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STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1753

State of Minnesota,
Appellant,

vs.

Bryan Steven Voss,
Respondent.

Filed May 8, 2017
Affirmed in part, reversed in part, and remanded
Reilly, Judge

Hennepin County District Court
File No. 27-CR-15-22928

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Considered and decided by Reilly, Presiding Judge; Hooten, Judge; and Kalitowski, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

REILLY, Judge

The City of Rogers and the City of Maple Grove separately charged respondent Bryan Steven Voss for misdemeanor offenses that occurred on the same day. The City of Rogers cited Voss for driving while impaired, and the City of Maple Grove charged Voss with three counts of assault, one count of disorderly conduct, and one count of careless driving. Voss pleaded guilty to the City of Rogers' fourth-degree driving-while-impaired charge, and the district court dismissed the City of Maple Grove's remaining charges as serialized prosecution in violation of Minn. Stat. § 609.035, subd. 1 (2014). Because we determine that the Rogers police officer articulated reasonable suspicion to justify the stop of the vehicle, but conclude that the charges brought by the City of Rogers and the City of Maple Grove did not arise from a single behavioral incident, we affirm in part and reverse in part. We remand for further proceedings in accordance with this opinion.

FACTS

On June 29, 2015, at approximately 8:57 p.m., Maple Grove Police Officer J.R. Ohnstad received a report of an assault in the City of Maple Grove. When Officer Ohnstad arrived at the address to investigate the report, he saw that the victim's lip had started to swell and change color. The victim stated that he was driving home when he noticed a driver tailgating him. The victim reported that the tailgating driver displayed his middle finger while continuing to follow him. The victim described the driver as a white male, with a crewcut, and reported that the man was driving a white Chevy Silverado with military plates. As the victim turned onto a side street to reach his home, the tailgating

driver did not follow him, and instead drove past him. The tailgating driver then did a U-turn and drove in the direction of the victim's neighborhood. As the victim parked his car in his driveway and stepped out of his vehicle, the other driver parked the Chevy Silverado behind the victim's car and stepped out of the truck. The driver punched the victim in the face, knocking him to the ground. The driver then raised his fist and approached the victim's mother—who had emerged from the victim's house—as if he intended to hit her, but instead returned to his vehicle and drove away.

Sergeant Steve Sarazin of the Rogers Police Department heard the dispatch report over the police radio. Within four miles of the assault and several minutes after the report, Sergeant Sarazin saw a white male with a crewcut driving a white pickup truck with military plates. Sergeant Sarazin noted the similarities to the dispatch description and stopped the white pickup truck to question the driver, who police later identified as Voss. Sergeant Sarazin noticed several indicia of intoxication, including a strong odor of alcohol, slurred and deliberate speech, and glassy eyes. As he continued to speak to the driver, a Maple Grove police officer arrived on the scene with the victim, and the victim positively identified the driver as the individual who punched him.

The City of Rogers charged Voss with two counts of driving while impaired. In a separate complaint, the City of Maple Grove charged Voss with three counts of misdemeanor assault (counts I-III), one count of disorderly conduct (count IV), and one count of careless driving (count V). Voss pleaded guilty to the City of Rogers' fourth-degree driving-while-impaired charge and sought dismissal of the City of Maple Grove's remaining charges. At the omnibus hearing, Voss argued that (1) the assault was a

"completed" misdemeanor, which rendered the stop unlawful, and (2) even if the assault did not constitute a completed misdemeanor, allowing the City of Maple Grove to charge counts I-V would result in serialized prosecution, in violation of Minn. Stat. § 609.035. The parties submitted the matter to the court without testimony, and the record consisted of a single exhibit—the police investigation file. The district court determined that the stop to investigate the assault report was valid, but the district court dismissed the remaining charges because the court found that they arose from the same behavioral incident.

The state appeals the district court's order, arguing that counts I-V do not arise from a single behavioral incident. Voss cross-appeals, contesting the lawfulness of the stop of his vehicle.

D E C I S I O N

I. The misdemeanor driving-while-impaired offenses and assault-related offenses did not arise from a single behavioral incident.

The state argues that the district court erred in its determination that the misdemeanor driving-while-impaired and assault-related offenses arose out of a singular behavioral incident. Because the facts of this case are undisputed, we review the district court's determination as to whether multiple offenses arose from a single behavioral incident de novo. *State v. Bauer*, 776 N.W.2d 462, 477 (Minn. App. 2009) (*Bauer I*), *aff'd*, 792 N.W.2d 825 (Minn. 2011).

