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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2012

State of Minnesota,
Respondent,

vs.

Lysa Kaye Conner,
Appellant.

Filed June 29, 2020
Reversed; motion granted
Connolly, Judge

Crow Wing County District Court
File No. 18-CR-17-2418

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

Donald F. Ryan, Crow Wing County Attorney, Stephanie Rae Shook, Assistant County Attorney, Brainerd, Minnesota (for respondent)

Lysa Kaye Conner, Motley, Minnesota (pro se appellant)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Rodenberg, Judge.

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

CONNOLLY, Judge

Appellant, pro se, challenges her conviction for first-degree controlled substance crime (possession), arguing that the district court erred by denying her motion to suppress the evidence obtained as the result of the expansion of a traffic stop. Because the district court erred in denying appellant's motion to suppress, we reverse.

FACTS

In May 2017, a deputy stopped a car after noticing that its windows were darkened. Prior to the stop, the car made a few quick turns that appeared to the deputy to be evasive, then stopped in front of a store. The deputy pulled up behind it.

As the deputy approached the car, its driver, later determined to be appellant Lysa Kaye Conner, held out a driver's license and a letter from a doctor indicating that she needed her car windows to be darkened. When the deputy asked for proof of insurance, appellant gave him an expired insurance card. While she looked for the current card, the deputy went back to his squad car.

There he learned that appellant's car was currently insured and that, in March 2016, the car had been stopped and subjected to a K9 sniff while being driven by a person known to the deputy to be a drug user. When the deputy went back to appellant's car, she showed him her current insurance card. He told her that she would not receive a citation for the darkened window; she said she would have the window tint fixed. The deputy then inquired if he could ask appellant a few more questions, and she replied, "Go ahead."

Based on the ensuing conversation, the deputy decided to conduct a K9 search of appellant's car, which revealed a total of 59.5 grams of methamphetamine, 5.5 grams of marijuana, and $390 in cash.

Respondent State of Minnesota charged appellant with first-degree possession of a controlled substance. She moved to suppress the evidence, which included the deputy's report and the DVD with the squad car video, arguing that the deputy lacked reasonable suspicion to expand the scope of the traffic stop. Her motion was denied. Following a stipulated-facts trial, she was convicted of first-degree possession of a controlled substance.

She challenges her conviction, arguing that the district court erred in denying her motion to suppress because the deputy lacked the reasonable, articulable suspicion of additional illegal activity necessary to expand the stop.

D E C I S I O N

"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). Appellant's motion to suppress was based exclusively on the deputy's lack of reasonable suspicion to expand the stop.

Generally, the scope and duration of a stop must be limited to the underlying justification for the stop, absent further facts. *State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003). Expanding either the scope or the duration of a stop requires an additional reasonable, articulable suspicion. *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). Articulable suspicion is an objective standard, determined from the totality of the

circumstances. *State v. Lande*, 350 N.W.2d 355, 357-58 (Minn. 1984). An expansion of a stop "not strictly tied to the circumstances that rendered the initiation of the stop permissible must be supported by at least a reasonable suspicion of additional illegal activity." *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012).

Here, the deputy stopped appellant because of the tint on her windows, and she could not immediately provide proof of current insurance. Both issues were quickly resolved: the deputy measured the tint of appellant's windows and told her she would not receive a citation; he also found that her insurance was current, first from a phone call, then when she produced her current proof of insurance. To expand the stop beyond the window tint and insurance issues, the deputy had to have "at least a reasonable suspicion of additional illegal activity." *See id*.

The deputy noticed that appellant appeared nervous, and that her nervousness appeared to increase over time. But nervousness, even increasing nervousness, during a traffic stop is not "illegal activity." *See id.* The deputy also believed appellant had been less than consistent and candid in explaining why she was going to a particular store in Brainerd when similar stores were closer to her residence. Again, choosing to drive farther to a particular store is not illegal activity. Finally, the fact that appellant's car had been stopped and subjected to an apparently unproductive K9 search a year earlier while another person was driving it did not support "a reasonable suspicion of additional illegal activity" on appellant's part during this stop.

The deputy had to have a reasonable suspicion of appellant's illegal activity before he expanded the stop by asking her if she would answer more questions. We conclude that,

when he expanded his stop of appellant, the deputy had no basis for a reasonable suspicion of any additional illegal activity.[1]

Reversed; motion granted.

[1] Respondent has moved to strike portions of appellant's brief and addendum that were not presented to the district court. An appellate court will strike from a party's briefs documents and references to documents that are not properly before the court on appeal. *Fabio v. Bellomo*, 489 N.W.2d 241, 246 (Minn. App. 1992), *aff'd*, 504 N.W.2d 758 (Minn. 1993). This court may not base a decision on matters outside the record on appeal or consider matters not produced and received in evidence below. *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). Appellant has not objected to the motion to strike. We grant the motion, noting, however, that none of the documents to which respondent objects had any effect on our decision.