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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1824**

State of Minnesota,
Appellant,

vs.

Eric Jon Prochnow,
Respondent.

**Filed April 8, 2019
Affirmed
Rodenberg, Judge**

Nobles County District Court
File No. 53-CR-18-159

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kathleen A. Kusz, Nobles County Attorney, Worthington, Minnesota; and

Travis J. Smith, Special Assistant Nobles County Attorney, Slayton, Minnesota (for
appellant)

Jacob M. Birkholz, Michelle Olsen, Birkholz & Associates, LLC, Mankato, Minnesota (for
respondent)

Considered and decided by Reilly, Presiding Judge; Rodenberg, Judge; and
Bratvold, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

In this pretrial appeal, appellant State of Minnesota argues that the district court erred by granting respondent Eric Jon Prochnow's motion to suppress the marijuana seized during a vehicle search after a traffic stop and by granting respondent's derivative motion to dismiss controlled-substance charges. The state argues that the officer had a reasonable articulable suspicion of drug-related activity sufficient to expand the duration and scope of the initial traffic stop. Because the record supports the district court's findings and because the district court properly applied the law, we affirm.

FACTS

Minnesota State Patrol Trooper Christensen was patrolling Highway I-90 when he observed a van that he believed was "following too closely" behind another vehicle. Trooper Christensen followed the van and determined that it passed a stationary roadside object only 1.44 seconds after the vehicle it was following. Because several Minnesota publications recommend a three-second following distance to be reasonable at interstate speeds, Trooper Christensen deemed the van to be following too closely to provide the driver enough time to safely react should the lead vehicle stop. Trooper Christensen also observed that the van's rear license plate was partially obstructed by a dealer-issued border cover. Trooper Christensen activated his emergency lights and signaled the van to pull over. It did so, and respondent was identified as the driver of the van. The stop and subsequent developments were recorded—audio and video—by the squad car recorder.

After pulling the van over, Trooper Christensen ran a computer check of the California license plate. Trooper Christensen approached the back of the van, where he peered into the back of the van. Trooper Christensen saw little or no luggage from his viewpoint, saw that the seats were folded down, and observed multiple dogs inside the van. Trooper Christensen noted that pillows and blankets were strewn about the back of the van and that the van appeared “lived in.” Respondent’s girlfriend, B.G., was in the passenger’s seat with a dog on her lap.

Trooper Christensen told respondent that the traffic stop was for an obstructed license plate. Respondent initially handed Trooper Christensen his Department of Homeland Security ID card, but also produced his California driver’s license, insurance information, and vehicle registration. Trooper Christensen noted that the van had recently been insured. He told respondent that he would be ticketed for the obstructed license plate, and asked respondent to get out of the van to see the obstruction. As respondent did so, Trooper Christensen noted audibly, apparently to himself, that the van had “[f]our dogs, no luggage, lived-in look.” Trooper Christensen showed respondent the license-plate obstruction and asked respondent to wait in the front seat of the squad car while Trooper Christensen wrote a warning ticket. Trooper Christensen testified that such warnings typically take 12 minutes to complete.

Trooper Christensen was suspicious of appellant and B.G., but was unable to identify any specific ongoing criminal activity. Trooper Christensen requested a criminal history for respondent, which takes 10 to 12 minutes and which he agreed is not normally part of issuing a warning for an obstructed license plate. While seated in the squad car,

Trooper Christensen began asking respondent questions “about his travel plans, life in Minnesota and California, luggage in the van or lack thereof, his traveling companion, employment,” potential criminal history,¹ and other investigative questions. Respondent said that he and B.G. were going to visit his ill mother in Apple Valley for several weeks, they planned to stay in a hotel, and his mother was not expecting them. Trooper Christensen’s report stated that during the squad-car interaction, he noticed that respondent’s “voice trembled, his carotid artery pounded and his eyes were bloodshot and watery,” and that there was “distinct marked reddening of the conjunctiva which is consistent with marijuana users.” Trooper Christensen did not believe respondent was under the influence of marijuana at the time of the stop. He thought respondent “had an unkept [sic] look as his clothes were dirty and that he had not bathed for several days.”

