STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1533

State of Minnesota,
Respondent,

vs.

Mark Allen Bergee,
Appellant.

Filed July 13, 2020
Affirmed
Florey, Judge

Crow Wing County District Court
File No. 18-CR-18-1459

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

Donald F. Ryan, Crow Wing County Attorney, Quinn T. Hoffman, Assistant County Attorney, Brainerd, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Tracy Smith, Judge; and Florey, Judge.

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

FLOREY, Judge

Appellant seeks review of his convictions for (1) driving after suspension and (2) providing a false name to a police officer—a misdemeanor and gross misdemeanor

respectively—arguing that the district court erred by denying his motion to suppress evidence on the grounds that the evidence was obtained after the officer impermissibly expanded the scope of the stop. We affirm.

FACTS

In November 2017, Officer DePaoli stopped a motor vehicle after a search of the license plate indicated that the registered owner was someone Officer DePaoli knew to have a revoked driver's license. As he approached the driver's side window, Officer DePaoli realized that appellant Mark Bergee had been driving—not the registered owner with the revoked license as he had expected. Immediately after Officer DePaoli greeted him, before any questions or further prompting, Bergee began to explain where he was going and his reason for driving the vehicle. Bergee also told Officer DePaoli that he had lost his wallet. The dashcam footage was informally transcribed as follows:

Officer DePaoli:	Hey there. How are we doing today?
Bergee:	How's it going, boss? My buddy's car is dead and he's stranded out here, so he called for a jump.
Officer DePaoli:	OK.
Bergee:	I'm just gonna give him a jump. I don't—I lost my wallet like 3 or 4 days ago—
Officer DePaoli:	OK.
Bergee:	But the car, I'm leasing from a gal in Brainerd—
Officer DePaoli:	OK.

Bergee: So it's gonna come in as [the registered owner's] name—

Officer DePaoli: OK. Gotcha. What's your name?

Bergee: Ted Bergee.

Officer DePaoli informed Bergee that he stopped him because he believed that the vehicle was being operated by the registered owner and that, because Bergee was not the registered owner, the stop was "technically" over. However, Officer DePaoli then asked Bergee if he would "mind hanging out" so Officer DePaoli could check the validity of his driver's license. Bergee responded by asking, "[w]hat did I do wrong?" The following dialogue followed:

Officer DePaoli: Well, you resemble a gentleman who's related to [the registered owner] who's got a suspended driver's license. . . . It's not you that she's associated with, so technically speaking, my traffic stop is in fact done. Do you have a valid license? . . . Well, that's the reason for the stop . . . as long as you've got a valid license and everything, if you don't mind hanging out just to make sure.

Bergee: Yup, sure.

. . .

Officer DePaoli: Hang tight for me, if you don't mind.

When Officer DePaoli returned from his squad car, he told Bergee that he did not "look like [Ted] Bergee." Bergee reasserted that his name was Ted Bergee and gave the officer a birth date and address, whereupon the officer started to return to his squad car to check again. Before Officer DePaoli was able to run the check, Bergee waved for him to

return. Bergee then admitted that his name was in fact Mark Bergee, and Officer DePaoli's search for that name revealed that Bergee's driver's license had been revoked. Officer DePaoli cited Bergee with driving after revocation and providing a false name to a police officer—a misdemeanor and gross misdemeanor respectively.

After the state filed a complaint against him, Bergee moved to suppress all evidence and dismiss, arguing that the evidence had been obtained after an impermissible expansion of the original scope of the stop. After a contested omnibus hearing, the district court denied the motion, finding that Officer DePaoli's expansion of the initial stop was lawful. Bergee stipulated to the state's case, and the district court issued an order finding him guilty of both charges. Bergee appealed.

D E C I S I O N

We review de novo pretrial rulings on motions to suppress evidence by independently reviewing the facts to determine whether the district court erred as a matter of law. *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012). Extrajudicial searches are per se unreasonable save for a few limited exceptions, one of which permits a "limited investigative stop," whereby the state can demonstrate that the officer had "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996). Appellate review of such issues entails a two-part analysis in which we ask (1) whether the stop was justified from the start and (2) whether the officer's conduct during the stop was "reasonably related to and justified by the circumstances that gave rise to the stop in the first place." *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004). The second inquiry entails the rule that "intrusion not

closely related to the initial justification for the search or seizure is invalid . . . unless there is independent probable cause or reasonableness to justify that particular intrusion." *Id.* (citing *Terry v. Ohio*, 392 U.S. 1, 20-21, 88 S. Ct. 1868, 1879 (1968). "It is the state's burden to show that a seizure was sufficiently limited to satisfy these conditions." *Id.* at 365. That is, the state must prove "that the stop was not the product of mere whim, caprice, or idle curiosity." *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003) (quotation omitted).

