STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2426

State of Minnesota,
Appellant,

vs.

James Anthony Smith,
Respondent.

Filed August 5, 2008
Affirmed
Minge, Judge

Dakota County District Court
File No. K3-07-62

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

James C. Backstrom, Dakota County Attorney, Lawrence F. Clark, Assistant County Attorney, Dakota County Judicial Center, 1560 West Highway 55, Hastings, MN 55033 (for appellant)

Mark D. Nyvold, 332 Minnesota Street, Suite W-1610, St. Paul, MN 55101 (for respondent)

Considered and decided by Minge, Presiding Judge; Klaphake, Judge; and Wright, Judge.

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

MINGE, Judge

The state brings this pretrial appeal to challenge the suppression of evidence, arguing that the officer's investigatory stop was justified based on the commission of what an officer believed to be a traffic violation and based on an outstanding warrant for respondent's son. Because the district court did not clearly err in determining that the stop was impermissible, we affirm.

FACTS

Just after 11 p.m. on January 3, 2007, Sergeant Scott Durdall ran a warrant search from his squad car's portable-data computer. Rick Austin Smith's name came up with an outstanding warrant for shoplifting and theft. Sergeant Durdall proceeded to Rick Smith's residence to make the arrest.

Sergeant Durdall observed a vehicle being operated near the listed address and ran the license plate number. The registered owner was respondent James Anthony Smith, who had the same last name and registered address as Rick Smith. Based on what he could see of the driver's hair, Sergeant Durdall concluded that the driver was male. Because the vehicle was registered to someone with the same last name and address as Rick Smith, and because it was driven by a male, Sergeant Durdall concluded that the driver of the vehicle could be Rick Smith and began following the vehicle.

Sergeant Durdall testified that when the vehicle approached a controlled intersection, the vehicle's tires passed the stop sign before coming to a complete stop. He believed that this constituted a traffic violation, and continued to follow the vehicle.

Because he was a new officer, he requested assistance in making the stop and potential arrest.

When Sergeant Durdall approached the vehicle, he learned that the driver was not Rick Smith, but the registered owner, respondent James Smith, who is Rick Smith's father. The officer noticed indicia of intoxication, including bloodshot eyes and the smell of alcohol. Respondent was subsequently charged with two counts of first-degree driving while impaired and one count of driving in violation of a restricted license.

A contested omnibus hearing was held on December 12, 2007. The district court concluded that the investigatory stop of respondent's vehicle was unlawful and that, as a result, evidence of his intoxication must be suppressed. Charges against him were therefore dismissed, and the state appeals.

D E C I S I O N

"In an appeal of a pretrial ruling suppressing evidence, this court will only reverse the district court if the state demonstrates 'clearly and unequivocally that the trial court has erred in its judgment and that, unless reversed, the error will have a critical impact on the outcome of the trial.'" *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996) (quoting *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992)). Here, respondent does not dispute that the district court's suppression of the evidence related to the stop critically impacted the outcome of the trial. Thus, this court need only consider whether the district court clearly and unequivocally erred in suppressing the evidence of the stop.

"In reviewing a district court's determinations of the legality of a limited investigatory stop, we review questions of reasonable suspicion de novo." *State v.*

Britton, 604 N.W.2d 84, 87 (Minn. 2000); *see also Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985). This court reviews the district court's findings of fact for clear error and accords great deference to the district court's credibility determinations. *Britton*, 604 N.W.2d at 87; *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff'd*, 508 U.S. 366, 113 S. Ct. 2130 (1993). A reviewing court gives "due weight to the inferences drawn from [factual findings made] by the district court." *State v. Lee*, 585 N.W.2d 378, 383 (Minn. 1998) (quotation omitted).

