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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1504**

Cole Gilbert McGuire, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed May 21, 2018
Affirmed
Peterson, Judge**

Olmsted County District Court
File No. 55-CV-17-2376

Grant M. Borgen, Bird, Jacobsen & Stevens, P.C., Rochester, Minnesota (for appellant)

Lori Swanson, Attorney General, Stephen D. Melchionne, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Peterson, Judge; and Ross, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from the district court's order sustaining the revocation of his driver's license, appellant argues that the police stop of the vehicle he was driving was unreasonable because it was based on the officer's mistaken belief as to the law. We affirm.

FACTS

On March 12, 2017, at about 3 a.m., Officer Craig Sammon of the Rochester Police Department was working on foot patrol when he saw “a very large diesel pickup [that] accelerated at a rapid rate, causing a large puff of black smoke to come from [the] exhaust and the exhaust to emit a loud rapping, popping noise.” As Sammon watched, the truck “rapidly accelerated” in an area with heavy foot traffic. Sammon got into his patrol car and followed the truck, and he saw that the truck did not have a rear license plate or a temporary registration permit. Sammon believed that vehicles driven in Minnesota had to have either a rear license plate or a temporary permit displayed in the rear window,¹ and he decided to stop the truck. Sammon eventually cited the driver, appellant Cole Gilbert McGuire, for fourth-degree driving while impaired, and McGuire’s driver’s license was revoked.

McGuire challenged the revocation of his driver’s license, arguing that there was no lawful basis for the stop. McGuire testified that he was a Missouri resident who was living in Rochester for a short period of time for a temporary job. He was driving “a full-size Mega Cab Truck 4 x 4” that was rated to pull an 18,000 pound trailer, and, under Missouri law, he was required to have only a front license plate.² McGuire admitted that his truck was “loud,” but he denied speeding. Sammon testified that he had no “reason based on [his] observations of the truck to know that it wasn’t registered in Minnesota.”

¹ Temporary vehicle permits that must be posted on the left side of the inside rear window of the vehicle may be issued under Minn. Stat. §§ 168.091, .092 (2016).

² For purposes of our analysis, we assume that, under Missouri law, the truck that McGuire was driving was required to have only a front license plate.

The district court sustained the revocation of McGuire’s driver’s license, concluding that Sammon had a reasonable, articulable suspicion of criminal activity that provided a basis for an investigatory stop. McGuire appeals.

D E C I S I O N

In a proceeding challenging a driver’s license revocation, we review de novo the district court’s application of law, *Pallas v. Comm’r of Pub. Safety*, 781 N.W.2d 163, 167 (Minn. App. 2010), including the legality of an investigatory traffic stop. *Wilkes v. Comm’r of Pub. Safety*, 777 N.W.2d 239, 242-43 (Minn. App. 2010). We review findings of fact for clear error. *Id.* at 243. The petitioner has the burden of proving that he is entitled to reinstatement of his license. *Pallas*, 781 N.W.2d at 166.

A warrantless search or seizure is presumptively unreasonable. U.S. Const. amend. IV; Minn. Const. art. I, § 10. But a police officer may make a brief investigatory stop if “the officer has a reasonable, articulable suspicion [of] criminal activity.” *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016) (quotation omitted). The stop cannot be “the product of mere whim, caprice or idle curiosity.” *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004). Even an insignificant violation of a traffic law provides a basis for an investigatory stop. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

Minnesota traffic regulations provide that

[n]o person shall operate, drive, or park a motor vehicle on any highway unless the vehicle is registered in accordance with the laws of this state and has the number plates or permit confirming that valid registration or operating authority has been obtained . . . as assigned to it by the commissioner of public safety, conspicuously displayed thereon in a manner that the view of any plate or permit is not obstructed.

Minn. Stat. § 169.79, subd. 1 (2016).

Generally, for any vehicle registered in Minnesota, “one plate must be displayed on the front and one on the rear of the vehicle.” Minn. Stat. § 169.79, subd. 6 (2016). But the legislature has authorized the commissioner of public safety to enter into agreements with other states, which

shall provide that vehicles properly registered or licensed in this state, when operated upon highways of the other state, shall receive exemptions, benefits, and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in such state when operated in this state. Any such declaration shall contemplate and provide for mutual benefits, reciprocal privileges or equitable treatment of the owners of vehicles registered in this and the other state.

Minn. Stat. § 168.187, subd. 7 (2016).³

Thus, a vehicle properly registered or licensed in Missouri will be treated as properly licensed in Minnesota even if the Missouri licensing requirements are different from Minnesota licensing requirements, and, for a properly licensed Missouri vehicle, the requirement to have only a front license plate is an exception from the Minnesota requirement that there be a plate displayed on the front and the rear of the vehicle. *See* Minn. Stat. § 645.26, subd. 1 (2016) (stating that, when general provision in law conflicts with special provision in the same or another law and conflict is irreconcilable, special

³ For purposes of our analysis, we assume that Minnesota and Missouri have agreed to provide reciprocal privileges and equitable treatment of the owners of vehicles registered in Minnesota or Missouri.

provision shall prevail and shall be construed as exception to general provision unless it is manifest intention of legislature that general provision shall prevail).

