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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1203**

State of Minnesota,
Appellant,

vs.

David James Fineday,
Respondent.

**Filed December 3, 2018
Affirmed
Jesson, Judge**

Cass County District Court
File No. 11-CR-18-330

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

Benjamin T. Lindstrom, Cass County Attorney, Jessica M. Plotz, Assistant Cass County Attorney, Walker, Minnesota (for appellant)

Mark D. Nyvold, Fridley, Minnesota (for respondent)

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

UNPUBLISHED OPINION

JESSON, Judge

A police officer stopped a driver, respondent David Fineday, on a narrow, two-lane road lined with significant snow banks. When Fineday pulled over and slid through the snow into a ditch on the side of the road, he began to accelerate. The police officer,

believing that Fineday was trying to flee, ordered him out of his vehicle at gunpoint before arresting him for outstanding warrants. In a subsequent search of Fineday's vehicle, officers discovered drug paraphernalia. Fineday moved to suppress the evidence found in his vehicle on the basis that the stop violated his Fourth Amendment rights. The district court, without articulating a decision on whether the initial stop was valid, determined that the evidence did not support the allegation that Fineday was trying to flee and, accordingly, that the police officer did not have a valid basis to expand the scope of the traffic stop. In this pretrial appeal, the state argues that the initial stop of the vehicle was valid based on the police officer's observation of a broken taillight and that the expansion of the stop was justified because the officer suspected that Fineday was trying to flee. Assuming without deciding that the initial stop was valid, we conclude that the record contained sufficient evidence and an appropriate legal basis for the district court to determine that the expansion of the stop was invalid. Accordingly, we affirm.

FACTS

Late one night in February 2018, respondent David Fineday was driving on a two-lane road in Cass County, Minnesota. The sides of the narrow road were lined with significant snow banks, and there was slight snow cover along the center of the road. Although the events leading to the traffic stop are disputed, these facts are not: a police officer pulled Fineday over, ordered him out of his vehicle at gunpoint, and arrested him for outstanding warrants. Police subsequently searched Fineday's vehicle and discovered a glass methamphetamine pipe in plain view. As a result, Fineday was charged with one

count of fifth-degree drug possession and one count of fleeing a peace officer in a motor vehicle. *See* Minn. Stat. §§ 152.025, subd. 2(1), 609.487, subd. 3 (2016).

Fineday filed a motion to suppress all evidence seized in violation of his right to be free from unreasonable seizures. At a hearing about his motion, Fineday argued that the police officer lacked a valid basis to initiate a traffic stop. Both parties presented their version of what happened on the night police stopped Fineday. The state entered into evidence the police squad car video of the stop¹ and presented the testimony of the police officer who stopped Fineday. The police officer testified that he noticed that a dark-colored Ford Expedition had a broken taillight and that he could not read the license plate, likely because the license plate light was out. The officer further testified that he followed the SUV for a few minutes before activating his emergency lights, but that the driver did not immediately pull over or completely stop for approximately half a mile to a mile. In the officer's experience, this behavior indicated that someone was trying to hide something. Once the vehicle pulled over, it began to slide through the snow into the ditch. The officer testified that the driver then accelerated and continued about 50 to 70 yards before coming to a stop.

Because he thought Fineday was trying to flee, the officer testified that he got out of his car and ordered Fineday out of the stopped vehicle at gunpoint. Fineday exited his vehicle, put his hands in the air, and lay down on the pavement. The officer handcuffed Fineday and put him in the police car. Next, the officer approached the stopped vehicle on

¹ The video is not clear on the disputed issue of whether the vehicle had a broken taillight and/or malfunctioning license plate light.

the driver's side to speak with the passenger, but had to open the driver's door because the window was broken. The officer testified that he found a glass meth pipe in plain view as a result of opening the door. The officer and a second responding officer searched the vehicle.

Fineday also testified. He testified that because of his military training he observed whether his vehicle's safety equipment was functioning every time before he got on the road. He also testified that his taillight had not been functioning a couple days earlier, but that he had fixed it with Plexiglas and a red permanent marker. Fineday further testified that on the night he was stopped, all of his vehicle equipment was functioning properly, including the taillights and the license plate light.

