made erroneous factual findings regarding the officers' observation of contraband within the vehicle from outside the vehicle. Because Officer Dalton did not violate the Fourth Amendment by opening the door to the vehicle and the events that followed justified the warrantless search of the vehicle, any error in the district court's findings regarding the officers' observations prior to opening the door are immaterial.