STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2106

State of Minnesota,
Appellant,

vs.

Richard Lee Weldon,
Respondent.

Filed May 16, 2011
Reversed and remanded
Crippen, Judge[*]

Rice County District Court
File No. 66-CR-10-2225

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

G. Paul Beaumaster, Rice County Attorney, Benjamin Bejar, Assistant Rice County Attorney, Faribault, Minnesota (for appellant)

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

Considered and decided by Bjorkman, Presiding Judge; Stoneburner, Judge; and Crippen, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

CRIPPEN, Judge

Appellant State of Minnesota challenges the district court's determination that the detention of respondent Richard Weldon for drug offense investigation purposes was flawed because the duration of the detention exceeded the scope of the valid traffic stop. Because the record does not support the district court's findings on the cause for detention and respondent's alternative arguments lack merit, we reverse and remand for further proceedings.

FACTS

On July 25, 2010, Rice County Deputy Sheriff Scott Robinson received a tip from a confidential informant (CI) advising him that "Fuzzy" was in Faribault dealing methamphetamine and would be leaving soon. Deputy Robinson knew that "Fuzzy" was the street name of respondent Ricky Lee Weldon. The CI also advised Deputy Robinson that respondent possessed "lots of product," which Deputy Robinson interpreted to mean methamphetamine.

On July 26, 2010, from an unmarked car, Faribault Police Officer Robert Vogelsberg observed respondent commit a minor traffic offense. At Officer Vogelsberg's direction, Faribault Police Officer Jeff Larson conducted a traffic stop in a marked police car. Officer Larson advised Deputy Robinson that respondent's vehicle had been stopped. When Deputy Robinson arrived he observed respondent in the driver's seat and a female passenger in the front passenger seat. Deputy Robinson recognized the passenger as S.L. because he had arrested her sixteen days earlier for possession of

methamphetamine. Deputy Robinson observed that respondent and S.L. displayed behavior consistent with being under the influence of methamphetamine.

Deputy Robinson asked respondent and S.L. to exit the vehicle, and he handcuffed respondent. Deputy Robinson found one half of a white pill during a consent search of S.L.'s purse. S.L. explained that the pill was Seroquel, for which she did not have a prescription. Deputy Robinson arrested S.L. for possession of a controlled substance. Deputy Robinson called for a narcotics-detection dog, which inspected respondent's vehicle and alerted police to the possible presence of narcotics. Police searched respondent's vehicle and found three individual bags of methamphetamine in an eyeglass case beneath the driver's seat; the bags weighed approximately 3.8, 3.9, and 2.7 grams, respectively. Police also found other methamphetamine-related contraband in the vehicle. Deputy Robinson arrested respondent.

Respondent was charged with second-degree controlled substance methamphetamine possession with intent to sell, a violation of Minn. Stat. § 152.022, subds. 1(1), 3(b) (2008); second-degree controlled substance methamphetamine possession, a violation of Minn. Stat. § 152.022, subds. 2(1), 3(b) (2008); possession of a small amount of marijuana, a violation of Minn. Stat. § 152.027, subd. 4(a) (2008); and possession of drug paraphernalia, a violation of Minn. Stat. § 152.092 (2008). Respondent moved to suppress all evidence obtained as a result of the search and seizure on the grounds that the search and arrest were conducted illegally without probable cause, and that police lacked a sufficient legal basis to stop his vehicle. The district court granted respondent's motion to suppress and dismissed the charges, finding that the

initial traffic stop was valid because it was based on Officer Vogelsberg's personal observation of a traffic violation, but that the seizure and detention of respondent continued beyond the extent necessary to advise him of the traffic violation and either issue a citation or a warning. On appeal, the state challenges the district court's decision to suppress the methamphetamine evidence obtained by police in their search of respondent's vehicle.

D E C I S I O N

When the state appeals a pretrial suppression order, it "'must clearly and unequivocally show both that the trial court's order will have a critical impact on the state's ability to prosecute the defendant successfully and that the order constituted error.'" *See State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998) (quoting *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995)). Suppression of evidence leading to the dismissal of criminal charges satisfies the critical-impact requirement. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). Because critical impact is not disputed, the only issue here is whether the order constituted error.

We review de novo a district court's determination of whether there was reasonable suspicion of unlawful activity to justify a limited investigatory stop. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). In doing so, we review the district court's findings of fact for clear error and give due weight to inferences drawn from those facts. *State v. Lee*, 585 N.W.2d 378, 382-83 (Minn. 1998). "Findings of fact are not clearly erroneous if they are supported by reasonable evidence in the record." *Sykes v. State*, 578 N.W.2d 807, 812 (Minn. App. 1998), *review denied* (Minn. July 16, 1998).

