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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1008**

Alexander John Whittle, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed January 22, 2013
Affirmed
Kalitowski, Judge
Concurring specially, Ross, Judge**

Dakota County District Court
File No. 19AV-CV-12-538

John A. Price, III, Lakeville, Minnesota (for appellant)

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Considered and decided by Kalitowski, Presiding Judge; Ross, Judge; and Cleary, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Alexander John Whittle challenges the district court's decision sustaining the revocation of his driver's license under Minn. Stat. § 169A.53 (2010), following a DWI arrest. We affirm.

DECISION

“The clearly erroneous standard controls our review of a district court’s factual findings.” *In re Source Code Evidentiary Hearings*, 816 N.W.2d 525, 537 (Minn. 2012).

“We review a district court’s determination regarding the legality of an investigatory traffic stop and questions of reasonable suspicion de novo.” *Wilkes v. Comm’r of Pub. Safety*, 777 N.W.2d 239, 242-43 (Minn. App. 2010).

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. But officers may conduct an investigatory stop of a vehicle if they have a “particularized and objective basis” for the stop. *State v. Anderson*, 683 N.W.2d 818, 822-23 (Minn. 2004). To justify the stop, “[t]he police must only show that the stop was not the product of mere whim, caprice or idle curiosity, but was based upon ‘specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.’” *State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996) (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)). There are two requirements for a constitutional investigatory stop of a vehicle: (1) “the suspicion must be particularized to the individual vehicle” and (2) the “stop must be objectively reasonable.” *State v. Cox*, 807 N.W.2d 447, 450-51 (Minn. App. 2011).

Appellant argues that the police officer’s investigatory stop of his vehicle was unconstitutional because the officer lacked a reasonable, articulable suspicion of criminal activity. We disagree.

Stop Was Particularized to Individual Vehicle

In November 2011, the police officer passed appellant's vehicle and observed both its license-plate number and current 2012 registration tabs. But when the officer entered the license-plate number into his state mobile computer, it informed him that the vehicle's registration had been expired since June 2011. The officer proceeded to stop appellant's vehicle because he believed that the registration tabs may have been stolen.

We conclude that on these facts the officer's suspicion was particularized because he stopped appellant's vehicle based on information that was unique to that vehicle. *See Cox*, 807 N.W.2d at 451 (concluding that stopping a car on suspicion of stolen tabs is particularized to that vehicle).

Stop Was Objectively Reasonable

In *Cox*, we upheld the constitutionality of an investigatory stop based on an officer's suspicion of stolen tabs. *Id.* at 450, 452. We held that "[w]hen a license plate displays 2010 tabs, but a computer check indicates that the vehicle's registration expired in 2008, it is objectively reasonable for an officer to infer that the 2010 tabs may have been stolen." *Id.* at 451. Moreover, we concluded that the officer's reliance on his mobile computer was reasonable: "There is no evidence in this record to indicate that [the officer] had reason to believe that the information derived from his computer was erroneous." *Id.* at 452. Likewise, the supreme court in *Pike* stressed that knowledge obtained from the state's mobile computer system is enough to form the basis of a reasonable suspicion of criminal activity, as long as "the officer remains unaware of any facts which would render [the officer's assumptions] unreasonable." 551 N.W.2d at 922.

Here, as in *Cox* and *Pike*, the officer had no reason to believe that the information from his mobile computer was erroneous. Although the officer testified that he had encountered registration inaccuracies in the past due to the “lag time” of the state mobile computer system, he indicated that the “typical” lag times were “a week or two weeks”—not several months. Moreover, he testified that because the state mobile computer system told him that appellant’s tabs had been expired since June, he had a heightened suspicion that the tabs were stolen:

[I]t furthered my suspicion in that the tabs did not belong on this vehicle. If the tabs would have been expired in June and if this would have been the first or second week of July, it would have been far more likely that those tabs would have been purchased in June, [and] simply not updated in the state system; but being as this was five or six months later, I believed even further that the tabs likely weren’t registered to this vehicle.

The district court found that “the officer contemplated the existence of ‘lag time’ but concluded that so much time had elapsed that it was not possible for lag time to be the basis for the expired registration.” This finding is supported by the record and is not clearly erroneous. Thus, we conclude that based on the information available to the officer at the time of the stop, he had an objectively reasonable belief that the tabs were stolen.

Appellant relies on an unpublished opinion of this court where we held that an investigatory stop was unreasonable because the trooper relied on information from his mobile computer, which he knew may not be reliable. But our unpublished opinions are not precedential. Minn. Stat. § 480A.08 (2010), subd. 3. Moreover, unlike the trooper in

the unpublished opinion, the officer here testified that so much time had passed between the expiration of the tabs and the date of the stop that he excluded lag time as a basis for the expired registration.

Affirmed.

