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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A07-0997

A07-1004

Richard Allen Frazier, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent,

State of Minnesota,
Respondent.

Filed July 1, 2008
Affirmed
Connolly, Judge

Mille Lacs County District Court
File No. 48-CV-07-183

Richard W. Curott, Curott & Associates, LLC, P.O. Box 206, Milaca, MN 56353 (for appellant)

Lori Swanson, Attorney General, David Koob, Assistant Attorney General, 445 Minnesota Street, Bremer Tower, Suite 1800, St. Paul, MN 55101 (for respondent Commissioner of Public Safety)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Muehlberg, 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UNPUBLISHED OPINION

CONNOLLY, Judge

In these consolidated appeals, appellant challenges the district court's order sustaining the revocation of his driver's license and the subsequent driving while intoxicated (DWI) conviction, arguing that the arresting police officer did not have a reasonable, articulable suspicion to stop and detain him. Because the officer acted within the scope of his authority, we affirm.

FACTS

On December 22, 2006, Deputy Kyle Burton was on routine patrol on Highway 23 in Milaca. Deputy Burton was driving west, with appellant's vehicle directly in front of him, when he observed a pile of snow on appellant's bumper, such that he could not clearly read the license plate. The vehicle-registration tabs were also obscured by the snow. Deputy Burton initiated a traffic stop of appellant's vehicle. He testified that it was cold outside at the time of the stop, but it was not snowing and had not snowed at all during his shift.¹

As Deputy Burton approached appellant's vehicle, he was able to read the license plate and see the registration tabs by looking directly down at the plate. The plate appeared to be securely fastened to the vehicle. Deputy Burton greeted appellant, who then asked, "You want a license I suppose?" Deputy Burton answered in the affirmative and also requested proof of insurance. Appellant inexplicably produced his wife's

¹ Deputy Burton's shift began at 5:00 p.m., and the traffic stop occurred at approximately 11:30 p.m.

driver's license rather than his own and only corrected the mistake after it was pointed out to him. Deputy Burton then inquired where appellant was coming from, and he testified that appellant told him that he had been playing pool at the Blue Moon Bar and had consumed approximately four beers.² Deputy Burton also smelled alcohol. Appellant was subsequently arrested and charged with DWI. He submitted to the intoxilyzer test which showed an alcohol concentration of above .08, and his license was revoked pursuant to Minn. Stat. § 169A.52, subd. 4 (2006).

Appellant brought a suppression motion prior to both the implied-consent hearing and his criminal trial. These motions were denied. The district court then sustained the revocation of appellant's driver's license and subsequently found him guilty of DWI in a bench trial. These consolidated appeals follow.

D E C I S I O N

I. The district court did not err by concluding that the partial obstruction of appellant's license plate by snow provided the officer with an articulable basis to stop appellant's vehicle.

Appellant argues that the snow on his vehicle's bumper did not provide Deputy Burton with reasonable, articulable suspicion sufficient to justify the traffic stop. Respondent asserts that the stop was lawful because it is a traffic violation to have snow obscuring the view of a license plate. The district court agreed with respondent, stating that "[j]ust as a driver removes snow from the windshield before driving, removing snow

² In a video of the traffic stop taken from Deputy Burton's squad car, appellant stated that he had consumed three beers.

from a bumper is not an undue burden on a driver. . . . As a result of this violation, Deputy [Burton] was justified in stopping [appellant's] vehicle.”

“An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.” *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 695 (1981). “Our cases, however, do not require much of a showing in order to justify a traffic stop. Ordinarily, if an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle.” *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). When an appellate court reviews a stop based on given facts, the test is not whether the district court decision is clearly erroneous, but whether, as a matter of law, the basis for the stop was adequate. *In re Welfare of G.M.*, 560 N.W.2d 687, 690 (Minn. 1997).

Minnesota traffic laws provide that a vehicle must have license plates or a permit “conspicuously displayed thereon in a manner that the view of any plate or permit is not obstructed.” Minn. Stat. § 169.79, subd. 1 (2006). In addition, “[t]he person driving the motor vehicle shall keep the plate legible and unobstructed and free from grease, dust, or other blurring material so that the lettering is plainly visible at all times.” *Id.*, subd. 7 (2006). License plates must also display proof that they have been properly registered. Placing a license tab for the month of expiration in the lower left corner and a license tab for the year of expiration in the lower right-hand corner fulfills this requirement. *Id.*, subd. 8 (2006).