The district court held that the impetus for the initial stop—Officer DePaoli's belief that the vehicle was being driven by the registered owner, who the officer knew lacked a valid driver's license—was reasonable. Further, the district court held that, while Officer DePaoli did expand the initial stop when he asked Bergee to provide his name and driver's license, the expansion was reasonable in light of Bergee volunteering that he lost his wallet. The district court reasoned that Bergee's statement—which he volunteered immediately—amounted to an admission that he did not then possess his driver's license and furnished independent suspicion for further intrusion. Bergee levies three challenges to the district court's rationale, arguing (1) that his statement to Officer DePaoli was not an admission and therefore could not create independent reasonable suspicion; (2) that even if his statement could have created reasonable suspicion, there is nothing to suggest that the officer in this case actually suspected illegal activity; and (3) that even if Officer DePaoli reasonably suspected illegal activity, police officers should not be permitted to "slow-walk a stop that they know is no longer valid in the hopes of hearing something incriminating."

First, we conclude that Bergee's statement could have formed the basis for independent reasonable suspicion. It is true that, in a vacuum, the statement, "I lost my wallet" is fairly neutral and at best ambiguous with respect to implications of illegal activity—but Bergee did not utter this statement in a vacuum. From the officer's perspective, he had just executed a stop of a vehicle on the side of the road and did nothing more than greet the driver before that driver stated that he had lost his wallet. For an objective police officer, operating on the common knowledge that many people keep their driver's licenses in their wallets, there would be only three reasonable ways to interpret such a statement: either (1) the driver was admitting that he was not licensed to drive; (2) the driver intended to reassure the officer that he was in fact licensed to drive despite not having a physical copy of his license on hand; or (3) the statement bore no relation to the context in which it was made and was offered as an arbitrary tidbit. It would be well within the bounds of objective reasonableness for an officer to interpret the statement in either of the first two ways—both of which would involve criminal activity.[1] This would be especially true where, as here, the statement is offered in a string of unprompted explanations for other circumstances or conduct with which the driver clearly believes the officer might take issue. In short, Bergee's statement, in the context in which it was made, could reasonably be interpreted by an officer in such a way as to create independent

[1] "[A] person shall not drive a motor vehicle upon a street or highway in this state unless the person has a valid license under this chapter for the type or class of vehicle being driven." Minn. Stat. § 171.02, subd. 1(a) (2018). "Every licensee shall have the license in immediate possession at all times when operating a motor vehicle and shall display it upon demand of a peace officer . . . ." Minn. Stat. § 171.08 (2018).

reasonable suspicion of criminal activity. Likewise, given that Officer DePaoli's original purpose for the stop was dispelled before even greeting Bergee, we conclude that his election to inquire further after Bergee provided an independent basis for reasonable suspicion sufficiently demonstrates that DePaoli did reasonably suspect that Bergee had been driving without a license.

As for Bergee's third argument, he points to the fact that Officer DePaoli's original suspicion was dispelled as he approached the driver's-side window of the vehicle and contends that Officer DePaoli cannot delay the conclusion of the stop in order to discover independent reasonable suspicion of criminal activity. While we generally agree with this principle, we find it inapplicable here. We considered this issue in *State v. Lopez*, wherein we held 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," during which time, our holding indicates, reasonable suspicion may be revived if the officer notices evidence that would create reasonable suspicion of criminal activity in any other circumstance. *State v. Lopez*, 631 N.W.2d 810, 814 (Minn. App. 2002). Here, Officer DePaoli had only greeted Bergee before Bergee made the statement that caused Officer DePaoli to reasonably suspect criminal activity. To reverse the district court on this ground would be to hold that Officer DePaoli should have abruptly turned around as soon as he realized DePaoli was not who he expected—before making any contact—and left the scene. This would be an absurd result. Therefore, as in *Lopez*, we conclude that the original stop was still valid by the time the officer's reasonable suspicion was restored—albeit as to other criminal activity. *Id.* We therefore hold that it was reasonable for Officer DePaoli to expand the scope of the

initial stop to include confirmation of Bergee's identity and driving privileges, and we affirm the district court's denial of Bergee's motion to suppress his responses to Officer DePaoli's questions.

Affirmed.