STATE OF MINNESOTA
IN COURT OF APPEALS
A11-29

State of Minnesota,
Respondent,

vs.

Frederick Peder Nelson,
Appellant.

Filed December 5, 2011
Affirmed
Worke, Judge
Dissenting, Stauber, Judge

St. Louis County District Court
File No. 69DU-CR-09-4109

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

Jessica J. Smith, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Steven K. Marden, Marden Law Office, St. Paul, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Wright, Judge; and Worke, Judge.

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

WORKE, Judge

Appellant challenges his conviction of first-degree driving while impaired (DWI), arguing that the district court erred by denying his suppression motion on the basis that the officer lacked reasonable, articulable suspicion to stop his vehicle when the mobile

data terminal in the squad car indicated that the vehicle's registration had expired but the vehicle displayed current registration tabs. Because the stop was justified by an objective manifestation that appellant was engaged in criminal activity, we affirm.

FACTS

On August 29, 2009, Deputy Brandon Silgjord of the St. Louis County Sheriff's Office observed a vehicle abruptly brake and rapidly decelerate in a suspicious and unusual manner. The deputy entered the license-plate number for the vehicle into his onboard computer system, which indicated that the license plate's registration had expired in September 2008. However, Deputy Silgjord noted that the registration tabs on the vehicle appeared current. At that point, the deputy suspected that there could be a fraudulent-tab offense in relation to the vehicle.

Deputy Silgjord initiated a traffic stop of the vehicle in order to obtain the small numbers printed on the tab and verify that the tabs had in fact been issued for the stopped vehicle. Appellant Frederick Peder Nelson, the driver and owner of the vehicle, told the deputy that he had recently purchased the registration tabs from the West Duluth Department of Public Safety office. The deputy was eventually able to determine that the tabs were not fraudulent and the discrepancy was caused by a delayed updating of the information in the state's computer database.

During the stop Deputy Silgjord noticed indicia of intoxication and arrested appellant for driving while impaired.[1] Appellant was charged with first-degree driving

[1] Appellant does not challenge the expansion of the stop, as it relates to the discovery of the indicia of intoxication.

while impaired and first-degree driving while impaired (over .08). Appellant moved to suppress the evidence from the stop, arguing that the stop was unconstitutional. The district court upheld the stop and denied appellant's motion. Appellant submitted to a stipulated-facts trial, and was found guilty on both counts. This appeal follows.

D E C I S I O N

Both the United States and Minnesota Constitutions prohibit unreasonable search and seizure by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A police officer may, however, initiate a limited investigative stop without a warrant if the officer has reasonable, articulable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968); *see also State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996) (noting that an investigative stop of a vehicle is lawful if the state can show that the officer had a "particularized and objective basis" for suspecting criminal activity (quotation omitted)). Whether police have reasonable suspicion to conduct an investigatory stop depends on the totality of the circumstances, and a stop is not justified if it is "the product of mere whim, caprice, or idle curiosity." *In re Welfare of M.D.R.*, 693 N.W.2d 444, 448 (Minn. App. 2005) (quotation omitted), *review denied* (Minn. June 28, 2005). The court may consider the officer's experience, general knowledge, and observations; background information, including the time and location of the stop; and anything else that is relevant. *Appelgate v. Comm'r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987).

A traffic stop "must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." *State v. George*, 557 N.W.2d

575, 578 (Minn. 1997) (quoting *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 695 (1981)). Although a mere hunch is not enough, any "violation of a traffic law, however insignificant," provides the police with an objective basis for a stop. *Id.*; *see also Knapp v. Comm'r of Pub. Safety*, 610 N.W.2d 625, 628 (Minn. 2000) (stating that the factual basis needed to justify an investigatory stop is minimal); *Holm v. Comm'r of Pub. Safety*, 416 N.W.2d 473, 475 (Minn. App. 1987) (recognizing that a driver's failure to dim his vehicle's headlights for oncoming traffic provided a sufficient basis for a traffic stop). But a violation of the traffic laws need not be shown for a stop to be valid. *See State v. Engholm*, 290 N.W.2d 780, 784 (Minn. 1980) (upholding stop as lawful even where no traffic violation was observed). We review a district court's determination of reasonable suspicion as it relates to limited investigatory stops de novo. *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003).

We recently held that a discrepancy between displayed license-plate tabs and information derived from an officer's onboard computer system constitutes an objectively reasonable basis to initiate an investigatory stop. *State v. Cox*, ___ N.W.2d ___, ___, 2011 WL 5903399, at *1(Minn. App. Nov. 28, 2011). Our holding in *Cox* compels a similar result here. Upon observing a discrepancy between the displayed license-plate tabs on appellant's vehicle and the information contained in the state's computer database, the officer had an objectively reasonable basis for the stop. The district court therefore did not err by denying appellant's suppression motion.

Affirmed.

STAUBER, Judge (dissenting)

I respectfully dissent. This case arises from a police stop solely for the purpose of determining "if it's a situation of stolen tabs or just delayed data."

As Deputy Silgjord followed appellant's vehicle, he checked the vehicle license-plate number using the onboard computer system in his squad car. The computer indicated that the plate had expired, but the registration tab appeared valid. Deputy Silgjord knew from his experience in checking license plates and registration tabs that the Department of Public Safety was negligent in keeping its computer records current and accurate.

The majority relies exclusively on this court's recent opinion in *State v. Cox*, ___ N.W.2d ___, 2011 WL 5903399 (Minn. App. Nov. 28, 2011), as its basis for concluding that the stop of appellant's vehicle was based on reasonable, articulable suspicion. But in *Cox*, there was "no evidence in [the] record to indicate that [the officer] had reason to believe that the information derived from [the] computer was erroneous." ___ N.W.2d at ___, 2011 WL 5903399, at *4. While *Cox* does not decide the issue, we noted our concern and stated that information procured from an onboard computer system "can be determined unreliable when an officer is aware of facts that would make reliance on the information unreasonable." *Id.*

Here, Deputy Silgjord expressly acknowledged that registration tabs often do not match the state's computer information and that flaws exist in the state computer system. I would therefore conclude that the information gathered from the onboard computer

system was not sufficiently reliable to justify this stop, that the district court erred by not suppressing the evidence, and would remand the matter.

Moreover, to the extent that *Cox* is not distinguishable on its facts, the United States Supreme Court has held:

> [E]xcept in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.

Delaware v. Prouse, 440 U.S. 648, 663, 99 S. Ct. 1391, 1401 (1979). Investigatory stops to check a vehicle's registration are therefore unconstitutional, unless supported by reasonable, articulable suspicion. By allowing an officer to stop a vehicle that is displaying current, legally purchased, properly affixed registration tabs, the majority has upheld a stop based upon the state's failure to keep its records current. I am aware of no published caselaw—save for this court's recently released opinion in *Cox*—allowing the police to conduct a seizure based solely on a delayed updating of the state computer system.[2] Yet that is precisely what the majority has done, first in *Cox* and again here. I wish to take no part in the upholding of this stop.

[2] We addressed this issue in our unpublished decision in *State v. Lincoln*, where we upheld a district court's suppression order, recognizing that stopping a vehicle could neither confirm nor deny an officer's suspicion of license plate or tab discrepancies due to deficiencies in the state's computer system. No. C7-01-1094, 2002 WL 171691, at *3 (Minn. App. Feb. 5, 2002).