STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0002

Thomas Michael Quigley, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed September 24, 2012
Affirmed
Wright, Judge

Washington County District Court
File No. 82-CV-11-4535

Kevin C. Quigley, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, Natasha Karn, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Schellhas, Judge; and Larkin, Judge.

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

WRIGHT, Judge

In this challenge to the district court's decision to sustain the revocation of his driver's license under the implied-consent law, appellant argues that the district court

erroneously considered evidence that was obtained in violation of his constitutional rights. We affirm.

FACTS

On Saturday, July 2, 2011, at approximately 8:40 p.m., Minnesota State Trooper Steven Dauffenbach observed a vehicle driving too closely behind another vehicle on Interstate 94, in violation of Minn. Stat. § 169.18, subd. 8 (2010). Trooper Dauffenbach stopped and approached the vehicle. There he encountered four occupants including the driver, more than one cooler, and "a pretty strong odor of [an] alcoholic beverage." Trooper Dauffenbach observed that the driver's eyes were bloodshot, watery, and glassy. When Trooper Dauffenbach asked the driver, later positively identified as appellant Thomas Michael Quigley, to produce his driver's license, the driver responded that he did not have it in his possession. Trooper Dauffenbach directed Quigley to step out of the vehicle.

When Quigley was outside of the vehicle, Trooper Dauffenbach was unable to discern whether Quigley smelled of alcohol because of the height difference between the two men. Trooper Dauffenbach asked Quigley if he had consumed alcohol, and Quigley denied drinking "at all." Trooper Dauffenbach also asked Quigley whether he had a Minnesota driver's license. When Quigley stated that he did, Trooper Dauffenbach directed Quigley to "have a seat in the back of [Trooper Dauffenbach's] car" while he verified Quigley's identity.

While verifying Quigley's identity, Trooper Dauffenbach spoke with Quigley in the squad car about his driving record and his consumption of alcohol that day. During this

time, Trooper Dauffenbach noticed an increasingly strong odor of an alcoholic beverage emanating from the backseat of the squad car. Although Quigley continued to deny that he had consumed any alcohol, Trooper Dauffenbach's observation prompted him to request that Quigley take a preliminary breath test (PBT). Quigley complied, and the PBT reported an alcohol concentration of 0.13. After obtaining the PBT results, Trooper Dauffenbach arrested Quigley for driving while impaired.

The Commissioner of Public Safety subsequently revoked Quigley's driving privileges. Quigley petitioned the district court for judicial review. Following a judicial review hearing, during which Quigley moved unsuccessfully to suppress evidence obtained after his confinement in Trooper Dauffenbach's squad car, the district court denied Quigley's petition for reinstatement and sustained the commissioner's revocation of Quigley's driving privileges. This appeal followed.

D E C I S I O N

Quigley argues that he is entitled to reinstatement of his driving privileges because the evidence supporting the revocation was obtained during an unlawful seizure.[1] The Minnesota Constitution protects against unreasonable searches and seizures. Minn. Const.

[1] Quigley also challenged the district court's failure to preserve his challenge to the reliability of Intoxilyzer 5000EN test results. But during the pendency of this appeal, the Minnesota Supreme Court issued its decision in *In re Source Code Evidentiary Hearings*, 816 N.W.2d 525 (Minn. 2012), concluding that "Intoxilyzer 5000EN instruments that report a numerical value for measured breath alcohol are reliable," and overruled challenges to those instruments based on the source code. At oral argument, Quigley conceded that his challenge to the reliability of Intoxilyzer 5000EN test results is moot. *See In re Inspection of Minn. Auto Specialties, Inc.*, 346 N.W.2d 657, 658 (Minn. 1984) (an issue on appeal is moot when an event occurs that makes an award of effective relief impossible or a decision on the merits unnecessary).

art. I, § 10. In an implied consent proceeding, evidence obtained from an unconstitutional search or seizure must be excluded. *See Ascher v. Comm'r of Pub. Safety*, 527 N.W.2d 122, 125 (Minn. App. 1995) (observing that "in implied consent proceedings the exclusionary rule applies to evidence obtained from an unconstitutional checkpoint"), *review denied* (Minn. Mar. 21, 1995).

A challenge to the constitutionality of an investigative stop presents a mixed question of fact and law. *See Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985). We review the district court's findings of fact for clear error, giving deference to the district court's credibility determinations. *Thompson v. Comm'r of Pub. Safety*, 567 N.W.2d 280, 281 (Minn. App. 1997), *review denied* (Minn. Sept. 25, 1997); *Roettger v. Comm'r of Pub. Safety*, 633 N.W.2d 70, 73 (Minn. App. 2001). Our review of the district court's conclusions of law, however, is de novo. *Dehn v. Comm'r of Pub. Safety*, 394 N.W.2d 272, 273 (Minn. App. 1986).