The district court may make reasonable inferences from the facts. *Groe v. Comm'r of Pub. Safety*, 615 N.W.2d 837, 842 n.2 (Minn. App. 2000) (finding that although the district court's choice of words, "*medical staff indicated*," appeared to be in error, the finding itself was not clearly erroneous as it could be inferred from other testimony), *review denied* (Minn. Sept. 13, 2000). Findings may be implicit in the district court's conclusion. *See Modaff v. Comm'r of Pub. Safety*, 664 N.W.2d 400, 402 (Minn. App. 2003) (stating that implicit in the district court's decision was the finding that the officer's account of the event was credible and the testimony of the driver and his passengers was not); *Umphlett v. Comm'r of Pub. Safety*, 533 N.W.2d 636, 639 (Minn. App. 1995) (concluding that Umphlett was not denied an opportunity for a second chemical test based on implicit finding by the district court), *review denied* (Minn. Aug. 30, 1995); *Daley v. Comm'r of Pub. Safety*, 384 N.W.2d 536, 538 (Minn. App. 1986) (stating that it was implicit in the district court's determination that the district court found the alcohol-concentration test to be reliable).

Following *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968), an officer must have a specific and articulable suspicion of a violation before stopping a vehicle. *Marben v. State, Dep't of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980), *review denied* (Minn. Aug. 1, 1980). The stop must be based upon "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion [of an investigatory stop]." *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880.

I.

The state argues that Sergeant Durdall's observation of what he believed to be a traffic violation under Minn. Stat. § 169.30(b) (2006) justified the investigatory stop. Minnesota cases "do not require much of a showing in order to justify a traffic stop. Ordinarily, if an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle." *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997); *see also State v. Engholm*, 290 N.W.2d 780, 784 (Minn. 1980) (finding stop lawful, despite no actual violation of traffic laws, where defendant's car was proceeding at an exceptionally slow speed and weaving in its lane just after bars had closed). But a stop may not be based on mere "whim, caprice, or idle curiosity." *Marben*, 294 N.W.2d at 699.

In *State v. George*, an officer stopped a motorcycle because it appeared to have three headlights, a lighting configuration that the officer incorrectly believed to be in violation of state law. 557 N.W.2d at 577. In fact, the motorcycle had a legally permissible number of headlights. *Id.* at 578. Because the officer was incorrect regarding the lighting statute, the supreme court held that the officer "did not have an

objective legal basis for suspecting that . . . George was driving his motorcycle in violation of any motor vehicle law (or that he was violating any other law)." *Id.* at 578.

The rule 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" has since been affirmed by the Minnesota Supreme Court. *State v. Anderson*, 683 N.W.2d 818, 824 (Minn. 2004). An officer's subjectively reasonable interpretation of a statute that has not been so interpreted by appellate courts does not provide a basis for a stop, because the determining factor is whether the officer correctly concluded that the driver was violating the traffic law, not whether the officer subjectively believed that this was the case. *Id.* at 823; *State v. Kilmer*, 741 N.W.2d 607, 609 (Minn. App. 2007) ("When a stop is premised on an ostensible violation of a traffic law, a mistaken interpretation of that law cannot provide the requisite objective basis for suspecting the motorist of criminal activity.").

In Minnesota, "[e]very driver of a vehicle shall stop at a stop sign or at a clearly marked stop line before entering the intersection, except when directed to proceed by a police officer or traffic-control signal." Minn. Stat. § 169.30(b). Thus, based on the plain language of the statute, a driver must stop at a stop sign "*before entering the intersection*." *Id.* An intersection is

> (a) . . . the area embraced within the prolongation or connection of the lateral curb lines or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

> (b) Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

Minn. Stat. § 169.01, subd. 36 (2006).

