STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0117

State of Minnesota,
Respondent,

vs.

Veronica Elana Mata-Woodruff,
Appellant.

Filed June 17, 2008
Affirmed in part, reversed in part, and remanded
Klaphake, Judge

Polk County District Court
File No. K3-06-53

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

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Lawrence Hammerling, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Wright, Judge.

U N P U B L I S H E D O P I N I O N

KLAPHAKE, Judge

Appellant Veronica Elana Mata-Woodruff appeals from her conviction for first-degree possession of a controlled substance. Minn. Stat. § 152.021, subd. 2(1) (2004). Appellant argues that the district court erred by refusing to suppress evidence found on her person after a stop of the vehicle in which she was a passenger. She further argues that the district court violated her right to confrontation by admitting a Bureau of Criminal Apprehension (BCA) laboratory report without supporting testimony from the analyst who prepared it.

Because the police had reasonable and articulable suspicion of additional criminal activity that permitted expansion of the stop and pat searches of appellant, we affirm the district court's order denying suppression of evidence, but reverse and remand for a new trial based on the Confrontation Clause violation.

D E C I S I O N

I. Expansion of Scope of Stop

Unreasonable searches and seizures are prohibited by both U.S. Const. amend. IV and Minn. Const. art. I, §10. A traffic stop is a seizure under both of these provisions. *State v. Askerooth,* 681 N.W.2d 353, 359 (Minn. 2004). This court reviews de novo a district court's pretrial order regarding suppression of evidence to determine whether the district court erred as a matter of law in making its decision. *Id.*

Police are permitted to make a limited investigative stop if they have a reasonable and articulable suspicion that a person is engaged in criminal activity. *State v. Britton,*

604 N.W.2d 84, 87 (Minn. 2000). However, once stopped, "the scope and duration of a traffic stop investigation must be limited to the justification for the stop." *State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003). An initially valid stop may become invalid if it becomes "intolerable" in its "intensity or scope." *Askerooth*, 681 N.W. 2d at 364. Each expansion of a stop beyond its original purpose must be justified by independent, reasonable, articulable suspicion of additional criminal activity. *State v. Burbach*, 706 N.W.2d 484, 488 (Minn. 2005). We review the totality of the circumstances to determine whether reasonable suspicion exists. *Id.* Even when one factor alone may not be "independently suspicious," several "factors in their totality" may provide an officer with sufficient reasonable suspicion to expand the scope of a stop. *State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998).

Appellant concedes that the initial stop of the vehicle in which she was a passenger was lawful. Before stopping the vehicle, police officers had a reasonable and articulable suspicion of criminal wrongdoing based on an officer's belief that the vehicle may have been stolen because its license plates were registered to a different vehicle. But appellant argues that her continued detention and pat searches were impermissible expansions of the scope of the initial stop because the officers did not have reasonable articulable suspicion that appellant was involved in the suspected theft of the vehicle. We disagree.

The record shows that (1) the officers could not verify the driver's identity; (2) none of the passengers claimed any knowledge as to the ownership of the vehicle or why the license plates on the vehicle did not match the make and model of the vehicle

registered for those plates; (3) drug paraphernalia was observed in plain view; (4) one of the rear-seat occupants was making furtive movements as if to hide something between his legs; (5) one passenger had recently been released from prison on a drug related offense; (6) the officers had knowledge of some of the passengers' prior violent behavior; (7) an officer observed an unusual bulge in appellant's pants; and (8) when the officer asked appellant to explain what she was concealing and whether it was a weapon or something that could hurt the officer, appellant's only response was to ask whether she would get in trouble. The totality of all these circumstances provided the officers with sufficient independent, reasonable, articulable suspicion of *additional criminal activity*. *Martinson*, 581 N.W.2d at 852. The officers were therefore justified in expanding the scope of the stop to search the vehicle and its occupants for weapons. *See State v. Moffatt*, 450 N.W.2d 116, 118-20 (Minn. 1990) (approving removal and frisk of three suspects in stopped car and placement of each in a separate squad car in order to continue investigation into suspected burglary). Contraband found pursuant to a legal "frisk" search is admissible evidence.

II. Confrontation Clause

Appellant argues that the district court's admission of the BCA reports of the results of tests performed on the suspected controlled substance found on appellant, as well as her urinalysis, violated her confrontation-clause rights. We agree.

Generally, absent a clear abuse of discretion, this court will not reverse a trial court's evidentiary ruling, including the admission of chemical or scientific test reports. *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006). However, we review de novo

whether the admission of evidence violates a criminal defendant's rights under the Sixth Amendment's Confrontation Clause. *State v. Warsame*, 735 N.W.2d 684, 689 (Minn. 2007). The right to confront one's accuser is guaranteed under U.S. Const. amend VI and Minn. Const. art. 1, § 6. The Confrontation Clause bars admission of out-of-court testimonial statements unless the declarant is unavailable to testify and the defendant had a prior opportunity for cross examination. *Crawford v. Washington*, 541 U.S. 36, 68, 124 S. Ct. 1354, 1374 (2004). BCA lab reports identifying a controlled substance are testimonial evidence under *Crawford*. *Caulfield*, 722 N.W.2d at 310.[1] In *Caulfield*, the supreme court further held that Minn. Stat. § 634.15 (2004), which permits an accused to request the testimony of an analyst at trial, violates the Confrontation Clause because it does not require the state to provide adequate notice to defendants that a failure to request an analyst's live testimony would result in a waiver of their constitutional rights. *Caulfield*, 722 N.W.2d at 313.

