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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1086**

State of Minnesota,
Respondent,

vs.

Rani Lee Carpenter,
Appellant.

**Filed October 28, 2019
Affirmed
Reilly, Judge**

Beltrami County District Court
File No. 04-CR-17-1183

Keith Ellison, Attorney General, St. Paul, Minnesota; and

David L. Hanson, Beltrami County Attorney, David P. Frank, Assistant County Attorney,
Bemidji, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Adam S. Lozeau, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

In this direct appeal from final judgment, which was stayed to permit appellant to pursue postconviction proceedings, appellant argues that his convictions for fifth-degree controlled-substance crime and fourth-degree driving while impaired must be reversed

because his trial counsel was ineffective by failing to challenge an illegal search, which would have resulted in suppression of the evidence and dismissal of the charges. Because we determine that trial counsel's performance was not objectively unreasonable, we affirm.

D E C I S I O N

Appellant Rani Lee Carpenter argues his convictions must be reversed because he received ineffective assistance of counsel. Specifically, appellant argues his trial counsel was ineffective because counsel failed to seek suppression of evidence against appellant, contending that the deputy performed an illegal trespassory search by physically intruding onto appellant's truck to perform his investigation. The Sixth Amendment to the United States Constitution and article I, section 6 of the Minnesota Constitution guarantee criminal defendants the right to effective assistance of counsel. To succeed on a claim of ineffective assistance of counsel, the claimant must affirmatively prove that his counsel's representation (1) "fell below an objective standard of reasonableness" and (2) "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 694, 104 S. Ct. 2052, 2068 (1984)).

When reviewing a postconviction court's denial of relief on a claim of ineffective assistance of counsel, we consider the "court's factual findings that are supported in the record, conduct a de novo review of the legal implication of those facts on the ineffective assistance claim, and either affirm the court's decision or conclude that the court abused its discretion because postconviction relief is warranted." *State v. Nicks*, 831 N.W.2d 493, 503-04 (Minn. 2013). A postconviction court "abuses its discretion if it exercised its

discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.” *Reed v. State*, 925 N.W.2d 11, 18 (Minn. 2019) (quotation omitted).

To prevail on his claim of ineffective assistance of counsel, appellant must first demonstrate that his counsel’s performance fell below an objective standard of reasonableness. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003). Appellant asserts that trial counsel’s performance was objectively unreasonable given the clarity of the United States Supreme Court’s holding in *United States v. Jones*, 565 U.S. 400, 132 S. Ct. 945 (2012).

In *Jones*, Antoine Jones was suspected of trafficking narcotics. *Id.* at 402, 132 S. Ct. at 948. The government obtained a search warrant to install a GPS device on the vehicle he drove. *Id.* Specifically, the warrant authorized the government to install the GPS on the vehicle registered to Jones’s wife in the District of Columbia within 10 days. *Id.* at 402-03, 132 S. Ct. at 948. However, agents installed the GPS on the vehicle while it was parked in a public lot in Maryland on the 11th day. *Id.* at 403, 132 S. Ct. at 948. Using the GPS, the government was able to track the vehicle’s movements for 28 days. *Id.* Jones and several alleged co-conspirators were subsequently charged with controlled substance crimes. *Id.* at 403, S. Ct. at 948. The court determined that the “[g]overnment physically occupied private property for the purpose of obtaining information” and that the physical intrusion amounted to an illegal search under the Fourth Amendment. *Id.* at 404-05, 132 S. Ct. at 949.

The case at hand is factually distinct from *Jones*. Here, a woman called 911 to report that a purple semi-truck was swerving on Highway 2 and had nearly run her off the road. A Beltrami County Sheriff's deputy received this information from the dispatcher. The deputy noticed a truck matching the caller's description and pursued the vehicle. After verifying that the truck's license plate matched the one identified by the caller, the deputy activated his lights to initiate a traffic stop. Once the driver pulled over, the deputy approached the semi and immediately climbed up onto the steps leading to the cab door of the truck to speak with the driver. From his position on the truck steps, the deputy was able to see inside the semi-truck.

The deputy identified the truck driver as appellant, Rani Lee Carpenter. During his conversation with appellant, the deputy noticed that several of appellant's teeth were missing or decayed, which suggested to the deputy that appellant used methamphetamine. The deputy also noticed a butane torch on the passenger seat, which he recognized as a device methamphetamine users use to smoke the drug. Finally, the deputy noticed that appellant's hands were "continually shaking" as he looked for his insurance paperwork. The deputy's observations led him to believe appellant was under the influence of a controlled substance. The deputy asked appellant to exit the truck to perform field sobriety tests. Based on the results of the field sobriety test, the deputy placed appellant under arrest. Appellant was charged with and subsequently convicted of fifth-degree possession of a controlled substance and fourth-degree driving while impaired.

As noted previously, appellant contends that his trial counsel was ineffective because he failed to raise a Fourth Amendment claim under *Jones*. It is not plain to us that *Jones* so clearly applies to the facts of this case. And appellant concedes there is no caselaw applying *Jones* to the factual situation presented here (i.e. officer climbing up onto the running boards of a tall truck to speak to a driver). Under the standard articulated in *Strickland*, trial counsel's performance must fall below an objective standard of reasonableness. We fail to see how trial counsel's performance can be objectively unreasonable when no clearly applicable caselaw exists to support such a claim. As such, we determine that appellant did not affirmatively prove that trial counsel's performance was deficient under the first prong of the *Strickland* test.

Moreover, this is not a case where trial counsel failed to file any motions. Trial counsel filed suppression motions on behalf of appellant. Specifically, trial counsel argued that the officer did not have reasonable, articulable suspicion of criminal activity to justify the stop and that the officer unlawfully expanded the scope of the stop by conducting field-sobriety testing. Appellant argues that trial counsel took the "conventional approach." We determine that trial counsel raised suppression issues that were supported by Minnesota caselaw. Trial counsel's performance was objectively reasonable under the circumstances of this case. The district court did not abuse its discretion by denying appellant's petition for postconviction relief based on a claim of ineffective assistance of counsel.

Affirmed.