STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1802

State of Minnesota,
Respondent,

vs.

John Michael Duffy,
Appellant.

Filed September 15, 2009
Reversed
Klaphake, Judge

Beltrami County District Court
File No. 04-K2-06-000757

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

Timothy R. Faver, Beltrami County Attorney's Office, 600 Minnesota Avenue NW, Suite 400, Bemidji, MN 55601-3190 (for respondent)

Mark D. Kelly, 1208 Grand Avenue, St. Paul, MN 55105 (for appellant)

Considered and decided by Klaphake, 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

KLAPHAKE, Judge

Appellant John Michael Duffy challenges his first-degree controlled substance conviction in violation of Minn. Stat. § 152.021, subd. 2(1) (2004). At a pretrial hearing,

the district court refused to suppress evidence obtained by a state trooper during a search of appellant's vehicle following a traffic stop in Beltrami County; the court also refused to suppress evidence later obtained from appellant's home during execution of a search warrant. Appellant claims that the court erred by refusing to suppress this evidence, conceding that the initial stop of his vehicle was lawful, but arguing that the vehicle search exceeded the scope and duration of a lawful traffic stop because the trooper confined him in his squad car during the stop and prolonged the stop after issuing him a warning citation for speeding. We reverse because we conclude that although the trooper could require appellant to sit in the front seat of his squad car during the stop, the trooper had no reason to prolong the traffic stop after issuing appellant a warning citation for speeding; therefore, the searches of appellant's vehicle and home were improper, and evidence obtained during those searches should have been suppressed.

D E C I S I O N

The constitutional prohibitions against illegal searches and seizures apply to cases involving law enforcement stops of vehicles. U.S. Const. amend. IV; Minn. Const. art. I, 10; *Arizona v. Gant*, 129 S. Ct. 1710, 1716 (2009); *State v. Burbach*, 706 N.W.2d 484, 488 (Minn. 2005) (holding warrantless searches of vehicles per se unreasonable, subject to limited exceptions). If law enforcement officers have an objective and articulable basis for suspecting criminal activity, they may conduct a limited investigative stop. *State v. Smallwood*, 594 N.W.2d 144, 155 (Minn. 1999). "[A]ny intrusion in a routine traffic stop must be supported by an objective and fair balancing of the government's

need to search or seize and the individual's right to personal security free from arbitrary interference by law officers." *Burbach*, 706 N.W.2d at 488 (quotations omitted).

When reviewing a pretrial order denying a motion to suppress evidence obtained during a traffic stop, this court independently reviews the facts and determines whether, as a matter of law, the district court erred in determining whether to suppress the evidence. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004). This court "review[s] the events surrounding the stop and consider[s] the totality of the circumstances in determining whether police had a reasonable basis justifying the stop." *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000); *State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998).

As to appellant's confinement in the squad car, Trooper John Engum testified that in "all cases" involving speeding citations he asks the driver to sit in his squad car while he processes the citation. During a legal traffic stop, police may order a driver to get out of a vehicle, but they may not confine a driver in a squad car "for convenience purposes." *Askerooth*, 681 N.W.2d at 367. Where police have safety concerns, however, they may confine a suspect in a squad car, but the record must support some articulated, reasonable suspicion of danger to the officer's safety. *Id.* at 369. Consistent with *Askerooth*, this record neither shows an underlying basis to support Engum's confinement of appellant in his squad, nor did Engum articulate one, although he stated that his general practice is to invite suspects to the squad car because "[i]t's a safer place to conduct business."

We do not view *Askerooth* as controlling, however, because appellant was not "confined" in Engum's squad car in the same way that the defendant in *Askerooth* was,

because he sat in the vehicle's front seat, not the back, and the encounter was therefore less intrusive than the confinement prohibited in *Askerooth*. Further, Engum had some suspicion of criminal activity due to Engum's knowledge of appellant's suspected drug trafficking activity and appellant's and his passenger's nervous conduct. Further, unlike in *Askerooth*, which involved only one officer and one driver, Engum was alone with two vehicle occupants. The reviewing court's evaluation of the validity of the scope of a stop is fact-dependent, and we conclude that the record provides sufficient factual basis to support confining appellant in the front seat of Engum's squad car during the very limited time of the processing of the traffic citation.

Appellant next contends that Engum's decision to re-approach his vehicle after issuing him the warning citation for speeding was unconstitutional because it expanded the scope and duration of the stop. "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 v. Ohio*, 392 U.S. 1, 17-18, 88 S. Ct. 1868, 1878 (1968)). "[E]ach incremental intrusion during a stop must be strictly tied to and justified by the circumstances which rendered the initiation of the stop permissible," *Askerooth*, 681 N.W.2d at 364, and "most drivers expect during a traffic stop to be detained briefly, asked a few questions, and then be allowed to leave after an officer . . . issues a citation." *Id.* at 367; *see State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002) ("An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop") (quotation omitted)). Further, law enforcement may expand the scope of a stop to investigate other illegal activity only if "the officer has reasonable, articulable suspicion

of such other illegal activity." *Wiegand*, 645 N.W.2d at 135; *see Terry*, 392 U.S. at 20-21, 88 S. Ct. at 1879-80.

At the time that he re-approached appellant's vehicle after issuing a warning citation for speeding, Engum decided to check the VIN numbers on the vehicle to determine whether they matched each other. The facts known to him at that time included that appellant was suspected of being a drug trafficker; Engum had recently participated in the arrest of another person for possession of drugs in appellant's car; he had seen that the vehicle's glove compartment was broken and observed a list of vehicle titles in the glove compartment; and he had observed nervous behavior of both of the vehicle's occupants. The state argues that this evidence provides an objective basis for Engum to have a reasonable suspicion of criminal activity such that he could initiate a search of appellant's vehicle to check the VIN numbers. We disagree.

Appellant's suspected drug activity did not provide Engum with a reasonable basis to suspect appellant of unlawful conduct related to stealing or tampering with vehicles. Further, the condition of the vehicle's glove compartment was consistent with the age of the vehicle, a 1995 GMC Yukon, and its overall condition, which included an apparent replacement door of a different color. In addition, while the list of vehicle titles Engum had seen in the glove compartment could be suggestive of criminal activity, Trooper Engum also testified that he knew that appellant had a "mechanical shop or a car dealership" and had "numerous cars registered to him." Given these facts known to Engum, the presence of a list of vehicle titles in appellant's glove compartment was not suggestive of criminal activity. Finally, without other evidence to suggest criminal

activity, the nervousness of the vehicle occupants, alone, is a common response to being stopped by police and not suggestive of criminal activity. *See Burbach*, 706 N.W.2d at 490. Under the totality of the circumstances, we conclude that Trooper Engum did not have a reasonable basis to suspect that appellant was involved in any criminal activity related to vehicle stealing or tampering that would support prolongation of the stop after issuance of the warning citation for speeding. *See Britton*, 604 N.W.2d at 87; *Martinson*, 581 N.W.2d at 852.

Therefore, we reverse.

Reversed.