STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1207

State of Minnesota,
Respondent,

vs.

Donn Richard Ganske,
Appellant.

Filed May 4, 2020
Affirmed
Connolly, Judge

Crow Wing County District Court
File No. 18-CR-18-2789

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

Donald F. Ryan, Crow Wing County Attorney, Brainerd, Minnesota; and

Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Reilly, Presiding Judge; Connolly, Judge; and Hooten, Judge.

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

CONNOLLY, Judge

Appellant, convicted of driving while impaired (DWI), challenges the denial of his motion to suppress the results of a search of his vehicle, arguing that there was not a reasonable, articulable suspicion of criminal activity to justify the initial traffic stop, and the results of his blood test, arguing that the search warrant for the test was not supported by probable cause. Because there was no error in denying appellant's motion to suppress the results of the vehicle search or of the blood test, we affirm.

FACTS

In July 2018, an officer saw appellant Donn Ganske stop his car in the middle of a highway, activate his turn signal, drive straight ahead, stop again on the shoulder, and twice exceed the speed limit. When the officer stopped appellant and approached his car, he saw a green, leafy material he recognized as marijuana, a torch lighter, and a digital scale in plain view. A subsequent search of the car revealed an open can of beer, a white powder and small crystalline shards that field-tested positive for methamphetamine, a small rock that field-tested positive for cocaine, several hundred dollars, and shotgun ammunition.

The officer and appellant recognized each other from a previous stop of appellant, and appellant asked the officer if he seemed "impaired like last time?" The officer applied for a search warrant, received one, and took appellant to a hospital, where a blood test revealed amphetamine and methamphetamine.

Appellant was charged with: (1) DWI—under the influence of controlled substances, (2) DWI—body contains any amount of a controlled substance, (3) possession of ammunition by an unlawful user of a controlled substance, and (4) driving after cancellation—inimical to public safety. He was also charged with two counts of fifth-degree possession of a controlled substance. He moved to suppress the evidence resulting from the search of his car and his blood test. Following a contested omnibus hearing at which the arresting officer testified, the district court concluded that the officer had (1) a particularized and objective basis to believe that appellant was engaged in criminal activity when he stopped appellant and (2) probable cause to support a warrant to test appellant's blood. The district court denied the motion to suppress the evidence of the blood test.[1] Appellant stipulated to the state's case to preserve the pretrial issue for appeal.

The district court found appellant guilty of DWI—body contains controlled substances, and dismissed the other counts. Appellant was sentenced to 42 months in prison. The execution of the sentence was stayed, and appellant was placed on probation for seven years. On appeal, he challenges the denial of the motion to suppress evidence from the search of his vehicle on the ground that the officer lacked both a particular and objective basis to believe appellant was engaged in criminal activity when he stopped

[1] The district court also concluded that the officer had probable cause to search appellant's vehicle, that appellant's challenge to the preliminary breath test (PBT) was moot because he did not submit to a PBT, that there was probable cause for proceeding to trial, that the officer's statements should not be suppressed, and that appellant's argument that nine minutes between the prosecutor's signing of the complaint and the officer's signing of it had no merit, but these conclusions are not challenged on appeal.

appellant and probable cause to support the application for a search warrant to test appellant's blood.

D E C I S I O N

1. Traffic Stop

When reviewing a district court's suppression order, this court independently reviews the facts and the law to determine whether the district court erred by suppressing or refusing to suppress the evidence. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). A district court's factual findings are reviewed for clear error. *State v. Lee*, 585 N.W.2d 378, 383 (Minn. 1998). The legal question of reasonable suspicion is reviewed de novo. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). "[T]he reasonable suspicion standard is not high." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotations omitted). An officer who "observes a violation of a traffic law, however insignificant, . . . has an objective basis for stopping the vehicle." *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

The officer testified that: (1) as he was waiting to turn south on to a highway, he saw a car going south activate its turn signal as if the driver planned to turn on to the road on which the officer was waiting; (2) the car came to a stop in the middle of the highway, but did not turn; (3) the officer thought his squad car might be blocking the driver's turn, so he turned on to the highway and began driving south; (4) the car followed him south on the highway, but then pulled halfway on to the shoulder and stopped; (5) the officer, concerned about signs of driver impairment, pulled off the highway to see what was going on; (6) the car drove back on to the highway and passed the officer; (7) the officer lost

visual contact with the car, but later, when going south on a county road, recognized the car going north on that road by its license plate; (8) he turned around, followed the car, and discovered it was going four miles per hour over the speed limit; and (9) he activated his lights and stopped the car.

