STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2159

State of Minnesota,
Respondent,

vs.

Tami Jo Gosen,
Appellant.

Filed September 9, 2013
Affirmed
Peterson, Judge

Martin County District Court
File No. 46-CR-11-308

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

Terry W. Viesselman, Fairmont, Minnesota (for respondent)

Tami Jo Gosen, Truman, Minnesota (pro se appellant)

Considered and decided by Stoneburner, Presiding Judge; Peterson, Judge; and Toussaint, Judge.*

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

PETERSON, Judge

In this pro se appeal from a conviction of a fifth-degree controlled-substance offense, appellant argues that the district court erred in denying her motion to suppress

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

evidence obtained during a search of her person and vehicle following a traffic stop. We affirm.

FACTS

In early 2011, the Le Sueur County Sheriff's Office notified the Martin County Sheriff's Office that appellant Tami Jo Gosen and her husband had been involved in the manufacture of methamphetamine before they moved to Martin County. In response, the Martin County Sheriff's Office distributed photographs of the couple to local pharmacies and asked them to call the sheriff's office if appellant or her husband attempted to purchase pseudoephedrine. On the evening of March 30, 2011, Detective Matthew Owens of the Martin County Sheriff's Office received a phone call from a Walgreens pharmacist who said that appellant had just purchased pseudoephedrine.

The Walgreens pharmacist told Owens that appellant had just left the store and provided a description of appellant's vehicle and her direction of travel. Deputy Jacob Ruppert responded to the call and immediately contacted two other pharmacies to ask if appellant had been there recently. The first pharmacy was closed, but an employee of a Walmart pharmacy told Owens that appellant had "just walked out of the store" after purchasing two boxes of pseudoephedrine. This contact occurred within a half hour of the initial call from the Walgreens pharmacist.

Ruppert was in his patrol car when he saw a vehicle that matched the description of the vehicle registered to appellant and appeared to be traveling faster than the posted speed limit. He turned on his radar and determined that the vehicle was traveling 62 miles per hour in a 55 mile-per-hour zone. Ruppert stopped the vehicle for speeding and

identified the driver as appellant. Appellant's teenage son was a passenger. When Ruppert approached the vehicle, he saw that appellant was "extremely nervous or possibly under the influence of narcotics," and she was "frail or skinny" with "pronounced" cheekbones.

For safety reasons, Ruppert asked appellant to get out of the vehicle. When he patted her down for weapons, he discovered two boxes of Sudafed, which contains pseudoephedrine. Ruppert also saw a white Walgreens bag in the back seat that he believed could contain more pseudoephedrine. When Ruppert asked whether there was any more pseudoephedrine in the vehicle, appellant said that she did not have more than the legal amount she was allowed. Ruppert asked appellant how many boxes of pseudoephedrine she had purchased that day, and she said she had purchased three boxes.

Ruppert placed appellant in the back of his squad car until backup officers arrived. When Ruppert told appellant that they were going to search her vehicle, she said, "Go ahead."[1] Ruppert had also independently decided to search the vehicle, stating as his reasons for doing so:

> Well, . . . a combination of everything, with the call from the pharmacy to me calling another pharmacy and having an indication she bought Sudafed at two locations in a short period of time and along with extreme nervousness and possibly under the influence of narcotics while talking to her, and visually seeing the stuff in her pocket, and additional bag in the back seat of the car.

[1] The district court specifically found that appellant's response "cannot be construed as voluntary consent."

During the search, Ruppert discovered an additional box of Sudafed, receipts for the purchases of pseudoephedrine at Walgreens and Walmart, and, in appellant's purse, a coin purse that contained several baggies, vials, and straws with a powdery substance on them, and a small amount of white powder that tested positive for methamphetamine. Appellant admitted that the white powdery substance was methamphetamine.

Appellant was charged with fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(a)(1) (2010), and another charge that was later dismissed. The district court denied appellant's motion to suppress the evidence obtained during the search of her person and vehicle. The court upheld the legality of the initial traffic stop and the expansion of the stop to search for pseudoephedrine pills.

The determination of appellant's guilt was submitted to the district court and tried on stipulated facts. The district court found appellant guilty, and this appeal followed.

D E C I S I O N

The United States and Minnesota Constitutions prohibit warrantless searches and seizures, subject to limited exceptions. U.S. Const. amend. IV; Minn. Const. art I, § 10. "In 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). "The factual basis required to support a stop is minimal." *State v. Haataja*, 611 N.W.2d 353, 354 (Minn. App. 2000) (quotation omitted), *review denied* (Minn. July 25, 2000). "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." *Anderson*, 693 N.W.2d at 823. Appellate courts review de novo the legality of an investigatory stop, examining the events surrounding the stop and considering the totality of the circumstances. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

Appellant does not contest the validity of the initial stop, which was based on a speeding violation. *See Anderson*, 693 N.W.2d at 822-23. But "the scope and duration of a traffic stop investigation must be limited to the justification for the stop[,]" *State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003), and any "intrusion not closely related to the initial justification for the search or seizure is invalid . . . unless there is independent probable cause or reasonableness to justify that particular intrusion." *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004). "To remain constitutional, an intrusion 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). "We review de novo a district court's determination of reasonable suspicion of illegal activity." *Id.* Evidence found as a result of a reasonable expansion of a traffic stop may be admitted at trial. *Id.* at 351.

> To be reasonable, the basis of the officer's suspicion must satisfy an objective, totality-of-the-circumstances test. We have described this test as asking whether the facts available to the officer at the moment of the seizure would warrant a man of reasonable caution in the belief that the action taken was appropriate. The test for appropriateness, in turn, is based on a balancing of the government's need to search or seize and the individual's right to personal security free from arbitrary interference by law officers. While the reasonable

> suspicion standard is less demanding than probable cause or a preponderance of the evidence, it still requires at least a minimal level of objective justification.

