STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0834

State of Minnesota,
Respondent,

vs.

Prince Theodore Tyler,
Appellant.

Filed May 5, 2009
Affirmed
Minge, Judge

Hennepin County District Court
File No. 27-CR-07-108449

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

Susan L. Segal, Minneapolis City Attorney, Jennifer Saunders, Assistant City Attorney, 333 South Seventh Street, Suite 300, Minneapolis, MN 55402 (for respondent)

F. Clayton Tyler, Karen Mohrlant, F. Clayton Tyler, P.A., 230 TriTech Office Center, 331 Second Avenue South, Minneapolis, MN 55401 (for appellant)

Considered and decided by Larkin, Presiding Judge; Minge, Judge; and Stauber, Judge.

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

MINGE, Judge

Appellant challenges his DWI conviction, arguing that he was unlawfully stopped and that the district court should have granted his motion to suppress critical evidence

and to dismiss charges. Because we hold that the officer had a reasonable, particularized, and objective basis for suspecting appellant of a violation of law, we affirm.

FACTS

In the early morning on August 25, 2007, appellant Prince Theodore Tyler was stopped by a state trooper on Interstate 94 in Minneapolis and arrested for DWI. Although appellant challenged the validity of the stop, the parties waived testimony, stipulated to the facts of the case, and entered into evidence the trooper's written reports and the video recording taken by the camera in the trooper's squad car. The district court found: (1) the trooper had been parked on the right side of the road, having just completed another traffic stop; (2) at the time appellant passed the trooper, "the squad car's headlights and interior lights were activated" but "it [was] unclear [from the squad car's video recording] whether the squad's emergency lights were activated"; (3) appellant passed the trooper in the rightmost lane without slowing down; (4) because he passed closely and at a high speed, appellant's passing shook the squad car; and (5) "traffic was light and [appellant] could have moved into the right center lane, putting a buffer lane between the vehicle[s]." There was no finding whether the trooper's lights were activated or whether the trooper believed they were activated.

The DWI arrest report stated that appellant was stopped for "fail[ing] to move over," and, in his supplemental report, the trooper explained that appellant was stopped because appellant passed him "so close" that appellant made the squad car move and that appellant did not "mov[e] to the right center lane to give the lane of safety that is required by law."

After reviewing the record, the district court arrived at a two-part, alternate conclusion: First, if the trooper's emergency lights were activated, "the stop was proper as there was a clear violation of Minn. Stat. § 169.18[,] [s]ubd. 11," and, second:

> If the emergency lights were not activated, the squad was well-lit and a stop had just occurred. It should have been apparent to [appellant] that there was an occupied vehicle on the side of the road, and that this vehicle was a police vehicle. [Appellant] neither slowed down nor moved over as he passed, and, in fact, drove so closely that he caused the squad car to move. Based on [appellant's] driving conduct, [the trooper's] stop was not based on "mere whim, caprice, or idle curiosity."

The district court denied the motion to suppress and found appellant guilty of the DWI violation. This appeal follows.

D E C I S I O N

The issue is whether there was a sufficient legal basis for the stop. "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 United States Constitution and Minnesota Constitution prohibit "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. "[A]n officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 675 (2000) (citing *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868 (1968)). Minnesota courts have held that the "principles and framework of *Terry* [apply when] evaluating the reasonableness of

[searches and] seizures during traffic stops even when a minor law has been violated." *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004).

"[T]he reasonable suspicion standard is not high." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). It requires "a minimum level of objective justification for making the stop." *Id.* (quotation omitted). "The police must only show that the stop was not the product of mere whim, caprice or idle curiosity. . . ." *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996). But they "must be able to articulate more than an inchoate and unparticularized suspicion or 'hunch' of criminal activity." *Timberlake*, 744 N.W.2d at 393 (quotations omitted). They must articulate a "particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S. Ct. 690, 695 (1981). That standard is met when an officer "observes unusual conduct that leads the officer to reasonably conclude in light of his or her experience that criminal activity may be afoot." *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). A traffic stop can be valid even if an actual law violation is not detected. *Pike*, 551 N.W.2d at 921.

Here, no one testified. The record is limited to the trooper's stipulated report and the video. This report indicates that the stop was predicated on the trooper's suspicion that appellant had violated Minn. Stat. § 169.18, subd. 11 (2006), which states that:

> When approaching and before passing an authorized emergency vehicle *with its emergency lights activated* . . . stopped . . . next to a . . . highway having two lanes in the same direction, the driver of a vehicle shall safely move the vehicle to the lane farthest away from the emergency vehicle, if it is possible to do so.

(emphasis added). The record does not establish whether the trooper's emergency lights were activated.

Appellant argues that the lack of evidence in the record specifying whether the trooper's emergency lights were activated leaves this court with a choice between two conclusions, which are very different than those stated by the district court: (1) the trooper's flashing lights were not activated and he had no factual foundation for suspecting a violation of the traffic law; or (2) the trooper failed to appreciate that activation of flashing lights was an essential element of the offense and, therefore, the stop was predicated on a mistake of law and was invalid. *See State v. George*, 557 N.W.2d 575, 579 (Minn. 1997) (finding that an officer's mistaken belief that certain innocent conduct was illegal cannot be a sufficient basis for a stop).

We reject the argument that the prosecution's case is caught in this dilemma. First, we note that the record allows the possibility that the flashing lights were activated and that the trooper properly applied section 169.18, subdivision 11. Second, we also observe that the rationale for the stop is not limited to the trooper's suspicion that appellant violated section 169.18, subdivision 11, and that the district court did not so limit its factual findings. Minnesota law prohibits driving "carelessly or heedlessly in disregard of the rights of others, or in a manner that endangers or is likely to endanger any property or any person," Minn. Stat. § 169.13, subd. 2 (2006), or driving with undue care or at reasonably imprudent speeds under the conditions, Minn. Stat. § 169.14, subd. 1 (2006). Here, the trooper expressed concern that appellant had passed his squad car too closely. This is a clear indication that the trooper was aware of a possible violation of the

just cited, more general traffic laws. The trooper was not simply acting on whim, caprice, or idle curiosity.

On this record, we note the circumstances—the trooper's vehicle was on the side of I-94 in the city of Minneapolis; the interstate is lighted, the trooper's vehicle had on its interior lights and was identifiable as police squad car; and appellant passed with such speed and in such proximity to the parked squad car that it shook. Based on these circumstances, we conclude that there was a sufficient manifestation of unsafe driving conduct by appellant to provide the trooper with a reasonable, particularized and objective basis for suspecting appellant of a traffic violation which is a breach of the criminal law. Because this limited foundation is all that is needed to uphold the stop, because this evidence is apparent on the face of the record, and because the officer and the district court were aware of this evidence in making and upholding the stop, we conclude that the stop was valid.

Affirmed.

Dated: