STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1317

State of Minnesota,
Appellant,

vs.

Juan Martinez Rios,
Respondent.

Filed December 24, 2012
Reversed and remanded
Rodenberg, Judge

Hennepin County District Court
File No. 27-CR-12-10979

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

Susan L. Segal, Minneapolis City Attorney, Jennifer Ardyn Saunders, Dawn M. Knutson, Assistant City Attorneys, Minneapolis, Minnesota (for appellant)

William M. Ward, Chief Hennepin County Public Defender, Abigail J. Cerra, Assistant Public Defender, Minneapolis, Minnesota (for respondent)

Considered and decided by Rodenberg, 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

RODENBERG, Judge

In this pretrial appeal, the state argues that: (1) the district court's order suppressing all evidence obtained as a result of a traffic stop has a critical impact on the

state's case, and (2) the district court erred in suppressing that evidence because the arresting officer had a particularized and objective legal basis to believe that respondent had committed a traffic violation. Because the officer had a particularized and objective legal basis to initiate the traffic stop, we reverse and remand.

FACTS

Respondent Juan Martinez Rios was arrested on September 30, 2011, and charged with driving after revocation in violation of Minn. Stat. § 171.24, subd. 5 (2010), and failing to yield right of way to an emergency vehicle in violation of Minn. Stat. § 169.20, subd. 5(a) (2010).[1]

At an omnibus hearing held on July 23, 2012, respondent challenged the basis for the traffic stop. *See generally* Minn. R. Crim. P. 11 (setting out the scope and procedures for omnibus hearings). The only witness at the hearing was Officer Daniel Tyra of the Minneapolis Police Department.

Officer Tyra testified that, on the morning in question, he was parked on the right shoulder of the southbound lane of Hiawatha Avenue in Minneapolis, Minnesota, issuing a speeding ticket to the driver of another vehicle. Officer Tyra's vehicle was "a tan Chevy Tahoe with a small Minneapolis police badge on the passenger side below the door mirror." The badge was not visible to persons driving on the highway. However, the vehicle was equipped with forward flashing lights; 360-degree flashing lights mounted under each side mirror; and red, blue, and amber strobe lights in the rear

[1] The state concedes that the second count of the complaint was erroneously charged, and does not challenge the district court's dismissal of that charge. The question of whether the district court appropriately dismissed the second count is not before this court.

window. The vehicle was owned by the Minneapolis Police Department and was used for law enforcement activity.

Officer Tyra testified that he had activated all of the emergency lights when he initiated the traffic stop for speeding, but that he had turned off the forward-facing lights when he had exited the squad car to issue the citation, leaving only the side-mirror and rear-window lights activated.

Officer Tyra testified that, after he finished talking to the driver being cited for speeding, he turned to walk back to his squad car. At that point, he saw the vehicle driven by respondent, which was southbound in the right-hand traffic lane. There were no other vehicles around it. Officer Tyra testified that respondent did not move his vehicle into the left traffic lane before passing Officer Tyra, and the police officer had to step back to avoid being struck by respondent's vehicle.

Officer Tyra then initiated a traffic stop of respondent's vehicle. Upon Officer Tyra's discovery that respondent's driving privileges had been revoked, respondent was arrested for driving after revocation.

At the close of the omnibus hearing, the district court suppressed all evidence obtained as a consequence of the traffic stop, stating:

> In short, the Court agrees with the defense. There's been no picture of the car produced, but a tan Chevy Tahoe, without a bar on the top, from a distance of a driver driving down Hiawatha Avenue could not reasonably give fair notice of 500

> feet or more that there was a squad in front of it.[2] A car with flashing lights could be—have a number of reasons.
>
> . . . The videotape also does indicate that [respondent], the driver of the car, actually did try to cross over to the left a little bit, because then [respondent] reentered fully the right lane as he drove southbound on Hiawatha Avenue.
>
> So the Court will grant the defense motion to suppress . . . .

