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STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1940

State of Minnesota,
Respondent,

vs.

Chad Ronald Schull,
Appellant.

Filed August 24, 2010
Affirmed
Wright, Judge

Blue Earth County District Court
File No. 07-CR-08-3391

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

Ross Arneson, Blue Earth County Attorney, Steven Kelm, Assistant County Attorney, Mankato, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Kalitowski, Judge; and Wright, Judge.

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

WRIGHT, Judge

Appellant challenges his conviction of third-degree driving while impaired (DWI), a violation of Minn. Stat. §§ 169A.20, subd. 1(5), 169A.26 (2008), arguing that the

evidence should have been suppressed because the officer's stop of his vehicle was the product of unconstitutional police conduct on a prior occasion and the evidence seized during this traffic stop resulted from an improper extension of the investigation after reasonable suspicion of unlawful activity had dissipated. We affirm.

FACTS

On September 20, 2008, Mapleton Police Officer Talman Wiles stopped a vehicle for failing to display a rear license plate. As Officer Wiles walked toward the vehicle, the driver, later identified as appellant Chad Ronald Schull, exited his vehicle. Officer Wiles instructed Schull to return to his vehicle and close the door. Schull complied with this instruction, and Officer Wiles continued to approach Schull's vehicle. When he was within two to three feet from it, Officer Wiles observed a temporary vehicle-registration sticker in the rear window of the vehicle. The officer had not seen the temporary vehicle-registration sticker prior to the traffic stop because of the angle of the rear window. Officer Wiles also observed two cases of beer in the vehicle's back seat.

Officer Wiles explained to Schull that he initiated the traffic stop because he had not seen the temporary vehicle-registration sticker. Schull then explained why his vehicle did not have a license plate. During Schull's explanation, Officer Wiles observed indicators of Schull's impairment, including slurred and lethargic speech. Officer Wiles directed Schull to perform a series of field sobriety tests, all of which he failed. Officer Wiles then arrested Schull for DWI. Officer Wiles recovered marijuana and a marijuana smoking device from Schull's pockets during a search incident to Schull's arrest. And he

recovered two open bottles of beer from the back seat of Schull's vehicle. The results of Schull's subsequent blood test indicated an alcohol concentration of .12.

Schull was charged with two counts of third-degree DWI, a violation of Minn. Stat. §§ 169A.20, subd. 1(1), (5), 169A.26; possession of marijuana in a motor vehicle, a violation of Minn. Stat. § 152.027, subd. 3 (2008); and possession of drug paraphernalia, a violation of Minn. Stat. § 152.092 (2008).

Schull moved to dismiss the charges, arguing that the traffic stop was unlawful because his license plates were removed based on a 2006 DWI charge that was subsequently dismissed for lack of probable cause after a determination that the charge was the result of an unconstitutional search and seizure. Therefore, he argued, the 2008 traffic stop at issue here was the product of the prior unconstitutional seizure without legal justification and his arrest was not supported by probable cause. At a May 15, 2009 contested omnibus hearing, Officers Wiles and Schull testified regarding the 2008 traffic stop. Following written arguments, the district court denied Schull's motion to dismiss.

Schull waived his right to a jury trial and agreed to a trial on stipulated facts, thereby preserving his right to appeal the district court's denial of his motion to dismiss. *See* Minn. R. Crim. P. 26.01, subd. 4 (providing for trial on stipulated facts). The district court found Schull guilty of third-degree DWI, a violation of Minn. Stat. §§ 169A.20, subd. 1(5) (.08 or more alcohol concentration within two hours of driving), 169A.26, and dismissed the remaining charges. This appeal followed.

D E C I S I O N

I.

