STATE OF MINNESOTA
IN COURT OF APPEALS
A10-203

State of Minnesota,
Appellant,

vs.

Mario Pacheco,
Respondent.

Filed July 27, 2010
Reversed and remanded
Worke, Judge

Hennepin County District Court
File No. 27-CR-09-19584

Lori Swanson, Attorney General, St. Paul, Minnesota 55101; and

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

Mark D. Nyvold, Special Assistant State Public Defender, St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and Bjorkman, Judge.

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

WORKE, Judge

In this pretrial appeal challenging the district court's grant of respondent's suppression motion stemming from the stop of his vehicle, the state argues (1) the

suppression order has a critical impact on its ability to prosecute respondent and (2) the district court erred in concluding that the officers lacked reasonable suspicion to stop respondent. Because the state demonstrates a critical impact and because the officers had reasonable suspicion to stop respondent, we reverse and remand.

D E C I S I O N

When appealing a pretrial order, the state must "clearly and unequivocally" demonstrate that (1) the order will have a "critical impact" on the state's ability to successfully prosecute the defendant and (2) the order was erroneous. *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998) (quotation omitted). Evidence obtained as the result of a constitutional violation must generally be suppressed. *State v. Jackson*, 742 N.W.2d 163, 177-78 (Minn. 2007). "When reviewing pretrial orders on motions to suppress evidence, [an appellate court] may independently review the facts and determine, 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).

On January 23, 2009, two Minneapolis police officers were traveling around South Minneapolis in a marked squad car as part of a routine patrol. Shortly after 3:00 p.m., the officers turned southbound onto Minnehaha Avenue. Once on Minnehaha, the officers noticed the car traveling immediately in front of them abruptly signal and pull over to the side of the road to park. The emergency lights on the squad car were not activated at this time, and the officers discussed how quickly the car parked after they turned onto Minnehaha. The officers circled the block to make additional observations and turned southbound onto Minnehaha roughly one minute later and several blocks south from

where respondent originally pulled over. The officers saw the vehicle again traveling southbound on the road, and the officers moved behind the vehicle. The car again abruptly signaled, pulled over, and parked. At this point, the officers initiated a traffic stop. The officers identified the driver of the vehicle, respondent Mario Pacheco, and determined that his driver's license was cancelled. Respondent was charged with driving-after-cancellation in violation of Minn. Stat. § 171.24, subd. 5 (2008).

Respondent moved to suppress all evidence derived from the traffic stop, arguing that the officers lacked a reasonable, articulable suspicion of criminal activity to justify the traffic stop. Both officers testified at a *Rasmussen* hearing in January 2010. The district court granted respondent's suppression motion on the record. The court noted that "[t]here was no evidence that [respondent] violated any traffic enforcement laws." The court also reasoned that there was no evidence that "either one of the officers had [] any eye contact with [respondent]" prior to the traffic stop and thus "the [c]ourt does not find that . . . there was a pattern of evasive conduct" by respondent. And the court concluded that, "while the officers articulated reasons as to why they stopped this driver in this vehicle based on their experience, [] it does not rise to the level of reasonable articulable suspicion." The court subsequently issued a brief memorandum of law summarizing the findings made on the record, and this appeal follows.

Critical Impact

Critical impact is a threshold issue and a demanding standard; in its absence, we will not review the underlying pretrial order. *State v. McCleod*, 705 N.W.2d 776, 784 (Minn. 2005). Whether the state can adequately demonstrate that a suppression order

critically impacts its ability to prosecute a defendant depends on if the ruling "significantly reduces the likelihood of a successful prosecution." *State v. Rambahal*, 751 N.W.2d 84, 89 (Minn. 2008) (quotation omitted).