The district court took Fineday's motion under advisement in order to watch the video of the stop. In an order, the district court found that it "need not decide the issue of whether the officer had a reasonable basis for a traffic stop" despite the fact that this was the issue that Fineday raised and the parties argued. Instead, the district court found that the evidence did not support an argument that Fineday was trying to flee, so the officer lacked "a reasonable articulable suspicion to expand the traffic stop." Accordingly, the district court granted Fineday's motion to suppress the evidence and dismissed the action. The state appeals.

D E C I S I O N

As a preliminary issue in an appeal of a pretrial order by the state, the state must demonstrate that the district court's order "will have a critical impact on the state's ability to prosecute the defendant successfully and that the order constituted error." *State v.*

Zanter, 535 N.W.2d 624, 630 (Minn. 1995) (quotation omitted). Determining whether it will have a “critical impact” is a “threshold issue,” meaning that this court will not review a pretrial order without such a showing. *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017) (quotations omitted).

We have previously determined that “[d]ismissal of a charge has a critical impact on the outcome of the trial.” *State v. Myers*, 711 N.W.2d 113, 115 (Minn. App. 2006), *aff’d sub nom State v. Melde*, 725 N.W.2d 99 (Minn. 2006). Here, the district court’s order suppressed the evidence and dismissed the action. Because the pretrial order had the effect of preventing the state from pursuing charges against Fineday, the state has met the threshold critical impact requirement.

We now turn to the state’s arguments. The state contends that the police officer had reasonable, articulable suspicion for both the initial traffic stop and any subsequent expansion of the stop. Additionally, the state contends it did not have the opportunity to address the second issue regarding the expansion of the stop. When reviewing a pretrial order on a motion to suppress evidence, we evaluate “the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.” *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007).

The initial stop

Both the United States and Minnesota Constitutions guarantee individuals the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. The United States Supreme Court has determined that “[t]emporary detention of individuals during the stop of an automobile by the police, even if only for a brief period

and for a limited purpose, constitutes a ‘seizure’ of ‘persons’ within the meaning of this provision.” *Whren v. United States*, 517 U.S. 806, 809–10, 116 S. Ct. 1769, 1772 (1996)

But police may conduct a limited, investigatory stop if they have “reasonable articulable suspicion of criminal activity.” *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999). To demonstrate reasonable, articulable suspicion, police must show that the stop was “not the product of mere whim, caprice or idle curiosity, but was based upon ‘specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.’” *State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996) (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)). Typically, an officer’s observation of a traffic law violation, even a seemingly insignificant one, creates an objective basis to stop a vehicle. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997)

The state argues that the initial stop was supported by reasonable, articulable suspicion because the police officer testified that Fineday had a broken taillight and malfunctioning license plate equipment. But Fineday testified that all of his vehicle’s equipment was working properly, and the squad car video of the stop does not resolve the issue of whether the equipment was working properly or malfunctioning. Although these are factual disputes based largely on the credibility of the conflicting testimony between the police officer and Fineday, the district court did not make any factual findings regarding whether the vehicle’s equipment was broken or functioning properly. Further, the district court did not draw a conclusion about whether the initial stop was valid.

Because the district court did not determine the validity of the initial stop, this court cannot decide whether it was valid or not. After all, trial courts—not appellate courts—

are in the best position to evaluate testimony and decide issues of fact. *Schafer v. Comm'r of Pub. Safety*, 348 N.W.2d 365, 368 (Minn. App. 1984). But we read the district court's order as assuming without deciding that the initial stop was valid because it continued to address the expansion of the stop. Similarly, we assume without deciding that the initial stop was supported by reasonable, articulable suspicion based on the police officer's observation that Fineday's taillight and/or license plate light was malfunctioning.

The expansion of the stop

Assuming the reasonableness of the initial stop, we turn to address the validity of the officer's decision to expand the traffic stop by ordering Fineday out of his vehicle at gunpoint. The state argues that the expansion of the stop was justified based on the police officer's belief that Fineday was trying to flee.

