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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-1026**

State of Minnesota,  
Respondent,

vs.

Antonio Darrell Holmes,  
Appellant.

**Filed May 7, 2018  
Affirmed  
Connolly, Judge**

St. Louis County District Court  
File No. 69DU-CR-15-577

Lori Swanson, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Mark Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Bradford Colbert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Connolly, Judge; and Smith, John, Judge.

## UNPUBLISHED OPINION

CONNOLLY, Judge

On appeal from his convictions for first-degree possession of a controlled substance, first-degree sale of a controlled substance, and giving a false name to a police officer, appellant challenges the district court's denial of his pretrial suppression motion, arguing that all of the evidence was the product of an unreasonable seizure and his incriminating statement was the product of custodial interrogation without a *Miranda* warning. We affirm.

### FACTS

On February 20, 2015, Sergeant Sobczak from the Fond du Lac Tribal Police Department conducted a traffic stop of a vehicle because it had expired tabs and he knew that the driver, S.T., had a revoked driver's license. Sobczak made the stop as the vehicle turned into a driveway. Appellant Antonio Darrell Holmes was sitting in the passenger seat, and two children were sitting in the back seat.

Sobczak approached the vehicle and spoke with S.T. about the vehicle's expired tabs and her revoked license. In previous interactions with Sobczak, S.T. had told Sobczak that people from Chicago were bringing drugs to the area. While S.T. was still sitting in her vehicle, S.T. gestured to appellant while telling Sobczak in a quiet voice that appellant "was one of the guys" she had been telling Sobczak about. According to Sobczak's written report, he asked S.T. to step out of the vehicle because she was acting suspiciously and he wanted to separate her from appellant to understand what she was trying to say. S.T. went with Sobczak to his squad car, where she told him, "This is one of the individuals that I've

been telling you about that comes up from Chicago and sells the drugs up out of Mahnomen.”

Sobczak asked S.T. where she was coming from. She said that she was coming from another individual’s residence, where she dropped off her brother so that he could buy drugs. At this residence, S.T. said she had seen a large amount of marijuana and heroin that was “about the size of a softball.” S.T. said that appellant came out of the residence and asked her for a ride to the address where the car was now stopped. S.T. did not know appellant’s name, but knew his nickname was “Say Say.” S.T. did not know why appellant wanted a ride to that residence.

S.T. then consented to a vehicle search. Nothing illegal was found in that search. Sobczak testified that at that point, S.T. was free to go, but she elected to stay in his squad car with her children. After speaking with S.T., Sobczak knocked on the front door of the residence. The occupant told Sobczak that she recognized appellant because he had come to her residence once or twice looking for hypodermic needles.

Shortly after Sobczak stopped the vehicle, Officer Durfee arrived as backup. Durfee arrived as Sobczak and S.T. were walking to Sobczak’s squad car. Sobczak asked Durfee to assist another officer, Miller, with watching appellant. As he approached the vehicle, Durfee heard Miller asking appellant to identify himself. Appellant said that his name was “Timothy Walker” and his birthdate was July 13, 1988. Durfee and Miller ran that name through dispatch more than once, but they received no results. Durfee testified that after he gave this name, appellant got out of the vehicle for a reason unknown to Durfee. Durfee patted appellant down for weapons, because this behavior was unusual during a traffic stop.

Durfee felt something on appellant and asked appellant what it was. Appellant told Durfee it was money. Durfee then took appellant to his squad car and asked appellant questions about his identification so he could input the correct spelling into his own computer. Appellant told Durfee that he had an Illinois driver's license, but that it was not on him. Durfee was unable to confirm appellant's identification through any of the systems to which he had access, which included running dispatch through Illinois records.

Durfee testified that he believed appellant had given a fake name because if appellant had a state-issued license, Durfee's systems would have shown results. Durfee told appellant that he was detaining him before putting him in the back seat of the squad car. Durfee patted appellant down before putting him in his squad car, and he took the money out of appellant's front pocket. Durfee then spoke to Sobczak about how he could not identify appellant. The officers decided to take appellant to get fingerprinted at a border patrol station, which Durfee testified was approximately 19 miles away.

