STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1874

State of Minnesota,
Respondent,

vs.

Daniel Hudson De Beaulie Ziegler,
Appellant.

Filed September 3, 2013
Reversed and remanded
Klaphake, Judge[*]

Wright County District Court
File No. 86-CR-11-5439

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

Thomas N. Kelly, Wright County Attorney, Karen L. Wolff, Assistant County Attorney, Buffalo, Minnesota (for respondent)

John D. Ellenbecker, St. Cloud, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Bjorkman, Judge; and Klaphake, 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

KLAPHAKE, Judge

After the district court denied his pre-trial motion to suppress evidence gathered after a traffic stop, appellant was found guilty of driving after cancellation in a *Lothenbach* proceeding that preserved his right to appeal the pretrial ruling. On appeal, appellant argues that the traffic stop was invalid because it was conducted on private property where traffic laws do not apply and that the evidence flowing from the stop should therefore have been suppressed. We reverse and remand.

D E C I S I O N

Appellant Daniel Hudson De Beaulie Zeigler appeals the district court's denial of his pretrial motion to suppress evidence. "When reviewing a district court's pretrial order on a motion to suppress evidence, we review . . . factual findings under a clearly erroneous standard and . . . legal determinations de novo." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted). "[W]here the facts are not in dispute and the [district] court's decision is a question of law, the reviewing court may independently review the facts and determine, as a matter of law, whether the evidence need be suppressed." *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992). Because the parties in this case do not dispute the facts, we review de novo.

The constitutional framework of *Terry v. Ohio* and its progeny underlies this case. Within that framework, "[i]n general, the 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). "Generally, if an officer observes a violation of a traffic law, no matter how insignificant . . . , that observation forms the requisite particularized and objective basis for conducting a traffic stop." *Id*. at 823. But "an officer's *mistaken* interpretation of a statute *may not* form the particularized and objective basis for suspecting criminal activity necessary to justify a traffic stop." *Id*. at 824 (emphasis added). When a defendant challenges the validity of a traffic stop, the burden is on the state to show that the stop was valid. *See id*. at 822-23 (stating that an officer may conduct an 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") (emphasis added).

In September 2011, a police officer stopped Zeigler for a traffic violation committed on privately owned roads. During a post-stop check of Zeigler's driving record, the officer discovered evidence of a different offense and arrested Zeigler for that offense. Zeigler argues that the traffic stop was invalid because the statute on which it was predicated was not enforceable on the private roads, that all evidence flowing from the stop should have been suppressed, and that police therefore lacked probable cause to arrest him.

Minn. Stat. § 169.02, subd. 1 (2010), states that Minnesota's traffic regulations "relating to the operation of vehicles refer exclusively to the operation of vehicles upon *highways*." (Emphasis added.) Minn. Stat. § 169.011, subd. 81 (2010) defines "street or highway" as "the entire width between boundary lines of any way or place when any part thereof is open to the use of the public, *as a matter of right*, for the purposes of vehicular

traffic." (Emphasis added.) To prevail, the state must show that the roads in question fit within the statutory definition of "highway."

In *Merritt v. Stuve*, 215 Minn. 44, 9 N.W.2d 329 (Minn. 1943), the supreme court construed a statutory definition of "highway" nearly identical to the one relevant to this case. *Id*. at 49, 9 N.W.2d at 332; *compare* Minn. Stat. § 169.01, subd. 29 (1941), *with* Minn. Stat. § 169.011, subd. 81 (2010). Focusing on the key phrase, "as a matter of right," the court held that even when the public does in fact use a privately owned road, if the owner *could* place limitations on its use, then it is not open to the public "as a matter of right," and is therefore not a "street or highway." *Merritt*, 215 Minn. at 51-52, 9 N.W.2d at 333.

The *Merritt* court also held that whether a particular statutory definition applies to a particular road "must be determined from all the facts and circumstances in each particular case." *Id*. at 53, 9 N.W.2d at 334. The state points to certain facts tending to show that the roads on which Zeigler was driving are held open to the public. But the state has produced no evidence that the private owner could not place restrictions on the use of those roads if he wanted to do so. Our independent review of the record reveals no such evidence either.

In the absence of any evidence that the private owner could not place restrictions on the use of the roads in question, we cannot conclude that they are held open to the public *as a matter of right*, or that they are highways, or that the traffic law on which the officer predicated the stop was enforceable.

The state argues in the alternative that even if the traffic laws were not enforceable, the traffic stop is still valid because it was based on the officer's mistake of fact about the private versus public nature of the roads. We reject this argument for two reasons. First, whether the road is legally a "highway" or a "private road" is not a matter of fact, but a matter of law, because those terms have specific statutory meanings. Second, a stop based on a mistake of law is invalid.

In *State v. Anderson*, 671 N.W.2d 900, 904 (Minn. App. 2003), *overruled by Anderson*, 683 N.W.2d at 824, this court held that "a stop based on a law enforcement officer's objectively reasonable interpretation of an ambiguous statute that has not been interpreted by an appellate court is valid." But, the supreme court reversed, holding that "an officer's mistaken interpretation of a statute *may not* form the particularized and objective basis for suspecting criminal activity necessary to justify a traffic stop." *Anderson*, 683 N.W.2d at 824 (emphasis added).

Because the state has produced no evidence that the roads on which Zeigler was driving were held open to the public as a matter of right, we conclude that they were not "highways" under the statute, and that the traffic stop was invalid because the traffic law on which it was predicated was not enforceable on those roads. Because the traffic stop was invalid, all evidence that flowed from it should have been suppressed.

Reversed and remanded.