

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
CRIMINAL COURT DIVISION

Court file #: 62-CR-08-10336

State of Minnesota,
Plaintiff,
v.

Max Jacob Specktor,
Defendant.

ORDER

The above-entitled matter came on for a hearing on September 29, 2009, before the Honorable Teresa R. Warner, District Court Judge, 1070 Ramsey County Courthouse, 15 West Kellogg Boulevard, St. Paul, Minnesota 55102.

Heidi Westby, Esq. and Derek Fitch, Esq., Assistant Ramsey County Attorneys, 50 West Kellogg Blvd., Suite 315, St. Paul, MN 55102, appeared on behalf of the State.

Larry Leventhal, Esq., 319 Ramsey Street, St. Paul, MN 55102, appeared on behalf of the Defendant, who was present.

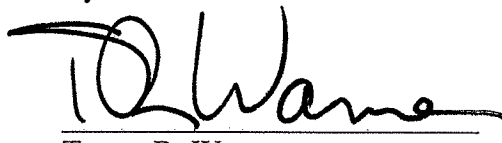
Based upon the files, records, and proceedings herein:

IT IS HEREBY ORDERED that:

1. Defendant, Max Specktor's Motion to Suppress Evidence is **DENIED**;
2. The attached memorandum is incorporated herein and made part of this Order.

It is so ordered.

By the Court:



Teresa R. Warner
Ramsey County District Court Judge

Date:

December 4, 2009

MEMORANDUM

Defendant, Max Spektor, is charged with Conspiracy to Commit Criminal Damage to Property in the First Degree, in violation of Minn. Stat. §609.595.1(1) & (3) and §609.175.2(3), and Conspiracy to Commit Riot in the Second Degree, in violation of Minn. Stat. §609.71.2 and §609.175.2(3). Defendant filed a Motion to Suppress evidence seized from a vehicle in which he was a passenger. Defendant's motion was heard September 29, 2009. At the hearing, the State presented the testimony of Ramsey County Sheriff's Deputy Richard Clark and Minneapolis Police Officers Patrick King and Matthew Wentz. Defendant presented the testimony of Ashley Majer.

On August 29, 2008, a search warrant was issued for the premises of 3500 Harriet Avenue South, Minneapolis, MN and the person of Max Spektor. The search warrant affiants are Inspector Tony Samec of the Ramsey County Sheriff's Office, Commander Dale Sommerhause, of the Special Investigations Unit, and Deputy Sheriff Richard Clark, Commander of the Ramsey County Sheriff's Narcotics Unit. The search warrant affidavit describes a one year multi-agency investigation into the activities of the RNC Welcoming Committee ("RNCWC") and contains the following information: Investigating officers reviewed publicly available "open source" information and became suspicious that members of the RNCWC were planning and conspiring to engage in criminal activity, including criminal damage to property, riot, civil disorder, use of incendiary devices and unlawful assembly, in Ramsey County during the Republican National Convention. The investigation revealed that RNCWC membership fluctuated between 30 and 35 people who attended over 100 meetings. Regular surveillance of RNCWC members took place, including the use of an undercover investigator and two confidential reliable informants, who posed as members of the RNCWC. Investigators determined that six individuals, including Defendant, Max Spektor, had exercised leadership

roles within the RNCWC. The affidavit describes how members of the RNCWC planned to use items such as Molotov cocktails, explosive devices, caltrops, nails, bricks, smoke bombs, sharpened poles and razor wire to attempt to disrupt the convention. The search warrant stated that probable cause existed to believe that these items were at 3500 Harriet Avenue South and on the person of Max Specktor.

The search warrant was issued for the premises of 3500 Harriet Avenue South and the person of Max Specktor. On August 30, 2008, law enforcement officers executed the search warrant on the premises of 3500 Harriet. Max Specktor was not present at the time of execution. Two days later, on September 1, 2008, the Ramsey County Sheriff's Office issued a probable cause pickup and hold¹ for Max Specktor for the felony offenses of conspiracy to commit criminal damage to property and conspiracy to commit riot. The probable cause pickup was based on the facts listed in the search warrant affidavit.

On September 1, 2008, a number of officers were in the area of 3500 Harriet to coordinate the arrest of Max Specktor. Minneapolis Police Officer Patrick King arrived at the area of 3500 Harriet at approximately 8:30a.m. Deputy Sheriff Richard Clark arrived at the area of 3500 Harriet at approximately 9:00a.m. Deputy Clark was notified by Commander Dale Sommerhause, one of the affiants on the search warrant, of the probable cause pickup for Max Specktor. Officer King and Deputy Clark were both aware of the probable cause pickup for Max Specktor issued by the Ramsey County Sheriff's Office. Minneapolis Police Officer Matthew Wente was in the area around 10:15a.m. when Officer King notified him by radio of the probable cause pickup for Max Specktor.