Around 18 minutes into the traffic stop, Trooper Christensen told respondent that he would verify the vehicle identification number (VIN) before completing the warning ticket. Trooper Christensen then returned to the passenger’s side of the van, where he questioned B.G. about their travel plans. B.G. confirmed all of the details that respondent provided, with the exception that she told the trooper that respondent’s mother was expecting them. Trooper Christensen then “checked” the VIN on the driver’s side of the van before returning to the squad car, where he informed respondent that a leaf was blocking the VIN and should be removed. In its order, the district court found that “[i]t is

¹ The district court’s order mistakenly indicates that Trooper Christensen’s questioning about respondent’s criminal history took place later than is depicted on the squad recording. It appears that this error in the district court’s timeline resulted from its adoption of the order of events set forth in Trooper Christensen’s report.

unknown if the VIN was actually visible by [Trooper] Christensen or if he actually cross-referenced the VIN.”

Over 20 minutes after the initial stop, Trooper Christensen finally gave respondent a warning ticket. Before respondent had a chance to exit the squad car, Trooper Christensen asked respondent if he would answer some questions. Respondent agreed. Trooper Christensen later acknowledged that, in his mind, “the stop was not over,” and that he “made [respondent] feel like he was able to leave to turn the situation to a consensual encounter.” Trooper Christensen directly questioned respondent about the presence of contraband in the van, which respondent denied. Trooper Christensen then asked for consent to search the van, and respondent told him that the van belonged to B.G. and that Trooper Christensen would have to ask her permission to search it.

Trooper Christensen went to the van, where he asked B.G. if there was any contraband in the van—which B.G. denied—and then asked permission to search her van. B.G. initially agreed to the search, but immediately asked if she had to consent to a search and stated that she would “rather not” have Trooper Christensen conduct a search. Trooper Christensen told B.G. that she did not have to consent to a search but that, if she did not consent, he would detain her and respondent in order to perform a dog sweep of the car. B.G. did not consent to either a search of the van or a dog sweep of it.

Trooper Christensen got his trained dog from the squad car and walked the dog around the van twice. The dog alerted at the rear of the van on the second lap. Trooper Christensen then searched the van and found a duffle bag containing 12 pounds of marijuana. Respondent and B.G. were arrested.

Respondent and B.G. were charged with one count of third-degree sale of five kilograms or more of marijuana in violation of Minn. Stat. § 152.023, subd. 1(5) (2016), and one count of fifth-degree possession of marijuana (not small amount) in violation of Minn. Stat. § 152.025, subd. 2(1) (2016). Respondent and B.G. requested a “joint consolidated contested omnibus hearing” because they had “identical legal issues for the hearing.” At the omnibus hearing, Trooper Christensen testified that the squad video would accurately reflect the events that occurred during the stop.

The district court made very detailed findings, relying “heavily on the squad video . . . which, as [Trooper] Christensen testified, would be the best evidence of what actually occurred during the stop.” The district court noted that some items of information “referenced during testimony and in the incident report appear strikingly different when the [district] court reviewed the squad video.” In its order, the district court found that, while Trooper Christensen was justified in stopping respondent for a traffic violation, the evidence did not support the existence of a reasonable articulable suspicion sufficient to warrant the trooper expanding the duration or scope of the traffic stop. Consequently, the district court denied respondent’s motion to suppress the evidence based on an unlawful traffic stop, granted respondent’s motion to suppress the evidence based upon Trooper Christensen’s unlawful expansion of scope and duration of the traffic stop, and dismissed the complaint.

This pretrial appeal by the state followed.

DECISION

As a preliminary matter, in an appeal by the state of a pretrial order, this court will only reverse if the state can “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.” *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995) (quotation omitted); see Minn. R. Crim. P. 28.04, subds. 1(1), 2(2)(b). A district court’s dismissal of a complaint meets the critical-impact requirement. *State v. Mike*, 919 N.W. 103, 107 (Minn. App. 2018), *review granted* (Minn. Nov. 13, 2018). The only disputed issue on appeal is whether the district court’s pretrial dismissal order was erroneous.

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. “Generally, warrantless searches are per se unreasonable.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). The United States Supreme Court has determined that “[t]emporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of ‘persons’ within the meaning of this provision.” *Whren v. United States*, 517 U.S. 806, 809-10, 116 S. Ct. 1769, 1772 (1996) (citations omitted).

“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). Even if a traffic stop is valid at its inception, the stop may become invalid if “it becomes intolerable in its intensity or scope.” *State v. Askerooth*, 681 N.W.2d

353, 364 (Minn. 2004) (quotation omitted). An officer can expand the scope of a stop to include investigation of additional criminal activity “only if the officer has reasonable, articulable suspicion of such other illegal activity.” *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). “Evidence obtained as a result of a seizure without reasonable suspicion must be suppressed.” *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011).

