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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1072**

State of Minnesota,
Respondent,

vs.

Paula Geraldine Reyes,
Appellant.

**Filed March 20, 2017
Affirmed
Kirk, Judge**

Mahnomen County District Court
File No. 44-CR-14-696

Lori Swanson, Attorney General, Matthew Frank, Assistant Attorney General, St. Paul, Minnesota; and

Darlene Rivera Spalla, Mahnomen County Attorney, Mahnomen, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Schellhas, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant challenges her conviction for fifth-degree possession of a controlled substance, arguing that the district court erred in denying her motion to suppress. Appellant

argues that (1) the police officer impermissibly expanded the scope of the traffic stop, and (2) any basis to search the car was dispelled after a narcotics-detection dog failed to alert to the presence of a controlled substance. We affirm.

FACTS

On September 4, 2014, White Earth Tribal Investigator Tami Hunt reported to White Earth Tribal Officer Jamie Allen that she witnessed a male involved in a suspected drug transaction leaving the Shooting Star Casino in a dark-colored sedan. A short time later, while Officer Allen was patrolling the area for the dark-colored sedan, he pulled over a car for speeding 63 miles per hour in a 55-mile-per-hour zone. He noted that the car's license plate number matched the license plate number of the sedan that Investigator Hunt reported leaving the casino. After approaching the car, Officer Allen identified the driver as M.H. and the car's passenger as appellant Paula Geraldine Reyes. Officer Allen returned to his squad car and continued to observe M.H. and appellant while dispatch checked M.H.'s driving status. Officer Allen testified that during this time, he observed that appellant "made a phone call and continuously looked over her shoulder at [him] and then [she] began making . . . furtive movements towards the center console and the floorboard." Officer Allen further testified that M.H. "remained abnormally rigid with his hands on the wheel, at 10:00 and 2:00, with his gaze affixed straight forward."

Officer Allen informed Investigator Hunt that he had stopped the sedan that she reported leaving the casino. Officer Allen then waited approximately ten minutes for Special Agent Paul Osowski to arrive. Upon his arrival, Officer Allen and Special Agent Osowski approached appellant and M.H., and Officer Allen asked for consent to search the car. When

appellant denied this request, Officer Allen retrieved Hagar, a narcotics-detection dog from his squad car, and he conducted a dog sniff of the car's exterior. Hagar did not alert during the two passes around the car; however, during this procedure, Officer Allen observed a segmented section of a drinking straw on the car's passenger-side floorboard. Officer Allen knew through his training and experience as a police officer that a segmented straw is commonly used in connection with drug activity. After making this observation, Officer Allen and Special Agent Osowski searched the car and discovered a small-rocklike substance, which field testing identified as containing heroin. Appellant stated that the heroin belonged to her.

Respondent State of Minnesota charged appellant with third- and fifth-degree possession of a controlled substance. Appellant moved to dismiss the charges and to suppress "all evidence and statements obtained from an illegal stop and expansion of the stop of the vehicle." At the contested-omnibus hearing, the district court granted the state's motion to dismiss the third-degree possession charge, and the state's probable cause packet was admitted into evidence.¹ The district court issued an order denying appellant's motion to suppress and dismiss. Next, appellant entered a "*Lothenbach* plea" to fifth-degree possession

¹ In accordance with *State v. Florence*, 306 Minn. 442, 457, 239 N.W.2d 892, 902 (1976), the state's probable-cause packet contained the complaint, police reports, and a number of related documents, which the district court could rely on in making a finding of probable cause. At no point did the parties stipulate to the district court considering this packet's information in deciding appellant's motion to suppress and dismiss. And, accordingly, the district court's order makes no reference to such information. However, the state seeks to impermissibly bolster its argument to this court by incorporating a number of details found only in this packet. Because the parties did not stipulate to such information's use in deciding appellant's motion, this court will not consider any factual allegations derived solely from the state's probable-cause packet.

of a controlled substance in order to obtain appellate review of the district court's denial of her suppression motion.² The district court found appellant guilty.

This appeal follows.

D E C I S I O N

I. The district court did not err by denying appellant's motion to suppress.

Appellant argues that the district court erred by failing to suppress evidence found after Officer Allen unlawfully expanded the scope of the traffic stop and, alternatively, that any basis to search the car was dispelled after a dog sniff failed to indicate the presence of a controlled substance. In reviewing a district court's order regarding the suppression of evidence, an appellate court reviews the court's legal determinations de novo and its factual findings for clear error. *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012). Whether a police officer had a reasonable, articulable suspicion sufficient to justify a search or seizure is a question of law, which we review de novo. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011).

A. The police officer's reasonable, articulable suspicion of drug-related criminal activity justified expanding the scope of the traffic stop.

Appellant argues that Officer Allen impermissibly expanded the scope of the traffic stop by conducting a dog sniff because he did not have a reasonable, articulable suspicion of drug-related criminal activity.

² Minn. R. Crim. P. 26.01, subd. 4, has "replaced *Lothenbach* as the method for preserving a dispositive pretrial issue for appellate review in a criminal case." *State v. Myhre*, 875 N.W.2d 799, 802 (Minn. 2016). Here, despite the plea being improperly referred to as a "*Lothenbach* plea," appellant maintained her not-guilty plea but stipulated to the prosecution's case pursuant to rule 26.01, subdivision 4.

Both the United States and Minnesota Constitutions protect citizens against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. 1, § 10; *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001). “A limited investigative stop is lawful if there is a particularized and objective basis for suspecting the person stopped of criminal activity.” *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). “[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” *Florida v. Royer*, 460 U.S. 491, 500, 103 S. Ct. 1319, 1326 (1983).

“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 officer developed a reasonable, articulable suspicion is determined by the totality of the circumstances, viewed objectively. *State v. Smith*, 814 N.W.2d 346, 351-52 (Minn. 2012). The reasonable-suspicion standard “is less demanding than probable cause or a preponderance of the evidence, [as] it requires at least a minimal level of objective justification for [expanding the scope of] the stop.” *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). “Police must be able to articulate more than an inchoate and unparticularized suspicion or hunch of criminal activity.” *Id.* (quotation omitted). Therefore, in order to lawfully conduct a dog sniff around the exterior of the car, which was initially stopped for speeding, Officer Allen must have had a reasonable, articulable suspicion of drug-related criminal activity. *Wiegand*, 645 N.W.2d at 137.

Appellant does not dispute Officer Allen’s justification for initiating the traffic stop based on speeding. *See State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004) (noting that a

traffic violation, no matter how insignificant, generally provides such a basis). After stopping the car for speeding, Officer Allen noted that the car's license plate number matched that of the sedan as reported earlier by Investigator Hunt. In addition, prior to expanding the scope of the investigative detention, Officer Allen further observed appellant and M.H. engaging in suspicious behavior while he checked M.H.'s driving status.

Based on an objective analysis of the totality of the circumstances, we conclude that there were sufficient articulable facts to establish a reasonable, articulable suspicion of drug-related criminal activity. Therefore, the district court did not err in concluding that Officer Allen was justified in expanding the scope of the stop to conduct a dog sniff.

B. The continued investigative detention and subsequent search were justified.

Appellant further argues that any basis supporting a reasonable, articulable suspicion of drug-related criminal activity was dispelled after Hagar failed to alert to the presence of a controlled substance. Therefore, according to appellant, the continued investigative detention and search of the car were unlawful.

In making this argument, appellant relies on *State v. Hickman*, 491 N.W.2d 673 (Minn. App. 1992), *review denied* (Minn. Dec. 15, 1992), and *State v. Pike*, 551 N.W.2d 919 (Minn. 1996). In *Hickman*, a police officer effected a traffic stop based on a reasonable, articulable suspicion that the vehicle did not have valid tabs. 491 N.W.2d at 674. During the stop, the officer observed and confirmed the validity of a 21-day temporary registration permit in the vehicle's rear window. *Id.* The officer nonetheless proceeded to approach the driver and determined that the driver did not have a valid driver's license. *Id.* On appeal, this court

affirmed the district court's suppression of evidence stemming from the traffic stop, holding that "detaining [the driver] to check his driver's license constituted an unlawful intrusion because [the officer's] suspicions about the vehicle's registration had been dispelled before he approached the driver." *Id.* at 675. Similarly, in *Pike*, the Minnesota Supreme Court noted that an officer may initiate a traffic stop where the officer knows that the vehicle's owner has a revoked license; however, such a justification "applies only while the officer remains unaware of any facts which would render unreasonable the assumption that the owner is driving the vehicle." 551 N.W.2d at 922.

Here, despite Hagar's failure to alert during the two passes around the car, the totality of the circumstances following the dog sniff continued to include the car's matching license plate number, and M.H. and appellant's suspicious behavior during the stop. These circumstances gave rise to reasonable, articulable suspicion of drug-related criminal activity prior to the dog sniff and remained unchanged despite Hagar's failure to alert.³ Moreover, Officer Allen's testimony indicates that he observed the segmented-drinking straw on the passenger-side floorboard while Hagar searched the car's exterior during a lawful dog sniff. Accordingly, because a number of facts support Officer Allen's continued suspicion after the dog sniff, *Hickman* and *Pike* are factually distinguishable from the current appeal.

While Hagar's failure to alert weighs against a determination that Officer Allen continued to have the requisite levels of justification following the dog sniff, the totality of

³ See generally *United States v. Lakoskey*, 462 F.3d 965, 976-77 (8th Cir. 2006) (holding that a negative dog sniff did not dispel reasonable, articulable suspicion that package contained drugs where factors previously supporting such suspicion remain unchanged); *United States v. Ramirez*, 342 F.3d 1210, 1212 (10th Cir. 2003) (same).

the circumstances included a number of articulable facts supporting a reasonable, articulable suspicion to continue the investigative detention and probable cause to search the car. Therefore, based on the totality of the circumstances, the district court did not err by concluding that Officer Allen was justified in continuing the investigative detention following the dog sniff and in searching those areas of the car likely to contain drugs.

Affirmed.