STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1989

State of Minnesota,
Respondent,

vs.

Jesse William Johnson,
Appellant.

Filed October 28, 2019
Affirmed
Reilly, Judge

Meeker County District Court
File No. 47-CR-17-737

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

Brandi Schiefelbein, Meeker County Attorney, Jeffrey D. Albright, Assistant County Attorney, Litchfield, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Charles F. Clippert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Reilly, Judge.

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

REILLY, Judge

In this direct appeal from the judgment of conviction for driving while impaired—test refusal, appellant argues that the district court erred in denying his motion to suppress

evidence because the police officer impermissibly expanded the scope of the traffic stop by subjecting him to field sobriety testing. We affirm.

FACTS

This appeal arises from appellant Jesse William Johnson's conviction for third-degree driving while impaired—test refusal. On August 3, 2017, a deputy with the Meeker County Sheriff's Office was on patrol in the city of Cosmos. The deputy observed a pickup truck with a non-functioning tail light and initiated a traffic stop of the truck.

The deputy's body camera recorded the events following the traffic stop. The deputy observed appellant exhibiting erratic behaviors and acting nervous. Specifically, appellant was making "weird movements" inside of his truck and looking away. The deputy characterized these nervous behaviors to be beyond those expected to occur during a routine traffic stop.

From a distance of less than five feet, the deputy saw that appellant's pupils were abnormally constricted. The deputy directed his flashlight into the truck, but moved the light away from appellant's face and confirmed that appellant's pupils were still constricted when the light was absent, suggesting to the deputy that appellant was under the influence of a controlled substance. When the deputy asked appellant if he was under the influence of a controlled substance, appellant denied being under the influence.

Because the deputy's observations led him to believe appellant was under the influence of a controlled substance, he asked appellant to exit his truck to perform field sobriety tests. Based on appellant's performance during the field sobriety tests, the deputy placed appellant under arrest for probable cause to believe appellant was driving under the

influence. The deputy obtained a search warrant for appellant's blood and explained to appellant that refusal to submit to a blood test authorized by a warrant was a crime. Appellant refused to submit to a blood test, but agreed to submit to a urine test. The deputy then obtained a search warrant for both a blood and a urine test. The deputy asked appellant if he would take the urine test. Appellant became belligerent and made derogatory statements toward the deputy. Appellant refused to submit to either a blood or urine test.

Appellant moved the court to dismiss the third-degree test refusal charge and the fourth-degree controlled substance driving-while-impaired charge, and to suppress evidence obtained as part of an illegally expanded traffic stop. The district court denied appellant's motions. The state subsequently withdrew the fourth-degree controlled substance driving-while-impaired charge. Following a court trial, the district court found appellant guilty of third-degree driving while impaired—test refusal, and of a rear tail light violation. This appeal follows.

D E C I S I O N

Appellant challenges the district court's denial of his motion to suppress. When reviewing a pretrial order on a motion to suppress evidence, an appellate court reviews the district court's factual findings for clear error and its legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). A factual finding "is not clearly erroneous if it is reasonably supported by the evidence as a whole." *State v. Barshaw*, 879 N.W.2d 356, 366 (Minn. 2016).

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Warrantless searches are

generally per se unreasonable. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). Moreover, 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 [the Fourth Amendment]." *Whren v. United States*, 517 U.S. 806, 809-10, 116 S. Ct. 1769, 1772 (1996) (citations omitted).

If an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping a vehicle. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). Furthermore, an officer may expand a traffic stop if the incremental intrusion is tied to and justified by "(1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in *Terry*." *State v. Askerooth*, 681 N.W.2d 353, 365 (Minn. 2004). Reasonable, articulable suspicion requires that the officer identify "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968). The reasonable, articulable suspicion standard is satisfied when an officer observes conduct that leads him to reasonably conclude, based on his experience, that "criminal activity may be afoot." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quoting *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997)). Evidence must be suppressed if it is obtained as a result of a seizure without reasonable suspicion. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011).

Here, the deputy stopped appellant's vehicle because of a non-functioning tail light. *See* Minn. Stat. § 169.57, subd. 1(a) (2018) (requiring that any vehicle be equipped with at least two stop lamps on the rear of the vehicle that emit a red or yellow light). Appellant

does not dispute the functionality of his vehicle's tail light and does not challenge the lawfulness of the initial stop. Rather, appellant argues that the deputy illegally expanded the scope of the traffic stop. Therefore, this court must determine whether there was reasonable, articulable suspicion to justify the deputy's expansion of the stop by requesting that appellant exit his vehicle and perform field sobriety tests.

The deputy observed that appellant exhibited signs of being under the influence of a controlled substance. Specifically, appellant exhibited erratic behaviors, acted very nervous, moved around his vehicle, did not make eye contact, and had abnormally constricted pupils. While nervousness alone is not sufficient to support the expansion of a stop, nervousness coupled with other "particularized and objective facts" may provide reasonable articulable suspicion. *State v. Syhavong*, 661 N.W.2d 278, 282 (Minn. App. 2003). Moreover, signs of being under the influence of a controlled substance are considered and may provide a police officer with specific and articulable facts to support an expansion of the stop. *See State v. Hegstrom*, 543 N.W.2d 698, 702 (Minn. App. 1996) (considering "the observed symptoms of some type of intoxication, particularly the severely constricted pupils" as a factor in establishing probable cause to believe driver was under the influence of a controlled substance). Appellant's nervousness coupled with his constricted pupils, a recognized sign of intoxication, formed a reasonable basis for the deputy to believe appellant was under the influence of a controlled substance, and justified his expansion of the scope of the traffic stop.

Finally, "by virtue of the special training they receive, police officers articulating a reasonable suspicion may make inferences and deductions that might well elude an

untrained person." *State v. Flowers*, 734 N.W.2d 239, 251-52 (Minn. 2007) (citing *Askerooth*, 681 N.W.2d at 369)). Here, the deputy has been a licensed peace officer since 2015 and has completed multiple drug and impaired driving courses. Additionally, the deputy has experience being around people who are under the influence of controlled substances. The deputy relied on his observations along with his training and experience to deduce that appellant was under the influence of a controlled substance and he reasonably expanded the stop on that basis. The district court did not err when it determined that appellant's conduct and the deputy's observation provided a sufficient basis to expand the scope of the stop.

Affirmed.