The only published case considering the manner in which a person must stop at a stop sign in order to comply with this statute is *Bohnen v. Gorr*, 234 Minn. 71, 77, 47 N.W.2d 459, 463 (1951). "One of the main purposes of the statute requiring a vehicle to stop before entering a through highway is to afford the driver of the vehicle a reasonable opportunity to observe approaching traffic on the highway to be crossed or entered." *Id.* In the context of a civil tort claim, the Minnesota Supreme Court determined that rather than having a responsibility to stop *before* the sign, a driver has a duty to "stop at a place where he [or she] may effectively observe approaching traffic." *Id.* The *Bohnen* court cited with approval several cases from other jurisdictions forging a similar rule, including one case from Pennsylvania that plainly articulated that a driver had a duty to stop at an intersection, not at a stop sign. *See id.* at 77 n.3, 47 N.W.2d at 463 n.2 (citing *Ketzel v. Lazzini*, 63 A.2d 369, 371 (Pa. Super. Ct. 1949)).

Here, the district court found that

> Sergeant Durdall testified that when the vehicle approached the intersection . . . the vehicle's tires passed the stop sign before coming to a complete stop. Sergeant Durdall believes that this driving behavior constituted a traffic violation. However, Sergeant Durdall testified that he did not stop the vehicle at this time, but continued to follow it as it turned south . . . .

. . . .

> [T]his testimony in and of itself does not establish that [respondent's] driving conduct violated Minn. Stat. § 169.30. Nor is Sergeant Durdall's subjective belief that a traffic violation occurred sufficient to validate an otherwise unlawful stop.

At trial, Sergeant Durdall testified regarding the suspected traffic violation as follows:

> DEFENSE COUNSEL: Okay. It's your position that the vehicle committed a traffic violation at a stop sign, is that right?
> DURDALL: Yes, at the one right there at 205th and 3.
> DEFENSE COUNSEL: Okay. What statute do you think was violated?
> DURDALL: Not stopping behind the stop sign . . . I think you got to come to a complete stop behind it.
>
> . . . .
>
> To be honest, I thought it was the stop sign statute.
> DEFENSE COUNSEL: Okay. Just to summarize your position then, you believe that the law requires a vehicle to stop behind the stop sign and since the vehicle didn't stop behind the stop sign in your opinion it committed a traffic violation?
> DURDALL: Yes.
> DEFENSE COUNSEL: That's fair?
> DURDALL: Yes.

The state points out that on direct examination by the prosecutor, Sergeant Durdall testified that respondent was "far into the intersection." Shortly after, the prosecutor asked Sergeant Durdall to clarify this assertion by asking whether respondent "stopped so that his vehicle was in the intersection . . . ?" Durdall replied that respondent was "past the stop sign, kind of turning to the right." Durdall went on to say, several times, that he believed that the traffic violation he observed was the failure to stop *behind* the stop sign.

Sergeant Durdall's statement regarding the vehicle being "far into the intersection" is an isolated statement that is never developed. He was not asked to describe or explain what he concluded constituted the boundaries of an "intersection," or whether the vehicle had proceeded beyond the "lateral boundary lines of the roadways of two highways" of the disputed stop. *See* Minn. Stat. § 169.01, subd. 36 (defining an intersection). He never indicated the position of the vehicle in relation to these boundary lines. He testified extensively that he believed the violation he witnessed was a failure to stop behind the stop sign. As we have already expounded, Durdall's mistaken belief regarding the requirements of the traffic statutes does not provide an objective basis for making an investigatory stop. *See Anderson*, 683 N.W.2d at 823-24.

The district court had the opportunity to evaluate the witnesses, what determined the officer's decision to make a stop, and the officer's overall approach in handling the situation. It apparently did not give any weight or credibility to the incidental intersection comment the state relies upon in this appeal. The district court implicitly found that, although respondent's vehicle passed the stop sign, there was not reliable evidence that it had entered the intersection as defined by the statute. *See Umphlett*, 533 N.W.2d at 639 (relying on implicit findings of the district court in evaluating claims made on appeal). This court reviews such factual findings for clear error, and gives due weight to the inferences drawn by the district court. *Britton*, 604 N.W.2d at 87 (reviewing factual findings for clear error); *Lee*, 585 N.W.2d at 383 (Minn. 1998) (stating that appellate courts give due weight to inferences drawn from factual findings by the

district court). Based on the tenor and substance of the testimony at trial, the district court's conclusion that no traffic violation occurred does not constitute clear error.