Appellant’s license plate was partially obstructed by snow, making it impossible for Deputy Burton to read the plate or see the license tabs from his squad car. Under the

plain language of the statute, this is a violation of Minn. Stat. § 169.79 (2006) and therefore a reasonable basis for the traffic stop.³ See *State v. Clark*, 394 N.W.2d 570, 572 (Minn. App. 1996) (holding that a rear license plate that was obliterated by snow, along with a suspected inoperable muffler, was sufficient to justify a traffic stop). Appellant was required to “keep the plate legible and unobstructed.” Minn. Stat. § 169.79, subd. 7. Because he failed to do so, Deputy Burton was justified in stopping his vehicle.

Appellant argues that “it would be an absurd construction of a statute to suggest that a driver would have to stop every ten minutes on a snowy night to wipe off his bumper in order to assure that he could not be stopped by an officer for committing a traffic offense.” According to appellant, such stops are inherently unreasonable because this traffic violation is based on a naturally occurring event. To support his argument, he cites three unpublished Montana district court cases. In two of the cases cited by appellant, the investigatory stops occurred in the midst of a heavy winter storm with falling snow. *City of Cut Bank v. Running Crane*, No. DC-03-055, 2003 Mont. Dist. LEXIS 3145 (Mont. Dist. Ct. Oct. 28, 2003); *Montana v. Desjarlais*, No. DC-04-177, 2005 Mont. Dist. LEXIS 3064 (Mont. Dist. Ct. Dec. 10, 2004). The facts in this case, however, demonstrate that it had not snowed for several hours before the stop of

³ This court reached the same conclusion in *State v. Holly*, No. CX-00-933, 2001 WL 15757, at *2 (Minn. App. Jan. 9, 2001). In that case, this court concluded that obstruction of the license plate by snow justified the traffic stop. *Holly* is an unpublished case that may be persuasive, but is not precedential. Appellant attempts to distinguish *Holly* by arguing that in that case the snow was actually on the license plate, whereas in this case the snow was on the bumper. The statute, however, explicitly requires that the driver keep the plate legible, and therefore, appellant’s argument is not persuasive. Minn. Stat. § 169.79, subd. 7.

appellant's vehicle. Therefore, those two cases can be distinguished from the facts here. In the third case, however, the Montana district court does seem to reject the argument that a license plate obscured by muddy snow is sufficient for a traffic stop. *City of Helena v. Wells*, No. BDC-98-124, 1999 Mont. Dist. LEXIS 522 (Mont. Dist. Ct. Feb. 10, 1999). But these Montana cases cited by appellant are not controlling precedent for this court. Because Minnesota caselaw provides that a license plate obscured by snow is sufficient for a traffic stop, appellant's argument that a naturally occurring event cannot be a reasonable basis for a traffic stop is unpersuasive. *Clark*, 394 N.W.2d at 572.

Appellant further asserts that, because every car's license plate would be obscured during a snow storm, such stops would amount to unconstitutional, roving checkpoints. He argues that the district court's holding will give the police limitless discretion. We disagree. We simply are not prepared to believe that in a blinding snowstorm, the first inclination of Minnesota law-enforcement personnel will be to use the occasion to engage in pretextual stops of drivers who have snow on their bumpers. Furthermore, these are not the facts in the case before this court.

Minnesota law requires that drivers keep their license plates legible. Minn. Stat. § 169.79, subd. 7. Therefore, appellant had an affirmative duty to keep his bumper and license plate free of snow. The district court stated that "[appellant] could have easily brushed this snow off of his bumper just as a driver would brush snow off of his windshield." It is not an onerous requirement to keep a license plate free of obstructions. Appellant could easily have avoided the stop by keeping his license plate and bumper free of snow since it had stopped snowing several hours earlier. Therefore, the district

court did not err in finding that Deputy Burton had a legitimate basis to stop appellant's vehicle.

II. The district court did not err by concluding that the officer did not exceed the scope of the traffic stop by making contact with, and detaining, appellant.

Appellant argues that his detention after the initial stop was unreasonable because once Deputy Burton could read the license plate as he approached the vehicle, there was no reason to detain him further. Respondent submits that the district court did not err in finding that Deputy Burton did not exceed the scope of the stop because there was ample reason to justify the detention. The district court provided three reasons justifying the detention: (1) although the license plate was viewable from certain angles, it was obstructed from the point of view of the officer's cruiser; (2) the officer was justified in making contact with appellant to inform him of the obstruction/violation and the need to attend to it; and (3) the officer was given the wrong driver's license initially, which gave him a reason to investigate further.