Minnesota Statutes section 609.035 bars multiple punishments for offenses that arise from the same behavioral incident. Minn. Stat. § 609.035, subd. 1 ("[I]f a person's conduct constitutes more than one offense under the laws of this state, the person may be

punished for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them."). When a person is charged with multiple offenses, a district court must examine the offenses charged to determine whether they "resulted from a single behavioral incident." *State v. Johnson*, 273 Minn. 394, 404, 141 N.W.2d 517, 524 (1966). In these instances, multiple prosecutions are strictly prohibited to "protect a defendant convicted of multiple offenses against unfair exaggeration of the criminality of his conduct." *State v. Norregaard*, 384 N.W.2d 449, 449 (Minn. 1986).

Minnesota law provides two separate tests for determining whether multiple offenses arose from the same behavioral incident. *State v. Bauer*, 792 N.W.2d 825, 827-28 (Minn. 2011) (*Bauer II*). The first test applies only if the offenses at issue are multiple intentional crimes; the second test applies when the challenged offenses include both intentional and nonintentional crimes. *Bauer I*, 776 N.W.2d at 478. We agree with both parties that the second test applies. Under the second test, Minnesota courts consider whether the offenses "(1) occurred at substantially the same time and place and (2) arose from a continuing and uninterrupted course of conduct, manifesting an indivisible state of mind or coincident errors of judgment." *Id.* (quotation and citation omitted).

With regard to the first part of this test, the district court correctly found that the two offenses "occurred at substantially the same time and place." *Id.* The investigatory stop occurred shortly after the assault and within four miles of the victim's residence. *See State v. Boley*, 299 N.W.2d 924, 926 (Minn. 1980) (holding that offenses that occurred in the same general area and within minutes of each other arose from the same behavioral incident); *see also State v. Finn*, 295 Minn. 520, 522, 203 N.W.2d 114, 115 (1972) (noting

that offenses that occurred within five minutes and three miles of each other substantially occurred at the same time and place). The first part of the single-behavioral-incident test is satisfied.

With regard to the second portion of the test, the driving-while-impaired offenses and the assault-related offenses did not arise from "a continuing and uninterrupted course of conduct, manifesting an indivisible state of mind or coincident errors of judgment." *Bauer I*, 776 N.W.2d at 478 (quotation and citation omitted). In this case, Voss engaged in at least two entirely separate offenses. Voss committed the first offense, assault, when he parked his vehicle in the victim's driveway, exited his truck, approached the victim, and punched the victim in the face, knocking the victim to the ground. Voss then stepped back into his truck and drove away. When Sergeant Sarazin stopped Voss to investigate the assault report, he noticed several indicia of intoxication and, after Voss failed the sobriety testing, the City of Rogers charged Voss with driving while impaired, the second offense. The record conclusively shows that Voss engaged in two separate and distinct offenses—driving while impaired and assault. Each time Voss drove he violated the driving while impaired laws. *See State v. Fichtner*, 867 N.W.2d 242, 253-54 (Minn. App. 2015) (noting that the supreme court has historically classified DWI offenses as nonintentional crimes), *review denied* (Minn. Sept. 29, 2015). When Voss intentionally exited his truck and punched the victim in the face, he demonstrated the general intent required for assault. *See State v. Dorn*, 887 N.W.2d 826, 830 (Minn. 2016) (clarifying that assault-harm is voluntary offense that requires only general intent to commit the physical act that is forbidden under Minnesota law).

Voss cites *State v. Krech*, 312 Minn. 461, 252 N.W.2d 269 (1977), to support his contention that the incidents arose out of the same behavioral incident. The facts of *Krech* are readily distinguishable from the facts at issue here. In *Krech*, the defendant led police on a high-speed chase that ended when the defendant crashed into an officer, thereby assaulting the officer. *Id.* at 463, 252 N.W.2d at 271. Krech did not stop and exit his vehicle to commit the assault, and there was no interruption between the high-speed chase and the assault. *Id.* Krech accelerated his car toward the officer in an attempt to cause bodily injury, without interruption. For that reason, the supreme court determined that Krech's conduct exhibited "an indivisible state of mind or coincident errors of judgment." *Id.* at 467, 252 N.W.2d at 273 (quotation omitted). Unlike *Krech*, Voss did not engage in a continuous or uninterrupted course of action and he demonstrated at least two separate errors of judgment.

