STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0308

State of Minnesota,
Respondent,

vs.

Ruben Leeander Chappelle,
Appellant.

Filed November 25, 2019
Reversed
Kirk, Judge[*]

Ramsey County District Court
File No. 62-CR-18-200

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

William M. Bailey, Olson Defense, Bloomington, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Jesson, Judge; and Kirk, 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

KIRK, Judge

Appellant Ruben Leeander Chappelle challenges his convictions of fifth-degree possession and sale of a controlled substance. Appellant argues that the district court erred in denying his motion to suppress and dismiss because the police obtained evidence as a result of a stop that was not supported by reasonable, articulable suspicion. He also argues that he did not voluntarily consent to an officer subsequently moving his vehicle, which led to the discovery of controlled substances. Because the police did not have reasonable, articulable suspicion to support the stop, we reverse.

FACTS

The homicide of S.W. occurred in October 2015. By the end of 2015, four people had been charged in connection with the homicide. In August 2016, two of the cases had resulted in convictions, and two were still pending. During the investigation and prosecution of these individuals, appellant's name was never mentioned. Early in the investigation, appellant had come to the attention of law enforcement because S.W.'s phone records showed approximately 132 contacts between S.W. and appellant before S.W.'s death. However, no further investigation took place at that time. Later in August 2016, the police received a report from the Minnesota Bureau of Criminal Apprehension indicating that DNA obtained from a light switch in S.W.'s bedroom matched that of appellant. Because of the earlier phone records and the DNA, the police decided to interview appellant regarding his knowledge of and relationship with S.W., so that they

could either include or exclude him as a suspect in the homicide or call him as a witness, if necessary, in one of the two unresolved cases.

Sergeant Jake Peterson, the lead investigator in S.W.'s homicide, instructed Sergeant Jeff Stiff to locate appellant so that he could be interviewed and served with a subpoena in case his testimony was needed in one of the pending cases. On August 26, 2016, while looking for appellant and surveilling appellant's girlfriend's residence, Stiff observed appellant enter that residence. Later, Stiff observed appellant leave the residence, put some things in his truck, and drive away. Stiff, who was in plain clothes, followed appellant in an unmarked vehicle and called for a marked police car to make a traffic stop. Officer Donald Chouinard responded and stopped appellant's vehicle. Pursuant to Stiff's directives, Chouinard asked appellant to step out of the vehicle. Stiff informed appellant that the reason for the traffic stop was that Peterson wanted to talk to him and would arrive soon.

Because appellant's vehicle was parked in a high-traffic area, Stiff asked appellant if the police could move it to a nearby CVS parking lot, and appellant agreed. Sergeant Dylanger Flenniken arrived on the scene a couple minutes later, and Stiff instructed him to move appellant's vehicle to the parking lot. When Flenniken entered the vehicle, he smelled marijuana. He looked in the center console and found a bag of marijuana. A more thorough search of the vehicle uncovered a digital scale and a backpack and cooler of marijuana. The police eventually arrested appellant for possession of marijuana.

Prior to the arrest, Stiff drove appellant to the CVS parking lot. Peterson arrived at the parking lot approximately 15 minutes after Chouinard first stopped appellant. He

explained to appellant that the purpose of the stop was to discuss S.W.'s homicide. He then interviewed appellant at the police station. Nothing further came of the investigation of appellant's role in S.W.'s homicide.

The state charged appellant with fifth-degree possession of a controlled substance, Minn. Stat. § 152.025, subd. 2(1) (2016), and fifth-degree sale of a controlled substance, Minn. Stat. § 152.025, subd. 1(1) (2016), based on the marijuana found in the vehicle. Appellant filed a motion to suppress the evidence and dismiss the charges against him. He argued that the police obtained the marijuana in his vehicle in violation of the Fourth Amendment to the United States Constitution and article I, section 10 of the Minnesota Constitution. Specifically, he claimed that the traffic stop was illegal because the officers lacked reasonable, articulable suspicion to stop him, and that the search of his vehicle was illegal because his consent to the police officer moving his vehicle was not voluntary. After an omnibus hearing, the district court denied appellant's motion to suppress and dismiss. Appellant agreed to a stipulated-facts trial to preserve the issue for appellate review under Minn. R. Crim. P. 26.01, subd. 4. He was found guilty of fifth-degree possession of a controlled substance and fifth-degree sale of a controlled substance, and the district court sentenced him. This appeal follows.

