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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0803

State of Minnesota,
Respondent,

vs.

Jeremy Allen Giles,
Appellant.

Filed April 22, 2019
Affirmed
Bratvold, Judge

McLeod County District Court
File No. 43-CR-17-1776

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael K. Junge, McLeod County Attorney, Daniel R. Provencher, Assistant County Attorney, Glencoe, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Lauren F. Schoeberl, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Reilly, Judge; and Bratvold, Judge.

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

BRATVOLD, Judge

Appellant challenges his conviction of being an ineligible person in possession of a firearm and argues that the district court erred in denying his motion to suppress. He argues

that (1) police lacked a reasonable, articulable suspicion of criminal activity when an officer stopped the car in which Giles was riding; and (2) law enforcement was not authorized to search the car after arresting the driver for driving while impaired (DWI). We conclude that police had reasonable articulable suspicion for the stop and that the search incident to arrest was lawful under *Arizona v. Gant*, 556 U.S. 332, 334, 129 S. Ct. 1710, 1712 (2009). Accordingly, we affirm.

FACTS

On November 5, 2017, at approximately 12:25 a.m., Officer Fiebelkorn patrolled downtown Glencoe, and saw a silver car driving northbound "on Pryor Avenue across the intersection of 16th Street." Fiebelkorn was driving westbound on 16th Street and "recognized this travel to be strange" because this street only led to a school, which was not open due to the late hour. Fiebelkorn watched the car, ran its plates, and determined that the registered owner was J.R. from Buffalo, Minnesota. Fiebelkorn turned his squad car around and "attempt[ed] to follow the car," but realized that he had "actually passed" the car where it was parked on the 1500 block of Stevens Avenue. Fiebelkorn eventually "relocated the vehicle going westbound" on Pryor, and followed it. Fiebelkorn "observed on two separate occasions that the vehicle did not emit a turn signal prior to 100 feet before the turn. The vehicle would stop, indicate its turn by signaling, and then make the turn." After observing these two separate violations, Fiebelkorn activated his emergency lights to stop the car.

Fiebelkorn approached the car and spoke to the driver, J.R., and "recognized [her] behavior to be strange or abnormal, because while she was looking at me, she had reached"

into the center console. Fiebelkorn also noticed that J.R. had "rapid speech, she was excited, her eyes were sensitive to light, she was unable to sit still, and had rigid arms." Accordingly, Fiebelkorn believed that J.R. was under the influence of a stimulant. Fiebelkorn called for backup, and then asked J.R. to exit her car and perform field sobriety tests.[1] During the tests, Fiebelkorn saw that J.R. had "eyelid tremors," her pupils were dilated, and she had "heat bumps" on her mouth or tongue, which are "consistent with smoking from a glass pipe." J.R. then attempted to get by Fiebelkorn and return to her car. Fiebelkorn stopped and arrested J.R., and brought her to his squad car.

Fiebelkorn returned to the car and asked appellant Jeremy Allen Giles, who was seated in the front passenger seat, to get out of the car. Fiebelkorn then conducted a search of the driver's area and found a hypodermic needle inside the driver's side door and a clear baggie "with a crystal-like substance in it that [he] recognized to be methamphetamine" near the center console. Next, Fiebelkorn searched the entire car and found a backpack in the backseat, "which contained a box of ammunition with six rounds of .38 caliber missing," men's cologne, men's deodorant, and a receipt. Later, Fiebelkorn returned to the 1500 block of Stevens Avenue where the car had been parked earlier, and found a loaded ".38 long barreled revolver" on the ground near the street.

The state charged Giles with being an ineligible person in possession of a firearm under Minn. Stat. § 624.713, subd. 1(2) (2016). Giles filed a motion to suppress the ammunition and firearm evidence, arguing that the search was unlawful because

[1] At about this time, Fiebelkorn saw a two-way radio in the center console and "three car CD deck radios with wires which appeared to be ripped" in the backseat.

