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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1971**

State of Minnesota,
Appellant,

vs.

Joshua Jon Mugge,
Respondent.

**Filed June 24, 2019
Affirmed
Halbrooks, Judge**

Pine County District Court
File No. 58-CR-17-481

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

Reese Frederickson, Pine County Attorney, Michelle R. Skubitz, Chief Deputy County Attorney, Pine City, Minnesota (for appellant)

Mark D. Nyvold, Fridley, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Connolly, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

The state challenges the district court's suppression of evidence based on its determination that the officer lacked reasonable, articulable suspicion to support a traffic stop. We affirm.

FACTS

In May 2017, after finishing his regular shift, a state trooper was contacted by the East Central Drug and Violent Offenders Task Force (the task force) and by the Minnesota Bureau of Criminal Apprehension (the BCA). The task force commander informed the trooper that respondent Joshua Jon Mugge might be transporting a large amount of methamphetamine in his vehicle and asked for the trooper's assistance in conducting a traffic stop based on a driving violation. The task-force commander informed the trooper that, based on a previously obtained search warrant, they had been tailing Mugge's vehicle and had placed a GPS tracking device on it, but had lost visual contact and were unable to overtake his vehicle between Pine County and St. Paul. The GPS data showed that Mugge was traveling on I-35 through Pine County at around 67 miles per hour. The speed limit on the interstate in that area is 70 miles per hour. The trooper was given Mugge's name, a description of the vehicle, and the license-plate number.

The trooper positioned his squad car in the middle of the bridge overpass on I-35 and observed a vehicle traveling faster than the others. The trooper activated his LIDAR (light detection and ranger) and determined that the vehicle was traveling at 80 miles per hour. The trooper merged onto I-35 in pursuit of the vehicle and was able to catch up to it and identify the vehicle as Mugge's. The trooper initiated a traffic stop based on speeding.

As the trooper approached the vehicle, Mugge had his driver's license ready. The trooper did not observe any drugs, and Mugge did not appear to be under the influence of any controlled substance or alcohol. After asking for Mugge's insurance and learning that the vehicle was a rental, the trooper asked Mugge for the rental agreement. As Mugge

reached across the front seat toward the glove box, his shirt lifted and the trooper saw a firearm tucked into the waistband of Mugge's jeans.¹ The trooper drew his gun and ordered Mugge out of the vehicle. After removing the firearm, the trooper placed Mugge under arrest.²

Because of the BCA tip that Mugge was transporting a large quantity of methamphetamine, the trooper conducted an external vehicle search using his drug-sniffing K9 officer "Skippy." When Skippy alerted to the presence of drugs, the trooper allowed Skippy to search the interior of the vehicle through the front driver's side window. Skippy alerted at the front passenger area. Without obtaining a warrant, the trooper hand-searched the vehicle and discovered drug paraphernalia. The trooper contacted a member of the task force, who instructed him to wait so that they could request a search warrant for the rest of the vehicle.

Mugge was charged with possession of a firearm by an ineligible person; he moved the district court to suppress the evidence. The trooper, who was the sole witness at the contested omnibus hearing, testified that he had not calibrated his LIDAR equipment or checked his radar equipment before using it to determine Mugge's speed. The trooper also stated that he did not turn on his body microphone/camera because he believed that it was inoperable. As a result, the district court noted that there was "no visual evidence, or

¹ The trooper testified that the task force informed him that Mugge was in possession of a firearm and kept it at the small of his back.

² The parties stipulated that certain statements made by Mugge after this point are inadmissible, and the state concedes that Mugge was in custody at this point in the encounter.

recorded evidence, other than the BCA's GPS logs" to consider in making a decision related to Mugge's speed. The GPS tracking log, which was admitted as an exhibit, showed that Mugge had been traveling between 68 and 70 miles per hour immediately before the trooper stopped him. The district court found that the "GPS logs are credible evidence and the Defendant's vehicle was not speeding. The State has not met its burden of proof, that there existed a reasonable articulable suspicion to pull over [Mugge]'s vehicle for speeding." Therefore, the district court concluded that, "[t]here being no other reason for which the vehicle was stopped, the fruits of the search must be suppressed." This appeal follows.

D E C I S I O N

When the state appeals a pretrial order suppressing evidence, the state must show that the district court erred and that the error will have a critical impact on the state's ability to prosecute the case. *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995). Here, Mugge acknowledges that the critical-impact question is satisfied. We review the district court's factual findings for clear error, and its legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

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." *Gauster*, 752 N.W.2d at 502. 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).

The principles and framework of *Terry* govern the “reasonableness of seizures during traffic stops even when a minor law has been violated.” *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004). A police officer may initiate a limited, investigative stop without a warrant if the officer has reasonable, articulable suspicion of criminal activity. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999) (citing *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1879-80 (1968)). However, the investigatory stop may not be the result of “mere whim, caprice or idle curiosity.” *State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996). “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).

The state asserts that the district court erred by crediting the GPS tracking logs over the testimony of the officer without a finding that the trooper’s testimony lacked credibility. While it is true that there is no explicit statement of credibility, the district court noted the trooper’s testimony that he did not calibrate his radar before using it that evening to determine Mugge’s speed or provide documentation to show that his LIDAR device had been tested. And the district court specifically noted the trooper’s testimony that he did not have any reason to dispute the task force’s GPS log showing Mugge’s speed as being between 68 to 70 miles per hour immediately before the stop.

The district court found that, other than the GPS logs, there was “no visual evidence, or recorded evidence” and that the trooper testified that “speeding was the only reason for

the traffic stop and there were no other observed traffic violations nor observations of [Mugge] being under the influence of controlled substances.” Thus, the district court concluded that the “GPS logs are credible evidence and [Mugge’s] vehicle was not speeding.” We conclude that the district court’s determination is not clearly erroneous.

Next, the state argues that the trooper had reasonable suspicion based on his knowledge that the task force was investigating Mugge for narcotic activity. We disagree. First, the trooper testified that he was instructed by the task force to find an independent legal basis to stop Mugge. Mugge correctly asserts that the state did not specifically raise the trooper’s knowledge of the investigation at the suppression hearing and instead relied on the trooper’s testimony that Mugge was speeding and the LIDAR and radar readings.

Second, while an officer may have knowledge imputed to him under the collective-knowledge rule, the officers must have some degree of communication between them. *State v. Lemieux*, 726 N.W.2d 783, 789 (Minn. 2007). Here, the trooper communicated minimally with the BCA and task force and was told only that Mugge was being investigated for drug activity and that he might have a large amount of methamphetamine in the vehicle. Based on our review of the record, we conclude that the information the trooper had concerning the task-force investigation does not amount to reasonable, articulable suspicion sufficient to justify the traffic stop. The district court properly granted Mugge’s motion to suppress the evidence.

Affirmed.