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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0906**

State of Minnesota,
Respondent,

vs.

Jordan Adam Burstad,
Appellant.

**Filed March 9, 2020
Affirmed
Worke, Judge**

Pennington County District Court
File No. 57-CR-18-245

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

Seamus P. Duffy, Pennington County Attorney, Stephen R. Moeller, Assistant County Attorney, Thief River Falls, Minnesota (for respondent)

Drew J. Hushka, Vogel Law Firm, Fargo, North Dakota (for appellant)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court erred by denying his motion to suppress drug evidence because the police did not possess a reasonable articulable suspicion to seize him and his custodial arrest was unlawful. We affirm.

FACTS

While on patrol the morning of April 5, 2018, Officer Johnsrud observed a vehicle exit a parking lot and travel in the opposite direction. Officer Johnsrud recognized the driver as an individual he knew, Appellant Jordan Adam Burstad. Because Officer Johnsrud believed there was an active warrant out for Burstad's arrest, he made a U-turn to follow the vehicle, and observed it pull into the parking lot of an apartment building. Officer Johnsrud then observed Burstad walking quickly towards the front entrance of the apartment building.

Officer Johnsrud parked his squad car, exited it, and called out for Burstad to stop. Burstad stopped and informed Officer Johnsrud that he had recently taken care of the outstanding warrant. When Officer Johnsrud checked Burstad's warrant status with dispatch, he was informed that the warrant had been cleared, but Burstad's driving privileges had been revoked.

Upon learning that Burstad's license was revoked, Officer Johnsrud asked Burstad to provide proof of insurance for the vehicle. Burstad stated that another individual owned the vehicle and he could not provide Officer Johnsrud with proof of insurance. After confirming that Burstad's driver's license was revoked for lack of insurance, Officer

Johnsrud arrested Burstad for driving after revocation and failure to provide proof of insurance. During a search incident to arrest, Officer Johnsrud discovered \$2,200 in cash in Burstad's wallet, which Burstad claimed he had recently won at the casino. Prior to leaving the parking lot, Burstad showed Officer Johnsrud that the vehicle was locked and informed him that the vehicle could be left in the parking lot.

During the booking process, officers found a pipe with white residue in Burstad's jacket pocket. The residue field-tested positive for methamphetamine. Based on finding the pipe with methamphetamine residue and \$2,200 in cash on Burstad, officers conducted a dog sniff of the vehicle Burstad was driving. The dog positively alerted to the presence of illegal substances in the vehicle. After obtaining a search warrant, officers searched the vehicle and discovered approximately 20.7 grams of methamphetamine and approximately 0.6 grams of ketamine. Officers subsequently obtained a search warrant for Burstad's residence and discovered additional evidence of drug-related activity.

The state charged Burstad with first-degree sale of methamphetamine, third-degree possession of methamphetamine, and fourth-degree possession of ketamine with the intent to sell. Burstad moved to suppress all evidence obtained as a result of the seizure, the dog sniff of his vehicle, and the search of his residence on the grounds that he was subjected to an unlawful search and seizure.

The district court denied Burstad's suppression motion. Burstad then stipulated to the prosecution's case pursuant to Minn. R. Crim. P. 26.01, subd. 4, in order to obtain appellate review of the district court's denial of his suppression motion. The parties stipulated that Burstad's constitutional challenges to the following issues were dispositive

of the case: (1) the *Terry* stop; (2) the expansion of the traffic stop; (3) the custodial arrest; and (4) the search of his person.

The parties agreed to a stipulated trial on the third-degree possession of methamphetamine charge and that the state would dismiss the other two charges. The district court found Burstad guilty of third-degree possession of methamphetamine. The district court sentenced Burstad to 27 months in prison, stayed for five years, with 90 days in jail, and placed him on supervised probation for five years. This appeal followed.

D E C I S I O N

Burstad argues that the district court erroneously denied his suppression motion because (1) he was unlawfully seized; (2) he was subjected to an unlawful custodial arrest; (3) officers lacked a reasonable suspicion to conduct the dog sniff of his vehicle; and (4) the search of his residence was unreasonable because the search warrant lacked probable cause.

When reviewing a district court's pretrial order on a suppression motion, this court reviews the district court's factual findings for clear error and its legal determinations *de novo*. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). Because the parties stipulated to the prosecution's case pursuant to Minn. R. Crim. P. 26.01, subd. 4, our review is further limited in this case to the issues that the parties stipulated to as being dispositive. Minn. R. Crim. P. 26.01, subd. 4(a). While Burstad challenges the dog sniff of his vehicle and the search of his residence on appeal, those issues were not included in the stipulation. Therefore, we decline to consider them. The remainder of our analysis will address Burstad's arguments with respect to the seizure and custodial arrest.

Seizure

Burstad argues that he was unlawfully seized because Officer Johnsrud's suspicion that he had an outstanding warrant was not reasonable.