The state appeals under Minn. R. Crim. P. 28.04, subd. 1(1).

D E C I S I O N

This court must first address whether the district court's ruling had a critical impact upon the state's case. If so, we must then determine whether the district court erred when it suppressed the evidence obtained as a result of the traffic stop.

I.

The state is permitted to appeal a district court's pretrial order under Minn. R. Crim. P. 28.04, subd. 1(1). However, in order to obtain review of the pretrial order, the state must demonstrate "clearly and unequivocally" that the order will have a "critical impact" on the state's ability to successfully prosecute its case. *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998) (quotation omitted). Only then may this court proceed to determine whether the pretrial order was erroneous. *Id.* The critical-impact standard is satisfied not only in "cases where the lack of the suppressed evidence completely destroys the state's case," but is also satisfied "where the lack of the suppressed evidence

[2] The district court appears to be referencing the language of Minn. Stat. § 169.20, subd. 5(a) (2010), which requires vehicles to yield the right of way to emergency vehicles within 500 feet that have their emergency lights and sirens activated.

significantly reduces the likelihood of a successful prosecution." *State v. Kim*, 398 N.W.2d 544, 551 (Minn. 1987).

In this case, the pretrial order would suppress all evidence possessed by the state, and would "completely destroy[] the state's case." *Id.* Therefore, the state has satisfied the critical-impact standard.

II.

The state argues that the district court erred when it determined that the traffic stop was an unreasonable seizure, thereby warranting suppression of the evidence obtained as a result of the stop. When considering the basis for an automobile stop, this court reviews the district court's factual findings for clear error, but reviews the legality of the traffic stop de novo. *Sarber v. Comm'r of Pub. Safety*, 819 N.W.2d 465, 468 (Minn. App. 2012). Even when the appeal arises from a pretrial order for suppression, this court "independently review[s] the facts and determine[s], as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

The United States and the Minnesota constitutions both prohibit unreasonable governmental searches and seizures. U.S. Const. amends. IV, XIV; Minn. Const. art. I, § 10; *Mapp v. Ohio*, 367 U.S. 643, 650, 81 S. Ct. 1684, 1689 (1961) (stating that the Fourth Amendment applies to the states under the Due Process Clause of the Fourteenth Amendment). Evidence obtained in violation of this constitutional protection is inadmissible at trial under the exclusionary rule. *Mapp*, 367 U.S. at 654–55, 81 S. Ct. at 1691. However, "[a] limited, investigatory stop of a motorist is reasonable if the state

can demonstrate that the officer had a particularized and objective legal basis for suspecting the person of violating the law." *Sarber*, 819 N.W.2d at 468. A traffic violation, no matter how insignificant, provides such a basis. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

Respondent's argument at the omnibus hearing, which was adopted by the district court and which respondent maintains on appeal, is that Officer Tyra did not have a particularized and objective legal basis to believe that respondent violated Minn. Stat. § 169.18, subd. 11(a) (2010), because *respondent* did not know that Officer Tyra's vehicle was an authorized emergency vehicle. This argument fails.

The reasonableness of a traffic stop must be examined from the point of view of the police officer. The stop is permissible "if *the officer* is able to articulate that he had a particularized and objective basis" based on *the officer's* assessment of all the circumstances and *the officer's* training and experience in law enforcement. *State v. Riley*, 667 N.W.2d 153, 156 (Minn. App. 2003) (emphasis added), *review denied* (Minn. Oct. 21, 2003).

Respondent's knowledge, or lack thereof, as to whether Officer Tyra's vehicle was an authorized emergency vehicle is not relevant to the inquiry. Nor is the question of whether a specially marked traffic-enforcement vehicle without a light bar provided respondent with adequate "notice" a factor in this inquiry.[3]

[3] Officer Tyra's testimony indicates that the squad car was marked and identified pursuant to Minn. Stat. § 169.98, subd. 2a (2010) (authorizing specially marked traffic-enforcement vehicles that are "marked only with the shield of the city . . . and the name of the proper authority on the right front door of the vehicle").