Durfee testified that he told appellant that appellant was not under arrest at this time, but that he was taking appellant to border patrol to get fingerprinted because he needed to positively identify him. Durfee told appellant that if his fingerprints showed that he was "Timothy Walker," he would be released. Durfee testified that shortly after they began driving, appellant said "I have to tell you the truth who I am," then said that his name was "Reginald Norvell" and that his birthdate was January 6, 1988. Durfee ran this name through dispatch, but believed that Norvell's physical description did not match appellant's height and weight. Durfee then told appellant that he was under arrest because he did not believe he had given his real name. Durfee took appellant to jail for booking and

identification. At the jail, Durfee requested that appellant be strip searched for contraband. The officers found a grayish-white powdery substance, which was later determined to be heroin.

The state charged appellant with first-degree possession of a controlled substance in violation of Minn. Stat. § 152.021, subd. 2(a)(1) (2014) (count 1); first-degree sale of a controlled substance in violation of Minn. Stat. § 152.021, subd. 1(1) (2014) (count 2); introducing contraband into a jail in violation of Minn. Stat. § 641.165, subd. 2(b) (2014) (count 3); and giving a false name to a police officer in violation of Minn. Stat. § 609.506, subd. 2 (2014) (count 4). Appellant brought a pretrial motion to suppress his statements and the evidence seized from him. The district court denied appellant's motion. The state dismissed count 3, and a jury convicted appellant of counts 1, 2, and 4. The district court sentenced appellant to 117 months in prison. Pursuant to a stipulated agreement and due to a change in drug-sentencing guidelines, the district court reduced appellant's sentence to 90 months on October 3, 2017.

## **D E C I S I O N**

Appellant challenges the district court's order denying his motion to suppress evidence found on appellant pursuant to a search incident to arrest and a non-*Mirandized* statement made by appellant. Appellant argues that his Fourth Amendment rights were violated because the officers had neither reasonable suspicion to expand the scope of the traffic stop nor probable cause to arrest him. Appellant also argues that his Fifth Amendment rights were violated because he was subjected to custodial interrogation without a *Miranda* warning. When reviewing a pretrial order on a motion to suppress, we

review factual findings for clear error and legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009) (quotations omitted). A factual finding “is not clearly erroneous if it is reasonably supported by the evidence as a whole.” *State v. Barshaw*, 879 N.W.2d 356, 366 (Minn. 2016).

## I.

Both the Minnesota and United States Constitutions guarantee, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. A warrantless search or seizure is unreasonable unless it falls under a recognized exception. *Ortega*, 770 N.W.2d at 149. If a police officer discovers evidence from an unreasonable search or seizure, that evidence must be suppressed. *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012).

“Investigative stops are permitted if there is a particularized basis for suspecting criminal activity.” *State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003). Here, the vehicle was stopped because it had expired tabs and Sobczak knew that the driver had a revoked license. Thus, the officers had reason for suspecting criminal activity and a basis for stopping the vehicle to further investigate that activity. Appellant does not dispute this. Instead, appellant argues that the officers lacked reasonable suspicion to expand the scope of the traffic stop to include him.

“When considering whether a traffic stop violated a person’s right to be free from unreasonable searches and seizures under Minn. Const. art. I, § 10, we first determine whether the officers expanded the duration or scope of the stop beyond the stop’s original

justification.” *Smith*, 814 N.W.2d at 351. A traffic stop may be expanded in scope or duration if an officer has reasonable suspicion of other illegal activity. *Id.* at 350. Reasonable suspicion requires “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quotation omitted). Whether a police officer had reasonable suspicion is based on the totality of the circumstances. *State v. Lande*, 350 N.W.2d 355, 357-58 (Minn. 1984).

Appellant cites to *State v. Johnson*, 645 N.W.2d 505 (Minn. App. 2002) to argue that this court has held that a traffic stop was impermissibly expanded to include a passenger when a police officer asked for the passenger’s driver’s license and subsequently looked into the identification. However, appellant mischaracterizes *Johnson*. In *Johnson*, this court held that a police officer may ask a vehicle’s passenger to prove that he has a valid driver’s license when the vehicle’s driver does not have a valid license. 645 N.W.2d at 508. The reason the traffic stop was impermissibly expanded in *Johnson* was that the police officers then took Johnson’s driver’s license and ran a warrants check on it. *Id.* Here, the driver of the vehicle, S.T., had a revoked driver’s license; therefore, the officers were entitled to ask appellant to prove that he had a valid driver’s license. Durfee testified that he asked appellant about his driving status “[b]ecause the driver of the vehicle was revoked, and you need a valid driver to drive that vehicle out of the parking lot.” Appellant told the officers that he had a valid driver’s license out of Illinois, and since appellant did not have the license on him, the officers ran the name and birthdate appellant provided through dispatch for validation. The officers did not run a warrants check on appellant.