The district court found:

> [The officer] was justified in stopping the vehicle in this case based on the observed driving conduct and the vehicle's speed. [He] testified that he observed the vehicle cross the lines on the roadway during the initial encounter with the vehicle. Later, after confirming it was the same vehicle based on the license plate number, he registered the vehicle driving 49 miles per hour in a 45 mile per hour zone.

Appellant argues that the stop was unconstitutional because "[t]he nature of the driving violation during the initial encounter was brief, and minimal," and the violation might have resulted from the squad car blocking the road; the second violation was also "minimal" and might have resulted from appellant's being confused by the squad car;[2] and the speeding was "minor." But *any* observed violation of a traffic law, "however insignificant," justifies a stop of the vehicle. *Id.* There is no support for the view that this does not apply to minimal or minor violations.

Appellant goes on to argue that, because *George* includes the word "ordinarily" before its assertion that any violation, however insignificant, can justify a stop, *see id.*, "the totality of the circumstances must be examined," and here, "[u]nder the totality of the

[2] In light of the contraband in plain view in appellant's car, appellant very possibly was unnerved by the presence of a squad car, but this would not have prevented the officer in the squad car from having a reasonable suspicion on which to base a stop of appellant.

circumstances, there was no reasonable suspicion for the traffic stop." But appellant does not show any reason why this was *not* an ordinary situation in which the rule would apply, particularly in view of the *Timberlake* holding that "the reasonable suspicion standard is not high." 744 N.W.2d at 393 (quotations omitted).

Therefore, the officer had reasonable suspicion to stop appellant's vehicle.

2. Blood Test

An appellate court affords great deference to the issuing judge's determination of whether a search warrant is supported by probable cause. *State v. Jones*, 678 N.W.2d 1, 11 (Minn. 2004). On appeal, this court's task is to ensure that the issuing judge had a "substantial basis" for concluding that probable cause existed. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). Significant deference is afforded to the decision of the issuing judge, whose task is "to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit . . . , including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Jenkins*, 782 N.W.2d 211, 223 (Minn. 2010) (quotations omitted).

The application for the search warrant recounted the circumstances leading to the stop, then stated that: (1) when the officer approached the stopped vehicle, he immediately saw a scale with marijuana and methamphetamine residue in plain view, as well as a torch lighter; (2) the officer recognized the driver as appellant from a previous arrest in which the officer had located a methamphetamine pipe and one-half pound of marijuana in appellant's car; (3) the previous arrest resulted in a draw of appellant's blood that tested

positive for methamphetamine; (4) the search of appellant's car revealed a small amount of marijuana, a marijuana pipe, a snort straw and a scale that tested positive for methamphetamine, small shards of a crystalline substance that field-tested positive for methamphetamine, a white rock that crumbled and field-tested positive for crack cocaine, and $1,800 in cash; and (5) appellant refused to perform any field sobriety tests. Based on this information, the district court found probable cause to issue a search warrant for a blood or urine sample from appellant.

Appellant argues that there was no probable cause because the totality of circumstances must be considered and one circumstance was that the application said nothing about appellant's appearance or demeanor. But appearance and demeanor are not essential to a finding of probable cause, and a substantial basis for the finding of probable cause here was provided by four circumstances: (1) appellant's driving prior to the stop; (2) the scale with marijuana and methamphetamine residue in plain view at the time of the stop; (3) the officer's recognition of appellant from a prior arrest that had resulted in a showing of methamphetamine in his system; and (4) the marijuana, pipe, snort straw, crystalline substance, and white rock found in appellant's car.[3]

The issuing judge had a substantial basis to find probable cause for the warrant.

Affirmed.

[3] Also, appellant's recognition of the officer from a previous arrest and his reference to "last time" could arguably be considered a circumstance that supports a finding of probable cause for a warrant to search his blood or urine.