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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1873

State of Minnesota,
Respondent,

vs.

Timothy Alan Bergeron,
Appellant.

Filed September 17, 2018
Affirmed
Jesson, Judge

Polk County District Court
File No. 60-CR-17-204

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

Greg Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney, Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Worke, Judge; and Bratvold, Judge.

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

JESSON, Judge

In the early hours of a January morning, a trooper noticed a car driving toward him without its headlights turned on. The trooper initiated a traffic stop, and soon discerned

that the driver, appellant Timothy Alan Bergeron, was potentially intoxicated. A urine test later confirmed Bergeron was under the influence of methamphetamine, and a search of the car revealed a glass smoking device, which is commonly used to smoke methamphetamine. Bergeron was charged with, and eventually convicted of, driving under the influence and possession of methamphetamine. On appeal, Bergeron argues that the trooper lacked sufficient reasonable suspicion of criminal activity to initiate a traffic stop because sunrise had already occurred and Bergeron was not required to have his headlights on. Bergeron also argues the district court erred by sentencing him for both the DWI and possession offenses. We affirm.

FACTS

At 7:45 a.m., on January 28, 2017, a trooper was on routine patrol in Polk County when he noticed an oncoming car being driven without its headlights on. Because the dark-colored car was difficult to see in the low light conditions, the trooper initiated a traffic stop. The trooper noticed two individuals in the car, appellant Timothy Alan Bergeron in the driver's seat, and a passenger.

Bergeron told the trooper that he was on his way back from a car-parts store, but the trooper became suspicious because he knew the store was closed that early in the morning. The trooper ran a check on Bergeron's driver's license, and it came back as canceled—inimical to public safety. The trooper arrested Bergeron and learned that Bergeron was on probation and subject to searches. The trooper searched the car and located a glass smoking device, which is commonly used to smoke methamphetamine, in the center console. The

passenger then informed the trooper that he and Bergeron recently smoked all of the methamphetamine that they had.

The trooper transported Bergeron to a corrections center, where Bergeron consented to a urine test. Bergeron provided a sample, which tested positive for amphetamine and methamphetamine. Bergeron admitted to using methamphetamine and then driving.[1] Bergeron was charged with first degree DWI in violation of Minnesota Statutes section 169A.20, subdivision 1(7) (2016), and fifth-degree possession in violation of Minnesota Statutes section 152.025, subdivision 2(1) (2016).[2]

Bergeron later filed a motion to suppress evidence on the grounds that the trooper lacked a reasonable articulable suspicion of criminal activity sufficient to conduct a traffic stop. Bergeron argued that the law requires cars have their headlights on before sunrise, but sunrise had already occurred at the time of the traffic stop because it was bright outside. The district court held a hearing regarding the motion to suppress where the trooper testified that at 7:45 a.m. he saw a "dark-colored vehicle" that did not "have its lights on" and that it "was very tough to see." He further testified that the traffic stop took place in "early morning, lower light conditions" and it "was cloudy, overcast." Lastly, he testified that the car did not have its headlights on, while all of the other vehicles did. In addition to the trooper's testimony, two exhibits were entered. The first exhibit was a United States

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[1] The passenger also provided a taped statement, which was consistent with Bergeron's statement.

[2] Bergeron was also charged with gross-misdemeanor driving after cancellation—inimical to public safety in violation of Minnesota Statutes section 171.24, subdivision 5 (2016). However, this charge was later dismissed.

Naval Observatory sunset table that stated the sun rose at 7:55 a.m. the day of the arrest, ten minutes after the trooper initiated the traffic stop. The second exhibit was the dashcam footage.

The district court denied the motion to suppress. The court determined that, based on the sunset table, the traffic stop occurred ten minutes before sunrise. The court also stated there was a discrepancy between the trooper's testimony that it was difficult to see Bergeron's vehicle, and the dashcam footage that the court found depicted "ample daylight to see oncoming vehicles." However, the court stated it was unsure whether the lighting in the dashcam footage was an exact match of the actual conditions. The court determined that, despite this discrepancy, there was reasonable suspicion for the traffic stop.

