STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1322

State of Minnesota,
Respondent,

vs.

Tracy Louise Brambrink,
Appellant.

Filed July 27, 2010
Affirmed
Peterson, Judge

Beltrami County District Court
File No. 04-CR-08-3459

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

Timothy R. Faver, Beltrami County Attorney, Bemidji, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, Mallory M. Gagan, Certified Student Attorney, St. Paul, Minnesota (for appellant)

Considered and decided by Lansing, Presiding Judge; Peterson, Judge; and Worke, Judge.

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

PETERSON, Judge

After her motion to suppress evidence was denied, appellant submitted her case to the district court on stipulated facts and was convicted of a fifth-degree controlled-substance offense. Appellant, who was on probation at the time of her arrest, appeals her conviction, arguing that the district court erred by finding that the search of her vehicle was based on reasonable suspicion. We affirm.

FACTS

Beltrami County Sheriff's Deputy Martin Gack saw a vehicle with a taillight out. Gack followed the vehicle, and when he activated the emergency lights on his patrol car, the vehicle came to a sudden stop. Gack heard the squealing of tires and saw the vehicle rock left to right after it came to a stop. Gack testified that the rocking was not consistent with a basic traffic stop and appeared unusual.

Gack approached the vehicle, and the driver told him that she did not have her driver's license with her. She then identified herself as appellant Tracy Louise Brambrink and told Gack her date of birth.[1] Gack noted that appellant was very nervous and seemed disheveled in appearance, but she explained her appearance by telling Gack that she had been catching leeches earlier in the day. With respect to appellant's appearance, Gack testified:

[1] Appellant's 13-year-old daughter was also in the vehicle.

> Q. Now you indicated earlier in your testimony that you observed her to be nervous and disheveled?
> A. Yes.
> Q. What concerns did that bring to you?
> A. Well due -- she explained her disheveled appearance and the appearance of her vehicle. That didn't really concern me but due to past experience working at law enforcement and working at a jail, I'm very accustomed to signs of past use of methamphetamine. I mean, just her appearance, the way she fidgeted in the vehicle, made me wonder if she hadn't taken some.
> Q. Taken some what?
> A. Taken some methamphetamine.

When Gack asked appellant for her driver's license and insurance card, she produced an insurance card. After Gack returned to his patrol car, appellant approached the patrol car and handed Gack a driver's license that identified her as Tracy Louise Brambrink. Gack informed the dispatcher that he had stopped appellant and confirmed that appellant's driver's license was valid.

While Gack was still in his patrol car, he received information from dispatch that appellant was on probation for a controlled-substance offense and was subject to random searches of her person, vehicle, and residence and was not to consume or possess alcohol or drugs.[2] Gack also received a telephone call from his supervisor, Sergeant Robert Carlson, who told Gack that appellant was a known methamphetamine user and that Carlson was on his way to the stop location with a canine unit.

Gack returned to appellant's vehicle and issued her a written warning for the taillight being out. He also asked appellant for consent to search her vehicle. In

[2] Appellant does not challenge the existence of a probation condition authorizing warrantless searches.

response, appellant asked to speak with a lawyer. Gack told appellant about the information that he received from dispatch and that his understanding of her probation condition was that he had the right to search her vehicle without her consent. Gack then asked appellant and her daughter to get out of the vehicle, and they waited for Carlson to arrive. Gack testified that he decided to search the vehicle because appellant's "personality during the stop kind of set off some red flags, but after receiving the page from Beltrami County Dispatch informing that she was on probation and subject to random searches of her vehicle. I routinely will search if I get a page like that."

Carlson arrived within minutes, and he noted "indicators or cues that [appellant] had been using methamphetamine or was a user." Specifically, Carlson observed that appellant was rubbing her skin and clenching her fists and that her eyes were bloodshot and slightly dilated. Gack searched the vehicle and, inside a purse, found a glass pipe that he recognized as a pipe used for smoking methamphetamine. Residue on the pipe tested positive for methamphetamine. A canine unit arrived a short time later, but nothing more was found during additional searching.

Appellant was charged with fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(1) (2006). Appellant moved to suppress the evidence found in her vehicle on the grounds that Gack lacked reasonable suspicion that appellant had committed a crime and that the search therefore violated appellant's rights under Minn. Const. art. I, § 10. Following a contested omnibus hearing, the district court denied appellant's motion. The case was submitted to the district court on stipulated facts pursuant to Minn. R. Crim. P. 26.01, subd. 4. The district court found appellant

guilty as charged and imposed a stayed prison sentence of one year and one day. This appeal followed.

D E C I S I O N

When reviewing a pretrial order denying a motion to suppress evidence, we independently review the facts and determine whether, as a matter of law, the district court erred by not suppressing the evidence. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004). We accept the district court's underlying factual determinations unless they are clearly erroneous. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

Both the United States Constitution and the Minnesota Constitution protect against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. The exclusionary rule prohibits the admission of evidence discovered during an illegal search. *In re Welfare of B.R.K.*, 658 N.W.2d 565, 578 (Minn. 2003).