1.

"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). But "[a]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002) (quotation omitted). There is no bright-line rule as to the reasonable length of an investigative detention, as long as police act diligently and reasonably. *State v. Moffatt*, 450 N.W.2d 116, 119 (Minn. 1990).

The district court properly concluded that the initial traffic stop was valid because police observed respondent violate the law by failing to signal a turn. The district court also observed that "[a]t the moment [respondent] was seized, the police had the authority to detain him only to the extent necessary to advise him of the traffic violation and either issue a citation or a warning" but that respondent "was made to wait" for Deputy Robinson to arrive. But the record does not support this finding. No evidence establishes the duration of Officer Larson's detention of respondent; this explains the district court's observation, inconsistent with its ultimate finding, that Deputy Robinson arrived "[a]fter an unknown period of time." Officer Larson did not testify, and Officer Vogelsberg testified that he left the area when Officer Larson initiated the traffic stop. Deputy Robinson testified that he was "in the area" and responded when he was advised of the traffic stop, but did not testify as to how quickly he responded. Because the record does not indicate how long Officer Larson detained respondent before Deputy Robinson

arrived, the district court's finding that respondent was impermissibly "made to wait" is clearly erroneous.

The state argues that, because respondent never raised the issue of his continued detention to the district court, the issue was waived. An issue not raised at the omnibus hearing is generally waived. *State v. Lieberg*, 553 N.W.2d 51, 56 (Minn. App. 1996); *State v. Brunes*, 373 N.W.2d 381, 386 (Minn. App. 1985), *review denied* (Minn. Oct. 11, 1985). At the omnibus hearing, respondent limited the issues to "the articulable grounds for the stop, the effect of denial of an attorney upon the request by the defendant for an attorney, and the issue of whether there was probable cause for the search." The issue of Officer Larson's continued detention of respondent before Deputy Robinson arrived was not raised at the omnibus hearing by either party.

But respondent asserts that the continued detention issue was not waived because it was raised generally in his suppression motion. His motion generally challenges the search and seizure as a violation of his constitutional and statutory protections and alleges that police conducted "the initial stop, frisk, detention, arrest, seizure, or search" of him without probable cause or reasonable suspicion.

"[A pretrial] motion must include all defenses, objections, issues, and requests then available. Failure to include any of them in the motion constitutes waiver . . . ." Minn. R. Crim. P. 10.01, subd. 2. "This is necessary to give the state the opportunity to present evidence to refute [a defendant's] claims." *Brunes*, 373 N.W.2d at 386. "[A] pretrial motion to suppress should specify, with as much particularity as is reasonable under the circumstances, the grounds advanced for suppression in order to give the state

as much advance notice as possible as to the contentions it must be prepared to meet at the hearing." *State v. Needham*, 488 N.W.2d 294, 296 (Minn. 1992). Because respondent included the detention topic in the general statement of his motion, there was no waiver of the issue. But the defense's failure to address the topic during the omnibus hearing, which also limited notice to the state, may give rise to the state's right for further proceedings on remand. *Id.* at 296-97.

Generally, defense counsel initially makes a rather general statement of the issues. *Id.* at 296. In *Needham*, the Minnesota Supreme Court reversed and remanded the case for a reopening of the omnibus hearing because, although the defendant made a general statement of the issues at the outset of the omnibus hearing, the district court's basis for suppressing evidence was an issue not specifically addressed at the omnibus hearing and therefore the state lacked proper notice. *Id.* Similarly, in the instant case, testimony and argument at the omnibus hearing focused on limited issues, and the state was not given proper notice of the continued detention issue. *See id.* (concluding that reopening the omnibus hearing was justified "to give the state a full and fair opportunity to meet its burden of proving by a fair preponderance of the evidence" that police acted within constitutional limits). Accordingly, the case must be remanded to the district court for further development of the record on the issue of respondent's continued detention.

2.

Although the district court did not address the circumstances of the stop beyond Officer Larson's detention of respondent, the state argues that facts supporting a reasonable, articulable suspicion or probable cause that respondent was involved in a

drug offense emerged after Deputy Robinson arrived. This argument has merit, confirming the conclusion that the district court erred when it suppressed the state's evidence and dismissed the charge. The existence of facts after Deputy Robinson arrived supporting a reasonable, articulable suspicion that respondent was involved in a drug offense narrows the necessary scope of proceedings on remand to police contact with respondent before Deputy Robinson's arrival.[1]

"An intrusion not closely related to the initial justification for the search or seizure is invalid under [the Minnesota constitution] unless there is independent probable cause or reasonableness to justify that particular intrusion." *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004). "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." *Wiegand*, 645 N.W.2d at 135. Whether the police have reasonable, articulable suspicion is based on the totality of the circumstances, including the collective knowledge of all investigating officers. *In re Welfare of M.D.R.*, 693 N.W.2d 444, 448-49 (Minn. App. 2005). "[I]nnocent factors in their totality, combined with the investigating officer's experience

[1] It follows that proceedings on remand will focus on police contacts with respondent before Deputy Robinson's arrival, including the breadth of police observations on drug-related facts. There also is cause for the court to explore the state's argument that Officer Larson was imputed with knowledge of what was known by other officers, which depends on the officers, including Larson, having some degree of communication. *See State v. Lemieux*, 726 N.W.2d 783, 789 (Minn. 2007) (stating that officers are "imputed with knowledge of all facts known by other officers involved in the investigation, as long as the officers have some degree of communication between them"). We find nothing in the record to support the district court's observation in the memorandum accompanying its suppression order that the state "concedes that, prior to the observed infraction, the police did not have a legal basis for seizing [respondent]."

. . . can be sufficient bases for finding reasonable suspicion." *State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998) (quotation omitted).

Deputy Robinson testified that respondent acted verbally aggressive, emotional, and intense; accused Deputy Robinson of lying; demanded to see an attorney; and constantly moved around in his seat and displayed "tweaking" muscular movements. Based on his experience as a narcotics investigator, Deputy Robinson concluded that respondent was under the influence of methamphetamine. Police observations corroborated the CI's description of respondent's vehicle, license plate number, and presence in Faribault on a specified date, and the record reflects that Deputy Robinson knows the CI personally and that the CI provided reliable information to police in the past. Moreover, Deputy Robinson possessed knowledge that respondent was on active probation or supervised release status and had a criminal history involving methamphetamine dealing, and he had recently arrested S.L. for methamphetamine possession.

Based on this record, sufficient facts arose following Deputy Robinson's arrival to provide police with both a reasonable, articulable suspicion and independent probable cause to believe that respondent was involved in a drug offense. This independent probable cause supports the law-enforcement officers' continued detention of respondent, the narcotics-detection dog sniff, and the subsequent search of respondent's vehicle. Accordingly, respondent's constitutional rights were not violated after Deputy Robinson's arrival. Briefly addressing respondent's arguments on other aspects of the detention, we add the following.

Respondent argues that Deputy Robinson's act of handcuffing him shortly after arriving on the scene constituted an arrest. This argument is without merit. *See Moffatt*, 450 N.W.2d 116, 119-20 (holding that defendants' detention did not become de facto arrest when police put defendants in back of police cars without probable cause). Moreover, Deputy Robinson testified that he handcuffed respondent "for everybody's safety" because respondent was being verbally aggressive and had a reputation for being "snakey," and he told respondent that he was being detained, but he did not tell respondent that he was under arrest. *See Askerooth*, 681 N.W.2d at 366-67 nn.9-10 (citing *United States v. Bradshaw*, 102 F.3d 204, 212 n.16 (6th Cir. 1996) (holding that police had valid safety basis for detaining defendant who exited his vehicle and approached officer in a nervous and jittery manner)) (observing that detention in *Moffatt* was based on "the serious crime being investigated"). Accordingly, the handcuffing of respondent does not provide an alternative basis to affirm the district court's suppression order.

A narcotics-detection dog sniff around the exterior of a vehicle during a routine traffic stop is lawful if the law-enforcement officer has a reasonable, articulable suspicion of drug-related criminal activity. *Wiegand*, 645 N.W.2d at 137.

Respondent contends that, because the CI advised police that respondent possessed "lots of product," the police exceeded the scope of their search by searching an eyeglass container found under respondent's driver's seat. "[P]olice may search a vehicle without a warrant, including any closed containers within the vehicle, if they have probable cause to believe the search will result in a discovery of evidence or contraband."

State v. Search, 472 N.W.2d 850, 852 (Minn. 1991) (citing *United States v. Ross*, 456 U.S. 798, 823-24, 102 S. Ct. 2157, 2172 (1982)). In the instant case, the CI's reference to "lots of product" is a subjective measurement, and possession of the more than 10 grams of methamphetamine police recovered from the eyeglass container constitutes a first-degree controlled substance offense. Moreover, methamphetamine can be, and in the instant case was, divided into smaller bags for concealment or sale, and Deputy Robinson testified that respondent had a reputation for concealing contraband. Accordingly, the police search of the eyeglass container was reasonable and did not exceed the permissible scope of the search.

Respondent's definition of issues at the omnibus hearing also alluded to his request for an attorney during the stop. Because the district court did not address the issue and respondent has abandoned assertion of the issue on appeal, we have no occasion to address that subject.

Reversed and remanded.