D E C I S I O N

Both the United States and Minnesota Constitutions protect citizens against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Any evidence obtained as a result of an illegal search or seizure is barred from trial under the exclusionary rule. *Wong Sun v. United States*, 371 U.S. 471, 485, 83 S. Ct. 407, 416 (1963).

A seizure occurs when an officer restrains the liberty of a citizen by means of physical force or show of authority. *Terry v. Ohio*, 392 U.S. 1, 19 n.16, 88 S. Ct. 1868, 1879 n.16 (1968). Reasonable suspicion permits the police to seize a person temporarily to investigate criminal activity, as long as the police have "objective, individualized articulable suspicion of criminal wrongdoing by that person." *Ascher v. Comm'r of Pub. Safety*, 519 N.W.2d 183, 184 (Minn. 1994). "Reasonable suspicion must be 'based on specific, articulable facts' that allow the officer to 'be able to articulate . . . that he or she had a particularized and objective basis for suspecting the seized person of criminal activity.'" *State v. Diede*, 795 N.W.2d 836, 842-43 (Minn. 2011) (quoting *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995)). The seizure cannot be based on "mere whim, caprice or idle curiosity." *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996). This court reviews the district court's determination as to reasonable suspicion de novo, but reviews the underlying findings of fact for clear error. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

There is no dispute that the traffic stop of appellant was a seizure requiring reasonable suspicion. The state argues that the police had reasonable suspicion that appellant was involved in the homicide of S.W. The specific, articulable facts that it points to are appellant's DNA on S.W.'s bedroom light switch and the 132 phone contacts between appellant and S.W. before S.W.'s death. These facts do not establish reasonable suspicion to connect appellant to the homicide. The homicide occurred in October 2015. The police learned of the phone records fairly quickly during the investigation. They received the DNA report in August 2016 and decided to investigate appellant. But the

DNA was not particularly significant. Based on the phone records, the police already knew that appellant had some sort of relationship with S.W., so the presence of his DNA in S.W.'s bedroom added little information. Furthermore, the DNA was on the bedroom light switch, not on the murder weapon, the victim's body, or near the victim's body. This evidence indicated only that appellant had a relationship with S.W. and that he had been in S.W.'s bedroom at some point.

Appellant may have been a person of interest for the police to interview, but the police did not have reasonable suspicion that he was a suspect ten months after the murder. Four people were already in custody, and none of them mentioned appellant or indicated that anyone else was involved. That appellant was not a true suspect is further demonstrated by the fact that the surveilling officer merely asked a patrol officer to make a routine traffic stop so that appellant could be interviewed. If appellant was viewed as a murder suspect who might be armed and dangerous, as the state claimed at the omnibus hearing, then the traffic stop likely would have involved multiple squad cars and officers.[1]

[1] The state relies on *Terry* to argue that the police could conduct a traffic stop here, but *Terry* was based on the need to take swift measures for public safety and crime prevention. 392 U.S. at 30, 88 S. Ct. at 1884. A *Terry* stop is clearly permissible when there is reasonable suspicion that the person stopped has just committed, is committing, or is about to commit an offense. 4 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 9.2(a), at 373 (5th ed. 2012). When the police stop a suspect in connection with an offense that has not occurred in the immediate past, however, "the benefits are less substantial and the risks more substantial . . . so that extension of *Terry* in this direction should be undertaken more cautiously." *Id.* at 374; *see also Blaisdell v. Comm'r of Pub. Safety*, 375 N.W.2d 880, 881-82 (Minn. App. 1985) (holding that "the 'less than probable cause' or 'specific and articulable facts' standard established in *Terry* as an exception to the warrant requirement is specifically premised on the exigencies of ongoing or imminent criminal activity"), *aff'd on other grounds*, 381 N.W.2d 849 (Minn. 1986).

Because there was no reasonable, articulable suspicion to stop appellant's vehicle, we need not decide whether appellant voluntarily consented for the police to enter and move his vehicle. The evidence obtained as a result of the illegal traffic stop is inadmissible under the exclusionary rule. Therefore, the district court erred in denying appellant's motion to suppress the evidence and dismiss the charges.

Reversed.

Here, the police began to search for appellant ten months after the crime, there was no indication that appellant was avoiding the police, and no witness had implicated appellant in the crime. Due to the large gap of time between the crime and the seizure, appellant's interest in being free from intrusion outweighed any public interest in safety. The police knew that appellant was a potential witness and that he was at his girlfriend's residence. They could have used alternative, less intrusive means to contact appellant to interview him or subpoena him.