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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1959**

State of Minnesota,
Appellant,

vs.

Andre Leroi Johnson,
Respondent.

**Filed May 21, 2012
Reversed and remanded
Stoneburner, Judge**

Hennepin County District Court
File No. 27-CR-11-5957

Lori Swanson, Minnesota Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, Assistant Hennepin
County Attorney, Minneapolis, Minnesota (for respondent)

Larry E. Reed, Minneapolis, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and
Collins, Judge.*

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

UNPUBLISHED OPINION

STONEBURNER, Judge

In this pretrial appeal, appellant state challenges the district court's order suppressing evidence obtained as a result of a traffic stop. The district court concluded that, although the stop was legal, the officer impermissibly expanded the scope of the stop. Because we conclude that the officer did not impermissibly expand the scope of the stop, we reverse and remand.

FACTS

The district court credited the testimony of Officer Daniel Nelson of the Bloomington Police Department that he stopped a vehicle driven by respondent Andre Leroi Johnson at approximately 4:30 a.m. based on his perception that the rear license-plate light was not functioning. But the district court concluded that the officer's immediate observations, on contact with Johnson, of indicia of intoxication did not justify having Johnson step out of the vehicle to perform sobriety tests. Concluding that the officer impermissibly expanded the scope of a legitimate traffic stop, the district court suppressed evidence of Johnson's intoxication and drugs discovered on his person during a search subsequent to his arrest. The state appeals.

DECISION

To prevail in an appeal of a pretrial order, "the state must 'clearly and unequivocally' show both that the trial court's order will have a 'critical impact' on the state's ability to prosecute the defendant successfully and that the order constituted error." *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995) (quotation omitted). Critical

impact must be determined first. *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998). In this case, the suppression order precludes prosecution, and the parties do not dispute that the state has shown the requisite critical impact.

In reviewing pretrial suppression orders, this court independently reviews the facts and determines as a matter of law whether the district court erred in suppressing or failing to suppress the evidence. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). This court accepts the district court's underlying factual determinations unless they are clearly erroneous. *State v. Lemieux*, 726 N.W.2d 783, 787 (Minn. 2007).

Both the United States and Minnesota Constitutions protect against “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. A police officer is permitted to make a limited investigative stop if the officer has “a reasonable, articulable suspicion that a suspect might be engaged in criminal activity.” *State v. Flowers*, 734 N.W.2d 239, 250 (Minn. 2007). The Minnesota Supreme Court has adopted the principles and framework of *Terry v. Ohio* for evaluating the reasonableness of seizures during traffic stops. *State v. Askerooth*, 681 N.W.2d. 353, 363 (Minn. 2004) (citing *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968)). “[E]ach incremental intrusion during a stop must be ‘strictly tied to and justified by’ the circumstances which rendered the initiation of the stop permissible.” *Id.* at 364 (citations omitted). An intrusion that is not closely related to the initial justification for a seizure is invalid under the Minnesota Constitution, article I, section 10, “unless there is independent probable cause or reasonableness to justify that particular intrusion.” *Id.* And the officer must develop a

reasonable, articulable suspicion of other illegal activity during the time necessary to resolve the original suspicion. *State v. Weigand*, 645 N.W.2d 125, 136 (Minn. 2002).

Johnson argues on appeal that the district court's finding that the stop was legal is clearly erroneous. Johnson concedes that a nonfunctioning license-plate light provides a legitimate basis for a traffic stop. But Johnson asserts that the district court did not credit the officer's testimony that he made the stop because he observed a nonfunctioning license-plate light. The record shows that this argument is without merit. Although the district court stated that it did not find any additional "conclusive evidence to verify the officer's belief that the rear light was out," the district court plainly credited the officer's testimony on this issue and held that the stop was legal. The officer articulated an objectively reasonable basis for suspecting that Johnson was violating a traffic law.

