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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1296**

State of Minnesota,
Appellant,

vs.

Ryan Ervin Salo,
Respondent.

**Filed January 30, 2018
Affirmed
Peterson, Judge**

Clay County District Court
File No. 14-CR-17-885

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

Brian J. Melton, Clay County Attorney, Michael D. Leeser, Assistant County Attorney,
Moorhead, Minnesota (for appellant)

Stormy Vickers, Fargo, North Dakota (for respondent)

Considered and decided by Kirk, Presiding Judge; Peterson, Judge; and Jesson,
Judge.

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

PETERSON, Judge

In this prosecution pretrial appeal, the state argues that the district court erred when it found that a police officer did not have reasonable, articulable suspicion to expand the scope of a traffic stop. We affirm.

FACTS

On March 16, 2017, Moorhead Police Officer Brandon Desautel was walking back to his squad car after finishing a call when a sport-utility vehicle (SUV) went by, and he saw that the front-seat passenger was not wearing a seatbelt. Desautel followed the SUV, and, before he activated his squad car's emergency lights, the SUV pulled over and legally parked on the side of the street.

Desautel pulled in behind the SUV, and, just as Desautel activated the emergency lights, the front-seat passenger opened the door and got out of the SUV. Desautel testified that the passenger exited "quickly" and that this conduct was alarming because "[u]sually they're trying to get away from the stop because something is wrong or not law abiding with it or they are trying to get out and harm the officer."

Desautel instructed the passenger to get back into the SUV, and the passenger complied with the instruction. Desautel approached the passenger side of the SUV and stated that he had stopped it because the passenger was not wearing a seatbelt. The passenger identified himself as respondent Ryan Ervin Salo. Desautel testified at the omnibus hearing that he recognized Salo from previous dealings. Desautel returned to his squad car and ran Salo's name for "wants and warrants," but there were none. Desautel testified that he "believe[d] there was a caution for narcotics." Backup officers arrived, and Desautel told them that Salo was in the SUV and that he had not yet decided whether to search the vehicle.

When Desautel returned to the SUV, Salo had lit a cigarette and taken off his jacket. Desautel testified that this conduct was concerning to him because, when people who

smoke get nervous, “they tend to light up the cigarette very quickly” and because removing a jacket can indicate that a person is about to run or that the jacket contains something that the person wants to keep hidden. Desautel had Salo get out of the SUV and questioned him. Desautel asked Salo whether he was on probation and when he had last used narcotics. Salo stated that he was on probation and had not used narcotics since he had last been put in jail.

Desautel then spoke with the driver. The driver told Desautel that Salo had removed a pack of cigarettes from his pocket and placed them in the center console. Desautel reached into the SUV, removed the pack of cigarettes from the center console, and found a small amount of methamphetamine in it.

The state charged Salo with fifth-degree controlled-substance crime (possession), and Salo moved to suppress all evidence obtained as a result of the vehicle search. Following a hearing on the motion, the district court concluded that Desautel violated Salo’s Fourth Amendment rights by unreasonably expanding the scope of the traffic stop and subjecting him to an unconstitutional search of his person and possessions. The court explained:

[Salo’s] act of exiting the vehicle and Officer Desautel’s activation of his emergency lights occurred almost simultaneously. Although Officer Desautel claims that [Salo’s] act “raised alarms,” the court finds it to be reasonable that [Salo] might exit the already parked vehicle for reasons other than the fact that Officer Desautel was attempting to effect a traffic stop. In any case, [Salo’s] act of exiting the vehicle can be objectively described as minimally suspicious, at best. Upon approaching the vehicle, [Salo] cooperated with Officer Desautel’s request for him to re-enter the vehicle. . . .

. . . [U]pon returning to his squad car, Officer Desautel was already considering whether he should search the vehicle. This fact is illustrated in the comment he made to one of the back-up officers about searching the vehicle. However, the only information that Officer Desautel was acting upon in weighing this option was the fact that he recognized [Salo] from prior encounters and that [Salo] had a “narcotics warning” in the Moorhead Police Department computer system. In his testimony, Officer Desautel did not identify any other objective circumstances which might lead him to believe that he would be justified in searching [Salo] and the vehicle for controlled substances without a valid warrant. Thus, the court finds that any suspicions of drug-related activity that Officer Desautel had at this point were unreasonable and amounted to nothing more than a mere hunch.

Upon returning to the vehicle, Officer Desautel failed to make any mention of the seatbelt violation before asking [Salo] to step out of the vehicle. He then immediately proceeded to question [Salo] about his probation and/or parole status. He asked [Salo] about his narcotic use and [Salo] denied having recently used. . . . The court finds that through this line of questioning, Officer Desautel had expanded the scope of the traffic stop beyond the seatbelt violation. . . .

