STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2136

State of Minnesota,
Appellant,

vs.

Jarvis Raynard Hoffman,
Respondent.

Filed June 23, 2009
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CR-08-41738

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, C-2000 Government Center, 300 South 6th Street, Minneapolis, MN 55487 (for appellant)

James A. Kamin, Acting Chief Public Defender, 701 4th Avenue South, Suite 1400, Minneapolis, MN 55415 (for respondent)

Considered and decided by Stauber, Presiding Judge; Stoneburner, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant State of Minnesota challenges the district court's pretrial order suppressing a handgun found on the seat of a minivan in which respondent had been sitting. Police officers pulled the vehicle over after they observed erratic driving and suspected road rage. Because we conclude that the officers impermissibly expanded the scope of the traffic stop, we affirm.

FACTS

On August 18, 2008, at approximately 4:05 a.m., respondent Jarvis Hoffman was a passenger in a minivan stopped by two Minneapolis police officers for swerving between lanes without signaling in a suspected case of road rage. To effectuate the stop, the officers activated the red lights on the squad car and illuminated the occupants with a spotlight. After the minivan stopped, the officers observed furtive movements by the occupants, including reaching down toward the floorboards, which led them to believe that there was a weapon in the vehicle. However, no movement within the vehicle is visible in the video taken from the squad car, which was activated within approximately five seconds of the time the officers turned on the flashing lights.

One officer approached the driver's side of the minivan, while the other approached the passenger side to speak with Hoffman. The driver did not have a driver's license with him, but he explained that he did have a valid license and provided his name and date of birth. Hoffman also did not have any identification with him, but he gave the officer his name and date of birth.

One of the officers returned to the squad car, where he ran a computer check to verify that the names and birthdates provided were correct, and that the driver had a valid license. The other officer remained with the vehicle. He engaged in "small talk" to try to calm down Hoffman and the driver, stating, "It's no big deal. If you got dope or if you don't have a license, we're not going to do anything about it. We'll cut you a break." After verifying the status of the driver's license and the two men's identities, the officers decided to remove them from the vehicle.

After Hoffman exited the vehicle, one officer immediately conducted a pat search of his person. The other officer looked in the front seat where Hoffman had been sitting and observed "a semiautomatic handgun sitting right on the seat, which would have been directed under the . . . rear end of Mr. Hoffman." Based on a prior conviction for illegal possession of a short-barreled shotgun, Hoffman was charged with possession of a firearm by an ineligible person.

Prior to trial, Hoffman moved to have the handgun suppressed. Following a *Rasmussen* hearing, the district court granted his motion, finding that "the police officers were not justified in asking [Hoffman] to step from the vehicle in which he was a passenger." The court concluded that the officers impermissibly expanded the scope of the stop because "[i]nvestigation of the presence of narcotics and weapons had no connection to the purpose of the stop," citing *State v. Fort*, 660 N.W.2d 415, 419 (Minn. 2003).

The state requested reconsideration. Upon rehearing and reconsideration, the district court denied the state's request to admit the handgun, again concluding "that the

scope of the stop was unreasonably extended to an investigation of weapons and contraband without sufficient articulation of reasons for the same." This appeal follows.

D E C I S I O N

I. The state established a critical impact.

On an appeal by the state of a pretrial ruling, the state must establish "clearly and unequivocally" both that the district court's ruling has a "critical impact" on the state's case and that the district court erred. *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998) (quotation omitted). The parties do not dispute that the state has met the critical-impact requirement—without evidence of the handgun, the state is compelled to dismiss the charge against respondent. *See State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (stating that critical impact is present when suppression of evidence leads to the dismissal of charges). The issue before this court is whether the district court clearly and unequivocally erred in suppressing the handgun.

II. The district court did not clearly and unequivocally err in suppressing the handgun.

"When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We review the district court's findings of fact to determine whether they are clearly erroneous. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). We defer to the district court on credibility assessments and reverse only if the court committed clear error. *See State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992)

(stating that trial court findings are not reversed unless clearly erroneous, and great deference is given to court's determinations regarding credibility of witnesses), *aff'd*, 508 U.S. 366, 113 S. Ct. 2130 (1993).

The protections of the Fourth Amendment to the United States Constitution and article I, section 10, of the Minnesota Constitution apply to seizures of the person, including brief investigatory stops such as the stop of the minivan in which Hoffman was a passenger. *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 694-95 (1981); *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004). We conduct a two-pronged analysis to determine the legality of an investigatory stop. *Askerooth*, 681 N.W.2d at 364. We first consider whether the stop was justified at its inception. *Id.* We then determine "whether the actions of the police during the stop were reasonably related to and justified by the circumstances that gave rise to the stop in the first place." *Id.* (citing *Terry v. Ohio*, 392 U.S. 1, 19-20, 88 S. Ct. 1868, 1879 (1968)). The scope and duration of a traffic stop may only be expanded when an officer has a reasonable articulable suspicion that other criminal activity is involved. *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). "An initially valid stop may become invalid if it becomes 'intolerable' in its 'intensity or scope.'" *Askerooth*, 681 N.W.2d at 364 (quoting *Terry*, 392 U.S. at 17-18, 88 S. Ct. at 1878).