The state argues that the district court's suppression order will significantly reduce the likelihood of a successful prosecution of respondent because the order precludes the state from introducing any evidence obtained from the traffic stop. Because the officers did not learn that respondent's driver's license was cancelled until after they initiated the investigatory stop, the state would have no evidence to sustain the charge of misdemeanor driving after cancellation. Accordingly, the suppression order will have a critical impact on the state's ability to prosecute respondent in this case. *See State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (holding that the suppression of evidence resulting in dismissal meets the critical-impact requirement).

Validity of the Investigatory Stop

A traffic stop is lawful under the Fourth Amendment if an officer can articulate a "particularized and objective basis for suspecting the particular persons stopped of criminal activity." *Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985) (quotation and emphasis omitted). The reasonable-suspicion standard is not high. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). But reasonable suspicion is more than merely the product of a whim, caprice, or idle curiosity. *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996). Articulable, objective facts that justify an investigatory stop are "facts that, by their nature, quality, repetition, or pattern become so unusual and suspicious that they support at least one inference of the possibility of criminal activity."

State v. Schrupp, 625 N.W.2d 844, 847-48 (Minn. App. 2001), *review denied* (Minn. July 24, 2001). The officer's suspicion may be based on the totality of the circumstances, including "the officer's general knowledge and experience, the officer's personal observations, information the officer has received from other sources, the nature of the offense suspected, the time, the location, and anything else that is relevant." *Appelgate v. Comm'r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987). We review de novo a district court's determination of reasonable suspicion of unlawful activity to justify a limited investigatory stop. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

Evasive Conduct

The state argues that respondent was engaged in "evasive conduct" that, when viewed in the context of the totality of circumstances, supported the officers' reasonable, articulable suspicion that respondent was engaged in criminal activity. The supreme court addressed whether "an evasive act alone, without other indicia of criminal activity or extreme behavior," can produce reasonable, articulable suspicion in *State v. Johnson*. 444 N.W.2d 824, 824 (Minn. 1989) (quotation omitted). In *Johnson*, a state trooper was traveling northbound on a highway, preparing to turn southbound at a crossover, when he saw a truck traveling southbound. *Id.* at 825. As the truck passed, the officer made eye contact with the driver, who proceeded to immediately exit the highway and turn onto a different road. *Id.* Moments later, the trooper saw the truck reemerge onto the highway. *Id.* The trooper did not witness any traffic violations and the truck did not exhibit any equipment deficiencies. *Id.* But the trooper assumed that the driver had abruptly exited the highway to avoid him. *Id.* The trooper conducted an investigatory stop and

determined that the driver's license had been revoked. *Id.* The driver was charged with driving after revocation and convicted, and appealed the validity of the stop. *Id.*

This court reversed the conviction, holding that "an evasive act alone, without other indicia of criminal activity or extreme behavior, does not justify an investigatory stop." *State v. Johnson*, 439 N.W.2d 400, 403 (Minn. App. 1989). The supreme court reversed this court and reinstated the conviction, noting that the rule announced by this court was inconsistent with United States Supreme Court decisions which "require only that the officer have a particular and objective basis for suspecting the particular person stopped of criminal activity." *Johnson*, 444 N.W.2d at 825 (quotation omitted). The supreme court reasoned that "if the driver's conduct is such that the officer reasonably infers that the driver is deliberately trying to evade the officer and if, as a result, a reasonable police officer would suspect the driver of criminal activity, then the officer may stop the driver." *Id.* at 827. The supreme court concluded that, although the defendant's conduct may have been "consistent with innocent behavior, it also reasonably caused the officer to suspect that defendant was deliberately trying to evade him and [] as a result, the trooper reasonably suspected [him] of wrongdoing." *Id.*

The district court apparently interpreted *Johnson* to require an officer to make eye contact with a driver in order for conduct to be considered evasive. This is a misinterpretation of *Johnson*. The supreme court never mandated eye contact as a requisite for evasive conduct. Rather, the supreme court's discussion of the trooper's eye contact with the defendant was made in an assessment of the basis for the trooper's reasonable, articulable suspicion:

> the trooper did not base his decision to stop solely on the fact that the defendant made a quick turn off the highway seconds after he looked the trooper in the eye. The trooper also observed the defendant turn off the secondary street into a driveway or side street and then resume his driving on the highway within a minute after turning off the highway.