Schull argues that the district court erred by denying his motion to dismiss because the traffic stop and seizure of evidence in this case resulted from an earlier unconstitutional search and seizure to which the exclusionary rule applies. The United States Constitution and the Minnesota Constitution prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Whether a seizure is unconstitutional presents a mixed question of fact and law. *State v. Lee*, 585 N.W.2d 378, 382-83 (Minn. 1998). We review the district court's findings of fact for clear error, giving due weight to inferences drawn by the district court from those facts. *Id*. at 383. But we review de novo whether, based on those facts, a seizure meets constitutional muster. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005).

All evidence is not "'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police." *Wong Sun v. United States*, 371 U.S. 471, 487-88, 83 S. Ct. 407, 417 (1963). When deciding whether evidence is the "fruit" of an unlawful search and seizure and thereby warrants suppression under the exclusionary rule, we examine whether, in light of the primary unconstitutional conduct, the evidence to which the instant objection is made has been obtained by exploiting the primary unconstitutional conduct or whether it has instead been obtained by a means that is sufficiently distinguishable to be purged of the primary taint. *State v. Maldonado-Arreaga*, 772 N.W.2d 74, 80 (Minn. App. 2009). In doing so, we consider factors including (1) the presence of intervening circumstances; (2) whether the evidence likely

would have been obtained absent the unconstitutional conduct; and (3) the temporal proximity of the unconstitutional conduct and the evidence alleged to be its fruit. *Id.*

When analyzed, two of three factors weigh in favor of concluding that the evidence at issue here is untainted by the earlier unconstitutional police conduct. First, there were several intervening circumstances between the initial unconstitutional stop in 2006 and Officer Wiles's collection of evidence in support of the instant offense. The 2006 charges were dismissed, and Schull obtained a temporary vehicle-registration sticker pending receipt of new license plates. In 2008, when Schull was stopped, the temporary vehicle-registration sticker was attached to his window. But Officer Wiles stopped Schull because the officer did not see the temporary vehicle-registration sticker initially and mistakenly thought that the driver did not have a valid license plate or a temporary vehicle-registration sticker on display. During the conversation that followed, Schull exhibited indicia of intoxication. He ultimately was arrested based on that evidence of intoxication. Additional evidence confirming Schull's intoxication was obtained following his arrest. These intervening circumstances, all of which were necessary in order for evidence of intoxication to be gathered in this case, support the conclusion that Officer Wiles did not exploit the 2006 unconstitutional police conduct to obtain evidence of Schull's intoxication.

With respect to the second factor, we agree with Schull that he would not have had the temporary vehicle-registration sticker if his license plates had not been impounded. Officer Wiles's search, therefore, would not have occurred without the initial unconstitutional conduct by another officer in 2006. But Officer Wiles stopped Schull

only because he was unable to see the valid temporary vehicle-registration sticker. Although Schull would not have needed the temporary vehicle-registration sticker if his license plates had not been impounded, Officer Wiles stopped the vehicle because the temporary vehicle-registration sticker was not visible to him. This factor weighs in favor of suppression. But the strength of this factor, when compared to the other factors, is relatively minimal.

Finally, the temporal-proximity factor weighs in favor of the constitutionality of the traffic stop and subsequent search. Officer Wiles stopped Schull's vehicle almost two years after the initial unconstitutional stop. This is a significant amount of time, which lends additional support to the conclusion that Officer Wiles did not exploit the illegality of the 2006 stop.

Our analysis of these factors demonstrates that the link between the initial unconstitutional stop and the evidence obtained by Officer Wiles is too attenuated to warrant suppression and dismissal of the charges at issue here. *See I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1040-41, 104 S. Ct. 3479, 3484 (1984) (stating that the "general rule in a criminal proceeding is that statements and other evidence obtained as a result of an unlawful, warrantless arrest are suppressible if the link between the evidence and the unlawful conduct is not too attenuated"). Given the intervening circumstances, including the substantial time between the earlier stop and the stop at issue here, there is no evidence that Officer Wiles obtained the evidence of intoxication by exploiting the unrelated unconstitutional stop. The district court did not err by declining to suppress the evidence as "fruit of the poisonous tree."