Fiebelkorn did not have reasonable, articulable suspicion of criminal activity when he stopped J.R., and Fiebelkorn lacked probable cause to search the vehicle after J.R.'s arrest. The state opposed Giles's motion, arguing that the stop was legal and that "there was independent probable cause, outside of the driver's arrest, which gave law enforcement the right to search the vehicle."

At a contested omnibus hearing, Fiebelkorn testified to the facts described above. Giles testified that J.R. and he were unfamiliar with Glencoe and had gotten lost. Giles also testified that a man that he did not know was in the backseat of J.R.'s car. After they noticed the squad car following them, the man was concerned because he had outstanding warrants. J.R. parked briefly at "Stevens and 15th," the man exited the car and he ran away. Giles denied that the gun or backpack belonged to him. Fiebelkorn testified that he did not see a third person in J.R.'s car.

The district court denied Giles's motion to suppress, concluding that J.R. "turned twice without signaling" before reaching the intersection, and therefore, "the stop of the vehicle was proper." The district court also determined that J.R. was arrested for driving under the influence, Fiebelkorn reasonably believed she was "under the influence of a stimulant," and, therefore, Fiebelkorn was "permitted to search the driver's area for evidence of a controlled substance." After he found a needle in "the driver's side door pocket and a baggie containing crystal like substance believed to be methamphetamine, [Fiebelkorn] then had probable cause under the vehicle exception to expand the search to the entire vehicle including the passenger compartment, trunk and any containers or bags."

The parties stipulated to facts under Minn. R. Crim. P. 26.01, subd. 4, to preserve the suppression issue for appellate review. Based on the stipulated facts, the district court found Giles guilty of being an ineligible person in possession of a firearm and imposed sentence, committing Giles to the Commissioner of Corrections for 45 months. Giles appeals.

D E C I S I O N

I. The district court did not err in determining that Fiebelkorn had reasonable, articulable suspicion to justify the stop.

Giles argues that there was no reasonable, articulable suspicion to support Fiebelkorn's stop of J.R.'s car and that the district court erred in denying his motion to suppress the evidence obtained from the stop. This court reviews a district court's pretrial order on a motion to suppress evidence using a mixed standard of review. *See State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). A district court's factual findings are reviewed for clear error and legal determinations are reviewed de novo. *Id.*

Both the United States and Minnesota Constitutions guarantee the right to be free from unreasonable searches and seizures. *See* U.S. Const. amend. IV; Minn. Const. art. I, § 10. The United States Supreme Court has determined that the "[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) (citations omitted). When making an investigatory stop of a vehicle, a police officer must have specific and articulable facts that establish "'reasonable suspicion' of a motor vehicle

violation or criminal activity." *State v. Duesterhoeft*, 311 N.W.2d 866, 867 (Minn. 1981) (citation omitted). An officer must also "have a particularized and objective basis" to suspect that the person is engaged in criminal activity. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). If an officer observes a violation of a traffic law, even one that is insignificant, there is an objective basis for an investigatory stop. *Id.*

Minnesota law provides that, "A signal of intention to turn right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning." Minn. Stat. § 169.19, subd. 5 (2016). At the omnibus hearing, Fiebelkorn testified that, on two occasions, he observed J.R. "stop" at an intersection before indicating her intent to turn with a turn signal, "and then make the turn." Accordingly, the district court determined that J.R. "turned twice without signaling at least 100 feet before doing so" and, therefore, she violated section 169.19. Because Fiebelkorn saw J.R. violate a traffic law, the district court concluded that the stop was proper.

On appeal, Giles concedes that J.R. failed to signal 100 feet before she turned, but argues that J.R. was unfamiliar with the area and did not decide to turn until she had reached the intersection. Giles argues that, because the statute requires a "signal of *intention to turn*," and J.R. did not form her intention to turn until she reached the intersection, she did not violate any traffic law. *See* Minn. Stat. § 169.19, subd. 5 (emphasis added).