At approximately 10:30a.m., Deputy Clark received a radio transmission that Max

¹ Minn.Stat. §629.34(c)(3) gives peace officers the authority to arrest a person without a warrant when a felony has been committed and the officer has reasonable cause to believe that the person arrested has committed the offense.

Specktor had been sighted outside of 3500 Harriet. Specktor spoke briefly with a group of people and then they all got into a van. For officer safety reasons, the officers waited for Specktor to leave the property before picking him up. Deputy Clark testified that the officers waited to pick up Specktor until he had moved away from the house because numerous people had been seen at the residence and it was not known how many people were inside.

The officers observing Specktor were in unmarked cars and did not have police uniforms on. Deputy Clark and Officer King observed Max Specktor and approximately 7 other individuals get into a van with Texas license plates and drive away. As soon as the van left the residence, Deputy Clark radioed uniformed officers in marked squad cars and directed them to stop the van. Officer King followed the van for about 8 blocks and observed the van exceed the speed limit, turn right at a right light with a "No turn on Red" sign posted, and fail to come to a stop at the red light before turning. The van made some evasive driving maneuvers. Based on this driving conduct, Officer King believed the driver had recognized him as an undercover officer. Officer Wentz was also following the van for the purpose of arresting Max Specktor and observed the same driving conduct. Officer Wentz reported the driving conduct to the officers in marked squad cars and asked them to initiate a traffic stop so they could arrest Max Specktor.

Marked squad cars boxed in the van and forced it to stop. Officers ran up to the van with their guns drawn. Officer King opened the rear door to the van. He ordered Max Specktor out of the van and placed him in the rear of his squad car. Officer Wentz approached the driver of the van and asked him for his driver's license. The driver produced an expired Texas driver's license. Officer Wentz issued a citation to the driver for not having a valid Minnesota driver's license. The other passengers were ordered out of the van and told to sit on the curb away from the van so officers could secure the scene. The other passengers were asked to identify themselves, but they refused to provide any personal information. During the stop, officers

observed in plain view helmets, exploding fireworks, a gas can and numerous back packs strewn about the back of the van. After the scene was secure, the other passengers were free to leave.

The stopped van was obstructing traffic and needed to be moved. A crowd of people had began gathering and officers became concerned for their safety. Some of the passengers were making phone calls asking other people to come to their location. Due to the gathering crowd and for officer safety reasons, the officers decided that the van needed to be moved immediately. The driver did not have a valid driver's license, Max Spektor had been arrested, and none of the other passengers were willing to produce a valid driver's license. For all of these reasons, the officers decided that they could not wait for a tow truck to arrive. Officer King drove the van approximately five blocks to the Minneapolis Police Department, Fifth Precinct to remove it from the area and avoid a potential riot situation. The van was searched at the Fifth Precinct and later towed to an impound lot.

The parties stipulated that the Fifth Precinct where the van was searched was a secure area and that no search warrant was obtained prior to the search. Upon searching the van, officers found numerous items including caltrops, exploding fireworks, items used for making Molotov cocktails, spring-loaded center punches, bolt cutters, hacksaw blades, gas cans and gas masks.

Motion to Suppress

Defendant asserts that the search of the van and the seizure of items within the van should be suppressed for the following reasons: (1) the van was searched without prior judicial approval; (2) the stop of the van was a traffic stop, therefore the search was prohibited; (3) the arrest of Defendant was improper and cannot form the basis for the search; and (4) a warrant was required to search the van because it had been removed from the scene of the stop prior to a property inventory.

The federal and state constitutions prohibit unreasonable searches and seizures. *U.S. Const. amend. IV; Minn. Const. art. I, §10*. The United States Supreme Court has stated that generally, warrantless searches and seizures are per se unreasonable. *Katz v. United States*, 389 U.S. 347, 357 (1967). But police may search a vehicle without a warrant, pursuant to the automobile exception, if they have probable cause to believe the vehicle contains contraband or other evidence of criminal conduct. *Maryland v. Dyson*, 527 U.S. 465, 467 (1999).

Defendant argues that the stop of the van was a traffic stop, therefore a search of the vehicle is prohibited unless for officer safety reasons. Defendant cites *Arizona v. Gant*, 129 S.Ct. 1710 (2009), in support of his position. In *Gant*, the U.S. Supreme Court found the search of a vehicle improper where the driver was arrested for driving with a suspended license, an offense for which police could not expect to find evidence in the passenger compartment of the car. However, the *Gant* Court held that a search incident to a lawful arrest is justified when it is “reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.” *Id.* at 1719. The *Gant* Court cited two other cases involving arrests for drug offenses and discussed how those offenses, unlike driving with a suspended license, were offenses for which police officers could reasonably expect to find evidence in the passenger compartment of the vehicle.