Even if an initial stop is valid, each incremental intrusion by police officers during the stop must be sufficiently related to and warranted by the reason for the initial stop. *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (quoting *Terry*, 392 U.S. at 19, 88 S. Ct. at 1868). Accordingly, each additional step taken by police officers during a traffic stop must be related to and justified by "(1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness as defined in *Terry*." *Id.* at 365.

The district court determined that the expansion of the stop was not justified by any of these grounds. In reaching this decision, the district court relied on the squad car video. Although the police officer testified that he thought Fineday was trying to flee, the district court found that the squad car video did not support that allegation. The district court found that Fineday began slowing down almost immediately, and that given the snow cover, it

was reasonable for Fineday to take his time slowing down so that he did not risk sliding into the ditch. Further, the district court found that Fineday's acceleration after he pulled over was an attempt to prevent his vehicle from becoming stuck in the snow. Because Fineday was not trying to flee, the district court determined that it was not reasonable for the police officer to expand the stop by ordering Fineday out of his vehicle at gunpoint.²

The district court's findings are well-supported by the record. *See Jordan*, 742 N.W.2d at 152 (noting that this court reviews factual findings for clear error). Here, the police video showed the entirety of the traffic stop and showed Fineday slowing down shortly after the officer activated his lights and sirens and also depicted the significant amount of snow on the side of the road. Based on the squad car video, it was reasonable for the district court to determine that Fineday accelerated and spun his wheels because he was trying to get back on the road to avoid getting stuck in the snow, not to flee. Because the district court's factual findings are supported by evidence in the record, they are not clearly erroneous.

² Before we turn our analysis to whether the district court's findings were supported by the record, we address the state's contention that the district court's sua sponte decision about the expansion of the stop deprived the state of notice and the opportunity to present arguments about that issue. Despite the narrow framing of the issue by the parties, the police officer testified broadly, explaining not only his reasons for the initial stop but his rationale for ordering Fineday out of his vehicle at gunpoint. There was sufficient testimony and evidence in the record for the district court to make factual findings about the expansion of the stop and address its validity. It was not improper for the district court to do so. *See State v. Evans*, 756 N.W.2d 854, 870 (Minn. 2008) (explaining that a district court's factual findings should not be disturbed if there is reasonable evidence supporting those findings).

Finally, we turn to the legal conclusion that the expansion of the stop was not supported by reasonable, articulable suspicion. We review legal conclusions in pretrial orders suppressing evidence de novo. *Jordan*, 742 N.W.2d at 152. Here, we consider whether the expansion of the stop—the officer’s decision to order Fineday out of his SUV at gunpoint—is supported by reasonableness.³ To determine reasonableness, we consider all of the circumstances. *See Terry*, 392 U.S. at 21, 88 S. Ct. at 1879; *see also Camara v. Municipal Court*, 387 U.S. 523, 536-37, 87 S. Ct. 1727, 1735 (1967) (noting that there is no definitive test for reasonableness other than “balancing the need to search [or seize] against the invasion which the search [or seizure] entails”).

The only argument offered by the state is that the police officer’s expansion of the stop was reasonable because the police officer believed Fineday was trying to flee. But the district court determined that the officer’s observations—the fact that Fineday took his time to pull over and accelerated once his tires slipped off the road into the snow—were evidence of Fineday trying to avoid getting his vehicle stuck in the snow, not evidence that he was trying to flee. It is not reasonable to order an individual pulled over for—at most—malfunctioning vehicle equipment to exit their vehicle at gunpoint. Because the evidence supports the district court’s finding that Fineday was not trying to flee, the police officer’s

³ The first two reasons which could potentially justify an expansion of the traffic stop—the original purpose of the stop or independent probable cause—do not apply here. *Askerooth*, 681 N.W.2d at 365. The police officer stated that he initiated the stop because of malfunctioning vehicle equipment, a traffic infraction that would not require the officer to order Fineday out of his vehicle at gunpoint. Nor did the police officer have independent probable cause to expand the stop because the district court factually determined that Fineday was not trying to flee.

decision to order Fineday out of his vehicle at gunpoint was not reasonable. Accordingly, the officer's expansion of the traffic stop was not justified.

Affirmed.