When determining whether a driver has committed a traffic violation, the legality of the driver's conduct is determined objectively. *See State v. Anderson*, 683 N.W.2d 818, 822-23 (Minn. 2004). The driver's subjective understanding, or misunderstanding, of the law is not relevant to determining whether an officer has acted lawfully in conducting a

traffic stop. *See, e.g.*, *State v. Wendorf*, 814 N.W.2d 359, 364 (Minn. App. 2012) (holding that an officer's traffic stop was valid, and that it was irrelevant that driver was subjectively confused as to whether statute allowed officer to make a traffic stop based solely on a seat-belt violation). Accordingly, even if J.R. did not decide to turn until she reached the intersection, Fiebelkorn had an objective basis to believe that J.R. had violated section 169.19 and the stop was proper. *See George*, 557 N.W.2d at 578.

Giles also argues that "intention to turn" in the statute refers to the individual driver's intent to turn. The state argues that "intention to turn" in section 169.19, subdivision 5, actually refers to "the signal itself, not the driver's intent." Statutory interpretation is a legal question, which we review de novo. *Dep't of Pub. Safety v. Van Bus Delivery Co.*, 400 N.W.2d 759, 760 (Minn. App. 1987). When a statute's text is plain and unambiguous, a court must not engage in further construction. *Anderson*, 683 N.W.2d at 821.

For two reasons, we agree with the state's interpretation of this unambiguous statute, which provides that, "A signal of intention to turn right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning." Minn. Stat. § 169.19, subd. 5. First, Minn. Stat. § 169.57, subd. 2(a) (2018), provides the requirements for "vehicle signals," and states that a vehicle must "be equipped . . . with a lamp or lamps . . . capable of clearly indicating *any intention to turn* either to the right or to the left and shall be visible and understandable during both daytime and nighttime from a distance of 100 feet both to the front and rear." Minn. Stat. § 169.57, subd. 2(a) (emphasis added). Second, section 169.19, subdivision 5, states that the intention to turn must "be given

continuously." We conclude that the statute refers to the signal itself, because a driver's intent cannot be shown "continuously." *See* Minn. Stat. § 169.19, subd. 5.

In sum, we affirm the district court's determination that police had reasonable, articulable suspicion to stop J.R.'s car.

II. The district court did not err by denying Giles's motion to suppress evidence obtained from the warrantless search of J.R.'s vehicle incident to her arrest.

Giles argues that the district court erred by denying his motion to suppress evidence obtained from the warrantless search of J.R.'s vehicle, because the search was not justified under the search-incident-to-arrest exception to the warrant requirement.

We begin our review with the United States and Minnesota Constitutions, which guarantee individuals the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A warrantless search is reasonable only if it falls within an exception to the warrant requirement. *State v. Stavish*, 868 N.W.2d 670, 675 (Minn. 2015). "A search incident to a lawful arrest is a well-recognized exception to the warrant requirement under the Fourth Amendment." *State v. Bernard*, 859 N.W.2d 762, 766 (Minn. 2015). The arresting officer may search "(1) the arrestee's person, and (2) the area within the arrestee's immediate control." *State v. Bradley*, 908 N.W.2d 366, 369 (Minn. App. 2018).

Giles contends that the district court misapplied the United States Supreme Court's decision in *Arizona v. Gant* when it determined that Fiebelkorn was permitted to search the car after J.R. was arrested. In *Gant*, the Supreme Court clarified the search-incident-to-arrest exception, stating that "[p]olice may search a vehicle incident to

a recent occupant's arrest *only if* the arrestee is within reaching distance of the passenger compartment at the time of the search *or [if]* it is reasonable to believe the vehicle contains evidence of the offense of arrest." 556 U.S. at 351, 129 S. Ct. at 1723 (emphasis added).

Giles argues that neither of the *Gant* scenarios apply in this case. We agree with Giles that the first scenario, where "the arrestee is within reaching distance" of the passenger compartment, does not apply here because J.R. had already been arrested and secured in Fiebelkorn's squad car when police searched her vehicle. Giles also argues that the second scenario does not apply because it was unreasonable for Fiebelkorn to believe that "evidence of the offense of arrest," a DWI, would be in J.R.'s car. Giles argues that the only "reasonable place [Fiebelkorn] might have expected to find evidence of DWI was in J.R.'s body, not in her vehicle."

