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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0016**

State of Minnesota,
Respondent,

vs.

Keith Ward Hohlen,
Appellant.

**Filed January 6, 2020
Affirmed
Worke, Judge**

Stearns County District Court
File No. 73-CR-16-10701

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

Janelle P. Kendall, Stearns County Attorney, Kyle R. Triggs, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court erred by denying his motion to suppress drug evidence because the police did not possess a reasonable articulable suspicion to seize him. We affirm.

FACTS

On October 12, 2016, Officer Merkling of the St. Cloud Police Department was performing traffic duty when he ran appellant Keith Ward Hohlen's license plate through the National Crime Information Center (NCIC) database. The tags on Hohlen's license plate indicated a valid registration, but the NCIC database indicated that the truck was registered to a dealership in Farming, and that the registration had expired in November 2015. Suspecting that Hohlen's registration tags were stolen, Officer Merkling stopped Hohlen's truck.

Officer Merkling provided Hohlen's registration information to dispatch, but did not receive their response because he was speaking with Hohlen at the time. During his conversation with Hohlen, Officer Merkling observed a strong odor of unburnt marijuana coming from the truck. In response to Officer Merkling's questioning regarding whether he had any marijuana in his truck or on him, Hohlen turned over a small amount of marijuana and a pipe.¹ During a search incident to arrest, Officer Merkling discovered a plastic sandwich bag in Hohlen's pocket that also contained marijuana which, when

¹ Hohlen does not challenge his arrest. He only challenges the basis for the seizure.

combined with the amount he initially turned over, weighed 63 grams. Hohlen was charged with fifth-degree drug possession.

Hohlen moved to suppress the evidence, arguing that Officer Merkling lacked a reasonable articulable suspicion to justify the initial traffic stop. The district court denied the suppression motion, and the matter was submitted to the district court on stipulated evidence pursuant to Minn. R. Civ. P. 26.01, subd. 4. The district court found Hohlen guilty and sentenced him to a year-and-a-day stayed sentence, with 34 days in jail. This appeal followed.

D E C I S I O N

Hohlen argues that the district court erred by denying his motion to suppress because Officer Merkling's suspicion that his registration tags were stolen was not reasonable. "When reviewing a district court's pretrial order on a motion to suppress evidence, we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted).

Officer Merkling pulled Hohlen over because he suspected that the registration tags on Hohlen's vehicle were stolen.² Police officers can conduct limited traffic stops to investigate suspected criminal activity when they can "point to specific and articulable

² Hohlen asserts that Officer Merkling provided no explanation for stopping his truck, but this assertion is not supported by the record. Officer Merkling was asked what concerns he had regarding the registration tags, to which he responded that in previous cases people "will try to take a registration sticker off of a different vehicle or put it on another vehicle, or sometimes they are stolen from a vehicle and placed on a different vehicle[.]" and then testified that he pulled the vehicle over and inspected the tags.

facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000) (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)). This court has noted two requirements for a constitutional investigatory stop of a motor vehicle: the suspicion must be particularized to the individual vehicle, and the stop must be objectively reasonable. *State v. Cox*, 807 N.W.2d 447, 450-51 (Minn. App. 2011).

Hohlen argues that Officer Merkling’s suspicion that his registration tags were stolen was not objectively reasonable and was not particularized to his truck. Hohlen asserts that Officer Merkling’s suspicion was not objectively reasonable because Officer Merkling testified that he was aware that the NCIC database could be wrong. However, Hohlen’s characterization of Officer Merkling’s testimony is not supported by the record.

Officer Merkling acknowledged that “[t]here are things that could be incorrect” in the NCIC database, but the surrounding context of that statement makes Officer Merkling’s reliance on the database objectively reasonable. In full, Officer Merkling stated: “Every time I’ve used [the NCIC database] it’s been accurate or up to date. There are things that could be incorrect in there but I’ve never really encountered anything that’s been out of the ordinary or incorrect.” Similarly, Officer Merkling stated that he has experienced delays in the system where “it comes back registered to a dealership.” However, Officer Merkling went on to explain that “usually, the driver . . . is able to provide me with some different paperwork that I visually confirm but that – it never comes back delayed through the system like that. I’ve never seen it.”

In similar circumstances, this court held that “[w]hen a license plate displays 2010 tabs, but a computer check indicates that the vehicle’s registration expired in 2008, it is objectively reasonable for an officer to infer that the 2010 tabs may have been stolen.” *Id.* at 451. Here, Officer Merklings search of the NCIC database indicated that Hohlen’s registration expired in November 2015, despite the valid November 2016 tag on the plates. While Officer Merklings indicated that he was aware of delays in the NCIC database, nothing in his testimony either undermined the reasonableness of his reliance on the database, or provided an explanation for the one-year discrepancy³ between the reported expiration of Hohlen’s registration and the tags displayed on his truck. Therefore, in accordance with *Cox*, Officer Merklings possessed an objectively reasonable articulable suspicion that Hohlen’s tags were stolen.

Hohlen next argues that Officer Merklings suspicion was not particularized to his truck, because the state only presented evidence that Hohlen’s tags did not match the database. Hohlen argues that the stop of his truck is analogous to the stop in *Britton*, where the supreme court stated that the mere presence of a broken car window, standing alone, is insufficient to support a reasonable suspicion that the vehicle had been stolen. 604 N.W.2d at 88. The supreme court reversed the district court’s decision denying Britton’s suppression motion because “the officer’s stated rationale for stopping this car would support stopping any car at all with a broken window.” *Id.* at 89.

³ An employee of the Stearns County License Center testified that a three-month delay is normal, but no evidence was presented which would explain a one-year delay.

Here, however, Officer Merkling could point to facts about this specific vehicle that made him suspect it was displaying stolen registration tags, namely, that the NCIC database indicated that the registration had been expired for nearly a year, even though the vehicle displayed valid registration tags. As stated in *Cox*, this mis-match provided Officer Merkling with an objectively reasonable basis to suspect that Hohlen's tags had been stolen. 807 N.W.2d at 451. Because Officer Merkling possessed an objectively reasonable suspicion of theft particularized to Hohlen's truck, the district court did not err by denying his suppression motion.

Finally, Hohlen asserts a number of violations of his constitutional rights in his pro se brief and claims that the district court judge should have been disqualified. Because Hohlen does not support his assertions with either argument or authority, they are forfeited. *State v. Anderson*, 871 N.W.2d 910, 915 (Minn. 2015) (“An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.” (quotation omitted)).

Affirmed.