McGuire argues that, because his vehicle was properly licensed under Missouri law, he was driving a vehicle with a legal license-plate configuration under Minnesota law when he was stopped, and Sammon's mistaken interpretation of Minnesota's license-plate law does not support a particularized and objective basis for suspecting criminal activity, which is required for a valid stop. The supreme court has held that an officer's mistaken belief as to the law cannot provide an objective basis for an investigatory stop. *George*, 557 N.W.2d at 578-79. In *George*, an officer stopped a motorcyclist because he believed that the motorcycle had an unlawful headlight configuration, but the officer was mistaken as to the law, and the headlight configuration was lawful. *Id.* The supreme court concluded that there was no legal basis for the stop because the officer did not have an objective legal basis for suspecting that George was driving his motorcycle in violation of the law. *Id.* at 579.

Similarly, in *Anderson*, an officer believed that a statute required a driver to move far enough away from a stopped emergency vehicle so that there was an entire free "buffer" lane between the driver's car and the emergency vehicle. 683 N.W.2d at 821. Based on this interpretation of the statute, the officer stopped a car that had not moved far enough to the left and eventually arrested the driver for an impaired-driving offense. *Id.* The supreme court concluded that the officer had incorrectly interpreted the statute and held "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." *Id.* at 823-24.

There is a significant difference between the circumstances in *George* and *Anderson* and the circumstances in this case. In both *George* and *Anderson*, the circumstances that the officers observed could not constitute a statutory violation, and, in both cases, the officer stopped the driver because the officer misunderstood the statute and incorrectly believed that he had observed a violation. Unlike *George* and *Anderson*, the circumstances that Sammon observed could be a violation of the general statute that requires both a front and a rear license plate, and, because Sammon was following McGuire's vehicle, he had no reason to know that McGuire's vehicle had a front license plate, as required in Missouri.

The supreme court addressed circumstances similar to this case in *State v. Timberlake*, 744 N.W.2d 390 (Minn. 2008). In *Timberlake*, police received a 911 call from an identified private citizen who reported that he saw something fall as a man got out of a white Pontiac Grand Prix at a gas station, and he then saw a gun lying on the ground. 744 N.W.2d at 392. The man quickly picked up the gun and got back into the car, which then left the gas station. *Id.* A black female was driving the car, and a black male was the passenger. *Id.* Within a half-minute of receiving this information, officers in the area of the gas station saw a black female driving a white Grand Prix with a black male passenger, and, based on the information they had just received, the officers stopped the Grand Prix and found a handgun under the front passenger seat. *Id.*

The passenger, Timberlake, was charged as a felon in possession of a firearm, and, before his jury trial, asked the district court to suppress the gun. *Id.* The district court denied the motion, and Timberlake was found guilty. *Id.* This court reversed, holding that the police did not have a sufficient basis to stop the Grand Prix because a “mere suspicion

that a person possesses a gun is insufficient to warrant a *Terry* stop, absent additional particular and objective facts which create a reasonable suspicion that the possessor does not have a permit or is otherwise about to commit a crime.” *Id.* at 392-93 (quoting *State v. Timberlake*, 726 N.W.2d 509, 514 (Minn. App. 2007)).

On review by the supreme court, Timberlake contended

that because it is legal in Minnesota for a private citizen to carry a permitted gun in public, police may not conduct an investigatory stop without additional evidence that the possession itself is illegal. For example, . . . police would need to suspect that the person carrying the gun does not have a valid permit or that some other criminal activity is afoot to warrant an investigatory stop.

Id. at 394.

The supreme court rejected this argument because it concluded that the nonexistence of a permit to carry a gun is not an element of the offense of possessing a pistol in a motor vehicle without first having obtained a permit; instead, a permit establishes an exception to criminal liability. *Id.* at 395. Based on this conclusion, the supreme court reversed this court and held “that the officers had a reasonable basis to suspect that Timberlake was engaged in criminal activity, even without knowing whether he had a permit.” *Id.*

We conclude that this reasoning also applies to Sammon’s observation that there was not a license plate displayed on the rear of McGuire’s vehicle as required under Minn. Stat. § 169.79, subd 6. Just as the officers in Timberlake had a reasonable basis to suspect criminal activity even though it is legal in Minnesota for a private citizen to carry a permitted gun in public, Sammon had a reasonable basis to suspect a registration violation even though it is legal in Minnesota for a truck registered in Missouri to have only a front

license plate. In both cases, the circumstances known to the police officers could have involved either legal activity or illegal activity, and the officers had a reasonable basis to suspect a violation, even though an investigation might show that there was no violation.

To determine whether McGuire was in violation of the law, Sammon needed to obtain more information, which is the precise purpose of an investigatory stop. *See Terry v. Ohio*, 392 U.S. 1, 22, 88 S. Ct. 1868, 1880 (1968) (stating that officer may investigate “possibly criminal behavior even though there is no probable cause to make an arrest”); *Johnson v. Comm’r of Pub. Safety*, 388 N.W.2d 759, 760 (Minn. App. 1986) (stating that “[s]uspicion of a violation is enough if the officer can sufficiently articulate the factual basis for [the] suspicion”). When Sammon decided to stop McGuire’s truck, Sammon had a reasonable, articulable suspicion of criminal activity; the stop was not the product of mere whim, caprice, or idle curiosity.

Affirmed.