"The Fourth Amendment of the United States Constitution and Article I, Section 10, of the Minnesota Constitution, prohibit unreasonable searches and seizures." *State v. Hickman*, 491 N.W.2d 673, 674 (Minn. App. 1992), *review denied* (Minn. Dec. 15, 1992). The "[t]emporary detention of individuals during the stop of an automobile by the police constitutes a seizure under the Fourth Amendment." *State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003) (quotation omitted). "[T]his court reviews de novo a district court's conclusions as to the application of a provision of the Minnesota Constitution." *Id.*

“[T]he scope and duration of a traffic stop investigation must be limited to the justification for the stop.” *Id.* In this case, that would be the illegible license plate. To justify expansion of the stop in scope or duration, the officer must have a reasonable, articulable suspicion of other criminal activity. *Id.* at 419. Deputy Burton was justified in approaching the vehicle and speaking with appellant to make him aware of the traffic violation and to request that it be remedied. Furthermore, Deputy Burton had a reasonable, articulable suspicion to request appellant’s driver’s license because an illegible license plate is a citable offense.

In *Hickman*, a police officer noticed that defendant’s vehicle-registration sticker on his license plate had expired. 491 N.W.2d at 674. The officer initiated a traffic stop. *Id.* After the stop, but while still sitting in his vehicle, the officer saw a temporary registration sticker in the rear window, and he confirmed the validity of the permit as he approached the vehicle. *Id.* The officer nonetheless approached the car and requested defendant’s driver’s license. *Id.* This court stated:

[W]e hold that detaining [defendant] to check his driver’s license constituted an unlawful intrusion because [the officer’s] suspicions about the vehicle’s registration had been dispelled before he approached the driver. After seeing the valid temporary permit, the officer no longer had articulable and reasonable suspicion that the vehicle was unregistered, that the driver was unlicensed, or that any criminal activity was afoot.

Id. at 675.

In *State v. Lopez*, the driver was stopped for not having license plates. 631 N.W.2d 810, 812 (Minn. App. 2001), *review denied* (Minn. Sept. 25, 2001). But while

approaching the vehicle, the officer noticed that there was a registration sticker in the rear window, indicating that the vehicle was properly licensed. *Id.* Nonetheless, the officer made contact with the driver, noticed indicia of intoxication, investigated further, and ultimately arrested Lopez for providing alcohol to minors. *Id.* This court distinguished *Lopez* from *Hickman*, stating:

Here, [the officer] acknowledged that the original purpose for the detention ended at the moment she saw the “drive-out” sticker. However, [the officer] approached the driver merely to explain her error, not to conduct an investigation. She did not ask to see [the driver’s] driver’s license and she did not initially request additional information. This was not an unconstitutional intrusion. It would be impractical to suggest that the officer, upon seeing evidence of lawful registration, immediately turn away and leave the stopped vehicle without explanation. Instead, the validity of the original stop continues at least long enough for the officer to approach the car and inform the driver he is free to go.

Id. at 813-14.

This case, however, is distinguishable from both *Hickman* and *Lopez*. In those cases, any suspicion of criminal activity was dispelled before the officer made contact with the vehicle’s occupants. Here, Deputy Burton was justified in making contact with appellant and asking for his driver’s license, because he could presumably have cited appellant for violating the statute, i.e., having an obstructed license plate.⁴ The traffic

⁴ Minn. Stat. § 171.08 (2006) states that “[e]very licensee shall have the license in immediate possession at all times when operating a motor vehicle and shall display it upon demand of a peace officer.” The Minnesota Supreme Court has “held that demanding to see a driver’s license under this statute is valid only if done in compliance with constitutional standards.” *Hickman*, 491 N.W.2d at 675. These constitutional standards require that the officer have reasonable, articulable suspicion of criminal

violation justifying the stop was not rectified prior to Deputy Burton making contact with appellant. When Deputy Burton requested appellant's driver's license, he was given appellant's wife's license. Appellant only produced his own license at the deputy's prompting. This created a reasonable suspicion that was compounded when appellant admitted to being at a bar and having several beers before driving. Deputy Burton also smelled alcohol. This information gave rise to a reasonable, articulable suspicion that appellant was driving while under the influence of alcohol. Therefore, appellant was not unlawfully detained.

Affirmed.

activity before requesting a driver's license. *Id.* In this case, there was a reasonable, articulable suspicion that appellant was violating Minn. Stat. § 169.79, subd. 1, because his license plate was obscured, and therefore Deputy Burton was justified in requesting appellant's driver's license in order to write him a ticket.