Giles correctly notes that *Gant* held that the search of appellant's vehicle was unlawful. *Id.* at 344, 129 S. Ct. at 1718-19. Police arrested Gant "for driving with a suspended license"; Gant was "handcuffed, and locked in the back of a patrol car." *Id.* at 335, 129 S. Ct. at 1714. Officers then searched Gant's car and found cocaine in the pocket of a jacket on the backseat. *Id.* at 336, 129 S. Ct. at 1715. The Supreme Court held that the search was unlawful because Gant was secured at the time of the search, and officers could not have reasonably believed that evidence of the crime of arrest (driving with a suspended license) would be in Gant's car. *Id.* at 344, 129 S. Ct. at 1719. The Court noted other cases, including *Thornton v. United States*, 541 U.S. 615, 632, 124 S. Ct. 2127, 2137 (2004) and *New York v. Belton*, 453 U.S. 454, 462, 101 S. Ct. 2860, 2865 (1981), where police arrested defendants for drug offenses before their vehicle was searched. *Gant* observed that drug

offenses, unlike driving with a suspended license, "suppl[ied] a basis for searching the passenger compartment of an arrestee's vehicle and any containers therein." *Id*. at 343-44, 129 S. Ct. at 1719.

Giles argues that *Belton* and *Thornton* are distinguishable because J.R. was arrested for DWI, not possession of drugs, therefore, Fiebelkorn could not have reasonably believed that he would find drugs in the car. Although Giles is correct that J.R.'s offense is different from the arresting offenses in *Belton* and *Thornton*, the record here still supports the district court's determination that Fiebelkorn reasonably believed that he would find drugs—evidence of the crime of arrest—in the car.

Fiebelkorn testified that when he initially approached the car, J.R. moved "furtive[ly]" and reached into the center console, and he could not see what was in her hand. During field sobriety tests, Fiebelkorn noticed that J.R. had "eyelid tremors," dilated pupils, and "heat bumps" on her tongue, which is "consistent with smoking from a glass pipe," and J.R. had other characteristics consistent with stimulant use. Finally, after J.R. failed two sobriety tests, she attempted to get past Fiebelkorn to return to her car. Fiebelkorn testified that because of this, he went to the car to "look[] for evidence related to the crime, which would have been the DWI." Based on his observations, it was reasonable for Fiebelkorn to believe that evidence of the crime would be in the vehicle.

Also, Fiebelkorn was not limited to searching J.R.'s person to obtain DWI evidence because Fiebelkorn had a reasonable belief that DWI evidence would be found in the car. *Gant* requires that "[p]olice may search a vehicle incident to a recent occupant's arrest only if . . . it is reasonable to believe the vehicle contains evidence of the offense of arrest."

556 U.S. at 351, 129 S. Ct. at 1723. Giles contends that the only place Fiebelkorn could find evidence of DWI was in "J.R.'s body, not in her vehicle." Evidence of drugs or drug paraphernalia in J.R.'s car is circumstantial evidence that J.R. was driving while impaired. Accordingly, we conclude that the district court did not misapply *Gant* and affirm the denial of Giles's motion to suppress.

The state also asserts two alternative grounds to support the search of the vehicle: (1) Fiebelkorn's observation of J.R.'s "furtive movements" in the center console gave him probable cause to search the car, and (2) Fiebelkorn's observation of the stolen radio items, in plain view, justified the search. *See State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007) (stating that the automobile exception allows officers to search a car without a warrant if they have probable cause to believe the car contains contraband). Because the search was justified under *Gant*, we do not consider or decide the state's alternative arguments.

In conclusion, Fiebelkorn had reasonable, articulable suspicion to stop J.R.'s car, and the search subsequent to J.R.'s arrest was lawful under *Gant*. Accordingly, we affirm the district court's denial of Fiebelkorn's motion to suppress.

Affirmed.