The United States Supreme Court has considered whether a warrantless search of a probationer's residence pursuant to a probation search condition similar to appellant's satisfied the Fourth Amendment. *United States v. Knights*, 534 U.S. 112, 122 S. Ct. 587 (2001). In *Knights*, the Supreme Court concluded that the search "was reasonable under our general Fourth Amendment approach of examining the totality of the circumstances, with the probation search condition being a salient circumstance." *Id.* at 118, 122 S. Ct. at 591 (quotation omitted). The Supreme Court explained:

> The touchstone of the Fourth Amendment is reasonableness, and the reasonableness of a search is determined by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the

> other, the degree to which it is needed for the promotion of legitimate governmental interests.

Id. at 118-19, 122 S. Ct. at 591 (quotation omitted).

In assessing the degree of intrusion upon the probationer's individual privacy, the Court stated:

> Inherent in the very nature of probation is that probationers do not enjoy the absolute liberty to which every citizen is entitled. . . .
> . . . The probation order clearly expressed the search condition and Knights was unambiguously informed of it. The probation condition thus significantly diminished Knights' reasonable expectation of privacy.

Id. at 119-20, 122 S. Ct. at 591-92 (quotation omitted).

In assessing the degree to which a search is needed for the promotion of legitimate governmental interests, the Court stated:

> The State has a dual concern with a probationer. On the one hand is the hope that he will successfully complete probation and be integrated back into the community. On the other is the concern, quite justified, that he will be more likely to engage in criminal conduct than an ordinary member of the community. . . . Its interest in apprehending violators of the criminal law, thereby protecting potential victims of criminal enterprise, may therefore justifiably focus on probationers in a way that it does not on the ordinary citizen.

Id. at 120-21, 122 S. Ct. at 592.

The Supreme Court then held

> that the balance of these considerations requires no more than reasonable suspicion to conduct a search of this probationer's house. The degree of individualized suspicion required of a search is a determination of when there is a sufficiently high probability that criminal conduct is occurring to make the intrusion on the individual's privacy interest reasonable.

> Although the Fourth Amendment ordinarily requires the degree of probability embodied in the term "probable cause," a lesser degree satisfies the Constitution when the balance of governmental and private interests makes such a standard reasonable. Those interests warrant a lesser than probable-cause standard here. When an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interest is reasonable.

Id. at 121, 122 S. Ct. at 592-93 (citations omitted).

The Minnesota Supreme Court has applied the *Knights*' totality-of-the-circumstances approach to decide whether the warrantless search of a probationer's residence was reasonable. *State v. Anderson*, 733 N.W.2d 128, 138-40 (Minn. 2007). In *Anderson*, the supreme court determined that Anderson's "reasonable expectation of privacy was diminished merely by virtue of his status as a probationer," and then balanced this diminished expectation of privacy against "the state's legitimate interest in ensuring that Anderson abides by the terms of his probation" and "the state's interest in protecting potential victims from illegal conduct Anderson might commit." *Id.* at 139-40. Based on this balancing, the court concluded "that the Fourth Amendment required no more than reasonable suspicion to conduct a search of Anderson's residence." *Id.* at 140.

In *Anderson*, the supreme court was asked to interpret article I, section 10, of the Minnesota Constitution to prohibit warrantless probation searches and to prohibit probation conditions that allow warrantless searches. *Id.* The supreme court explained that it looks to the state constitution as an independent basis for individual rights "'with restraint and some delicacy,' especially when the right at stake is guaranteed by identical

or substantially similar language in the federal constitution." *Id.* (quoting *Kahn v. Griffin*, 701 N.W.2d 815, 828 (Minn. 2005)). The court then stated:

> The Supreme Court's decision in *Knights* does not appear to be a sharp or radical departure from its previous decisions or a retrenchment on its Fourth Amendment jurisprudence with respect to probation searches. Moreover, we are not convinced that federal precedent inadequately protects our citizens' basic rights and liberties. Accordingly, we decline Anderson's invitation to deem the search of his residence unreasonable under the Minnesota Constitution.

Id. Applying the supreme court's analysis of *Knights* in *Anderson*, we conclude that we should decide this case by using the totality-of-the-circumstances approach and balancing appellant's individual privacy rights against the state's interests.

Like the probationers in *Knights* and *Anderson*, appellant's reasonable expectation of privacy was diminished merely by virtue of her status as a probationer. Unlike those probationers, however, whose homes were searched, appellant was subjected to a search of the vehicle that she was driving. Although a search of an automobile is a substantial invasion of privacy, the privacy expectation surrounding an automobile is less than that of a home because an automobile generally does not serve as the repository of personal effects and because of the significant governmental regulation of vehicles. *State v. Wiegand*, 645 N.W.2d 125, 131 (Minn. 2002). Consequently, appellant's reasonable expectation of privacy was perhaps even less than the probationers in *Knights* and *Anderson*.