Lastly, Voss contends that the state's concession—that count V, careless driving, arose from the same behavioral incident—is indicative of his continuous and uninterrupted course of conduct. It is a well-established rule of law in Minnesota that if the state wants to charge a defendant with more than one offense, the state should bring one prosecution listing the charges as separate counts. *Id.* at 468, 252 N.W.2d at 274 (citing *State v. Reiland*, 274 Minn. 121, 127, 142 N.W.2d 635, 639 (1966)). But a subsequent prosecution in a separate jurisdiction does not violate Minn. Stat. § 609.035 when the offenses do not arise from the same behavioral incident. *See, e.g.*, *State v. Butterfield*, 555 N.W.2d 526, 531 (Minn. App. 1996) (holding defendant's desire to satisfy sexual needs too broad of motivation where defendant assaulted victim in three different locations), *review denied*

(Minn. Dec. 17, 1996); *State v. Secrest*, 437 N.W.2d 683, 685 (Minn. App. 1989) (upholding consecutive sentences in criminal sexual conduct case where sexual assaults occurred in separate counties and there was no unity in time), *review denied* (Minn. May 24, 1989). For purposes of this limited appeal, we accept the state's concession and assume, without deciding, that count V, careless driving, arose out of the same behavioral incident as driving while intoxicated. Because the remaining counts did not arise from a single behavioral incident, and because the City of Rogers and the City of Maple Grove were entitled to bring subsequent prosecutions in separate jurisdictions due to the nature of the offenses, we reverse. We remand counts I-IV to the district court for proceedings in accordance with this decision.

II. The stop of the vehicle was lawful.

In the alternative, Voss argues that, if this court determines that the offenses did not arise from the same behavioral incident, the district court correctly dismissed the charges because the assault-related offenses constituted a completed misdemeanor under *Blaisdell v. Comm'r of Pub. Safety*, 375 N.W.2d 880 (Minn. App. 1985) (*Blaisdell I*), *aff'd on other grounds*, 381 N.W.2d 849 (Minn. 1986), and that the stop to investigate the completed misdemeanors was impermissible under the Fourth Amendment. As a general rule, an officer may make an arrest for most misdemeanors if the misdemeanor occurs within the presence of the police officer. *See* Minn. Stat. § 629.34, subd. 1(c)(1) (2014). But this was not an arrest—it was an investigatory stop, and the presence requirement is not similarly applicable to investigatory stops. *See State v. O'Neill*, 299 Minn. 60, 65, 216 N.W.2d 822, 826 (1974). Further, because the officer initiated the stop to investigate a recent

misdemeanor, the fact that the investigatory stop resulted in a lawful arrest does not render the stop invalid.

In *Blaisdell v. Comm'r of Pub. Safety* (*Blaisdell II*), the supreme court declined to address whether a stop to investigate a completed misdemeanor is always impermissible under the Fourth Amendment. 381 N.W.2d 849, 850 (Minn. 1986). Instead, the supreme court commented that "misdemeanors committed in the 'very recent past' probably are not completed ones." *Id.*; *see also Blaisdell I*, 375 N.W.2d at 882 n.2 ("Courts should be hesitant to declare criminal conduct which occurred in the very recent past (such as the same day of the stop) to be 'completed.'"). Following the supreme court's guidance in *Blaisdell II*, we have repeatedly held that a stop to investigate a misdemeanor committed in "the very recent past" is lawful. *See, e.g.*, *State v. Stich*, 399 N.W.2d 198, 199 (Minn. App. 1987) (upholding a warrantless stop to investigate a misdemeanor offense committed only moments before). Because the assault-related offense at issue here occurred within four miles and within a short time of the investigatory stop, the stop was a lawful investigatory stop.

The test that we apply to determine if a police officer lawfully stopped and temporarily seized a person is whether the officer had "reasonable, articulable suspicion that the person has been, is, or is about to be engaged in criminal activity." *Blaisdell II*, 381 N.W.2d at 850 (quoting *United States v. Place*, 462 U.S. 696, 702, 103 S. Ct. 2637, 2641 (1983)). In *State v. Anderson*, we held that a warrantless stop of a vehicle to investigate a misdemeanor offense was lawful when (1) the officer arrived at the scene within a matter of minutes, (2) dispatch supplied the officer with an adequate description

of the vehicle involved, and (3) the vehicle was observed within the close vicinity of the crime scene. 391 N.W.2d 527, 530 (Minn. App. 1986) (citing *State v. Ritchie*, 379 N.W.2d 550 (Minn. App. 1985)).

Here, the stop occurred within four miles of the assault; this distance is clearly within the general vicinity of the misdemeanor. Voss matched the description dispatch supplied to the officers: a white male, approximately 30 years old, with a crewcut, driving a white Chevy truck with National Guard license plates. And the stop occurred shortly after the assault. The officer had a reasonable, articulable suspicion that Voss was involved in the assault. The district court did not err in its determination that the stop was lawful.

Affirmed in part, reversed in part, and remanded.