STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1201

State of Minnesota,
Respondent,

vs.

Martin William Klasen,
Appellant.

Filed May 28, 2013
Affirmed
Worke, Judge

Hubbard County District Court
File No. 29-CR-11-638

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

Donovan D. Dearstyne, Hubbard County Attorney, Erika C. H. Randall, Assistant County Attorney, Park Rapids, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Bridget K. Sabo, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

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

WORKE, Judge

Appellant argues that the district court erred by refusing to suppress evidence discovered during the unconstitutional search of his vehicle. Because we conclude that appellant consented to the search, we affirm.

D E C I S I O N

Following a stipulated-facts proceeding, the district court found appellant Martin William Klasen guilty of third-degree controlled-substance crime, driving after revocation, failure to provide proof of insurance, and possession of marijuana in a motor vehicle. Appellant argues that the district court erred in its pretrial ruling by refusing to suppress the evidence discovered during the alleged unconstitutional search of his vehicle.

When reviewing a district court's decision on a motion to suppress evidence, we independently review the facts and determine whether, as a matter of law, the district court erred by not suppressing the evidence. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). The validity of a search or seizure is a question of law, which is reviewed de novo. *State v. Bauman*, 586 N.W.2d 416, 419 (Minn. App. 1998), *review denied* (Minn. Jan. 27, 1999).

The United States and Minnesota Constitutions guarantee the right to be free from "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. Evidence resulting from an unreasonable search and seizure must be excluded. *See State v. Wiggins*, 788 N.W.2d 509, 512 (Minn. App. 2010) (stating that evidence seized in

violation of the prohibition against unreasonable searches and seizures "generally must be suppressed"), *review denied* (Minn. Nov. 23, 2010).

Appellant admits that Deputy Adam Williams justifiably initiated a traffic stop after observing a broken taillight on appellant's vehicle. But he claims that the deputy unreasonably expanded the scope of the stop beyond its original purpose based solely on appellant's probationary status.

Minnesota courts evaluate the reasonableness of searches and seizures conducted during traffic stops using the inquiry established in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968). *State v. Askerooth*, 681 N.W.2d. 353, 363 (Minn. 2004). A *Terry* analysis is twofold: "[f]irst, we ask whether the stop was justified at its inception. . . . [s]econd, we ask whether the actions of the police during the stop were reasonably related to and justified by the circumstances that gave rise to the stop in the first place." *Id.* at 364 (citations omitted). "An initially valid stop may become invalid if it becomes intolerable in its intensity or scope." *Id.* (quotations omitted).

An extended traffic stop and search is reasonable "as long as each incremental intrusion during the stop is tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in *Terry*." *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012) (quotation omitted). "To be reasonable, the basis of the officer's suspicion must satisfy an objective, totality-of-the-circumstances test." *Id.* at 351.

In evaluating the totality of the circumstances, this court considers "whether the facts available to the officer at the moment of the seizure would warrant a [person] of

reasonable caution in the belief that the action taken was appropriate." *Id*. at 351−52 (quotations omitted). "[A] police officer may expand the scope of a traffic stop to include investigation of other suspected illegal activity . . . only if the officer has reasonable, articulable suspicion of such other illegal activity." *Id.* at 351 (quotation omitted). The police officer's suspicion "must be particularized and based on specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *Id.* at 352 (quotations omitted).

Here, when the deputy initiated the stop and appellant moved his vehicle to the side of the road, the deputy saw appellant move an item to the back seat of his vehicle. After he approached the vehicle, the deputy observed a small wooden club, a potential weapon, between the driver's seat and the driver's door. The deputy noticed that appellant was not wearing shoes in March, he was fidgety, and had slurred speech. Appellant was unable to produce his driver's license and lied by telling the deputy that it was suspended when it was actually revoked. The deputy issued appellant a citation for driving with a revoked license.

While appellant searched for his proof of insurance, the deputy noticed a black case with a zipper closure in the glove box and a butane-torch lighter, which he knew through his training and experience were items commonly associated with drug use; appellant was careful to remove these items from the deputy's view. The deputy also noticed that appellant's eyes were glassy. When appellant was unable to provide proof of insurance, the deputy walked back to his vehicle to amend the citation.

While in his vehicle, the deputy inquired with dispatch about appellant's probationary status. While he awaited a response, the deputy returned to appellant's vehicle with the amended citation. He asked appellant if he was on probation. Appellant denied being on probation. When dispatch informed the deputy that appellant was on supervised probation from a prior DWI conviction, the deputy asked appellant to submit to a preliminary breath test (PBT) because appellant was subject to a no-use condition and based on the deputy's earlier observations of appellant's appearance and behavior. The PBT reading was very low, indicating to the deputy that there was some form of intoxicant present; in his experience THC activates the PBT in this manner. The deputy asked appellant to exit the vehicle and asked if he could search the vehicle; appellant consented. After the deputy located a scale with white powdery residue on it and methamphetamine pipes in the vehicle, he placed appellant under arrest. The deputy searched appellant and found THC and amphetamine in appellant's coat sleeve.

Appellant now argues for the first time on appeal that he did not consent to the search. But appellant failed to challenge consent in the district court during the omnibus hearing when the deputy testified that he asked appellant if he could search the vehicle and appellant consented. Here, absent further testimony, the district court properly found that appellant consented to the search and concluded that appellant's consent to a search was sufficient to allow the deputy to conduct the search. *See State v. Alayon*, 459 N.W.2d 325, 330 (Minn. 1990) (stating that whether consent to search was voluntary is a fact question determined from the totality of the circumstances); *see also State v. Doren*, 654 N.W.2d 137, 141 (Minn. App. 2002) (stating that this court defers to the district

court's credibility assessments), *review denied* (Minn. Feb. 26, 2003). Appellant asserts that he merely "submitted to an assertion of authority." But there is nothing in the record to contradict the deputy's testimony. Moreover, because appellant did not challenge the testimony in district court, the state was deprived of any further opportunity to flesh out the voluntariness of appellant's consent under the circumstances. Because the record supports the district court's finding, we conclude that appellant consented to the search.

Finally, the totality of the circumstances—appellant's probationary status, the fact that he was prohibited from using alcohol and controlled substances, the fact that appellant was untruthful about his probation status, and the deputy's observations of appellant's unusual appearance and behavior—led the deputy to suspect that appellant was engaged in criminal activity to justify expansion of the scope of the traffic stop. *See State v. Pierce*, 347 N.W.2d 829, 833 (Minn. App. 1984) (stating that vehicle search was proper in part because the officer recognized the driver, knew that he was on probation, and that he was not supposed to be drinking or in possession of alcoholic beverages); *see also Smith*, 814 N.W.2d at 351 (stating that the decision to expand the scope of the initial stop is valid as long as the officer has reasonable, articulable suspicion of such other illegal activity); *State v. Flowers*, 734 N.W.2d 239, 251–52 (Minn. 2007) (stating that because of their special training, "police officers articulating a reasonable suspicion may make inferences and deductions that might well elude an untrained person").

Affirmed.