Balanced against appellant's diminished expectation of privacy is the state's legitimate interest in ensuring that appellant abides by the terms of her probation and in

protecting potential victims from illegal conduct that appellant might commit. Based on appellant's probation condition that she was not to consume or possess alcohol or drugs, it is apparent that the additional search condition was specifically directed toward the state's interest in ensuring that appellant avoid alcohol and drugs for her own sake and to avoid any harm that she might cause to others while under the influence. Based on this balancing, we conclude that only reasonable suspicion was required before searching appellant's vehicle.

The supreme court explained in *Anderson* that "[r]easonable suspicion is more than an unarticulated hunch. It is a particularized and objective basis for suspecting a person of criminal activity." 733 N.W.2d at 138 (quotations omitted). Appellant argues that because the totality of the circumstances did not give Gack a particularized and objective basis for suspecting appellant of criminal activity, detaining her beyond the time necessary to issue her a warning for the non-working taillight was an unreasonable seizure and search. We disagree.

Gack testified that he saw appellant's vehicle come to an unusually abrupt stop after the patrol car's emergency lights were activated. He also testified that when he initially stopped appellant, he was not concerned about her disheveled appearance, which she satisfactorily explained, but he was concerned by the way she fidgeted because it made him wonder if she had taken some methamphetamine. Gack's concern about appellant's fidgeting was based on his experience working with methamphetamine users; it was not merely an unarticulated hunch. An officer may make inferences and deductions that may elude an untrained person in arriving at a reasonable, articulable

suspicion of criminal activity. *State v. Syhavong*, 661 N.W.2d 278, 282 (Minn. App. 2003). When Gack then learned that appellant was a known methamphetamine user and that she was on probation for a controlled-substance offense, it was reasonable to suspect that appellant had taken some methamphetamine. The probability that criminal conduct was occurring was sufficiently high to make the intrusion on appellant's significantly diminished privacy interest reasonable.

Gack's testimony that he routinely will search a vehicle if he gets information that the driver is on probation and subject to random searches of the vehicle suggests that Gack did not subjectively determine whether there was a particularized and objective basis for suspecting appellant of criminal activity. But when evaluating the reasonableness of a seizure, a court's task is not just to determine whether a police officer articulated a valid reason for the seizure; the court's task is to apply an objective standard to determine whether a person of reasonable caution who knew what the officer knew at the time of the seizure would believe that a seizure was warranted. An officer's failure or inability to articulate a valid basis for a seizure does not invalidate the seizure if a valid basis exists. As the Supreme Court explained in *Scott v. United States*, 436 U.S. 128, 138, 98 S. Ct. 1717, 1723 (1978), "the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action."

Citing *Scott*, the Minnesota Supreme Court has concluded:

> Under the "objective theory" of probable cause which the United States Supreme Court has adopted, a search must be upheld, at least as a matter of federal constitutional law, if there was a valid ground for the search, even if the officers conducting the search based the search on the wrong ground or had an improper motive. . . . The same rule applies to police investigatory practices short of arrest or search.

State v. Pleas, 329 N.W.2d 329, 332 (Minn. 1983) (citations omitted); *see also State v. Faber*, 343 N.W.2d 659, 660 (Minn. 1984) (stating that a motor vehicle "stop must be upheld if there was a valid objective basis for it"); *State v. Schinzing*, 342 N.W.2d 105, 110 n.1 (Minn. 1983) ("If there was an objective basis for the search of the truck, [the officer's] failure to articulate that basis at the omnibus hearing does not destroy the validity of the search."); *State v. Speak*, 339 N.W.2d 741, 745 (Minn. 1983) (concluding that when facts were sufficient to establish probable cause, fact that officers did not think along these lines did not matter because issue is whether there was objective probable cause, not whether officers subjectively felt that they had probable cause); *State v. Barber*, 308 Minn. 204, 207, 241 N.W.2d 476, 477 (1976) (holding that "the action of the police officer in stopping defendant's vehicle in this case was proper and not based on mere whim, caprice, or idle curiosity" because "the facts, together with the reasonable inferences an experienced police officer could draw therefrom, justify the minimal intrusion upon defendant's rights").

Because a person of reasonable caution who knew what Gack knew when he asked appellant for consent to search her vehicle would reasonably suspect that appellant had taken some methamphetamine, the search of appellant's vehicle was valid, and the

district court did not err in denying appellant's motion to suppress evidence found during the search. Because we have concluded that a reasonable suspicion has been shown, we decline to address the state's argument that a reasonable suspicion was not necessary to detain appellant.

Affirmed.