Hoffman does not dispute that the initial stop of the minivan was justified. An officer has an objective basis for stopping a vehicle if the officer observes a traffic-law violation, even a minor one. *George*, 557 N.W.2d at 578. Here, the traffic stop was

justified by the officers' observations that the minivan was swerving between lanes without signaling and their concern that such conduct was related to an act of road rage.

The dispositive issue is whether the search that revealed the handgun in the passenger seat was within the scope of the stop's underlying justification. We note that the state does not challenge on appeal the district court's ruling that alleged furtive movements by the occupants and their nervous demeanor after the stop did not support expansion of the traffic stop. We are thus left to decide whether the search was reasonably related to and warranted by the observed driving conduct.

Relying on *Pennsylvania v. Mimms*, 434 U.S. 106, 98 S. Ct. 330 (1977), the state argues that a police officer may order occupants to exit a motor vehicle during a routine traffic stop without implicating the Fourth Amendment. In *Mimms*, the Supreme Court held that "once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." 434 U.S. at 111 n.6, 98 S. Ct. at 333 n.6; *see also Maryland v. Wilson*, 519 U.S. 408, 415, 117 S. Ct. 882, 886 (1997) (holding that "an officer making a traffic stop may order passengers to get out of the car pending completion of the stop"). In both *Wilson* and *Mimms*, the Supreme Court concluded that concerns for officer safety in conducting traffic stops outweighed the intrusion into the personal liberty of drivers and passengers of lawfully stopped vehicles. 519 U.S. at 413-14, 117 S. Ct. at 886; 434 U.S. at 110-11, 98 S. Ct. at 333.

We conclude that the state's reliance on *Mimms* and *Wilson* is misplaced. In *Fort*, the Minnesota Supreme Court interpreted article I, section 10, of the Minnesota

Constitution to impose more stringent protections during traffic stops than the Fourth Amendment. 660 N.W.2d at 416; *see also Askerooth*, 681 N.W.2d at 363 ("We conclude that, in the context of traffic stops, following [the] proposition that the existence of probable cause of a minor traffic violation eliminates the need for balancing individual and governmental interests would threaten the integrity and coherence of our interpretation of article I, section 10 in *Fort*."); *State v. Fuller*, 374 N.W.2d 722, 726 (Minn. 1985) (stating that it is axiomatic that the supreme court is free to interpret the Minnesota Constitution as affording greater protection against unreasonable searches and seizures than the United States Constitution).

The state advocates a more narrow interpretation of article I, section 10, of the Minnesota Constitution and argues that *Fort* is distinguishable because "the duration of the stop [here] was not unnecessarily extended by requesting that the occupants exit the vehicle." This argument is unavailing. The *Fort* decision turned on the fact that the investigation related to drugs, and weapons had absolutely nothing to do with the purpose of the traffic stop. In *Fort*, police officers stopped a vehicle in a known "high drug" area for speeding and having a cracked windshield. 660 N.W.2d at 416. Officers asked the driver and Fort, the passenger, to exit the vehicle. *Id*. at 417. An officer took Fort to the squad car and asked him a series of "particularly intrusive" questions that "were aimed at soliciting evidence of drugs and weapons." *Id*. at 418. The supreme court concluded that Fort was seized and that "[t]he purpose of this traffic stop was simply to process violations for speeding and a cracked windshield and there was no reasonable articulable

suspicion of any other crime. Investigation of the presence of narcotics and weapons had no connection to the purpose for the stop." *Id*. at 419.

As in *Fort*, the officers' search for weapons in the minivan had nothing to do with the initial purpose for the stop. Before having either the driver or Hoffman exit the vehicle, the officers took down their names and information and verified their identities and the driver's license status. The officers never asked any questions about the driving conduct or suspected road rage. The officers' failure to ask any questions related to the purpose of the stop undermines the state's assertions that the officers asked the driver and Hoffman to exit the vehicle to investigate the basis for the traffic stop. Indeed, the officers' testimony that they felt there might be a gun or contraband in the car demonstrates that the decision to ask the occupants to get out of the vehicle was not related to the observed traffic violation or suspected road-rage incident.

On these facts, we conclude that the officers expanded the scope of the stop beyond the initial traffic violation, and the district court did not clearly and unequivocally err in suppressing the handgun.

Affirmed.