By attempting to verify appellant's driver's license, the officers did not expand the scope of the stop beyond its original justification.

After the name and birthdate that appellant provided did not garner any results in the state where appellant claimed to have a valid driver's license, Durfee became suspicious that appellant had given him a fake name. Durfee testified that in his experience, when an individual says he has a license out of a different state, and he spells his name for you, but no results show up, he is giving you a fake name. Durfee then detained appellant in the back of his squad car and spoke with Sobczak about how he cannot positively identify appellant. At that point, Durfee had reasonable suspicion that appellant was committing a crime, which justified detaining appellant.

Alternatively, appellant argues, for the first time on appeal, that the evidence obtained from his search should have been suppressed because the police did not have probable cause to arrest him. Since appellant did not argue this issue in front of the district court, the district court did not thoroughly consider if and when the police had probable cause to arrest appellant. This court has declined to "decide issues which are not first addressed by the [district] court and are raised for the first time on appeal even if the issues involve constitutional questions regarding criminal procedure." *State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989).

## **II.**

Appellant also challenges the district court's order denying his motion to suppress his non-*Mirandized* statement that he made while being taken to the border patrol station

for fingerprinting. A *Miranda* warning is required when a suspect “is both in custody and subject to interrogation.” *State v. Thompson*, 788 N.W.2d 485, 491 (Minn. 2010).

The state does not dispute that when appellant gave a second name to the police, appellant was in custody for *Miranda* purposes, but it contends that the district court properly concluded that the statement appellant sought to suppress was voluntary rather than the product of interrogation. When determining whether an individual was interrogated, this court independently examines the totality of the circumstances based on the facts as found by the district court. *State v. Jackson*, 351 N.W.2d 352, 355 (Minn. 1984). Interrogation includes both express questioning and its functional equivalent, meaning “any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” *Rhode Island v. Innis*, 446 U.S. 291, 300-01, 100 S. Ct. 1682, 1689-90 (1980). The crux of the inquiry is whether, from the suspect’s perspective, the police conduct reflects “a measure of compulsion above and beyond that inherent in custody itself.” *State v. Edrozo*, 578 N.W.2d 719, 724-25 (Minn. 1998).

Appellant argues that he was interrogated because while he was in the back of Durfee’s squad car on the way to the border patrol station, Durfee stated that if appellant provided a name and a fingerprint that matched, he would be released, which caused appellant to state that his name is “Reginald Norvell” with a birthdate of January 6, 1988. However, the evidence does not suggest that appellant’s statement was made in response to anything Durfee said. Durfee’s testimony indicates that before driving to the border patrol station, Durfee told appellant “that he is being detained, he’s not under arrest at this

time, and if he is truly who he says he is with a fingerprint, [Durfee] would release him.” Durfee then testified that “[w]hen we started . . . he was in the back of my squad car. Halfway down [the road], he said, ‘I have to tell you the truth [about] who I am.’” That is when appellant gave the name Reginald Norvell. The time lapse between Durfee’s and appellant’s statement suggests that appellant volunteered the information.

Additionally, the district court found that “[a]ccording to [appellant’s] own testimony, on the way to be finger printed, he realized he was not going to be released, so he provided the name of Reginald Norvell to Officer Durfee.” Appellant’s statement appears to have been motivated by an attempt to get out of custody rather than interrogation. This is not “a measure of compulsion above and beyond that inherent in custody itself.” *Edrozo*, 578 N.W.2d at 724. There is no indication that when appellant gave the name Reginald Norvell and the birthdate January 6, 1988, he was responding to interrogation by Durfee. Thus, the district court did not err by denying appellant’s motion to suppress his statement.

**Affirmed.**