. . . .

. . . Officer Desautel was operating on nothing more than an unreasonable hunch when he expanded the scope of the traffic stop by abruptly asking [Salo] to step out of the vehicle and proceed[ing] to question him about his possible use of narcotics.

The district court determined that the methamphetamine must be suppressed under the fruit-of-the-poisonous-tree doctrine and dismissed the case. This pretrial appeal by the state followed.

DECISION

“[An appellate] court will, in a pretrial appeal, reverse the determination of the [district] court only if the state demonstrates clearly and unequivocally, first, that the [district] court erred in its judgment and, second, that unless reversed, the error will have a critical impact on the outcome of the trial.” *State v. Joon Kyu Kim*, 398 N.W.2d 544, 547 (Minn. 1987). If the district court erred in suppressing the methamphetamine, the error will have a critical impact on the outcome of the trial because the methamphetamine is necessary evidence to prove the charge against Salo. *State v. Kromah*, 657 N.W.2d 564, 566 (Minn. 2003). Consequently, the issue before us is whether the district court erred in its judgment that the methamphetamine must be suppressed because Desautel was operating on nothing more than an unreasonable hunch when he expanded the traffic stop by asking Salo to step out of the SUV.

“When reviewing a district court’s pretrial order on a motion to suppress evidence, [an appellate court] review[s] the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted). The existence of a reasonable suspicion to support a limited investigatory stop is a question of law, which is reviewed de novo. *State v. Lugo*, 887 N.W.2d 476, 484, 487 (Minn. 2016).

In Minnesota, the principles and framework of *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968), apply when evaluating the reasonableness of traffic stops even when a minor law has been violated. *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004). “A *Terry* analysis involves a dual inquiry. First, we ask whether the stop was justified at its

inception. Second, we ask whether the actions of the police during the stop were reasonably related to and justified by the circumstances that gave rise to the stop in the first place.” *Id.* at 364 (citations omitted). Salo does not challenge the initial stop of the vehicle.

The second *Terry* prong constrains the scope and methods of a search or seizure. An initially valid stop may become invalid if it becomes intolerable in its intensity or scope. Thus, each incremental intrusion during a stop must be strictly tied to and justified by the circumstances which rendered the initiation of the stop permissible. An intrusion not closely related to the initial justification for the search or seizure is invalid under article I, section 10 [of the Minnesota Constitution] unless there is independent probable cause or reasonableness to justify that particular intrusion.

Id. (citations and quotations omitted).

In essence, Article I, Section 10 of the Minnesota Constitution requires that each incremental intrusion during a traffic stop be tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in *Terry*. Furthermore, the basis for the intrusion must be individualized to the person toward whom the intrusion is directed.

Id. at 365. “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 man of reasonable caution in the belief that the action taken was appropriate.’” *Id.* at 364 (quoting *Terry*, 392 U.S. at 21–22, 88 S. Ct. 1868, 1880).

The state argues that the district court erred in concluding that Desautel’s “suspicions of drug-related activity . . . were unreasonable and amounted to nothing more than a mere hunch.” A trained police officer may draw inferences and make deductions based on “all of the circumstances . . . that might well elude an untrained person.” *State v.*

Johnson, 444 N.W.2d 824, 826 (Minn. 1989) (quotation omitted). Also, “‘innocent’ factors in their totality, combined with the investigating officer’s experience in apprehending drug traffickers, can be sufficient bases for finding reasonable suspicion.” *State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998) (citing *Reid v. Georgia*, 448 U.S. 438, 441, 100 S. Ct. 2752, 2754 (1980)).

While activating his emergency lights, Desautel saw Salo quickly get out of the SUV. Desautel testified that when someone opens a car door and gets out right away, the person is often trying to get away because something is wrong or something unlawful is occurring or, possibly, the person is trying to harm the officer. The state argues that the district court failed to recognize or consider Desautel’s testimony and that innocent factors, in their totality, combined with the officer’s experience, can be a sufficient basis for finding reasonable suspicion. But, as the district court found, Salo cooperated with Desautel’s request to get back into the SUV and remained in the SUV until Desautel returned from his squad car. Thus, the totality of the innocent factors dispelled any reason to believe that Salo was trying to get away or harm Desautel.

The state also argues that the district court failed to consider that Desautel recognized Salo from prior contacts and received a “narcotics warning” when he ran Salo’s name on the Moorhead police department’s computer system. But the district court specifically found that, when Desautel returned to his squad car, he was considering whether to search the SUV, and the only information that Desautel “was acting upon in weighing this option was the fact that he recognized [Salo] from prior encounters and that [Salo] had a ‘narcotics warning’ in the Moorhead Police Department computer system.”