ROSS, Judge (concurring specially)

I concur in the court's decision that Officer Tschida had reasonable suspicion to stop Whittle's car and that the stop was not unconstitutional. *See State v. Cox*, 807 N.W.2d 447, 451–52 (Minn. App. 2011) (holding that an observed discrepancy between state computerized vehicle registration records and displayed tabs establish reasonable suspicion to justify stop). I write separately to note my departure from the court's analysis today to the extent the analysis implies that the validity of the stop depends on the length of the period between the expiration of Whittle's vehicle registration and the date of the stop. I believe that the length of the expiration period has almost no relevance. The officer's visual observation of the license plate and the state computerized database gave conflicting information: one suggested that the vehicle registration was valid and the other that it was not. A reasonable explanation for the discrepancy is current unlawful conduct: if the tabs do not belong on the plates, then the driver is operating a car with invalid registration. This alone supports the stop. For three reasons, the objective reasonableness of the patrol officer's reliance on the state's registration database is not undermined just because he knows that a brief, two-week delay in updating the database has sometimes previously occurred.¹

The first reason that the information from the state's database alone justifies the stop on reasonable-suspicion grounds regardless of the officer's speculation about a

¹ I add that any subjective concern by Officer Tschida arising from previous occasional two-week lags in registration entry into the state's computerized database is also accounted for by the grace period in the statute itself: "A vehicle registered . . . shall display the plates and insignia issued within ten days of the first day of the month which commences the registration period." Minn. Stat. § 168.09, subd. 4 (2010).

possible two-week lag period's impact on database accuracy is that the lag never catches up to real time. That is, if the lag period must be accounted for, then an officer is *never* justified in relying on the database designation of a *presently* expired vehicle registration because in every case the owner might have only recently registered the now-seemingly unregistered vehicle within the previous two weeks. In other words, the possible lag-time inaccuracies exist whenever the computer indicates a presently expired plate whether the expiration period began two years ago or two months ago or two weeks ago.

Second, the rationale of the stop that happened here is exactly what *Terry v. Ohio* contemplated. The premise of *Terry* and its progeny is that the Fourth Amendment is not implicated when an officer stops and briefly detains a person to investigate the officer's reasonable *suspicion* of *possible* criminal conduct. *See* 392 U.S. 1, 26–27, 88 S. Ct. 1868, 1882–83 (1968) (“[A] perfectly reasonable apprehension . . . may arise long before the officer is possessed of adequate information to justify taking a person into custody . . . for a crime.”). If an officer must first conduct an investigation and eliminate all noncriminal possibilities *before* making the stop, then at least probable cause, not mere reasonable suspicion, would always precede a stop, and *Terry* would be meaningless. One way to investigate whether a vehicle is presently unregistered is to contact a responsible state employee directly and confirm that the state's computer information is accurate. But this is impractical and unnecessary; the only practical way for the officer to investigate the reasonable concern is to stop the car immediately and ask the driver to verify the vehicle's registration. *See* Minn. Stat. § 168.11, subd. 1 (2010) (requiring that the registration card “shall be retained by the registered owner until expiration”). An

investigatory stop may be the more intrusive approach, but, under *Terry*, it is constitutional.

Third, I think my understanding best reflects the limited reach of *State v. Pike*. The trooper in *Pike* had stopped a car in part because he learned from the state's database that the owner's driver's license had been revoked. 551 N.W.2d 919, 921 (Minn. 1996). A panel of this court held that this was not a sufficient ground for the stop unless the trooper also had reason to believe that the current driver and the unlicensed owner were one and the same. *State v. Pike*, 543 N.W.2d 96, 98–99 (Minn. App. 1996). The supreme court reversed. It first clarified that “[a]n actual violation of the vehicle and traffic laws need not be detectable.” *Pike*, 551 N.W.2d at 921. And it held that the state's database indication that the owner is unlicensed is enough to support the stop. *Id.* at 922. The court cautioned in dicta that the holding “applies only while the officer remains unaware of any facts which would render unreasonable the assumption that the owner is driving the vehicle.” *Id.* The court today implies that an officer's awareness of a brief computer-updating delay may be such an invalidating fact. This is not so under *Pike*. Particularly instructive here, the *Pike* court specifically clarified that, “for example, if the officer knows that the owner of a vehicle has a revoked license and further, that the owner is a 22-year-old male, and the officer observes that the person driving the vehicle is a 50- or 60-year-old woman, any reasonable suspicion of criminal activity *evaporates*. . . . [I]t would be unconstitutional for the officer to make a stop *in such a situation*.” *Id.* (emphasis added). So even in dicta, *Pike*'s only hypothetical example of a suspicion-ending event is not an event that would render merely *uncertain* the officer's assumption

of criminal activity (like knowledge of occasional delays in updating the computer), but a situation that would render entirely *unreasonable* the assumption that criminal activity is occurring (like knowledge that the driver *cannot* be the person who the state computer identifies as unlicensed). The court's discussion of *Pike* today, like this court's reference to *Pike* in further dictum in *Cox*, 807 N.W.2d at 451–52, might lead some to believe mistakenly that *Pike* stands for a broader proposition than the facts and limiting language in *Pike* would support.

Here, as in *Pike* and *Cox*, an officer may reasonably rely on the state's computerized database because he may assume the database to be accurate. He does not violate the federal or state constitution by basing a brief investigative stop on the database information even if he believes that the database is not always current. I support the majority's decision on that ground.