STATE OF MINNESOTA
IN COURT OF APPEALS
A11-324

State of Minnesota,
Appellant,

vs.

Purvis Ray,
Respondent.

Filed June 13, 2011
Reversed and remanded
Connolly, Judge

Hennepin County District Court
File No. 27-CR-10-42384

Lori A. Swanson, Attorney General, St. Paul, Minnesota; and

Susan L. Segal, Minneapolis City Attorney, Heidi L. Johnston, Assistant City Attorney, Minneapolis, Minnesota (for appellant)

David W. Merchant, Chief Appellate Public Defender, Mark D. Nyvold, Assistant Public Defender, St. Paul, Minnesota (for respondent)

Considered and decided by Toussaint, Presiding Judge; Connolly, Judge; and Willis, 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

CONNOLLY, Judge

The state appeals from the district court's pretrial order concluding that police lacked probable cause to arrest respondent for two gross misdemeanors: second-degree driving while impaired and driving after cancellation. Because we conclude that the state has demonstrated critical impact and that the police had probable cause to arrest respondent for the two gross misdemeanors, we reverse and remand.

FACTS

At approximately 8:35 a.m. on January 2, 2010, a Minneapolis police officer observed a vehicle with a set of beads hanging from the rearview mirror. The officer stopped the vehicle. The driver was identified as respondent Purvis Ray. The officer observed that respondent had bloodshot, watery eyes. Respondent told the officer that he did not have a valid driver's license. The officer verified the status of respondent's license and learned that it had been canceled as inimical to public safety. The officer arrested respondent for this offense.

While en route to the jail, the officer smelled a strong odor of alcohol emanating from respondent. Officers conducting an inventory search of respondent's vehicle contacted the arresting officer and stated that they had found several open bottles of alcohol in the vehicle. Respondent refused the officer's request to perform field sobriety tests. The officer read the Minnesota Implied Consent Advisory and asked respondent to submit to a blood or urine test; he refused both tests.

The state charged respondent with three counts: (1) gross-misdemeanor, second-degree driving while impaired for test refusal pursuant to Minn. Stat. § 169A.25, subd. 1(b) (Supp. 2009); (2) gross-misdemeanor driving after cancellation pursuant to Minn. Stat. § 171.24, subd. 5 (2008); and (3) petty-misdemeanor driving with a suspended object between the driver and the windshield pursuant to Minn. Stat. § 169.71, subd. 1(a)(2) (Supp. 2009). Respondent pleaded not guilty to all three counts. Before trial, respondent moved for a probable-cause determination. The district court, based solely on the complaint, concluded that the state lacked probable cause on the gross-misdemeanor counts:

> I'm going to find that the police in this instance did lack probable cause to stop the vehicle. It seems to me that they stopped him for having something on his rearview mirror, but there's no indication of any deviant driving conduct, there is no indication of the smell of alcohol, and only when they made the stop and they did an inventory search they found [a]n open bottle that triggered some field sobriety tests, but I don't think that rises to the standard necessary for an articulable reason to stop Mr. Ray's vehicle, so I'm going to find there's no probable cause.

The state subsequently dismissed the petty misdemeanor. On appeal, the state challenges the district court's probable-cause determination.

D E C I S I O N

The state may appeal pretrial orders pursuant to Minn. R. Crim. P. 28.04, subd. 1(1). "When the state appeals a pretrial order under Minn. R. Crim. P. 28.04, a reviewing court will reverse only if the state demonstrates clearly and unequivocally that the district court erred in its judgment and, unless reversed, the error will have a critical

impact on the outcome of the trial." *State v. Trei*, 624 N.W.2d 595, 597 (Minn. App. 2001), *review dismissed* (Minn. June 22, 2001).

I. The district court's ruling had a critical impact on the state's case.

Dismissal of charges against the defendant satisfies the critical-impact requirement. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). Because the district court's ruling led to the dismissal of the charges for test refusal and driving after cancellation, the ruling had a critical impact on the state's case. Therefore, the question becomes whether the district court clearly and unequivocally erred in its judgment.

II. The district court erred in concluding that the police lacked probable cause to believe that appellant had committed the charged crimes.

A. The police had reasonable articulable suspicion to stop respondent's vehicle.

"[T]he state and federal constitutions allow an officer to conduct a limited investigatory stop of a motorist if the state can show that the officer had a particularized and objective basis for suspecting the particular person stopped of criminal activity." *State v. Anderson*, 683 N.W.2d 818, 822-23 (Minn. 2004) (quotation omitted). In general, "if an officer observes a violation of a traffic law, no matter how insignificant the traffic law, that observation forms the requisite particularized and objective basis for conducting a traffic stop." *Id.* at 823 (citing *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997)).

Minnesota law prohibits the operation of a motor vehicle with any object suspended between the driver and the windshield, with a few exceptions not applicable here. Minn. Stat. § 169.71, subd. 1(a)(2) (exempting sun visors, rearview mirrors, "driver

feedback and safety-monitoring equipment," and "global positioning systems or navigation systems"). It is undisputed that respondent had a set of beads hanging from his rearview mirror in violation of Minn. Stat. § 169.71, subd. 1(a)(2). Because respondent violated a traffic law, the officer had reasonable, articulable suspicion to stop respondent's vehicle.

