STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1980

State of Minnesota,
Appellant,

vs.

Shane Michael Collmann,
Respondent.

Filed May 4, 2010
Affirmed
Bjorkman, Judge

Blue Earth County District Court
File No. 07-CR-09-1202

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

Ross Arneson, Blue Earth County Attorney, Christopher J. Rovney, Assistant County Attorney, Mankato, Minnesota (for appellant)

Sharon E. Jacks, Minneapolis, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Kalitowski, Judge; and Minge, Judge.

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

BJORKMAN, Judge

On appeal from a pretrial dismissal, the state argues that the district court erred in suppressing evidence seized from respondent, a passenger in a stopped vehicle. Because the search of respondent impermissibly expanded the scope of the traffic stop, we affirm.

FACTS

On April 21, 2009, Blue Earth County Deputy Josh Steinbach pulled over an SUV driven by Ricky Sullivan in Mankato. Deputy Steinbach knew that Sullivan's driver's license had been suspended, and he observed that the SUV failed to signal a turn. Respondent Shane Collmann was a passenger in the front seat of the vehicle. Deputy Steinbach noted that both the driver and Collman appeared nervous. Collmann asked several times if he could leave the vehicle and walk to a friend's house nearby. Deputy Steinbach told Collman to remain in the vehicle until the traffic stop was completed.

Blue Earth County Deputy Scott Wolfe later arrived at the scene to assist. At that point, Deputy Steinbach had arrested Sullivan, secured him in the back seat of the squad car, and started filling out the vehicle tow slip.

Collmann had exited the vehicle and started to walk away from the scene, and Deputy Wolfe ordered him to return. Collmann complied. Deputy Wolfe asked Collmann whether he had anything illegal. Collmann replied that he had a "pot pipe" in his pocket and gave it to the deputy. Deputy Wolfe then conducted a full search of Collmann, looking for narcotics. The search revealed a second pipe, a small jar containing marijuana, and methamphetamine hidden in the battery case of a mini-flashlight.

Collmann was charged with fifth-degree controlled-substance crime, in violation of Minn. Stat. § 152.025, subd. 2(1) (2008). At the omnibus hearing, Collmann argued that the evidence should be suppressed as the fruit of an unconstitutional search and seizure of his person. The district court agreed. Having suppressed the evidence, the

district court dismissed the charge against Collmann for lack of probable cause. This appeal follows.

D E C I S I O N

"When reviewing a district court's pretrial order on a motion to suppress evidence, we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009) (quotation omitted). Where, as here, the facts are not in dispute, we 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).

In a pretrial appeal, we will reverse the district court only if the state clearly demonstrates that (1) the district court erred, and (2) unless reversed, the error will have "a critical impact on the outcome of the trial." *State v. Dendy*, 598 N.W.2d 4, 6 (Minn. App. 1999), *review denied* (Minn. Sept. 28, 1999); *see also State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1988) (applying this standard to pretrial suppression-of-evidence orders in felony cases). Dismissal of a charge has a critical impact on the outcome of a trial. *State v. Myers*, 711 N.W.2d 113, 115 (Minn. App. 2006), *aff'd*, *State v. Melde*, 725 N.W.2d 99 (Minn. 2006). Collmann does not dispute that the critical-impact requirement is met.

Both the federal and state constitutions guarantee the right to be free from unreasonable searches and seizures. U.S. Const. amend IV; Minn. Const. art. I, § 10. Our supreme court, in interpreting article I, section 10 of the Minnesota Constitution,

expressly adopted the principles of *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1838 (1968), in the context of traffic stops. *State v. Askerooth*, 681 N.W.2d 353, 359-60 (Minn. 2004). A *Terry* analysis involves a two-part inquiry: (1) Was the stop justified at its inception? If so, (2) were the actions of the police during the stop "reasonably related to and justified by the circumstances that gave rise to the stop in the first place"? *Id.* at 364. "[T]he scope and duration of a traffic stop investigation must be limited to the justification for the stop." *State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003).

The parties agree that Deputy Steinbach conducted a valid stop of the vehicle in which Collmann was riding. Our focus is on the second prong of the *Terry* analysis. A valid traffic stop may become invalid if it becomes "intolerable" in its "intensity or scope." *Askerooth*, 681 N.W.2d at 364. The state has the burden to show that a seizure was sufficiently limited. *State v. Krenik*, 774 N.W.2d 178, 182 (Minn. App. 2009), *review denied* (Minn. Jan. 27, 2010).