Instead, the relevant question is whether the facts were such that Officer Tyra formed a particularized and objective legal basis to believe that respondent's conduct violated Minn. Stat. § 169.18, subd. 11(a), which provides that

> [w]hen approaching and before passing an authorized emergency vehicle with its emergency lights activated that is parked or otherwise stopped on or next to a street or highway having two lanes in the same direction, the driver of a vehicle shall safely move the vehicle to the lane farthest away from the emergency vehicle, if it is possible to do so.

Respondent conceded at oral argument before this court that Officer Tyra's vehicle was an authorized emergency vehicle. Furthermore, although the statute does not define "emergency lights," the configuration of the lights on the squad car, as described by Officer Tyra in his testimony, indicates that they were "emergency lights" within the meaning of Minn. Stat. § 169.18, subd. 11(a).

With the exception of turn signal lights and hazard lights, only certain statutorily enumerated vehicles may be equipped with flashing lights. Minn. Stat. § 169.64, subd. 3 (2010). "[A]uthorized emergency vehicles" are among the classes of vehicles permitted to use flashing lights. *Id.*

With certain narrow exceptions relating to motorcycles and collector-vehicle brake lights, vehicles are generally not permitted to be equipped with blue lights. Minn. Stat. § 169.64, subd. 4 (2010). However, "[a]uthorized emergency vehicles may display flashing blue lights to the rear of the vehicle as a warning signal in combination with other lights permitted or required by this chapter." *Id.*, subd. 4(b).

According to the testimony of Officer Tyra, the rear-windshield lights were activated as respondent approached his location. These lights displayed flashing blue lights in combination with flashing red and amber lights. The rear-window and flashing side-mirror lights were thus the type of emergency lights described in Minn. Stat. § 169.64, subds. 3, 4(b).

The district court's statement that "[a] car with flashing lights could be—have a number of reasons," when combined with its expressed concern that Officer Tyra's vehicle did not possess a light bar, persuades us that the district court accepted as true Officer Tyra's testimony that the rear-window and side-mirror lights were activated at the time respondent passed the squad car.

The district court also implicitly found that respondent did not cross into the left lane by noting that respondent "did *try* to cross over to the left *a little bit*, because then [respondent] *reentered fully* the right lane." (Emphasis added.) The squad-car video and Officer Tyra's testimony support this implicit finding. We therefore conclude that Officer Tyra was presented with facts that gave rise to a particularized and objective legal basis for him to believe that respondent had failed to move into the farthest available lane when approaching a stopped authorized emergency vehicle that had its emergency lights activated, thereby appearing to the officer to be in violation of Minn. Stat. § 169.18, subd. 11(a).[4]

[4] Based on its comments regarding whether respondent tried to move over and over what distance respondent may have been able to see the flashing lights on the police vehicle, the district court seems to have analyzed whether respondent committed a provable violation of Minn. Stat. § 169.18, subd. 11(a). As discussed above, the reasonableness of

Because Officer Tyra had a particularized and objective legal basis for the traffic stop, the traffic stop did not violate respondent's right to be free from unreasonable searches and seizures, and the district court erred by excluding all evidence obtained as a consequence of the traffic stop. Accordingly, the district court's suppression order is reversed, and this matter is remanded for further proceedings consistent with this opinion.

Reversed and remanded.

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the stop must be assessed from the facts available to the officer. The state is not required to prove the violation observed by the officer beyond a reasonable doubt. *See Sarber*, 819 N.W.2d at 468 (requiring only a particularized and objective legal basis); *Riley*, 667 N.W.2d at 156 (requiring that *the officer* be able to articulate a particularized and objective legal basis based on the circumstances he observed and his training and experience).