The stop of the van was not a mere traffic stop. A probable cause pickup on the felony offenses of conspiracy to riot and conspiracy to commit damage to property had been issued for Defendant, Max Specktor, whose residence was under surveillance. When Specktor left the residence, Deputy Clark radioed other officers and directed them to stop the van and arrest Max Specktor. Probable cause existed to believe that Max Specktor was in possession of dangerous weapons that he intended to use to disrupt the Republican National Convention. Officers observed Specktor and approximately 6 other people get into the van and leave the residence.

Officers observed Max Specktor carry a khaki bag into the van. The day Max Specktor was arrested was September 1, 2008, the opening day of the Republican National Convention. When the officers stopped the van, they observed in plain view some of the items believed to be in the possession of Max Specktor. Given the circumstances surrounding the arrest of Max Specktor, the offenses of conspiracy to riot and conspiracy to commit damage to property are offenses for which it is reasonable to believe that evidence might be found in the vehicle. The facts present here differ from those in *Gant*, and officers were justified in searching the van after arresting Max Specktor because there was probable cause to believe that the vehicle contained evidence of criminal conduct.

Defendant asserts that his arrest was an invalid warrantless arrest because officers had time to secure a warrant. Police officers may arrest a felony suspect without an arrest warrant in any public place...provided they have probable cause. *State v. Walker*, 584 N.W.2d 763, 766 (Minn.1998). Probable cause exists when the facts indicate that a person of ordinary care and prudence would entertain an honest and strong suspicion that a crime has been committed. *State v. Olson*, 634 N.W.2d 224, 228 (Minn.App.2001). In evaluating whether probable cause exists, a court looks at objective facts and considers the totality of the circumstances. *Olson*, 634 N.W.2d at 228. In *State v. Brantley*, 2002 WL 109365 (Minn.App.), the Minnesota Court of Appeals discussed how the collective knowledge approach applies to an officer making an arrest based on a probable cause pickup:

Probable cause exists when the facts and circumstances would lead a person of ordinary care and prudence to have a strong suspicion that a crime has been committed. *State v. Johnson*, 314 N.W.2d 229, 230 (Minn.1982). It is not uncommon for an arresting officer to rely on factual data learned from police communications when acting on a "pick-up-and-hold" order. Recognizing that "it is unrealistic to demand that each officer in the department personally know all the facts necessary to justify an arrest," the supreme court has stated that a determination of whether sufficient probable cause for the arrest exists should be judged by "total knowledge of the police department." *State v. Radil*, 288 Minn.

279, 283, 179 N.W.2d 602, 605 (1970). “Under the ‘collective knowledge’ approach, the *entire* knowledge of the police force is pooled and imputed to the arresting officer***.” *State v. Conway*, 319 N.W.2d 35, 40 (Minn.1982) (emphasis in original). *Brantley* at 2.

The search warrant was executed as to the premises, but not as to the person of Max Spektor. Based on the facts set forth in the search warrant affidavit, the Ramsey County Sheriff’s Department issued a probable cause pick up for Max Spektor. Officers had probable cause to arrest Spektor on felony offenses. On September 1, 2008, officers first noticed Max Spektor outside his residence at 10:30a.m. For safety reasons, the officers waited until Max Spektor left the residence to make the arrest. A short time after Max Spektor was first spotted, the vehicle he was in was stopped, and he was arrested.

There was sufficient probable cause for the arrest of Max Spektor based on a probable cause pickup and hold issued by the Ramsey County Sheriff’s Department for the felony offenses of conspiracy to riot and conspiracy to commit damage to property. There was probable cause to believe that the vehicle contained evidence of this criminal conduct and the search of the van was a proper search. Defendant’s Motion to Suppress is denied.

The final issue was whether the search was proper as an inventory search. Although this Court finds that the search was proper on probable cause grounds, this Court will still address the search as an inventory search. Inventory searches are a well-defined exception to the warrant requirement. *Colorado v. Bertine*, 479 U.S. 367, 371 (1987). An inventory search conducted pursuant to a standard police procedure prior to lawfully impounding an automobile is not unconstitutional. *State v. Goodrich*, 256 N.W.2d 506, 510 (Minn.1977). The police will generally be able to justify an inventory search taken to safeguard the contents of the automobile once the police have lawful custody of the vehicle. *Id.* The threshold inquiry when determining the reasonableness of an inventory search is whether the impoundment of the vehicle was proper.

Id. For impoundment to be proper, the state must have an interest in impounding that outweighs the individual's Fourth Amendment right to be free of unreasonable searches and seizures. *Id.*

The van was stopped in the street, was obstructing traffic, and could not remain where it was. The driver did not have a valid driver's license and the passengers were unwilling to produce a valid driver's license. It was necessary for police officers to impound the vehicle, there were public safety concerns that outweigh the van's occupants' right to be free of unreasonable searches and seizures. Officer King testified that the van was inventoried pursuant to standard procedures. The search of the van was a proper inventory search.

TRW