The district court properly focused its analysis on the reasonableness of the stop. A brief investigatory stop requires only reasonable suspicion of criminal activity, not probable cause to believe that a crime has been committed. *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996). The reasonable-suspicion standard is not particularly demanding. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). But reasonable suspicion is more than merely a whim, caprice, or idle curiosity. *Pike*, 551 N.W.2d at 921-22.

A traffic stop "is more analogous to an investigative stop . . . than to a formal arrest." *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004). And the Minnesota Supreme Court has held that "the principles and framework of *Terry* [apply when] evaluating the reasonableness of seizures during traffic stops even when a minor law has been violated." *Id*. at 363 (citing *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968)). A traffic stop is valid, therefore, if the officer who executes the stop can articulate a particularized and objective basis for doing so. *Timberlake*, 744 N.W.2d at 393. "To be reasonable, the basis must satisfy an objective test: 'would the facts available to the officer at the moment of the seizure . . . warrant a [person] of reasonable caution in the belief that the action taken was appropriate.'" *Askerooth*, 681 N.W.2d at 364 (quoting *Terry*, 392 U.S. at 21-22, 88 S. Ct. at 1880).

Although Schull was driving with a valid temporary vehicle-registration sticker, Officer Wiles was unable to see the temporary vehicle-registration sticker in Schull's window. The facts available to Officer Wiles, therefore, were that a driver was operating a vehicle that did not have a rear license plate or a temporary vehicle-registration sticker, which is a traffic violation. *See* Minn. Stat. § 169.79, subd. 1 (2008) (requiring license

plates or registration permit). That Officer Wiles was mistaken does not invalidate the stop. *See State v. Barber*, 308 Minn. 204, 207, 241 N.W.2d 476, 477 (1976) (holding that although officer was mistaken that vehicle occupants might be switching plates between cars based on license plates attached with wire, inference drawn was rational and justified the stop); *City of St. Paul v. Vaughn*, 306 Minn. 337, 341, 237 N.W.2d 365, 368 (1975) (holding that officer acted properly in stopping car based on mistaken, but reasonable, belief that it was being driven by actual driver's brother, whom officers knew had suspended license); *State v. Johnson*, 392 N.W.2d 685, 687 (Minn. App. 1986) (holding that stop was valid because officer "acted reasonably in stopping the car which he mistakenly (but reasonably) believed to be the same one he had been following"). Based on the facts known to Officer Wiles at the initiation of the traffic stop, the officer possessed a particularized, objective reason for stopping Schull's vehicle. Because Officer Wiles's conduct did not violate constitutional protections against unreasonable searches and seizures, the district court did not err by denying Schull's motion to dismiss.

II.

Schull next argues that, because Officer Wiles observed indicia of intoxication only after unlawfully extending the stop, the district court erred by failing to suppress the evidence and dismiss the charges. We review de novo the legality of a limited investigative stop and questions of reasonable suspicion. *State v. Syhavong*, 661 N.W.2d 278, 281 (Minn. App. 2003) (citing *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999)).

Officers generally may conduct investigative stops so long as they have a particularized basis for suspecting criminal activity. *State v. Smallwood*, 594 N.W.2d 144, 155 (Minn. 1999). "[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). Under both the Fourth Amendment and the Minnesota Constitution, any expansion of the scope or duration of an investigative stop is proper only when the officers have a reasonable articulable suspicion of additional criminal activity. *Id.* at 419 (applying Article I, Section 10, of the Minnesota Constitution); *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002) (applying Fourth Amendment to the United States Constitution).