Officer Johnsrud instructed Burstad to stop walking towards the apartment building, and Burstad complied with this directive. "A limited investigative stop is permissible if the officer is able to articulate that he had a particularized and objective basis for suspecting criminal activity." *State v. Riley*, 667 N.W.2d 153, 156 (Minn. App. 2003), *review denied* (Minn. Oct. 21, 2003). This assessment is based on "all the circumstances," which include "the officer's general knowledge and experience, the officer's personal observations, information the officer has received from other sources, the nature of the offense suspected, the time, the location, and anything else that is relevant." *Appelgate v. Comm'r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987) (quotation omitted). A stop must not be "the product of mere whim, caprice, or idle curiosity." *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996). Minnesota recognizes that an officer's "honest, reasonable mistakes of fact are unobjectionable under the Fourth Amendment." *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003). Further, "[i]f the facts upon which the officer relies turn out to be mistaken, those mistaken facts may still support a particularized and objective basis for suspecting a person of criminal activity" so long as the mistake itself was objectively reasonable. *State v. Poehler*, 935 N.W.2d 729, 733 (Minn. 2019).

The district court found that Officer Johnsrud had a reasonable suspicion to stop and briefly detain Burstad despite his mistaken understanding of Burstad's warrant status. The record indicates the following facts. Officer Johnsrud recognized Burstad while he was

driving a vehicle. While working the previous weekend, Officer Johnsrud learned that there was an active warrant for Burstad's arrest. Officer Johnsrud observed Burstad turn out of a parking lot and head in the opposite direction. After following Burstad's vehicle into the parking lot of an apartment building, Officer Johnsrud observed Burstad exit the vehicle and walk quickly towards the apartment building that was not his residence. Based on the record, Officer Johnsrud had a particularized and objective basis to suspect Burstad of criminal activity, despite his reasonable mistake about Burstad's outstanding warrant. Because the investigatory stop was not the product of mere whim, caprice, or idle curiosity, the district court did not err by denying Burstad's suppression motion.

Burstad argues that Johnsrud's mistake about the outstanding warrant was unreasonable because he did not avail himself of the resources to confirm or deny the status of the warrant prior to the seizure. While the record indicates that Officer Johnsrud did not check Burstad's warrant status prior to the seizure, Officer Johnsrud testified that he felt he needed "to take quicker action" because he was concerned that Burstad was driving. This fact, when viewed in context of the record as a whole, further supports the district court's finding that Officer Johnsrud had the requisite reasonable suspicion for the investigatory stop.

Custodial arrest

Burstad argues that Officer Johnsrud impermissibly subjected him to a custodial arrest because he "voluntarily ceased driving and did not reasonably appear to be likely to engage in further criminal activity." He contends that because he had stopped driving, he

no longer reasonably appeared to be likely to continue driving with a revoked license or without proof of insurance.

Minn. R. Crim. P. 6.01, subd. 1(a), provides:

In misdemeanor cases, peace officers who decide to proceed with prosecution and who act without a warrant must issue a citation and release the defendant unless it reasonably appears:

- (1) the person must be detained to prevent bodily injury to that person or another;
- (2) further criminal conduct will occur; or
- (3) a substantial likelihood exists that the person will not respond to a citation.

The district court determined that exceptions (1) and (3) did not apply. In analyzing whether further criminal conduct would occur, the district court found that it was reasonable for Officer Johnsrud “to believe that [Burstad] would continue to operate the apparently uninsured vehicle, regardless of his driving status, to get back to his residence.” The district court concluded that Officer Johnsrud’s determination was reasonable because of Burstad’s prior citation for driving without proof of insurance and his observation of Burstad operating the vehicle.

We determine that it was reasonable for Officer Johnsrud to conclude that an arrest was necessary to prevent further criminal conduct, specifically, to prevent Burstad from driving with a revoked license and without proof of insurance. The record indicates that Burstad’s driver’s license was revoked and he was unable to provide Officer Johnsrud with proof of insurance. Officer Johnsrud observed both of these violations. In addition, Officer Johnsrud testified that, based on his knowledge, Burstad did not live at the apartment building where he parked the vehicle. Therefore, it was reasonable for Officer Johnsrud to

believe that Burstad would continue to operate the uninsured vehicle without a valid license.

In support of his position that his custodial arrest was unlawful, Burstad relies solely on *State v. Varnado*, 582 N.W.2d 886 (Minn. 1998). We note that while *Varnado* involved a warrantless misdemeanor arrest, it does not address the circumstances under which an officer may properly arrest an individual to prevent further criminal conduct. Therefore, *Varnado* does not support Burstad's position.

Because Officer Johnsrud could reasonably conclude that Burstad's arrest was necessary to prevent further criminal activity, the district court did not err by denying his suppression motion.

Affirmed.