Id. The district court also specifically noted that its determination that the officer had reasonable suspicion to justify the stop was based on the record before it. *Id.*

Moreover, the supreme court has applied the analysis set forth in *Johnson* in a case where there was no eye contact between the arresting officer and the driver. In *State v. Petrick*, an officer was preparing to make a u-turn on a residential street around 1:30 a.m. and waited to allow a car traveling in the opposite direction to pass him before completing the u-turn. 527 N.W.2d 87, 87 (Minn. 1995). When the approaching vehicle passed the squad car, the officer watched as the vehicle made an immediate right turn at a nearby intersection, pulled into the closest driveway, shut the lights off before stopping the car to park, and parked the car at the very bottom of the driveway without exiting the vehicle. *Id.* at 87-88. Relying on *Johnson*, the supreme court concluded that the officer's belief that the driver was trying to evade him justified the stop. *Id.* at 89. Despite extensively quoting *Johnson*, the supreme court made no mention of eye contact being a prerequisite to finding conduct to be evasive. *See id.* at 88-89. Accordingly, the lack of eye contact between the officers and respondent in this case isn't dispositive of whether evasive conduct occurred.

Respondent also relies on this court's decision in *Schrupp*. In *Schrupp*, an officer followed a vehicle as it pulled into a residential area and the vehicle quickly pulled into a

private driveway and began speaking to the property owner. 625 N.W.2d at 845. The officer remained in close proximity to the car and ran the vehicle's license plate number to confirm that the registered owner did not live near the neighborhood the driver had pulled into. *Id.* The driver spoke with the property owner for roughly three minutes before he pulled out of the driveway and resumed driving down the residential road. *Id.* Once the car was back on the residential road, the officer initiated a traffic stop and learned that the driver's license had been cancelled. *Id.* This court held that the stop was invalid, interpreting *Johnson* as requiring unusual behavior such as repetitive conduct, and concluding that the officer's suspicion at the inception of the stop was therefore inchoate. *Id.* at 848.

But here, respondent did engage in repetitive conduct, twice pulling his vehicle over to the side of the road after the squad car moved behind him; thus, *Schrupp* is inapposite. Aside from the lack of eye contact, the facts of *Johnson* are quite analogous to this case. The officers observed seemingly innocent behavior when respondent legally pulled his vehicle over to the side of the road on the first occasion. After observing respondent pull his vehicle over to the side of the road on the second occasion, however, the officers stated that they thought it was suspicious, indicating that the behavior was inconsistent with how an average citizen behaves when a squad car is behind them. The officers reasonably believed respondent was trying to evade police.

High-Crime Area

Additionally, both officers testified that respondent was stopped in a high-crime area, frequently the scene of burglaries and other crimes. One officer testified that they

"didn't know if [respondent] was casing businesses or residences in the neighborhood to burglarize them." This testimony was corroborated by the other officer, who explained that the area has "a high crime rate, robberies, burglaries, etcetera. So the traffic stop was initiated to investigate his behavior and to make sure that he wasn't attempting to commit any [] crime." It is true that mere presence in a high-crime area, without more, is insufficient justification for an investigative seizure. *See, e.g.*, *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) ("[M]erely being in a high-crime area will not justify a stop."). But here, the officers were not advancing the presence of a high-crime area as the lone justification of the stop. Viewing the totality of the circumstances in this case, the suspicion caused by respondent twice abruptly parking his vehicle when followed by a squad car is strengthened when the car is traveling through an area that the officers consider to be a high-crime area.

Based on the conduct of respondent and the officers' concern for the area where the stop occurred, the officers exhibited the requisite reasonable, articulable suspicion to justify the stop. Accordingly, the district court erred in concluding that the stop was invalid and suppressing all evidence gathered from the stop.

Reversed and remanded.