And even if the officer's belief that the license-plate light was not functioning was mistaken, a mistaken factual belief does not invalidate a stop. *See State v. Barber*, 308 Minn. 204, 206, 241 N.W.2d 476, 477 (1976) (noting that the factual basis required to support a stop for a routine traffic stop is minimal and affirming the legality of a stop based on an officer's mistaken belief that license plates were being used fraudulently based on the way they were attached to the car); *City of St. Paul v. Vaughn*, 306 Minn. 337, 343, 237 N.W.2d 365, 367 (1975) (upholding the validity of a stop despite the officer's mistaken identification of the driver as a person whose driver's license was suspended). The district court did not err in concluding that the stop was legal based on the officer's articulated reason for the stop.

The district court also credited the officer's testimony that when he reached the driver's side window he immediately smelled alcohol coming from the vehicle and noted that the driver's eyes were red and watery.¹ But the district court concluded that the odor of alcohol from the vehicle and the condition of Johnson's eyes did not provide sufficient reasonable suspicion of illegal activity to expand the traffic stop, noting that the officer failed to conduct any inspection of or make inquiry about the light. The state cites *State v. Lopez*, 631 N.W.2d 810, 814 (Minn. App. 2001), *review denied* (Minn. Sept. 25, 2001), for the proposition that the odor of alcohol in a vehicle provides reasonable suspicion of criminal activity sufficient to expand the scope of an initially unrelated traffic stop. The state additionally argues that the officer's observation of Johnson's red, watery eyes constitutes an objective indication of intoxication sufficient to constitute probable cause to believe that a person is under the influence, citing *State v. Kier*, 678 N.W.2d 672, 678 (Minn. App. 2004).

In *Lopez*, an officer stopped a vehicle for not having license plates. While approaching the vehicle, the officer noticed a valid registration sticker in the window. *Lopez*, 631 N.W.2d at 812. The officer continued to approach the driver and, after making contact with the driver, noticed "a faint odor of alcohol coming from the car's interior." *Id.* There were five occupants in the car. *Id.* The officer asked the car owner to step out of the car and, after questioning the owner, determined that a twelve-pack of

¹ Several of the district court's findings, including what the officer observed on reaching the driver's side window, are merely descriptions of the testimony and not true "findings of fact." See *Dean v. Pelton*, 437 N.W.2d 762, 764 (Minn. App. 1989) (distinguishing recitation of testimony or claims from true findings). Nonetheless, based on the district court's conclusions and memorandum, which accept this testimony as true, we conclude that the district court credited the officer's testimony.

beer in the car belonged to Lopez, a passenger in the car. *Id.* Lopez was later charged with providing alcohol to a minor. *Id.* The district court suppressed the evidence and dismissed the charges, concluding that the officer should have terminated the stop as soon as she saw the registration sticker in the rear window. *Id.* at 813. This court reversed the suppression of evidence, reasoning that “[b]ecause the odor of alcohol provided [the officer] with reasonable suspicion of criminal activity . . . she had a lawful basis to continue the detention and conduct an investigation.” *Id.* at 814.

In *Kier*, this court rejected Kier’s argument that an officer’s observations of an odor of alcohol from Kier’s breath, bloodshot and watery eyes, and slurred speech did not constitute probable cause for a DWI arrest, citing *State v. Wynne*, 552 N.W.2d 218, 221 (Minn. 1996), for the proposition that “[a]n officer needs only one objective indication of intoxication to constitute probable cause to believe a person is under the influence.” 678 N.W.2d at 678. “Common indicia of intoxication include an odor of alcohol, bloodshot and watery eyes, slurred speech, and an uncooperative attitude.” *Id.*

The state has clearly and unequivocally shown that, under controlling case law, the district court erred by concluding that the officer failed to articulate a reasonable suspicion of additional criminal activity sufficient to justify ordering Johnson out of the vehicle to perform sobriety tests. And, because the officer’s observations of indicia of intoxication were made immediately, within the time necessary to resolve the initial reason for the stop, the district court erred in holding that the officer impermissibly expanded the scope of the traffic stop in this case.

Reversed and remanded.