B. Probable cause to arrest

"An initially valid stop may become invalid if it becomes 'intolerable' in its 'intensity or scope.'" *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (quoting *Terry v. Ohio*, 392 U.S. 1, 17-18, 88 S. Ct. 1868, 1878 (1968)). "An intrusion not closely related to the initial justification for the search or seizure is invalid under [the Minnesota Constitution] unless there is independent probable cause or reasonableness to justify that particular intrusion." *Askerooth*, 681 N.W.2d at 364. "The Supreme Court has acknowledged that most drivers expect during a traffic stop to be detained briefly, asked a few questions, and then be allowed to leave after an officer either issues a citation or concludes that the issuance of a citation is not warranted." *Id.* at 366. "Requesting a stopped driver to show his license is standard procedure in stop cases." *State v. Schinzing*, 342 N.W.2d 105, 109 (Minn. 1983); *see also Askerooth*, 681 N.W.2d at 365 n.7 (driver's "statement that he did not have a driver's license [in his possession] may have provided probable cause for a new misdemeanor violation").

Because respondent's traffic violation was a petty misdemeanor, the officer needed probable cause to believe respondent had committed a crime for which arrest is permitted before he could arrest respondent. *See* Minn. Stat. § 169.89, subd. 1 (2010)

(stating that traffic violation is generally a petty misdemeanor); *State v. Ortega*, 770 N.W.2d 145, 150 (Minn. 2009) ("The crime for which probable cause exists must be one for which a custodial arrest is authorized."); *compare* Minn. R. Crim. P. 6.01, subd. 1(a) (directing officers to issue citations for misdemeanor offenses absent certain circumstances) *with* Minn. R. Crim. P. 6.01, subd. 2 (providing for permissive issuance of a citation for gross-misdemeanor and felony offenses absent certain circumstances). Probable cause to arrest an individual "exists where the facts would lead a person of ordinary care and prudence to hold an honest and strong suspicion that the [individual] under consideration is guilty of a crime." *Trei*, 624 N.W.2d at 597.

The officer arrested respondent for gross-misdemeanor driving after cancellation. *See* Minn. Stat. § 171.24, subd. 5 (stating a person is guilty of a gross misdemeanor if he operates a motor vehicle after his license has been canceled as inimical to public safety). The elements of driving after cancellation are: (1) "the defendant operated a motor vehicle," (2) "the operation of the motor vehicle required a driver's license," (3) "the defendant's [license] was canceled at the time the defendant was operating the motor vehicle," and (4) "the defendant had been given notice of the cancellation, or reasonably should have known of it." 10A *Minnesota Practice*, CRIMJIG 29.40 (2006).

Respondent was driving when the officer stopped the vehicle, and he subsequently told the officer that he did not have a valid driver's license. The officer verified that respondent's license and driving privileges had been canceled as inimical to public safety. Under these circumstances, the officer had probable cause to believe that respondent committed gross-misdemeanor driving after cancellation, in violation of

Minn. Stat. § 171.24, subd. 5, and properly arrested respondent. Thus, the district court erred in concluding that the officer did not have probable cause to arrest respondent for driving after cancellation and should not have dismissed the charge.

C. Probable cause to invoke implied consent

In Minnesota it is a crime for a person to drive, operate, or be in physical control of a motor vehicle when that person is under the influence of alcohol or "the person's alcohol concentration at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of [a] motor vehicle is 0.08 or more." Minn. Stat. § 169A.20, subd. 1(1), (5) (Supp. 2009) (driving while impaired). An officer may require a driver to submit to chemical testing for intoxication when the officer has probable cause to believe the driver violated Minn. Stat. § 169A.20 (2008) and one of the following exist:

> (1) the person has been lawfully placed under arrest for violation of section 169A.20 . . . ;
>
> (2) the person has been involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death;
>
> (3) the person has refused to take the screening test provided for by section 169A.41 (preliminary screening test); or
>
> (4) the screening test was administered and indicated an alcohol concentration of 0.08 or more.

Minn. Stat. § 169A.51, subd. 1(b) (2008).

The complaint states that respondent "refused to perform any field sobriety tests." Although the complaint does not explicitly state that respondent refused to take the preliminary breath test, the fact that respondent refused to perform any field sobriety tests

satisfies Minn. Stat. § 169A.51, subd. 1(b)(3) (refusal to take preliminary screening test). Thus, the question remains as to whether the officer had probable cause to believe respondent had been driving while impaired, in violation of Minn. Stat. § 169A.20, at the time he asked respondent to submit to a chemical test.

"Probable cause exists when all the facts and circumstances would lead a cautious person to believe that the driver was under the influence." *Groe v. Comm'r of Pub. Safety*, 615 N.W.2d 837, 840 (Minn. App. 2000) (quotation omitted), *review denied* (Minn. Sept. 13, 2000). "This court does not review probable cause determinations de novo," but, rather, determines whether "the police officer had a substantial basis for concluding that probable cause existed at the time of invoking the implied consent law." *Id.* (quotation omitted). This court considers the totality of the circumstances when determining whether there was probable cause to believe respondent was driving while impaired. *Id.*

"Common indicia of intoxication include an odor of alcohol, bloodshot and watery eyes, slurred speech, and an uncooperative attitude." *State v. Kier*, 678 N.W.2d 672, 678 (Minn. App. 2004). During the initial stop, the officer observed that respondent's eyes were bloodshot and watery. Following respondent's arrest, "the officer smelled a strong odor of an alcoholic beverage" coming from respondent. Under the totality of the circumstances, the officer observed two objective indicators of intoxication. "An officer needs only one objective indication of intoxication to constitute probable cause to believe a person is under the influence." *Id.* at 678 (quotation omitted). These observations, in addition to the fact that respondent's license had been canceled as inimical to public

safety, gave the officer probable cause to suspect that respondent had been driving while impaired. *See* Minn. Stat. § 171.04, subd. 1(10) (2008) (prohibiting licensure to persons inimical to public safety). The district court erred in concluding that the officer lacked probable cause.

Because we conclude that the officer had probable cause to believe that respondent had been driving while impaired without evidence of the open containers of alcohol officers found during a search of respondent's vehicle, we do not address respondent's challenge to the search of his vehicle.

Reversed and remanded.