Id. at 351-52 (quotations and citations omitted).

Appellant argues that expanding the scope of the stop to include the search of her person and vehicle was illegal because "there was not a reasonable, articulable suspicion of any additional criminal activity." We disagree.

When Ruppert decided to search appellant and her vehicle, he knew that a pharmacist had reported that appellant had just purchased pseudoephedrine, a precursor drug for making methamphetamine; within 30 minutes, another pharmacist reported that appellant had purchased more pseudoephedrine; after appellant was stopped for speeding, she seemed "nervous or possibly under the influence of narcotics," and showed physical signs of using methamphetamine; and, when questioned, appellant volunteered her opinion that the amount of pseudoephedrine she possessed was within the legal limit. Under the totality-of-the-circumstances test, these objective facts articulated by Ruppert are sufficient to create a reasonable suspicion that appellant possessed more than the legal amount of pseudoephedrine. *See id*. at 354 (upholding expansion of traffic stop for traffic violations to permit inquiry into whether defendant had weapons or anything illegal in vehicle, when defendant demonstrated "violent shaking" that seemed due to nervousness and gave an "evasive" excuse for his shaking); *State v. Cox*, 807 N.W.2d 447, 452 (Minn. App. 2011) (upholding expansion of traffic stop for suspected stolen license-plate registration tabs to investigate whether defendant was driving under the influence, when defendant demonstrated signs of intoxication); *but see State v. Burbach*, 706 N.W.2d 484,

490 (Minn. 2005) (invalidating expansion of traffic stop for speeding to include search of vehicle for controlled substances, when only evidence of additional criminal activity was driver's nervous behavior and an uncorroborated tip, and driver exhibited no signs of inebriation); *Fort*, 660 N.W.2d at 419 (invalidating expansion of vehicle stop for traffic violations to include search of passenger, when officer did not suspect "any crime other than the traffic violations").

Appellant argues that the information about her criminal history that Ruppert received was false because she had "no prior charges." But the stipulation of facts submitted to the district court for trial stated that information received from the Le Sueur County Sheriff's Office "indicated that [appellant] . . . and her husband were engaged in the production of methamphetamine." Appellant could have engaged in the production of methamphetamine without ever being charged with a criminal offense. The fact that appellant had no prior charges does not demonstrate that the information was false.

Appellant also argues that because Ruppert did not know the amount of pseudoephedrine that a person can legally possess, he could not have had a reasonable suspicion that she possessed an illegal amount. Under Minn. Stat. § 152.02, subd. 6(f) (2010), "[n]o person may acquire through over-the-counter sales more than six grams of methamphetamine precursor drugs, calculated as the base, within a 30-day period." Any compound, mixture, or preparation intended for human consumption that contains pseudoephedrine as an active ingredient is a methamphetamine precursor drug. Minn. Stat. § 152.02, subd. 6(a)(1) (2010). Also, possession of any chemical reagents or

precursors with the intent to manufacture methamphetamine is a crime. Minn. Stat. § 152.0262, subd. 1 (2010). Pseudoephedrine is a chemical reagent or precursor. *Id.*

To have a reasonable suspicion of additional illegal activity Ruppert did not need to know the precise amount of pseudoephedrine that a person can legally possess or the precise amount that appellant possessed. It was sufficient to know that there is a legal limit and that appellant had purchased pseudoephedrine at two different pharmacies within a half hour. On these facts, a reasonable person would be warranted in believing that appellant purchased pseudoephedrine at the two different pharmacies in order to obtain more pseudoephedrine than she could acquire through an over-the-counter sale at just one pharmacy.

Appellant also argues that Ruppert had no reason to remove her from her vehicle and conduct a pat-down search. Ruppert testified that he removed appellant from her vehicle for safety reasons, because "a weapon could be brandished alongside of the [car] seat," and he stated that it would not have been safe to leave appellant in the car to await the arrival of backup officers because "[w]aiting . . . would have been more dangerous, just for the fact I can't see what's going on in the vehicle." He also said that if there were narcotics in the car, "she could be hiding them further in the vehicle." These are valid reasons for removing appellant from her vehicle and searching her. *See Askerooth*, 681 N.W.2d at 369-70 (permitting removal of driver from vehicle stopped for traffic violation to squad car if confinement was "reasonably related to the initial lawful basis for the stop, reasonably related to the investigation of an offense lawfully discovered or suspected during the stop, or a threat to officer safety"); *State v. Yang*, 814 N.W.2d 716, 718 (Minn.

App. 2012) ("[W]hen circumstances exist to create an objectively reasonable concern for officer safety, the officer engaged in a valid stop may also conduct a brief pat-down search for weapons.").

Finally, appellant argues that when the officers searched her vehicle, their initial suspicion was that she possessed more Sudafed than was allowed, and when they did not find more Sudafed than she admitted she had, this initial suspicion was dispelled and the officers could not prolong the stop by searching through her purse and coin purse. But, "[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." *United States v. Ross*, 456 U.S. 798, 825, 102 S. Ct. 2157, 2173 (1982). When the officers searched appellant's vehicle, they had probable cause to believe that they would find methamphetamine precursor drugs, and that was the object of the search. Appellant's purse and coin purse could conceal pseudoephedrine tablets. The officers did not need to stop the search when they discovered the pseudoephedrine that appellant admitted she possessed.

For all of these reasons, we conclude that the district court did not err by denying appellant's motion to suppress evidence obtained during the searches of her person and vehicle.

Affirmed.