The BCA forensic analysts who performed these tests did not testify, and thus appellant was not given the opportunity to cross-examine the analysts who generated the reports used as evidence against her. There is nothing in the record to show that appellant had a prior opportunity for cross-examination.

III. Plain Error

Because appellant did not object to admission of the reports on Confrontation Clause grounds, both parties acknowledge that appellant's confrontation clause claim can

[1] The Minnesota Supreme Court issued its decision in *Caulfield* after appellant's trial but before her sentencing.

be reviewed only for "plain error." This court has discretion to consider a claim of evidentiary error even if it was not raised before the district court if it constitutes plain error. Minn. R. Crim. P. 31.02; *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

"The plain error standard requires that [appellant] show: (1) error; (2) that was plain; and (3) that affected substantial rights. If those three prongs are met, [this court] may correct the error only if it seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings." *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002) (quotations omitted). Appellant has the burden of proof to establish plain error. *Griller*, 583 N.W.2d at 741.

The district court's admission of the BCA report without supporting testimony from the analyst who prepared it was an erroneous admission of hearsay evidence, thus satisfying the first plain-error prong. *Caulfield*, 722 N.W. 2d at 308. This error was also plain as it was contrary to the supreme court's decision in *Caulfield*, satisfying prong two. *Id.* at 313; *see State v. Dobbins*, 725 N.W.2d 492, 513 (Minn. 2006) (quoting *Johnson v. United States*, 520 U.S. 461, 468, 117 S. Ct. 1544, 1549 (1997) ("An error is plain if it is 'clearly contrary to the law at the time of appeal.'")). As to the third prong, "an error affects substantial rights where there is a 'reasonable likelihood' that the absence of the error would have had a 'significant effect' on the jury's verdict." *State v. Reed*, 737 N.W.2d 572, 583 (Minn. 2007) (quotation omitted).

Appellant argues that the error significantly affected the verdict because respondent presented the BCA lab report as the definitive evidence on the weight and identity of the substance found on her, as well as a key piece of evidence showing that

she likely knew the substance was methamphetamine, two of the three necessary elements to prove the crime of which appellant was convicted. We agree.

In *Caulfield*, the supreme court held that the erroneous admission of the lab report was not harmless even though Caulfield admitted the substance found in his possession was cocaine and field tests of the substance indicated the same. *Caulfield*, 722 N.W.2d at 314-17.[2] In evaluating the reasonable likelihood that the erroneously admitted evidence significantly affected the verdict, this court must weigh the persuasiveness of that evidence. *See Caulfield*, 722 N.W.2d at 317 (stating that in no case has the supreme court ever held that the admission of "direct and persuasive evidence on an element of the crime" was harmless solely because "other less direct and less persuasive or largely circumstantial evidence is strong). The court found that Caulfield's admission to police and the two field tests of the substance, although sufficient to support the finding of guilt, were of "lesser persuasive quality than the lab report, which was relied on by the state to be the definitive evidence of the identification of the substance." *Id.*

Although the report in this case is not the only persuasive evidence introduced to prove the necessary elements of the crime of which appellant was convicted, we must also consider the manner in which the evidence was presented. Because respondent did not mention the results of the field test in its opening or closing arguments, the BCA

[2] Because the defendant objected to the admission of laboratory test results, *Caulfield* invoked harmless error rather than plain error. Both doctrines, however, involve an analysis of the effect of the error on substantial rights. *Compare* Minn. R. Crim. P. 31.01 and 31.02.

report was presented in a manner that gave it significant focus, making it more likely to affect the verdict under a *Caulfield* analysis. *Cf. id* at 317.

The last consideration in the plain error analysis is whether the correction of the unobjected-to error is required to ensure the fairness and integrity of the judicial process. *Reed*, 737 N.W.2d at 584, n.4 (stating that plain error analysis includes same finding of effect on substantial rights as harmless error analysis, with addition of fourth factor of whether correction of the unobjected-to error is required to ensure fairness and integrity of the judicial process). Appellant argues that because she was not given adequate notice that she must affirmatively request live testimony to preserve her constitutionally protected rights, she should be given a new trial to ensure the fairness and integrity of judicial proceedings. Based on the holding in *Caulfield* that the implied statutory waiver of confrontation rights was unconstitutional, resulting in 2007 legislation modifying the statute to comply with the court's concerns,[3] we agree. *Caulfield*, 722 N.W. 2d at 313. The district court's admission of the BCA reports without the testimony of the analysts who prepared the reports was plain error.

We therefore reverse appellant's conviction and remand this matter to the district court for retrial.

Affirmed in part, reversed in part, and remanded.

[3] *See* 2007 Minn. Laws ch. 54, art. 3, §§ 12-13 at 249-50.