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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1785**

State of Minnesota,
Respondent,

vs.

Quentin Laurel Rasmussen,
Appellant.

**Filed September 4, 2018
Affirmed
Halbrooks, Judge**

Pennington County District Court
File No. 57-CR-16-700

Lori Swanson, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General,
St. Paul, Minnesota; and

Seamus Duffy, Pennington County Attorney, Stephen R. Moeller, Assistant County
Attorney, Thief River Falls, Minnesota (for respondent)

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

Kate M. Baxter-Kauf, Special Assistant Public Defender, Lockridge Grindal Nauen
P.L.L.P., Minneapolis, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Halbrooks, Judge; and
Kalitowski, Judge.*

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges his first-degree aggravated controlled-substance-crime conviction, arguing that the district court erred by denying his pretrial suppression motion. We affirm.

FACTS

A Thief River Falls Police Department officer and an investigator from the Pennington County Sheriff's Department observed appellant Quentin Rasmussen leaving a residence on a motorcycle in Thief River Falls. Because the officer believed that Rasmussen did not have a motorcycle endorsement, he contacted dispatch. Dispatch confirmed that Rasmussen did not have a motorcycle endorsement.

The officers followed Rasmussen and stopped him after he failed to signal for a turn. Rasmussen informed the officers that he did not have a motorcycle endorsement or proof of insurance for the motorcycle. During the stop, the officers noted that, on the license plate of the motorcycle where the sticker would normally be, there was a tab that said "Void." When questioned further, Rasmussen told the officers that the motorcycle was owned by B.J. Upon the officers' request, dispatch checked the motorcycle's license-plate number and VIN, but neither was registered to anyone. Based on the "Void" tab and the fact that the license plate was not registered, the officers suspected that the motorcycle was stolen.

The officers ran Rasmussen's driver's license and learned that he had two convictions in the last ten years for not having proof of insurance, a gross misdemeanor

under Minn. Stat. § 169.791, subd. 2(a) (2016). They arrested him, and another officer who had arrived on the scene to assist performed a search incident to arrest. He found a scale and three small bags of a white substance that the officers believed to be methamphetamine. The officers then obtained a search warrant and searched the saddlebags on the motorcycle, finding a 14.5 ounce bag of methamphetamine, several other small bags, scales, and \$1,500 in cash.

Rasmussen was charged with first-degree aggravated controlled-substance crime under Minn. Stat. § 152.021, subd. 2(a)(1) (2016). He moved to suppress the evidence from the arrest, arguing that the officers lacked probable cause to arrest him and that the evidence was the product of an improperly expanded search. The district court held an omnibus hearing on the issue and denied Rasmussen's motion. He then agreed to a trial on stipulated evidence pursuant to Minn. R. Crim. P. 26.01, subd. 4, to preserve appellate review of the suppression issue. The district court found Rasmussen guilty of first-degree aggravated controlled-substance crime and sentenced him to 150 months in prison. This appeal follows.

D E C I S I O N

Our review is limited to the district court's ruling on Rasmussen's suppression motion. In an appeal from a suppression-motion ruling, we review the district court's factual findings for clear error and its legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). We may also "independently review the facts and determine, as a matter of law, whether the district court erred in . . . not suppressing . . . the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

Rasmussen argues that the officers did not have probable cause to arrest him for failure to provide proof of insurance. The statute provides:

Every driver shall have in possession at all times when operating a vehicle and shall produce on demand of a peace officer proof of insurance If the driver does not produce the required proof of insurance . . . the driver is guilty of a misdemeanor. A person is guilty of a gross misdemeanor who violates this section within ten years of the first of two prior convictions under this section A driver who is not the owner of the vehicle may not be convicted under this section unless the driver knew or had reason to know that the owner did not have proof of insurance required by this section, provided that the driver provides the officer with the name and address of the owner at the time of the demand

Minn. Stat. § 169.791, subd. 2(a). Rasmussen focuses on the last part of the statute—the nonowner exception—and claims that he met the exception’s requirements by providing the arresting officers with the name of the motorcycle’s owner. He contends that because he met the exception, he cannot be convicted under the statute, and therefore he could not be arrested for violating the statute.

Rasmussen’s argument assumes that he met the nonowner exception to the statute. The proof-of-insurance statute requires a nonowner to provide an “officer with the name *and address*” of the vehicle’s owner. *Id.* (emphasis added). The omnibus hearing testimony from the officers confirms that Rasmussen told them that the motorcycle belonged to B.J. But Rasmussen did not provide the officers with B.J.’s address.

Relying on *State v. Wetsch*, Rasmussen maintains that he was not required to provide B.J.’s address. 511 N.W.2d 490, 492 (Minn. App. 1994), *review denied* (Minn. Apr. 19, 1994). In *Wetsch*, this court omitted the address requirement in its discussion of

the nonowner exception, stating simply that a nonowner driver may not be convicted under the proof-of-insurance statute if he “give[s] the officer the name of the car’s owner.” *Id.* But the appellant in *Wetsch* was the owner of the vehicle—not a nonowner driver—and the focus of the *Wetsch* court was whether there was a scienter requirement for owner-drivers. *Id.* at 491. So the discussion of the nonowner exception—and thus the omission of the address requirement from that discussion—is dicta. Accordingly, Rasmussen’s reliance on *Wetsch* is misplaced. Instead we look to the plain language of the statute, which clearly requires nonowner drivers to provide a name *and* an address to qualify for the nonowner exception. We conclude that Rasmussen did not meet these requirements.

We briefly note that Rasmussen’s argument also fails on other grounds. In *State v. Timberlake*, the Minnesota Supreme Court analyzed Minn. Stat. § 624.714, subd. 1a (2006), which criminalizes carrying or possessing “a pistol . . . in a public place . . . without first having obtained a permit to carry the pistol.” 744 N.W.2d 390, 395 (Minn. 2008). The supreme court held that “the ‘without a permit’ language creates an exception to criminal liability that places a burden on the defendant to come forward with some evidence of a permit.” *Id.* And in *State v. Williams*, the supreme court further clarified that the statute at issue in *Timberlake* “operates as an affirmative defense: Once a defendant produces a permit . . . the overall presumption of innocence operates to shift the burden back onto the state to show the invalidity of the permit, or violation of the terms of the permit.” 794 N.W.2d 867, 872 (Minn. 2011) (quotation omitted). In terms of creating an affirmative defense, the proof-of-insurance statute is analogous to the statute at issue in *Williams* and *Timberlake*. Thus, the nonowner exception is an affirmative defense to

conviction, not an element of the offense. And the mere fact that Rasmussen could attempt to raise an affirmative defense at trial does not preclude officers from arresting him based on probable cause to believe that he violated the proof-of-insurance statute.

Affirmed.