We conclude the district court did not clearly and unequivocally err by determining that there was not a traffic violation that provided an objective basis for the stop.

II.

The second issue is whether the officer had an objective basis for stopping respondent based on his belief that he was Rick Smith. The question before us is whether an officer may reasonably conclude that a relative of the registered owner of a vehicle, who has the same registered address as the registered owner, is the driver of the vehicle.

Although the reasonable suspicion standard is flexible, the officer must have some particularized, objective, and reasonable basis for stopping a vehicle. *See Ornelas v. United States*, 517 U.S. 690, 696, 116 S. Ct. 1657, 1661 (1996) (noting that the principle of reasonable suspicion is not a "finely-tuned standard[]"). "[G]ood faith is not enough to constitute probable cause. That faith must be grounded on facts within knowledge of the [officer], which in the judgment of the court would make his faith reasonable." *Carroll v. United States*, 267 U.S. 132, 161-62, 45 S. Ct. 280, 288 (1925) (quoting *Dir. Gen. of R.R.s v. Kastenbaum*, 263 U.S. 25, 28, 44 S. Ct. 52, 53 (1923)). This principle also applies to reasonable suspicion; good faith is not enough to constitute reasonable suspicion.

The parties dispute the application of *Pike*, 551 N.W.2d at 919, to this case. In *Pike*, a state highway trooper noted a car travelling unusually slowly. *Id.* at 920-21. He ran the vehicle's license plate number and discovered that the registered owner of the vehicle had a revoked driver's license. *Id.* at 921. The trooper could see that the driver was the same gender and age group as the registered owner. *Id.* He pulled the vehicle over. *Id.* In considering whether the district court clearly and unequivocally erred in suppressing evidence obtained as a result of the stop, the Minnesota Supreme Court concluded that because the trooper was aware that the owner of the vehicle had a revoked license, the stop was permissible. *Id.* at 922. The court stated that

> [w]hen an officer observes a vehicle being driven, it is rational for him or her to infer that the owner of the vehicle is the current operator. . . . [W]e hold that the knowledge that the owner of a vehicle has a revoked license is enough to form the basis of a 'reasonable suspicion of criminal activity' when an officer observes the vehicle being driven.
>
> This holding, of course, applies only while the officer remains unaware of any facts which would render unreasonable the assumption that the owner is driving the vehicle.

Id.

Here, we consider the reach of *Pike*. Officer Durdall was looking for the subject of a warrant. He came across a vehicle being operated in the vicinity of the subject's home and ran the plates. The vehicle was registered to a different person with the same last name and address as the subject with a warrant. But *Pike* states that it would be rational for an officer to infer that a vehicle was being operated by its owner, not a relative who shared an address with the registered owner.

Under the state's interpretation of *Pike*, an officer would have an objective reasonable suspicion of criminal activity justifying a stop whenever they came across a vehicle registered to someone with the same last name and registered address as the subject of a warrant. The state's argument would expand *Pike*. This would also be an expansive reading of "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion [of an investigatory stop]." *See Terry*, 392 U.S. at 21, 88 S. Ct. at 1880.

Officer Durdall observed a vehicle, registered to an individual without a warrant for his arrest, being driven by a male. He made this identification based on the driver's short hair cut and had no indication of the driver's age range or any other features that could reasonably identify him as the person identified in the warrant. Officer Durdall did not recognize the driver as the subject of the warrant, see the subject get into the vehicle, receive a tip that the subject of the warrant was driving the vehicle, or otherwise come into contact with the subject. Rather, he had a hunch that this "might" be respondent's son, Rick Smith. This is inadequate to constitute a reasonable suspicion of criminal activity. Based on this record, we conclude the district court did not make a clear, unequivocal error in suppressing the evidence collected as a result of the stop.

Affirmed.

Dated: