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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1322**

State of Minnesota,
Appellant,

vs.

Dana Lee Dempsey,
Respondent.

**Filed January 22, 2008
Affirmed
Hudson, Judge**

Wright County District Court
File No. 86-T6-06-1556

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Considered and decided by Randall, Presiding Judge; Kalitowski, Judge; and
Hudson, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Appellant State of Minnesota challenges the district court's pre-trial order granting respondent's motions to suppress evidence and dismissing the charges against respondent. Appellant argues that the deputies had reasonable articulable suspicion to extend a traffic stop in order to run a driver's-license check and because respondent had a non-transparent window decal. Based on the district court's credibility determination that the window decal was transparent and because appellant did not establish that the deputies required respondent to produce a driver's license, we affirm.

FACTS

In January 2006, a Wright County sheriff's deputy and her field training officer stopped a vehicle in Monticello, Minnesota, for having a non-functioning rear license-plate light and a non-transparent circular decal on the rear driver's-side window. At some point during the stop, the deputies identified the driver as respondent Dana Lee Dempsey, who had a suspended driver's license. The deputies cited appellant for driving after a suspended license in violation of Minn. Stat. § 171.24, subd. 1 (2006), and for having a non-transparent decal on a window in violation of Minn. Stat. § 169.71, subd. 1(a)(3) (2006).

Thereafter, the district court conducted a contested omnibus hearing on the ground that appellant was illegally stopped. At the hearing, the two Wright County sheriff's deputies and respondent testified.

The deputy testified that she noticed a non-transparent decal on respondent's rear triangular driver's-side window. She explained that the decal was a white circle with a star in it. The deputy stated that she and her training officer proceeded to follow the car and stopped the car after they observed that "it appeared that the license plate lights were not working." She stated that after she stopped the vehicle, she approached the driver and identified him by name and date of birth and informed respondent that he was stopped because his rear license-plate light was not working. The deputy testified that respondent then asked if he could inspect the light. The deputy stated that after inspecting the license-plate light with respondent, the light "may have been working but if it was working it was very dim or covered with dirt."

The field training officer testified that respondent's car had a small circular decal containing a star on its rear driver's-side window. He testified that he did not think the decal was transparent. He also stated that a person could not see the license-plate light 50 feet away from the vehicle.

Respondent testified that after the officers stopped him, he was told that his rear license-plate light was not working and that he asked to inspect it. Respondent stated that when they inspected the plate light, the deputies said "Oh, I guess it is [working] now." Respondent stated he believed that the deputy asked for his name and identification as soon as she walked up to the car. Respondent also admitted that he had a decal on his car that contained white lettering but that a person could see through the decal.

After hearing the testimony, the district court suppressed the evidence of the stop and dismissed the charges against respondent. The district court concluded:

In so far as that license plate light, it's apparent that when they stopped the car if the license plate appeared as if it wasn't working and they later saw that it was, they just send the driver on his way normally. In so far as they say, "Well, I don't think it was clearly illuminated in 50 feet," I'm not convinced much by that testimony. So I discount that. I think the Lopez case does govern the license plate light. . . .

The problem with the nontransparent sticker is that I've got testimony that says it was not transparent and testimony that says it was transparent. That's a question at trial that is not going to reach the finder of fact because . . . [j]uries and fact finders don't find stops. Judges do as a matter of law.

And so I've got testimony both ways on that. State has the burden of proof. I'm not convinced on the transparency of the sticker. I'm going to suppress the stop.

This appeal follows.

D E C I S I O N

Appellant challenges the district court's order granting respondent's motions to suppress the evidence and dismiss the charges against respondent. When reviewing a pretrial order, the state must "clearly and unequivocally show[]" that the district court erred and the error will have a "critical impact on the outcome of the trial." *State v. Battleson*, 567 N.W.2d 69, 70 (Minn. App. 1997) (quotation omitted). The state can show a critical impact when "the suppression of the evidence destroys or significantly reduces the likelihood of a successful prosecution." *Id.* (quotation omitted). Because the district court's pretrial order prevents the prosecution of the charges against respondent, the state has shown that the order critically impacted the outcome of the trial. The district court found, and the parties do not dispute, that the initial stop for a non-functioning rear

license-plate light was valid. Therefore, our analysis moves to whether the district court clearly erred in suppressing the evidence related to the extension of the stop.

“[W]hen reviewing a pre-trial order suppressing evidence where the facts are not in dispute and the trial 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). The district court’s determination as to whether the limited investigatory stop was legal is subject to de novo review. *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999). But when the facts are in dispute, this court reviews the district court’s findings of fact for clear error and accords great deference to the district court’s credibility determinations. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000); *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff’d*, 508 U.S. 366, 113 S. Ct. 2130 (1993).

Appellant argues that the district court clearly erred in finding that the officers did not have a reasonable articulable suspicion to extend the stop because (1) the deputies observed a non-transparent decal on the vehicle’s window; and (2) once the deputies discovered that respondent did not have a driver’s license, they had reasonable articulable suspicion to continue the stop and run a driver’s-license check.

Police may conduct “limited stops to investigate suspected criminal activity” when the police can provide a reasonable articulable suspicion that criminal activity occurred and can provide objective support for the suspicion. *Britton*, 604 N.W.2d at 87 (citing *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)); *see State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) (holding that a stop “must be justified by some objective

manifestation that the person stopped is, or is about to be, engaged in criminal activity” (quotation omitted)). The test to determine the validity of the continuing detention is the same as for the initial stop insofar as a police officer must continue to have a “reasonable suspicion of criminal activity.” *State v. Lopez*, 631 N.W.2d 810, 814 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. Sept. 25, 2001). And “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).

Window decal

Appellant first argues that the district court clearly erred in finding that the window decal on respondent’s car was non-transparent and contends that whether the decal was transparent was a question of fact for the fact-finder to decide. We disagree.

District courts have authority to make necessary factual findings, including credibility determinations, at a pre-trial hearing. *City of St. Louis Park v. Berg*, 433 N.W.2d 87, 89 (Minn. 1988); Minn. R. Crim. P. 12.02–12.03. In this instance, if respondent had a non-transparent decal on his car in violation of Minn. Stat. § 169.71, subd. 1(a)(3) (2006), the deputies would have had reasonable articulable suspicion to extend the stop. Therefore, the district court had to make a factual finding regarding the transparency of the window decal to determine whether extending the stop on that basis was valid. Based on the conflicting testimony and limited evidence presented at the omnibus hearing, the district court determined that the state did not carry its burden to show that the window decal was non-transparent. In light of our deference to the district court’s credibility determinations, we cannot conclude that the district court clearly erred.

As a result of the district court's credibility determination on the transparency of the decal, appellant's argument that the deputies had a reasonable articulable suspicion to detain respondent because they suspected that the decal was non-transparent likewise fails. To continue a stop, the police must have "objective support" that the person stopped is involved in criminal activity. *George*, 557 N.W.2d at 579; *see also Lopez*, 631 N.W.2d at 814 (holding that test to determine validity to continue stop same as test for initial stop). Here, the district court specifically stated that it was "not convinced" that the decal was non-transparent. Accordingly, the deputies did not have reasonable suspicion or objective support for a suspicion of criminal activity needed to continue the stop based on the window decal.

Driver's-license check

Appellant also argues that the deputies had a reasonable articulable suspicion to detain respondent because the police may run driver's-license checks during traffic stops under Minn. Stat. § 171.08 (2006), which requires all drivers to carry a driver's license. We disagree.

In general, police officers have authority to run driver's-license checks when they make stops for traffic violations. *State v. Pleas*, 329 N.W.2d 329, 333–34 (Minn. 1983); *see State v. Schinzing*, 342 N.W.2d 105, 109 (Minn. 1983) (holding that asking "a stopped driver to show his license is standard procedure in stop cases"). But the police must still observe constitutional standards, and therefore they must have some reasonable basis to suspect criminal activity to conduct a driver's-license check. *State v. Hickman*, 491 N.W.2d 673, 675 (Minn. App. 1992), *review denied* (Minn. Dec. 15, 1992) (holding

that officer's suspicions of an expired vehicle registration were dispelled as he approached vehicle and thus the officer no longer had reasonable articulable suspicion "that any criminal activity was afoot" sufficient to justify a driver's-license check). Thus, Minn. Stat. § 171.08 does not by itself provide a constitutional basis for the additional intrusion of asking for a driver's license. *Id.*

Appellant also contends that when respondent did not produce a driver's license after the deputy asked respondent for his identification, she had an objective basis to extend the stop and run a driver's-license check. But in order to establish reasonable articulable suspicion that a driver does not have a driver's license, the state must first establish that the police officer requested that the driver provide a driver's license.

Here, neither the deputy nor her field training officer testified to asking respondent to provide a driver's license. Instead, the record suggests that the deputy asked respondent for his name and date of birth, which he provided. Nothing in this factual scenario gave the deputy an objective basis to suspect that respondent did not have a driver's license. Therefore, the deputy had no authority to extend the stop and run a driver's-license check.

In sum, the district court discounted the evidence presented by appellant that the rear license-plate light was not visible and the window decal was non-transparent. Based on its credibility determinations, the district court concluded that the deputies did not have a reasonable articulable suspicion of criminal activity to continue the stop after learning that the license-plate light worked and the window decal was transparent. *See Lopez*, 631 N.W.2d at 813–14 (concluding that even though the reason for initial stop

was dispelled, because the police officer had reasonable suspicion of criminal activity, she could extend the stop). The district court did not clearly err in suppressing the evidence of the stop and dismissing the charges against respondent.

Affirmed.