The case proceeded to a stipulated-facts trial, where the district court determined that Bergeron was guilty of the DWI and possession of methamphetamine. The district court sentenced Bergeron to 51 months for the DWI, and to a concurrent 12 months for the possession of methamphetamine.

D E C I S I O N

On appeal, Bergeron argues that the district court erred when it determined the trooper had reasonable suspicion to initiate a traffic stop based on a lack of headlights. Alternatively, Bergeron contends that if the convictions stand, then the district court erred by sentencing him for both the DWI and the possession of methamphetamine. We address each argument in turn.

I. The trooper had sufficient reasonable suspicion of criminal activity to initiate a traffic stop.

Bergeron contends that the lack of headlights did not provide sufficient reasonable suspicion of criminal activity to initiate a traffic stop because there was ample light. This court reviews the legal conclusions of suppression rulings de novo and the district court's factual findings for clear error. *State v. McCabe*, 890 N.W.2d 173, 175 (Minn. App. 2017), *review denied* (Minn. Apr. 26, 2017).

"Both the U.S. and Minnesota Constitutions protect the right of the people to be secure in their persons, houses, papers, and effects by forbidding unreasonable searches and seizures." *State v. Liebl*, 886 N.W.2d 512, 515 (Minn. App. 2016) (quotation omitted). Law enforcement is permitted to conduct a limited investigatory stop of motor vehicles if the officer "has an objectively reasonable and articulable basis for suspecting the motorist of criminal activity." *State v. Kilmer*, 741 N.W.2d 607, 609 (Minn. App. 2007). Traffic violations, even insignificant ones, can provide that basis for a legal stop. *Id.*

The traffic violation at issue here is driving without headlights before sunrise. Minnesota requires drivers to turn on their headlights in several situations: from "sunset to sunrise;" when it is raining or snowing; or at any time when conditions impair visibility. Minn. Stat. § 169.48, subd. 1(a) (2016). This court has previously determined that testimony from a trooper, in conjunction with other evidence, is sufficient grounds for a district court to find that the event requiring headlights occurred. *See, e.g.*, *McCabe*, 890 N.W.2d at 174, 176 (determining that an officer's testimony that it was raining outside, in

conjunction with dashcam footage depicting rain, was sufficient to support the district court's finding that it was raining outside).

Here, multiple facts in the record support the district court's finding that sunrise had not yet occurred. First, the trooper testified the traffic stop took place in the early morning, and there were "lower light conditions." Second, the sunset table establishes that the traffic stop occurred before sunrise. Based on the district court's finding that sunrise occurred after the traffic stop, Bergeron violated the statute, which provided the trooper with a reasonable suspicion of criminal activity.

Bergeron argues that the district court's finding that sunrise occurred after the traffic stop was erroneous in light of the court's finding that the dashcam footage appears to show "ample daylight to see oncoming vehicles" and contradicted the trooper's testimony. We disagree. The trooper's testimony, in conjunction with the table, is sufficient to support the district court's finding of fact that the traffic stop occurred before sunrise occurred. *See McCabe*, 890 N.W.2d at 174, 176. The district court noted there was a discrepancy with the video, but where there is evidence to support the district court's conclusion—as there is here—one piece of evidence to the contrary does not render the district court's finding clearly erroneous.[3]

[3] Bergeron also argues that the district court correctly noted that there was a discrepancy between the trooper's testimony and the dashcam footage, but reached an incorrect legal conclusion by erroneously relying on an unpublished decision from this court. We are not persuaded. A close reading of the district court's order shows that the court did not rely on the unpublished case, but instead cited to it to highlight that the trooper here did not make a mistake of fact.

While there are multiple paths the district court could have taken to determine whether sunrise had yet occurred—either by looking at the technical point the sunrise occurred based on a table, or merely by looking at the amount of light outside—the path the district court took was reasonable and supported by the record. The district court therefore did not err in determining there was sufficient reasonable suspicion of criminal activity to initiate the traffic stop.

