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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0803
A08-1297

Lyle James Chastek, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent (A08-0803),

and

State of Minnesota,
Respondent (A08-1297),

vs.

Lyle James Chastek,
Appellant.

Filed March 31, 2009
Affirmed
Connolly, Judge

McLeod County District Court
File No. 43-C8-06-000723

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Considered and decided by Worke, Presiding Judge; Hudson, Judge; and Connolly, Judge.

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

CONNOLLY, Judge

Appellant was charged with driving while impaired (DWI) and his driver's license was revoked. The revocation was sustained following an implied consent hearing and appellant was subsequently convicted of fourth-degree DWI following a Minn. R. Crim. P. 26.01, subd. 4 proceeding. Appellant challenges the validity of the traffic stop and the admission of the urinalysis test results based on an insufficient chain of custody, the separation of powers doctrine, and the confrontation clause. Because the stop was lawful and the urinalysis test results were properly admitted in the implied consent hearing and appellant waived any objection to admission of the urinalysis test results in the rule 26.01, subd. 4 proceeding, we affirm.

FACTS

On April 6, 2006, Glencoe Police Officer Bradley James Schnickel was on routine patrol when he observed a vehicle that appeared to be traveling in excess of the posted 30-miles-per-hour speed limit. Officer Schnickel was approximately one block behind the vehicle and there were no obstructions between his squad car and the vehicle. Officer Schnickel activated his radar unit and obtained a reading of 39 miles per hour. Based

upon his visual speed observations and his radar reading, Officer Schnickel stopped the vehicle. Officer Schnickel identified the driver as appellant Lyle James Chastek.

After making contact with appellant, Officer Schnickel noticed indicia of alcohol impairment and arrested appellant for DWI. Officer Schnickel read appellant the implied consent advisory, and appellant agreed to provide a urine sample. Officer Schnickel obtained a Bureau of Criminal Apprehension (BCA) urine test kit, confirmed that it contained a white powder, and personally observed appellant provide a urine sample. After obtaining the sample, Officer Schnickel closed and sealed the sample in a box, wrote the police department's address on it, and left it on the police administrative assistant's desk for mailing to the BCA. This is the normal procedure for handling urine kits within the Glencoe Police Department.

The urine sample was analyzed at the BCA laboratory and revealed an alcohol concentration of .19. Appellant was subsequently charged with fourth-degree DWI and fourth-degree DWI with an alcohol concentration of .08 or more within two hours of driving. The district court combined the implied consent hearing with an evidentiary hearing in the companion criminal case. The district court issued an order in the implied consent hearing denying appellant's motion to dismiss the charges based on a lack of reasonable, articulable suspicion for the traffic stop, denying appellant's motion to exclude the BCA urine analysis report, and sustaining the revocation of appellant's license. Soon thereafter, the district court issued another order in relation to the evidentiary hearing in the companion criminal case denying appellant's motion to dismiss based on a lack of reasonable, articulable suspicion for the traffic stop, denying

appellant's motion to exclude the BCA report based on the state failing to establish a satisfactory chain of custody, but specifically reserving a decision on appellant's motion to exclude the BCA report based on appellant's sixth amendment right of confrontation for trial. Appellant filed a notice of appeal from the implied consent order while awaiting trial on the criminal case. In July, appellant was convicted of fourth-degree DWI following a rule 26.01, subd. 4 proceeding at which appellant had stipulated to the admission of the BCA urine analysis report. A notice of appeal was then filed from the district court's evidentiary hearing order. The cases have been consolidated on appeal.

D E C I S I O N

I. The stop of appellant's vehicle was lawful.

Appellant argues that the traffic stop of his vehicle was unlawful. The district court disagreed, concluding that Officer Schnickel had a reasonable, articulable suspicion for the stop.

"A police officer may make an investigatory stop of a motor vehicle if the officer has specific and articulable facts establishing reasonable suspicion of a motor vehicle violation or criminal activity." *State v. Battleson*, 567 N.W.2d 69, 70 (Minn. App. 1997) (quotations omitted). "[I]f 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). Speeding is a valid basis upon which to stop a motor vehicle because it is a traffic violation under Minn. Stat. § 169.14, subd. 2 (2008). "In reviewing a district court's determinations of the legality of a limited investigatory

stop, we review questions of reasonable suspicion de novo." *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

The district court made numerous findings of fact with regard to the traffic stop which we outline below. First, Officer Schnickel observed appellant's vehicle traveling at a rate of speed in excess of the posted 30-miles-per-hour limit. Second, Officer Schnickel positioned his vehicle behind appellant's vehicle, activated his radar, and obtained a reading of 39 miles per hour. Third, Officer Schnickel was not aware of any problems with the radar unit that would affect its accuracy, despite the fact that he did not calibrate the radar unit on the evening of appellant's arrest. Lastly, although Officer Schnickel had not received specialized training in speed detection, the district court found that he testified credibly that most streets in Glencoe are posted for 30 miles per hour and that through his personal experience, he has gained the ability to detect vehicles traveling in excess of 30 miles per hour. Officer Schnickel's testimony on these points was unrebutted, and the district court relied on this information to conclude that the stop was lawful. "The [district] court's factual findings are subject to a clearly erroneous standard of review . . . ." *State v. Critt*, 554 N.W.2d 93, 95 (Minn. App. 1996), *review denied* (Minn. Nov. 20, 1996).

Appellant argues that these factual findings were clearly erroneous because neither Officer Schnickel's visual estimation nor the unknown radar device provided a credible basis for the stop. We disagree. Officer Schnickel testified that he could visually determine that a vehicle was traveling over the 30-miles-per-hour speed limit based on his experience patrolling the streets of Glencoe. The district court found this testimony to

be credible. And as the district court noted, although Officer Schnickel did not have official training to visually determine the speed of a vehicle, "39 mph in a 30 mph zone is enough of a difference that a person familiar with the area could gain the ability to discern the difference." Furthermore, the visual estimation was supported by the reading on the radar unit.

> While the Officer did not follow the standard procedure [by calibrating his radar unit], and therefore, may not be able to prove beyond a reasonable doubt that [appellant] was traveling at 39 mph, that is not the standard in this case. Here, the Court must determine whether, under the totality of the circumstances, the Officer had a reasonable, articulable basis for stopping [appellant's] vehicle.

The district court was not clearly erroneous when it found that Officer Schnickel had a reasonable, articulable basis to initiate a traffic stop based on his visual observations and the radar unit's reading.

II. The district court did not abuse its discretion by concluding that respondents established a sufficient chain of custody for admission of the urine test.

Appellant argues that respondents failed to establish a satisfactory chain of custody for admission of the urine test results. The district court disagreed, concluding that a sufficient chain of custody had been established. "The admissibility of a piece of evidence which is challenged under the chain of custody rule is generally left to the sound discretion of the [district court]." *Berendes v. Comm'r of Pub. Safety*, 382 N.W.2d 888, 891 (Minn. App. 1986).

"All possibility of alteration, substitution, or change of condition need not be eliminated in laying a chain-of-custody foundation. 'In the absence of any indication of

substitution, alteration, or other form of tampering, reasonable probative measures are sufficient.'" *State v. Hager*, 325 N.W.2d 43, 44 (Minn. 1982) (quoting M. Graham, *Evidence and Trial Advocacy Workshop: Relevance and Exclusion of Relevant Evidence-Real Evidence*, 18 Crim. L. Bull. 241, 243-46 (1982)). The Minnesota Supreme Court applied this reasoning to fluid samples in *Schram v. Comm'r of Pub. Safety*. 359 N.W.2d 632 (Minn. App. 1984). In that case, the supreme court articulated that the proponent of the test need only show with a "reasonable probability that tampering did not occur." *Id.* at 634.

In this case, ample evidence appeared in the record to support the district court's conclusion that a sufficient chain of custody had been established. Officer Schnickel obtained a BCA urine test kit, observed that it contained the necessary white powder preservative, and personally observed appellant provide a urine sample. Thereafter, Officer Schnickel closed and sealed the sample in a box and placed the box on an administrative assistant's desk for transit to the BCA. This was in accordance with the procedures of the Glencoe Police Department. The BCA's lab report indicates that a sealed urine kit was received from the Glencoe Police Department which contained a urine sample collected from appellant. This evidence indicates a reasonable probability that tampering did not occur. Furthermore, appellant is unable to set forth any evidence that would challenge the integrity of the urine sample.

Appellant argues that respondents must be able to trace where, and in whose custody, the urine sample was at all times. Existing caselaw mandates no such requirement. The district court did not abuse its discretion by concluding that

respondents had established a sufficient chain of custody to allow for the admission of the urine test result.

III. Minn. Stat. § 634.15 does not violate the separation of powers doctrine.

Appellant argues that Minn. Stat. § 634.15 (2008) violates the separation of powers doctrine and is therefore unconstitutional. The district court did not address this argument in either of its orders, although it does appear that appellant presented the issue to the district court in a brief. This statute provides that a certificate of analysis may be introduced in any criminal hearing, at trial, or a proceeding pursuant to Minn. Stat. § 169A.53, subd. 3 (2008) and the document is admissible into evidence if it is the result of any laboratory analysis or examination, if it is prepared and attested to by the person performing the laboratory analysis or examination in a laboratory operated by the BCA.

The constitutionality of a statute presents a question of law that this court reviews de novo. *State v. Wolf*, 605 N.W.2d 381, 386 (Minn. 2000). "The party challenging the constitutionality of a statute must show beyond a reasonable doubt that the Minnesota Constitution has been violated." *State v. Pearson*, 633 N.W.2d 81, 84 (Minn. App. 2001).

The separation of powers doctrine generally prohibits each branch of government from intruding upon another branch's unique constitutional functions. *State v. T.M.B.*, 590 N.W.2d 809, 812 (Minn. App. 1999), *review denied* (Minn. June 16, 1999). The power to regulate the admissibility of evidence is a matter that has been delegated exclusively to the judiciary. *State v. McCoy*, 682 N.W.2d 153, 160 (Minn. 2004). Nonetheless, Minn. Stat. § 634.15 "allows a report of the blood analysis results to be

admitted in evidence in an implied consent hearing if certain conditions are met." *Pearson*, 633 N.W.2d at 84. Appellant argues that this statute is a "blatant violation of the separation of power doctrine" because the legislative branch cannot "force a trial court to admit evidence without proper foundation."

This very assertion was summarily rejected by this court in *Pearson*. *Id.* at 86. In *Pearson*, this court noted that the statute does not unconstitutionally interfere with the judicial functions of ascertaining the facts and applying the law, but "merely establishes a presumption of reliability that the driver may choose to rebut with live testimony." *Id.*

Appellant counters that the validity of *Pearson* is in doubt after the Minnesota Supreme Court's decision in *State v. Caulfield*. 722 N.W.2d 304 (Minn. 2006). We disagree. The *Caulfield* court determined that in criminal cases, admission of the BCA report under Minn. Stat. § 634.15 is testimonial and "its admission, under the statute permitting its introduction without the testimony of the analyst, violated [the defendant's] rights under the Confrontation Clause." *Id.* at 307. In contrast, *Pearson* held that the BCA results can be admitted under certain circumstances without violating the separation of powers doctrine. *Pearson*, 633 N.W.2d at 86. The *Caulfield* court's invalidation of Minn. Stat. § 634.15 with regard to the confrontation clause does not overrule *Pearson's* interpretation of the separation of powers doctrine.

IV. The district court did not err by admitting the urine test into evidence pursuant to Minn. Stat. § 634.15 in the implied consent proceeding and reserving the issue of admission of the urine test until trial in the criminal proceeding.

Appellant argues that Minn. Stat. § 634.15 violates appellant's rights under the confrontation clause. The district court disagreed with regard to the implied consent hearing, holding that because an implied consent hearing is civil in nature, the protections of the sixth amendment do not apply. In the criminal context, however, the district court reserved the issue of any confrontation clause violation until trial, noting that after *Caulfield*, 722 N.W.2d at 313, appellant must either make a valid waiver of his right to confrontation or the state must produce the BCA analyst.

The constitutionality of a statute presents a question of law that this court reviews de novo. *Wolf*, 605 N.W.2d at 386. "The party challenging the constitutionality of a statute must show beyond a reasonable doubt that the Minnesota Constitution has been violated." *Pearson*, 633 N.W.2d at 84.

The confrontation clause of the sixth amendment does not apply to implied consent proceedings because they are civil in nature. *See* U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.") Appellant argues that implied consent proceedings are actually "quasi-criminal" in nature and therefore the safeguards of the sixth amendment must apply. But the Minnesota Supreme Court has determined that implied consent hearings are neither criminal nor de facto criminal proceedings.

Davis v. Comm'r of Pub. Safety, 517 N.W.2d 901, 905 (Minn. 1994). Therefore, the district court properly determined that there was no violation of the confrontation clause when the BCA report was admitted at the implied consent hearing.

In a criminal proceeding, the accused has the right to confront the witnesses against him. U.S. Const. amend. VI. BCA test results in criminal cases are considered testimonial and are therefore subject to the confrontation clause. *Caulfield*, 722 N.W.2d at 306. Appellant argues that he was denied the opportunity at the evidentiary hearing to confront the BCA scientist who analyzed his urine sample, which he maintains is a violation of his sixth amendment right to confront witnesses against him. As the trial court reserved the issue of admissibility of the BCA report, appellant's right to confrontation was not violated. Appellant could have had the opportunity to cross-examine the BCA scientist at trial, but chose not to do so when he agreed to a rule 26.01, subd. 4 proceeding and stipulated to the admission of the report. Therefore, the district court's decision to defer ruling on the admissibility of the BCA lab test until trial is upheld as the ruling did not deny appellant his right to confront the BCA witness at trial. In the alternative, appellant waived his right to challenge the ruling when he agreed to submit his case based on the written reports to the court and didn't preserve his confrontation clause objection. The district court did not deny appellant's right to confrontation with regard to the criminal trial.

Affirmed.