There was not any evidence that described the nature of Desautel's prior encounters with Salo, however, and the state has not explained how those encounters support a determination that it was reasonable to expand the scope of the traffic stop. Nor has the state explained how the "narcotics warning" supports a determination that Salo was engaged in any drug-related activity during the traffic stop.

Before Desautel asked Salo to get out of the SUV, he saw that Salo had removed his jacket and was smoking a cigarette. The state argues that the district court did not consider Desautel's testimony that someone who removes a jacket during a traffic stop is often trying to conceal something or preparing to flee. But this testimony is a statement about people in general, rather than an individualized statement about Salo or the circumstances of the traffic stop, and it was not a reasonable basis to conclude that Salo was hiding something or preparing to flee.

The evidence presented at the suppression hearing showed that, when Desautel asked Salo to get out of the SUV, Desautel knew that Salo (1) had not been wearing his seat belt, (2) got out of the SUV but returned when told to do so, (3) identified himself, (4) had encountered Desautel in the past, (5) had a "narcotics warning" in the Moorhead police computer system, (6) removed his jacket, and (7) was smoking a cigarette. Desautel's testimony provided possible explanations why a suspect would leave a vehicle, remove his jacket, and smoke a cigarette, but his testimony did not provide any objective basis for concluding that any of these possible explanations applied specifically to Salo. Considered in their entirety, these facts would not cause a person of reasonable caution to

conclude that, when Desautel returned to the SUV, it was appropriate to expand the scope of the traffic stop to investigate drug-related activity.

The state also argues that Salo's constitutional rights were not infringed because Salo had a reduced privacy expectation due to his supervised-release status. Both probationers and parolees have reduced expectations of privacy. *State v. Heaton*, 812 N.W.2d 904, 907-08 (Minn. App. 2012), *review denied* (Minn. July 17, 2012). Because parole is more like prison than probation, parolees have an even lower expectation of privacy than probationers.¹ *Id.* The state argues that it was irrelevant that Desautel did not know the difference between supervised release and probation because the important factor is that Salo had a reduced expectation of privacy due to his supervised-release status. We agree that Salo had a reduced expectation of privacy, and it is not significant that Desautel was not aware that Salo was on supervised release, rather than probation. But Salo's reduced expectation did not allow Desautel to search Salo.

The conditions of Salo's release required him to "submit to any unannounced visits and/or search of [his] person, residence, possessions, cell phone, vehicle or premises by the agent/designee." The state argues that Desautel was a designee of Salo's supervising agent because the agent testified that he had informed the Clay County Sheriff's Department that Salo was in Moorhead and that he was concerned that Salo was selling and using narcotics. The agent also testified that he "heavily" relies on the police to assist him in supervising

¹ *Heaton* is distinguishable from this case because it involved a warrantless search of the parolee's home, which the parolee had consented to as a term of his parole. 812 N.W.2d at 908.

parolees. The entire knowledge of the police force is pooled and imputed to an arresting officer. *State v. Riley*, 568 N.W.2d 518, 523 (Minn. 1997). But the district court specifically found that the agent “testified that he did not direct any search of [Salo] on that day. In fact, Officer Desautel never even attempted to contact [the agent] to receive authorization to search [Salo].” Under the express terms of his supervised release, Salo was not required to submit to a search during the traffic stop.

Finally, the state argues that the district court erred by failing to find that Salo had no reasonable expectation of privacy in the vehicle where the methamphetamine was found. But, as the district court found, when the vehicle was searched, Desautel had already unreasonably expanded the scope of the traffic stop, and the methamphetamine was the fruit of this unreasonable expansion.

Before evidence discovered by exploiting previous illegal conduct may be admitted,

the state must show that the evidence was obtained by means sufficiently distinguishable to be purged of the primary taint. Minnesota appellate courts examine several factors to determine whether evidence is fruit of the poisonous tree. The factors considered are (1) the purpose and flagrancy of the misconduct; (2) the presence of intervening circumstances; (3) whether it is likely that the evidence would have been obtained in the absence of the illegality; and (4) the temporal proximity of the illegality and the evidence alleged to be the fruit of the illegality. No one factor is dispositive; rather, courts must balance all of these factors.

State v. Olson, 634 N.W.2d 224, 229 (Minn. App. 2001) (citations and quotation omitted), review denied (Minn. Dec. 11, 2001).

The methamphetamine was found almost immediately after Desautel began questioning Salo about his narcotics use and probation status; there were no intervening

circumstances. If Desautel had not unreasonably expanded the scope of the traffic stop, the methamphetamine would not have been discovered. The methamphetamine was discovered by exploiting the unreasonable expansion of the traffic stop.

Affirmed.