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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0865**

State of Minnesota,
Respondent,

vs.

Christian Alfo Cano Fernandez,
Appellant.

**Filed January 7, 2019
Affirmed
Schellhas, Judge**

Blue Earth County District Court
File No. 07-CR-17-2614

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

Patrick R. McDermott, Blue Earth County Attorney, Susan B. DeVos, Assistant County Attorney, Mankato, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Adam Chandler, Special Assistant Public Defender, Briggs and Morgan, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Schellhas, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his conviction of driving while impaired, arguing that the district court erred by denying his suppression motion because the evidence obtained was the result of an unlawful expansion of the scope of the traffic stop. We affirm.

FACTS

After midnight on July 14, 2017, Officer William Hullopeter stopped a vehicle when he discovered that the registered owner, a 48-year-old woman, had a cancelled driver's license. As he exited his squad car and approached the vehicle, Officer Hullopeter observed that the driver, who was not a female, had bloodshot, watery eyes, and that his breath had a "strong minty odor" emanating from the gum he was chewing. Officer Hullopeter also observed "beer cans directly behind the driver's seat," and that the driver was wearing two paper wristbands that are the type commonly issued at events where alcohol is served. Officer Hullopeter identified the driver as appellant Christian Fernandez and asked him to perform several field sobriety tests, the results of which indicated impairment. The officer arrested Fernandez, transported him to the Blue Earth County Jail, and read him the Implied Consent Advisory. Fernandez agreed to provide a breath test, which revealed an alcohol concentration of 0.10.

Respondent State of Minnesota charged Fernandez with two counts of gross misdemeanor driving while impaired (DWI) and one count of driving after cancelation. Fernandez moved to suppress the evidence obtained as a result of the stop, arguing that the stop was unlawfully expanded because Officer Hullopeter should not have further

approached the driver as soon as he shined his spotlight into the vehicle and determined that the driver was not a female and therefore was not the registered owner of the vehicle with the canceled driver's license. At the suppression hearing, the court heard Officer Hullopeter's testimony and proceeded on the basis of oral argument, police reports, and the squad-car video.

The district court found that "the officer's suspicions about the identity of the driver were not dispelled until he exited the squad vehicle and approached [Fernandez's] vehicle." The court also found that when Officer Hullopeter "approached the vehicle and spoke with [Fernandez], he immediately" observed signs that Fernandez had been drinking, and that "these new observations were made at the same time that Hullopeter determined that the driver was not the registered owner." The court stated that "[i]t is nonsensical that, upon making the . . . additional observations, Hullopeter would simply walk away from the scene because his suspicions about a possible driver with a cancelled license had been dispelled." The court determined that the officer's "observations are enough to give rise to a reasonable suspicion that [Fernandez] had been driving under the influence of alcohol, and they therefore support an expansion of the scope of the initial stop to include a DWI investigation." The district court therefore denied Fernandez's motion to suppress.

Fernandez waived his right to a jury trial, stipulated to the state's evidence, and agreed to submit the case to the district court under Minn. R. Crim. P. 26.01, subd. 4, to preserve for appellate review the pretrial suppression ruling. The district court found Fernandez guilty of the two counts of gross misdemeanor DWI, but not guilty of driving

after cancelation. The court sentenced Fernandez to 364 days in jail, 279 of which was stayed for two years.

This appeal follows.

DECISION

When reviewing a pretrial suppression order, this court reviews a district court’s factual findings for clear error and the legal determinations de novo. *State v. Onyelobi*, 879 N.W.2d 334, 342–43 n.4 (Minn. 2016). 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).

The United States and Minnesota Constitutions protect individuals from “unreasonable searches and seizures” by the government. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. But a law enforcement officer may conduct a brief investigatory stop of a person if the officer has a reasonable, articulable suspicion that the person might be engaged in criminal activity. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) (citing *Terry v. Ohio*, 392 U.S. 1, 19–21, 88 S. Ct. 1868, 1879–81 (1968)). “Reasonable suspicion must be based on specific, articulable facts that allow the officer to be able to articulate that he or she had a particularized and objective basis for suspecting the seized person of criminal activity.” *State v. Morse*, 878 N.W.2d 499, 502 (Minn. 2016) (quotations omitted).

“[T]he scope of a [seizure] must be strictly tied to and justified by the circumstances that rendered the initiation of the investigation permissible.” *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). An officer may expand the scope of the initial stop to investigate other suspected illegal activity “if the officer has reasonable, articulable suspicion of such

other illegal activity.” *Id.* Each incremental intrusion must be tied to and justified by the stop’s original purpose, by probable cause, or by reasonableness. *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012).