“When reviewing a district court’s pretrial order on a motion to suppress evidence, we review the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.” *Gauster*, 752 N.W.2d at 502 (quotation omitted).

In his briefing to this court, respondent argued that the initial traffic stop was not valid. At oral argument, however, respondent withdrew that argument. Consequently, we do not review the district court’s conclusion that the initial stop was valid.

The state contends generally that the district court erred in determining that Trooper Christensen unlawfully expanded the scope and duration of the traffic stop. The state argues that, under the low reasonable-suspicion standard, Trooper Christensen’s stated reasoning, taken in totality, demonstrates that Trooper Christensen had reasonable articulable suspicion of drug-smuggling activity. We disagree.

As noted, the district court made very detailed findings of fact to support its determination that Trooper Christensen did not have a reasonable articulable suspicion of criminal activity when he expanded the scope of the stop. The district court noted that “some of these indicators referenced during testimony and in the incident report appear strikingly different” when compared to the squad car recording. The district court found

that, upon “[r]eviewing the squad video, the [district] court cannot [discern] such nervousness that would equate to suspicion.” The district court observed from the video recording that respondent was “quite calm and willing to comply with questions asked.”

The district court described respondent as appearing

unkempt and a little weary, but his responses to the officer’s questions are immediate and appropriate. He does not appear to [be] under the influence of alcohol or drugs, and is overall appropriate and talkative with [Trooper] Christensen. [Respondent’s] appearance is mostly unremarkable and does not reveal extreme nervousness beyond what one would expect with a person seated in the front seat of a squad car.

The district court also found that:

While the warning was being drafted in this case, which . . . takes time to review materials, [respondent] was subject to questioning about a number of topics aside from the license plate obstruction. Although some of it was conversational, *review of the squad video indicates, [Trooper] Christensen was clearly searching for more information that would support his initial hunch.*

(Emphasis added.) Ultimately, the district court found that “[b]ased on the testimony and evidence, it is clear that the officer was determined to find some justification to enter into and search [respondent’s] vehicle.”

The record supports the district court’s findings. At the omnibus hearing, Trooper Christensen stated that he observed “multiple indicators” that there “was probably criminal activity going on.” But Trooper Christensen was unable to articulate what criminal activity he suspected. He testified as follows:

CHRISTENSEN: There [were] multiple indicators initially right off the bat that led me to believe that there was probably criminal activity going on.

RESPONDENT'S COUNSEL: Okay. Um, criminal activity. Can you be any more specific? What criminal activity were you suspecting based on your initial approach to the vehicle?
CHRISTENSEN: *There's no way for me to know unless I ask him more questions.*

(Emphasis added.) The district court's findings of fact are not clearly erroneous, and are supported by the squad car video and the officer's admitted inability to have discovered any particular criminal activity before expanding the scope of the stop.

The state argues that Trooper Christensen observed multiple indicators that, in the totality of the circumstances, support a finding of reasonable articulable suspicion. But Trooper Christensen engaged in multiple expansions of a traffic stop, including questioning the passenger about things (which had no relation at all to the traffic stop), questioning respondent about his criminal history beyond active warrants, and resumed questioning after the warning ticket was issued. This is not a case of one pinpointed time of expansion of the traffic stop. The record supports the district court's finding that the trooper was "clearly searching" for support for his initial "hunch" and was "determined to find some justification to enter into and search" the van.

Importantly, and as noted above, Trooper Christensen essentially admitted at the omnibus hearing that he was acting on a "hunch" of ongoing criminal activity and wanted to expand the scope of the traffic stop to confirm his suspicions. Many of the factors on which the state seems to rely to support its argument that there was reasonable articulable suspicion to expand the stop, and which we do not address here, arose after Trooper Christensen had already unlawfully expanded the scope and duration of the traffic stop.

Taken to its logical conclusion, the state's argument boils down to this: as long as an experienced officer cites some facts in support of some generalized suspicion, the district court must defer to the officer's determination that expansion of a traffic stop is lawful. That is not the law; deference is one thing and abdication is another. The record supports the district court's findings of fact, and we affirm its order suppressing the evidence and dismissing the complaint.

Affirmed.