STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0131

State of Minnesota,
Appellant,

vs.

Leland Wayne Thompson,
Respondent.

Filed August 8, 2022
Reversed and remanded; motion denied
Ross, Judge

Ramsey County District Court
File No. 62-CR-21-5196

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

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

Mark D. Nyvold, Fridley, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Smith, John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

ROSS, Judge

The district court issued a pretrial order suppressing evidence of a sawed-off shotgun in the pending trial of Leland Thompson for unlawfully possessing the gun, reasoning that police unconstitutionally used a bicycling-law violation merely as "an excuse" to stop Thompson. Because the officers' subjective motivations are irrelevant to the search-and-seizure analysis and the objective circumstances establish reasonable suspicion justifying the stop, we reverse the suppression order and remand for trial.

FACTS

An anonymous 9-1-1 caller reported "somebody dealing drugs" near the intersection of Wabasha Street and Kellogg Boulevard in downtown St. Paul at about 3:30 on a Tuesday morning in September 2021. The caller described a group of "about six to eight people . . . on bicycles," consisting of "white and black and Native" men and women. He said that one man, "[a] Native [American] with long hair," had a pistol. The caller did not see the gun but reported that the man had engaged in "an altercation" with someone else and then "reached into his backpack like he was gonna grab one." The caller declined to give his name or telephone number, saying that he preferred to remain anonymous.

Police officer Charles Lemon and his partner drove to the intersection and saw a man and a woman on bicycles near the Wabasha Street bridge. The pair began riding away from the officers. Officer Lemon noticed that both were riding on the sidewalk and without a forward-facing lamp, which violates Minnesota Statutes section 169.222 (2020). The officers got out of their squad car and told the couple to stop. Officer Lemon directed the

man, whom the officer later identified as Leland Thompson, to get off his bike and remove his backpack, which was "slung horizontally across the front of his chest." Thompson told the officers that he had a felony warrant for his arrest, a fact the officers confirmed. An officer handcuffed Thompson, and Officer Lemon searched the backpack and found a sawed-off shotgun.

Possessing a short-barreled shotgun is unlawful, Minn. Stat. § 609.67, subd. 2 (2020), and Thompson, who was convicted of first-degree manslaughter in 1999, is ineligible to possess any firearm under Minnesota Statutes section 624.713, subdivision 1(2) (2020). The state charged Thompson with unlawfully possessing a firearm as an ineligible person. Thompson moved the district court to suppress all evidence flowing from the stop, contending that the stop was unlawful under the Fourth Amendment.

The district court granted Thompson's motion to suppress the evidence. It held that the anonymous tip lacked sufficient indicia of reliability to support reasonable suspicion to stop Thompson. It rejected the state's contention that the stop was justified by Thompson's unlawfully riding his bicycle on a business-district sidewalk or by his riding without proper lighting. It did so reasoning that the cycling-violation bases were merely "an excuse for a stop which had already happened rather than a justification preceding the stop."

The state appeals.

DECISION

We will review the merits of the state's pretrial appeal because the challenged suppression order has a critical impact on the state's ability to successfully prosecute Thompson, and we reverse because the suppression order rests on legal error.

State objections to pretrial decisions are not automatically subject to appellate review. We will review the state's pretrial appeal of an order suppressing evidence only if the state shows that the order critically impacted the case by significantly reducing the likelihood of a successful prosecution. *State v. Obeta*, 796 N.W.2d 282, 286 (Minn. 2011). The prerequisite exists here. The district court excluded all evidence obtained from Officer Lemon's search, including evidence about the shotgun that Thompson is charged with illegally possessing. Without the shotgun evidence, the state cannot successfully prosecute Thompson for unlawfully possessing a firearm. We turn to the merits of the district court's order.