II. The district court correctly sentenced Bergeron for both the DWI and the possession of methamphetamine.

Bergeron contends that the district court erred by sentencing him for both the DWI and possession of methamphetamine because they were part of a single behavioral incident. When the facts are not in dispute, as is the case here, this court reviews de novo "whether multiple offenses form part of a single behavioral act." *State v. McCauley*, 820 N.W.2d 577, 591 (Minn. App. 2012), *review denied* (Minn. Oct. 24, 2012).

In analyzing whether multiple offenses arise from a single behavioral incident, the Minnesota Supreme Court has put forth two separate tests depending on whether any of the crimes have an intent element. *State v. Bauer*, 792 N.W.2d 825, 827-28 (Minn. 2011). Here, the parties do not agree on which test to use. While the parties agree that possession is an intentional crime, the state argues DWI is not an intentional crime for purposes of this analysis. Bergeron disputes this, arguing that both possession and DWI are intentional crimes.

We agree with the state. In *State v. Clement*, the Minnesota Supreme Court stated a DWI was a "nonintentional traffic offense." 277 N.W.2d 411, 412 (Minn. 1979). And

in *State v. Sailor*, the Minnesota Supreme Court stated misdemeanor DWI is not an intentional crime. 257 N.W.2d 349, 352 (Minn. 1977). Because one of the crimes here does not contain an intentional component, the proper test is 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.'" *State v. Bauer*, 776 N.W.2d 462, 478 (Minn. App. 2009) (citing *State v. Gibson*, 478 N.W.2d 496, 497 (Minn. 1991)), *aff'd*, 792 N.W.2d 825 (Minn. 2011).

In application of this test, both factors weigh in favor of concluding that the possession and DWI offenses were not part of the same behavioral incident. For the first prong, timing and place, the record suggests the offenses occurred at different times. In his taped statement to the trooper, Bergeron stated that he smoked methamphetamine the night before in his car and had unsuccessfully attempted to buy more just before his arrest. The possession offense, therefore, occurred the night before the arrest, while the DWI occurred in the morning. *See State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016) (stating a possession crime, while continuous, "is complete when the offender takes possession of the prohibited item"). For the second prong, whether the offenses arose from a continuous course of conduct manifesting an indivisible state of mind, the offenses were sufficiently distinct. The possession offense occurred the night before, and the record suggests the purpose was to personally use the methamphetamine. *See State v. Zimmerman*, 352 N.W.2d 452, 454 (Minn. App. 1984) (stating in the absence of other facts, the objective of possession is the "personal use of mind-altering drugs"). The DWI occurred the following

morning and was the result of Bergeron wanting to buy more methamphetamine. As a result, these two offenses did not occur as part of a continuous course of conduct.

The parties cite to two unpublished opinions from this court where we reached different conclusions on whether possession and DWI were part of the same behavioral incident. But different outcomes in different cases can be expected as this analysis is, after all, "not a mechanical test, but involves an examination of all the facts and circumstances." *State v. Soto*, 562 N.W.2d 299, 304 (Minn. 1997). And different cases contain different facts. Here Bergeron's own testimony revealed that he possessed the methamphetamine the night before the DWI, and the purpose of him driving the following morning—while still under the influence—was to obtain more methamphetamine. Because these two crimes were distinct from one another, the district court did not err in sentencing Bergeron for both offenses.[4]

Affirmed.

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[4] Bergeron cites to caselaw where the Minnesota Supreme Court determined that DWI and open-bottle violations are the same behavioral incident. *See State v. Tildahl*, 540 N.W.2d 514, 515 (Minn. 1995); *City of Moorhead v. Miller*, 295 N.W.2d 548, 550 (Minn. 1980). However, this line of caselaw is distinguishable from possession offenses, as an open-bottle violation is inherently tied to the driving violation—both offenses can only occur in a car.