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STATE OF MINNESOTA
IN COURT OF APPEALS
A10-589

Jess James Murphy, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed November 23, 2010
Affirmed; motion denied
Stoneburner, Judge

Dakota County District Court
File No. 19WSCV091286

Jeffrey S. Sheridan, Strandemo, Sheridan & Dulas, P.A., Eagan, Minnesota (for appellant)

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Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and Stoneburner, Judge.

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

STONEBURNER, Judge

On appeal from a decision affirming revocation of his driver's license under the implied-consent law, appellant argues for the first time on appeal that, under the Minnesota Constitution, the exclusionary rule must be applied to the acts of state record

keepers to invalidate a stop that was based on inaccurate information in a state database. Because appellant failed to establish at the implied-consent hearing that the information in the database was caused by state error, and because appellant failed to make his argument under the Minnesota Constitution to the district court, we affirm.

FACTS

Appellant Jess James Murphy was arrested on suspicion of driving while impaired (DWI) in December 2008. Murphy's driving privileges were revoked and his license plates were impounded. The license-plate impoundment was entered on the Minnesota Department of Public Safety (DPS) computer database. The revocation of Murphy's driving privileges was rescinded by order dated April 8, 2009, and Murphy's DWI charges were dismissed in July 2009.

On May 24, 2009, an Inver Grove Heights police officer, on routine patrol, checked the license-plate number of a vehicle being driven by Murphy. For reasons not stated in the record, the DPS computer database continued to show that Murphy's plates had been impounded for alcohol offenses and did not show that the underlying license revocation had been rescinded. The officer stopped Murphy's vehicle based solely on the information from the database that Murphy's license plates were subject to impoundment. During the stop, the officer observed indicia of Murphy's intoxication. Murphy was arrested and charged with DWI. Murphy's driver's license was revoked, and he challenged the revocation.

At the implied-consent hearing, Murphy challenged the lawfulness of the 2009 stop[1] and asked the district court to take judicial notice of the court orders rescinding the 2008 license revocation and dismissing the DWI charges. Respondent Commissioner of Public Safety (the state) argued that the orders are not relevant to the May 2009 stop because the plates remained impounded due to Murphy's failure to obtain new plates. The state also argued that there was no evidence presented to show that the police officer who made the stop was aware of the rescission order. The district court stated that it would take notice of the orders, but was not sure of the relevance.

Murphy did not dispute that the officer who made the stop reasonably relied on DPS records showing that Murphy's plates were impounded. Murphy specifically stated to the district court that he was "not asking you to put any fault at the foot of this officer." But Murphy argued that the district court should consider DPS's record-keeping function and "find that the Commissioner cannot manufacture his own basis for a stop in this fashion." The state noted that the district court could only speculate about why the DPS computer database did not show that the license revocation had been rescinded, noting that the law requires that when plates are impounded, the owner must turn them in and obtain new plates "[s]o there are reasons besides just the fault of the State why the plates were noted impounded on [Murphy's] record." The state argued that the officer had a reasonable, objective, articulable suspicion to make the stop that was not invalidated by any mistake of fact contained in the DPS database.

[1] Murphy also challenged the reading of the implied-consent advisory but has not appealed the ruling on that issue.

The district court found that it was "unclear whether the error in the records . . . was the result of delay by [DPS] . . . or the result of [Murphy's] failing to obtain new license plates," but concluded that "[t]he stop . . . was valid because the officer had a good faith belief that [Murphy's] license plates were impounded."[2] The district court sustained the revocation of Murphy's driving privileges. Murphy appeals, arguing only that the exclusionary rule should be extended to invalidate a stop based on what Murphy characterizes as a DPS record-keeping error.

D E C I S I O N

I. Motion to strike

The state has moved to strike documents contained in the appendix of Murphy's appellate brief and references to those documents in Murphy's brief. Specifically, the state objects to a copy of the 2009 Annual Report of the DPS's Driver and Vehicle Services Division, which identifies fundamental flaws in the division's mainframe information system and describes a four-year effort to update the division's outmoded

[2] We note that this is not a case in which the officer had a "good faith" but mistaken interpretation of a law as in *State v. George*, 557 N.W.2d 575 (Minn. 1997) and *State v. Anderson*, 683 N.W.2d 818 (Minn. 2004). The supreme court has held that "whether made in good faith or not," an officer's mistaken interpretation of a law—a suspected violation of which forms the basis of a stop—is insufficient to meet the required "particularized and objective basis" for the stop. *Anderson*, 683 N.W.2d at 824. At oral argument on appeal, Murphy argued for the first time that the district court's ruling amounted to an application of a "good faith exception" to the exclusionary rule recognized by the United States Supreme Court, but not adopted by the Minnesota Supreme Court in cases involving an alleged violation of Minn. Const. art. 1, §10. We disagree that the district court was applying a "good faith exception" to application of the exclusionary rule in this case. There is no authority that the exclusionary rule applies in this case and the district court did not find that the exclusionary rule applies. In the context of this case, the district court's use of the term "good faith" meant only that the officer had a reasonable, objective, articulable basis for the stop.

system. This information was not offered or admitted at the implied-consent hearing. Murphy argues that the report may be considered for the first time on appeal because it is a publicly accessible document.

"The papers filed in the [district] court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases." Minn. R. Civ. App. P. 110.01. And the supreme court has disregarded public records first submitted on appeal where the information is evidentiary in nature. *See, e.g.*, *Hinneberg v. Big Stone Cnty. Hous. & Redev. Auth.*, 706 N.W.2d 220, 224 & n.2 (Minn. 2005) (granting motion to strike statistical information regarding Section 8 housing-voucher waiting lists as evidentiary information not presented to the hearing officer or made part of the record); *see also, State v. Robinson*, 718 N.W.2d 400, 406 (Minn. 2006) (declining to consider American Medical Association guidelines on the need for routine screening of female patients for domestic abuse in certain situations as evidentiary in nature and not made part of the record). Because Murphy relies on the newly submitted information in making his argument on appeal but failed to make the information part of the record at the implied-consent hearing, we conclude that it would be inappropriate to consider this information on appeal. But because we also conclude that the information is not relevant to the issues in this appeal, we deny the motion to strike. *See Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 233 n.2 (Minn. 2007) (denying a motion to strike as moot because the court did not rely on the challenged material).

II. Basis of the traffic stop

A determination of reasonable suspicion for a traffic stop presents a mixed question of fact and law. *State v. Lee*, 585 N.W.2d 378, 382–83 (Minn. 1998). This court reviews de novo a district court's legal determination of reasonable suspicion of unlawful activity to justify a limited-investigatory stop. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). A district court's findings of fact are reviewed for clear error. *Lee*, 585 N.W.2d at 383.

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A stop is lawful under the federal and state constitutions if an officer can articulate a particularized and objective basis for suspecting the person stopped of criminal activity. *Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985). An objective basis for a stop is generally satisfied by a police officer's observation of a traffic-law violation. *George*, 557 N.W.2d 575, 578 (Minn. 1997). Minnesota law requires that vehicles display valid license plates. Minn. Stat. § 169.79 (2008).

In this case, Murphy concedes that the officer learned from the database that Murphy's plates were impounded, and Murphy does not fault the actions of the officer. On this record, the officer had a particularized, objective, and articulable basis for the stop. The district court did not err in concluding that the stop was valid.

III. Argument for extension of exclusionary rule under the Minnesota Constitution

Murphy argues that DPS's faulty record keeping resulted in a violation of his Fourth Amendment rights and that the Minnesota Constitution requires extension of the exclusionary rule to protect those rights.[3] We first note that Murphy's argument that the state constitution requires extension of the exclusionary rule to control the conduct of state record keepers is predicated on his unsupported assertion that the database did not reflect the rescission of Murphy's plate impoundment due to the state's error. The district court did not make such a finding, and there is no evidence in the record to support such a finding. The district court's finding that it is "unclear" as to whether a mistake is attributable to either party is not clearly erroneous.

Murphy failed to argue to the district court that the Minnesota Constitution requires the extension of the exclusionary rule he now seeks. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally address only questions that have been presented to, and considered by the district court). We therefore

[3] Murphy's brief on appeal acknowledges that the United States Supreme Court has concluded that this type of computer error poses no appreciable threat to Fourth Amendment interests. *Arizona v. Evans*, 514 U.S. 1, 15–16, 115 S. Ct. 1185, 1194 (1995) (stating "[t]here is no indication that the arresting officer was not acting objectively reasonably when he relied upon the police computer record" and holding that there is a categorical exception to the exclusionary rule for clerical errors of court employees). Murphy's argument is that the federal cases were decided under a "good-faith exception" to application of the exclusionary rule not recognized by the Minnesota Supreme Court and that this court should independently apply the Minnesota Constitution, which provides greater protection than the federal constitution, to extend the application of the exclusionary rule in this case. We presume Murphy is asking for a ruling to protect his rights under Minn. Const. art. I, § 10 rather than the Fourth Amendment.

decline to address this argument except to note that the exclusionary rule was not designed to ensure accurate administrative record keeping; the rule exists as a check on police power. "The purpose of suppression is not to vindicate a defendant's rights nor to affirm the integrity of the courts, but to deter police from engaging in illegal searches." *State, City of Minneapolis v. Cook*, 498 N.W.2d 17, 20 (Minn. 1993). In essence, the rule "is intended to persuade police officers to follow the rules." *Id.*[4] Here, in addition to not having been found at fault, the actors alleged by Murphy to have made a mistake are not police officers, did not conduct a stop or a search or seizure, and are not within the intended scope of the exclusionary rule under the federal or state constituions.

Affirmed; motion denied.

[4] The United States Supreme Court has held that a court employee was not within the scope of the exclusionary rule because: (1) the exclusionary rule was designed to deter police misconduct, (2) it is unlikely that a court employee would try to subvert the Fourth Amendment; and (3) there is no basis for believing that applying the rule under these circumstances would help prevent clerical mistakes. *Herring v. U.S.*, 129 S. Ct. 695, 701, (2009) (citing *Evans*, 514 U.S. at 15, 115 S. Ct. at 1185.)