We reverse the district court's suppression order. We review factual findings in support of a decision to suppress evidence for clear error and legal conclusions de novo. *State v. Wilde*, 947 N.W.2d 473, 476 (Minn. App. 2020), *rev. denied* (Minn. Oct. 1, 2020). The district court suppressed the evidence here because it believed that police obtained it during an unconstitutional seizure. The Constitution prohibits "unreasonable searches and seizures." U.S. Const. amend. IV. A police officer who stops and detains a person to briefly investigate possible criminal activity has not unreasonably seized the person if the circumstances and their rational implications reasonably justify the detention. *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968). If the Fourth Amendment allows an officer to stop and investigate a person whom he reasonably suspects is involved in possible criminal activity, it also necessarily allows the officer to stop a person whom he knows has committed a criminal offense, including even minor unlawful acts like traffic offenses. *State v. Poehler*, 935 N.W.2d 729, 733 (Minn. 2019). Our only question, which we easily answer, is whether

the circumstances provided reasonable suspicion that Thompson was engaged in an unlawful act that the officers observed.

The record reveals that Thompson's two minor bicycling offenses justified the stop. "No person shall ride a bicycle upon a sidewalk within a business district unless permitted by local authorities." Minn. Stat. § 169.222, subd. 4(d). Nor may a person ride at night "unless the bicycle or its operator is equipped with . . . a lamp which emits a white light visible from a distance of at least 500 feet to the front." *Id.*, subd. 6(a)(1). Observing violations of this section provides reasonable suspicion for an officer to stop the offender. *United States v. Banks*, 553 F.3d 1101, 1104–05 (8th Cir. 2009) (affirming the denial of a motion to suppress because the defendant was riding his bicycle at night without a light). Officer Lemon testified without any disputing evidence that he saw Thompson and his companion "riding their bicycles, they were doing so on the sidewalk . . . . They also didn't have lights emitting, specifically white lights emitting from the front of the bicycles, which is also a violation of the law during the nighttime hours." The district court implicitly credited this testimony as an accurate description of the circumstances. That the officer observed Thompson riding his bicycle in a manner that violated the law justified the officer's temporary seizure to investigate under the Fourth Amendment.

Thompson offers two fact-related theories to support the district court's suppression order. Both fail.

Thompson argues first that the evidence does not support reasonable suspicion for the stop based on the headlight violation because Officer Lemon could not have seen that Thompson lacked the lighting required by statute. But the officer testified that he observed

Thompson riding his bicycle without the required headlamp. We do not weigh credibility on appeal, *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012), and the district court did not find the officer's testimony incredible. And Thompson points to no evidence indicating that he possessed a headlamp, let alone evidence that he possessed one that was illuminated before the stop.

Thompson argues second that the evidence does not support reasonable suspicion for the stop based on the sidewalk violation because the state did not prove that he was riding in the business district. Thompson does not dispute that he was riding his bicycle on a business-district sidewalk when the officers stopped him. He instead urges us by motion to disregard references in the state's brief citing authorities showing the boundaries of the city's business district because the state did not present that zoning information during the suppression hearing in the district court. He is correct that "[t]he record on appeal consists of the documents filed in the district court, the offered exhibits, and the transcripts of the proceedings, if any." Minn. R. Crim. P. 28.02, subd. 8. But the contested authorities are St. Paul's publicly accessible zoning code and its official zoning map delineating the business district where the stop occurred. These undisputedly accurate public records need not be in the record for our consideration. We reject Thompson's motion to strike the state's references to the zoning information. Even if we disregarded the references, the officer testified that he saw Thompson riding in the business district, and this testimony is ample evidence of the infraction. During the hearing in the district court, Thompson did not contest the accuracy of the officer's testimony about where he was cycling, and he also does not contest it on appeal.

We are not persuaded to a different holding by the district court's rationale. The district court rejected the bicycling violations as bases to justify the stop, deeming the officer's description of the violations to be "an excuse for a stop which had already happened rather than a justification preceding the stop." This reasoning rests on the erroneous legal premise that a seized person's pre-stop infraction justifies a stop only if the infraction is the officer's true motive for the stop. To the contrary, more than twenty-five years ago a unanimous Supreme Court rejected this premise, recognizing that its precedent "foreclose[s] any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved." *Whren v. United States*, 517 U.S. 806, 813 (1996). A proper reasonableness analysis under the Fourth Amendment considers "whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing" as derived from the totality of the circumstances, *State v. Lemert*, 843 N.W.2d 227, 231 (Minn. 2014) (quotation omitted), not whether the detaining officer actually relied on that objective basis. The district court's reasonable-suspicion analysis improperly adopted a subjective approach that led to a faulty conclusion.

Reversed and remanded; motion denied.