Schull argues that Officer Wiles had "no legal justification for extending the stop to converse with Schull about why he had no license plate." Two cases inform our analysis. In *State v. Hickman*, we affirmed the suppression of evidence obtained during a traffic stop under circumstances that resemble, but only partially, those in this case. 491 N.W.2d 673, 674 (Minn. App. 1992), *review denied* (Minn. Dec. 15, 1992). The officer stopped Hickman's vehicle because it had an expired temporary vehicle-registration sticker. *Id.* While still seated in his patrol car, the officer saw a temporary vehicle-registration sticker in the vehicle's rear window. *Id.* Nonetheless, the officer approached Hickman and asked to see his driver's license. *Id.* Hickman did not have a valid driver's license, and he was charged with driving after revocation. *Id.* We concluded that "detaining Hickman to check his driver's license constituted an unlawful intrusion because [the officer's] suspicions about the vehicle's registration had been dispelled." *Id.*

at 675. On this basis, we affirmed, holding "[t]hat the initial stop was constitutional did not establish the constitutionality of the later intrusion (asking to see the driver's license)." *Id*.

In *State v. Lopez*, we reversed the suppression of evidence gathered after a traffic stop. 631 N.W.2d 810, 812 (Minn. App. 2001), *review denied* (Minn. Sept. 25, 2001). The officer initiated a traffic stop when she noticed a vehicle without license plates. *Id*. The officer observed a valid temporary vehicle-registration sticker in the window as she walked up to the vehicle and approached the driver to explain why she stopped the vehicle. *Id*. While speaking with the driver, the officer smelled a faint odor of an alcoholic beverage coming from the vehicle. *Id*. After further investigation, including questioning the vehicle's occupants and administering a preliminary blood test to the driver, Lopez was charged with providing alcohol to the driver, who was a minor. *Id*. The *Lopez* court concluded that the officer's conduct was not an unconstitutional intrusion because the officer "approached the driver merely to explain her error, not to conduct an investigation." *Id*. at 813. The *Lopez* court reasoned that "[i]t would be impractical to suggest that the officer, upon seeing evidence of lawful registration, immediately turn away and leave the stopped vehicle without explanation." *Id*. at 813-14. "Instead, the validity of the original stop continues at least long enough for the officer to approach the car and inform the driver he is free to go." *Id*. at 814.

Schull concedes that Officer Wiles's conduct was not as intrusive as that of the officer in *Hickman*. But Schull argues that, unlike the officer in *Lopez*, Officer Wiles "did not limit his contact with Schull to telling Schull he was free to go." Rather, Officer

Wiles "proceeded to have a conversation" with Schull about why there was not a license plate on his vehicle. The facts, as described in *Lopez*, however, do not indicate that the officer told the driver he was "free to go." *Id.* at 812. Rather, as occurred here, the officer in *Lopez* approached to explain why she made the stop and, in the course of that conversation, she smelled alcohol. *Id.* The *Lopez* court focused on the distinction between the officer approaching to explain her error and an officer approaching to conduct an investigation. *Id*. at 813. The *Lopez* court's use of the phrase "long enough for the officer to approach the car and inform the driver he is free to go," *id*. at 814, is not meant to limit the officer's contact to telling the driver he is free to go. Rather, it describes the general scope of a traffic stop and the permissibility of an officer taking enough time to explain the mistaken reasons for a stop. The critical question is whether the officer's conduct, after the valid purpose for the stop has dissipated, continues long enough to constitute an investigation. *Id*. at 813.

The circumstances here are almost identical to those in *Lopez*. As the officer did in *Lopez*, Officer Wiles noticed that the vehicle had a valid temporary vehicle-registration sticker in its window as he walked up to the vehicle; and he continued to approach the driver in order to explain that he did not see the temporary vehicle-registration sticker when he initiated the traffic stop. Officer Wiles observed indicia of intoxication when Schull began to explain why he did not have a license plate. Nothing in the record indicates that Officer Wiles asked for Schull's driver's license or otherwise conducted an investigation between the point when the officer observed the valid temporary vehicle-registration sticker and when he observed the indicia of intoxication. Like the officer's

conduct in *Lopez*, Officer Wiles's conduct did not improperly extend the traffic stop beyond the valid purpose for the initial stop. Accordingly, the district court properly denied Schull's motion to dismiss the charged offenses.

Affirmed.