STATE OF MINNESOTA
IN COURT OF APPEALS
A09-490

State of Minnesota,
Respondent,

vs.

Ty Alexander Vinje,
Appellant.

Filed March 16, 2010
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CR-07-114830

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, G. Tony Atwal, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Minge, 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 Ty Alexander Vinje challenges his convictions of first-degree driving while impaired (DWI) and driving after cancellation. Vinje contends that the evidence

supporting the convictions should be suppressed. Because the police had a reasonable articulable suspicion justifying the initial traffic stop and because the stop was not impermissibly expanded, we affirm.

FACTS

In the early morning hours of September 27, 2007, Officer Elizabeth White of the Hopkins Police Department received a call from a reserve officer. The reserve officer, who managed a local bar, told Officer White that either Vinje or his brother was in the bar, where they had a history of presenting false IDs.

When Officer White arrived at the bar, the reserve officer took her outside to a Chevrolet Malibu parked in the north lot that he suspected Vinje or his brother had driven to the bar. Officer White observed an open bottle of beer in the car's center console. She performed driver's license checks on Vinje and his brother, which revealed that neither brother possessed a valid license.

Officer White contacted Officer Chris Peterson for assistance. She then drove her squad car out of the parking lot and took up a position across the street in an empty lot. Officer Peterson arrived on the scene a few minutes later and parked his squad car about 50 feet away from Officer White. The two squad cars were 800 to 1,000 feet away from the Malibu. From this location, the officers could not observe the immediate area around the Malibu, or see someone enter the car, but they could see cars enter and leave the parking lot. Approximately 15 to 20 minutes later, the Malibu pulled out of the lot.

Officer Peterson initiated a traffic stop near the bar's south parking lot. Officer Peterson approached the Malibu on foot and looked inside the passenger compartment,

but did not see the open beer bottle. He identified Vinje as the driver. While talking with Vinje, Officer Peterson smelled an odor of alcohol and observed that Vinje's eyes were watery and bloodshot. At the same time, Officer White talked with Vinje's passenger, who also smelled of alcohol.

Officer Peterson ordered Vinje out of the vehicle. After passing field sobriety tests, Vinje submitted to a PBT, which registered a .084 reading. The officers arrested Vinje. After Vinje's arrest, the police conducted an inventory search of the Malibu, and found no beer bottle. Officer White returned to the location where the Malibu had been parked and found a bottle matching the one she had seen earlier in an adjoining parking space.

Vinje moved to suppress all evidence obtained as a result of the stop, arguing that it was not objectively reasonable for the police to suspect the open bottle would still be in the car at the time of the stop. Vinje also argued that the officers impermissibly extended the duration of the stop after it was apparent that the bottle was not inside the car. The district court denied the motion and Vinje submitted the case for a court trial on stipulated facts pursuant to Minn. R. Crim. P. 26.01, subd. 3. The district court found Vinje guilty of first-degree DWI, in violation of Minn. Stat. §§ 169A.20, subd. 1(5), .24 (2006), and driving after cancellation, in violation of Minn. Stat. § 171.24, subd. 5(1) (2006). Vinje was sentenced on the DWI conviction to 48 months' imprisonment, stayed for five years. This appeal follows.

D E C I S I O N

Vinje challenges the district court's denial of his pretrial motion to suppress all evidence obtained as a result of the traffic stop. When reviewing a pretrial order on suppression of evidence "where the facts are not in dispute and the [district] court's decision is a question of law, the reviewing court may independently review the facts and determine, as a matter of law, whether the evidence need be suppressed." *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992).

I. The officers had reasonable articulable suspicion to stop Vinje's car.

The Fourth Amendment to the U.S. Constitution and article I, section 10 of the Minnesota Constitution protect a person's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Subject to certain defined exceptions, warrantless searches and seizures are considered unreasonable. *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999). The state bears the burden of showing that at least one of the exceptions applies in order to avoid suppression of the evidence acquired from a warrantless search. *State v. Metz*, 422 N.W.2d 754, 756 (Minn. App. 1988).

A police officer may make a limited investigative stop of a motor vehicle if the officer has reasonable articulable suspicion that the person stopped is engaged in criminal activity. *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003) (applying *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880 (1968)). This standard is a minimal one. "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). Whether police have reasonable suspicion to conduct an investigatory stop depends on the totality of the circumstances, and a stop is not justified if it is "the product of mere whim, caprice, or idle curiosity." *In re Welfare of M.D.R.*, 693 N.W.2d 444, 448 (Minn. App. 2005) (quotation omitted), *review denied* (Minn. June 28, 2005).

Vinje does not dispute that Officer White saw an open bottle of beer in the parked Malibu and that she observed the Malibu leave the parking lot less than 45 minutes later. Vinje argues that it was unreasonable for the officers to suspect the open bottle was still in the car because of the passage of time and the presumption that Vinje would comply with the law by removing the open bottle from the Malibu before leaving the parking lot. We disagree. The fact that Vinje or his passenger *could* have removed the bottle before driving off does not change the fact that the officers had an objectively reasonable basis—an open-bottle violation—for making a stop. Vinje points to no authority imposing an obligation on the officers to assume that the bottle was no longer present. The totality of the circumstances demonstrates that the officers did not stop the Malibu based on "mere whim, caprice, or idle curiosity." *Id.* And Vinje's assertion, in his pro se supplemental brief, that he was targeted based on the reserve officer's bias, is unavailing.

II. The officers did not unlawfully expand the scope of the stop.

"Expansion of the scope of the stop to include investigation of other suspected illegal activity is permissible under the Fourth Amendment only if the officer has reasonable, articulable suspicion of such other illegal activity." *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). Our supreme court has similarly construed the

Minnesota Constitution to limit the scope of a *Terry* stop to the investigation of the offense that prompted the stop, the limited search for weapons, and the "investigation of only those additional offenses for which the officer develops a reasonable, articulable suspicion within the time necessary to resolve the originally-suspected offense." *Id.* at 136; *see also State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (explaining that each "incremental intrusion" during a stop must be justified by the circumstances that permitted the stop in the first place, independent probable cause, or other reasonable suspicion of criminal activity).

Vinje contends that once Officers Peterson and White approached the vehicle and did not see an open bottle, any suspicion of criminal activity was dispelled and the stop should have ended. We disagree. Officer Peterson noticed the odor of alcohol and observed that Vinje's eyes were watery and bloodshot. These observations provided reasonable articulable suspicion that Vinje was driving while impaired. *See Hager v. Comm'r Pub. Safety*, 382 N.W.2d 907, 911 (Minn. App. 1986) (concluding that odor of alcohol and bloodshot eyes provided reasonable suspicion to administer preliminary breath test). And Officer Peterson was aware, from his experience, that vehicle occupants may take steps to hide bottles from direct view. A police officer may rely on his training and experience to draw inferences and make deductions that might elude an ordinary citizen. *State v. Munoz*, 385 N.W.2d 373, 376 (Minn. App. 1986). On this record, we conclude that the officers did not impermissibly expand the scope of the stop.

Affirmed.