The district court determined that Collmann was seized when Deputy Steinbach ordered him to stay in the car, and that the seizure was invalid. We disagree. While requiring Collmann to remain in the stopped vehicle constitutes a seizure, we conclude that it was not improper.

For Fourth Amendment purposes, a passenger in a vehicle is seized along with the driver when the police initiate a traffic stop. *Brendlin v. California*, 551 U.S. 249, 257, 127 S. Ct. 2400, 2406-07 (2007). The United States Supreme Court has explained that "[a] lawful roadside stop begins when a vehicle is pulled over for investigation of a traffic violation. The temporary seizure of driver and passengers ordinarily continues,

and remains reasonable, for the duration of the stop." *Arizona v. Johnson*, 129 S. Ct. 781, 788 (2009). The *Arizona* Court concluded that the officer "was not constitutionally required to give [the passenger] an opportunity to depart the scene after he exited the vehicle without first ensuring that, in so doing, [the officer] was not permitting a dangerous person to get behind her." *Id.* The Minnesota Supreme Court quoted this holding approvingly in *Ortega*, 770 N.W.2d at 152. Deputy Steinbach's order to Collmann to stay in the vehicle during the traffic stop was a valid incident of the initial seizure.

Collmann contends that his continued seizure after Sullivan was arrested and confined in the deputy's squad car unlawfully extended the duration and scope of the officer's seizure of him incident to the traffic stop. We do not reach this argument because we affirm the district court on different grounds, namely that the search of Collmann unreasonably expanded the scope of the officer's seizure incident to the stop. *See Brecht v. Schramm*, 266 N.W.2d 514, 520 (Minn. 1978) ("If the trial court arrives at a correct decision, that decision should not be overturned regardless of the theory upon which it is based.").

By the time Deputy Wolfe arrived at the scene, Collmann had left the vehicle against Deputy Steinbach's direction. Deputy Wolfe called Collmann back and asked whether "he had anything illegal on him." Collmann responded that he had a "pot pipe" and surrendered it to the deputy. The state argues that Deputy Wolfe then had probable cause and the duty to search Collmann further for illegal items. We disagree.

"[E]ach incremental intrusion during a traffic stop" must "be tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in *Terry*." *Askerooth*, 681 N.W.2d at 365. None of these factors are present here.

First, Deputy Wolfe's question, asking whether Collmann "had anything illegal on him" was not reasonably related to the purpose of the traffic stop. This court considered a similar situation in *State v. Syhavong*, 661 N.W.2d 278, 281 (Minn. App. 2003). In *Syhavong*, an officer stopped a driver for a broken rear taillight. 661 N.W.2d at 281. Because the driver and passenger were acting nervous, the officer asked if there was anything illegal in the car. *Id.* at 280. This court held that "[b]ecause [the officer's] question about contraband was not related in scope to the circumstances that justified the stop, the resulting detention and inquiry were unreasonable." *Id.* at 281. Similarly, Deputy Wolfe's question about contraband was not reasonably related to the purported purpose for the stop: the driver's failure to signal a turn and driving without a license.

Second, the state has not demonstrated that Deputy Wolfe had independent probable cause to conduct a warrantless search of Collmann. "There is probable cause to arrest without a warrant when a person of ordinary care and prudence, viewing the totality of the circumstances objectively, would entertain an honest and strong suspicion that a specific individual has committed a crime." *Ortega*, 770 N.W.2d at 150. The crime must be one for which a custodial arrest is authorized. *Id.* "[P]robable cause to suspect that a person possesses a non-criminal amount of marijuana, in and of itself, does not trigger the search-incident-to-arrest exception to the warrant requirements of the

Fourth Amendment." *Id.* at 149 n.2. Collmann's possession of the pot pipe is a petty misdemeanor offense. *See* Minn. Stat. § 152.092 (2008). Accordingly, Deputy Wolfe's discovery of the pipe did not give him probable cause to arrest and search Collmann.

Finally, the factors that made the search reasonable in *Terry* are not present. *Terry* permits a warrantless search of an individual where an officer suspects that person is "engaged in illegal activity and also believes that a suspect may be armed and dangerous" out of a concern for officer safety. *State v. Flowers*, 734 N.W.2d 239, 250 (Minn. 2007). Deputy Wolfe testified that he did not have any concerns for his safety with Collmann. And because Collmann had already exited the car, the concern articulated in *Ortega* that a passenger may use force to prevent discovery of contraband in a vehicle was not present.

Because the search of Collmann's person impermissibly expanded the scope of the traffic stop, the district court did not err in suppressing the drugs found as a result of the search.

Affirmed.