In *State v. Pike*, the supreme court considered the validity of an investigatory stop of a vehicle that was based on an officer’s knowledge that the owner of the vehicle had a revoked license. 551 N.W.2d 919, 922 (Minn. 1996). The supreme court explained that, “[w]hen an officer observes a vehicle being driven, it is rational for him or her to infer that the owner of the vehicle is the current operator.” *Id.* Based on this inference, the court held that

it is not unconstitutional for an officer to make a brief, investigatory, *Terry*-type stop of a vehicle if the officer knows that the owner of the vehicle has a revoked license so long as the officer remains unaware of any facts which would render unreasonable an assumption that the owner is driving the vehicle.

Id.

Fernandez acknowledges that under *Pike*, the initial stop of the vehicle was valid because the vehicle was registered to an owner with an expired driver’s license. But Fernandez argues that because “Officer Hullopeter’s reasonable suspicion of criminal activity was based entirely upon his assumption that the registered owner . . . was the person driving the vehicle,” the reasonable suspicion justifying the stop was dispelled as soon as the officer “shined his squad spotlight on the car” and recognized that Fernandez was not a middle-aged woman. Fernandez argues that because Officer Hullopeter observed that the

driver of the vehicle was not a middle-aged woman, his detention of Fernandez for the purpose of asking to see his driver's license was unconstitutional.

To support his claim, Fernandez cites *State v. Hickman*, 491 N.W.2d 673 (Minn. App. 1992), *review denied* (Minn. Dec. 15, 1992). In that case, a police officer noticed that the defendant's vehicle-registration sticker on his license plate had expired and initiated a traffic stop. *Id.* at 674. While still sitting in his vehicle, the officer noticed a temporary registration sticker in the rear window of the vehicle and confirmed the validity of the permit as he approached the vehicle. *Id.* The officer nonetheless requested the defendant's driver's license. *Id.* This court held that

detaining [defendant] 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. After seeing the valid temporary permit, the officer no longer had articulable and reasonable suspicion that the vehicle was unregistered, that the driver was unlicensed, or that any criminal activity was afoot.

Id. at 675 (footnote omitted).

This case is distinguishable from *Hickman* because unlike in *Hickman*, Officer Hulloper's suspicions that criminal activity was afoot were not dispelled until he "was in close proximity to the vehicle," close enough to observe that the registered owner of the vehicle was not the driver, but also close enough to "*immediately*" observe that the driver had "bloodshot, watery eyes," and "'minty' breath." (Emphasis added.). Officer Hulloper also observed "alcoholic beverage containers in plain view in the vehicle," and that Fernandez was wearing wristbands of the type worn by "younger people at events or locations where alcohol is served." These new observations occurred prior to Officer

Hullopeter asking for Fernandez’s driver’s license and provided him with reasonable suspicion that Fernandez was driving under the influence of alcohol. *See State v. Klamar*, 823 N.W.2d 687, 696 (Minn. App. 2012) (concluding that an officer’s observation of the odor of alcohol and bloodshot and watery eyes justified the expansion of a traffic stop to investigate a suspicion of impaired driving); *State v. Kier*, 678 N.W.2d 672, 678 (Minn. App. 2004) (“An officer needs only one objective indication of intoxication to constitute probable cause to believe a person is under the influence.” (quotation omitted)). Under these circumstances, it was reasonable for Officer Hullopeter to continue the stop. *See State v. Lopez*, 631 N.W.2d 810, 813–14 (Minn. App. 2001) (explaining that “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” because it would be “impractical” to suggest that the officer, upon seeing evidence dispelling the basis for the stop, should “immediately turn away and leave the stopped vehicle without explanation”), *review denied* (Minn. Sept. 25, 2001).

Although Fernandez is correct that the reasonable suspicion for the basis of the initial stop was dispelled when the officer observed that Fernandez was not a middle-aged woman, the officer’s immediate observations that Fernandez may have been under the influence of alcohol provided the officer with a valid basis to continue with the stop and to expand the scope of the stop. *See id.* (holding that “[b]ecause the odor of alcohol provided [the officer] with reasonable suspicion of criminal activity . . . she had a lawful basis to continue the detention and conduct an investigation”). We conclude that the district court did not err by denying Fernandez’s suppression motion.

Affirmed.