Under Minnesota law, we conduct a dual inquiry to evaluate the reasonableness of a seizure that occurs during a traffic stop—even when a minor law has been violated. *State v. Askerooth*, 681 N.W.2d 353, 363-64 (Minn. 2004). First, we determine "whether the stop was justified at its inception." *Id.* at 364. Next, we determine "whether the actions of the police during the stop were reasonably related to and justified by the circumstances that gave rise to the stop in the first place." *Id.* An intrusion that is not closely related to the initial justification for the stop is invalid under the Minnesota Constitution unless there is independent probable cause or individualized, reasonable

suspicion to justify the intrusion. *Id.*[2] A traffic stop is presumed to be temporary and brief. *State v. Herem*, 384 N.W.2d 880, 882 (Minn. 1986). Requiring a driver to sit in a squad car for a short time, however, does not necessarily exceed the scope of an ordinary traffic stop. *Id.* at 883.

Because Trooper Dauffenbach observed Quigley follow another vehicle "more closely than is reasonable and prudent," a violation of Minn. Stat. § 169.18, subd. 8 (2010), the traffic stop was justified at its inception.[3] *See State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) (even a minor traffic violation can support an investigatory stop). Therefore, the focus of our analysis is whether Trooper Dauffenbach's decision to confine Quigley was reasonable. This requires us to determine whether the confinement was "justified by some government interest that outweighed [Quigley's] interest in being free from 'arbitrary interference by law officers.'" *See Askerooth*, 681 N.W.2d at 365 (quotation omitted). In doing so, we consider in turn both Trooper Dauffenbach's

[2] In the context of a traffic stop, the Minnesota Constitution affords greater protection against unreasonable searches and seizures than the United States Constitution. *Askerooth*, 681 N.W.2d at 360-63. The United States Constitution permits the warrantless arrest of a person who has committed even a minor traffic violation, but the Minnesota Constitution requires a balancing of individual and governmental interests. *Id.*

[3] Quigley contends that the record contains "no credible evidence" that he violated Minn. Stat. § 169.18, subd. 8. The record indicates otherwise. Trooper Dauffenbach testified that he observed Quigley follow another vehicle at an unsafe distance and speed. And the district court expressly found this testimony credible. Because we defer to the district court's credibility determinations, we reject Quigley's contention. *See Roettger*, 633 N.W.2d at 73.

subjective basis for detaining Quigley *and* the objective circumstances of the stop. *See id.* at 365-68.

1.

The record establishes that Trooper Dauffenbach confined Quigley in the back seat of the squad car based on Quigley's statement, "I have a driver's license but I don't have it on me." Although such confinement was consistent with Trooper Dauffenbach's standard practice and was intended to verify Quigley's identity, the Minnesota Supreme Court has expressly concluded that "the lack of a driver's license, by itself, is not a reasonable basis for confining a driver in a squad car's locked back seat when the driver is stopped for a minor traffic offense." *Id.* at 365. Therefore, Trooper Dauffenbach's subjective basis for detaining Quigley does not provide reasonable grounds for expanding the traffic stop.

2.

We next consider the objective circumstances of this stop to determine whether expansion of the stop was reasonable. The record establishes that late Saturday evening during the Fourth of July holiday weekend, Trooper Dauffenbach observed the driver of a vehicle commit a minor traffic violation on an interstate highway. Trooper Dauffenbach conducted a traffic stop and encountered a vehicle containing four occupants, more than one cooler, and "a pretty strong odor of [an] alcoholic beverage." Trooper Dauffenbach

saw that the driver's eyes were bloodshot, watery, and glassy.[4] Trooper Dauffenbach testified that initially he "wasn't sure if [the driver] had been drinking or not," but "it was obvious [the occupants of the vehicle] were drinking alcohol."

When a driver has committed a minor traffic offense, more than a lack of identification is required to confine the driver in a squad car. *Id.* at 369. In addition to his lack of identification, Quigley had bloodshot, watery eyes, and he was driving a vehicle that contained coolers and had a strong odor of alcohol. The stop occurred on the shoulder of an interstate highway during the evening hours over the Fourth of July holiday weekend. *See State v. Lee*, 585 N.W.2d 378, 383 (Minn. 1998) (considering the time of day when determining whether there was probable cause to believe that defendant had driven under the influence of alcohol). The vehicle's occupants outnumbered Trooper Dauffenbach four to one. Taken as a whole, the facts before us justify a reasonable expansion of the traffic stop under an objective, totality-of-the-circumstances test. *See State v. Smith*, 814 N.W.2d 346, 351-52 (Minn. 2012) (stating that the reasonableness test is satisfied when "the facts available to the officer at the moment of the seizure [would]

[4] Quigley contends that Trooper Dauffenbach's testimony on this point is inconsistent with his police report, which was referred to during cross-examination. The record on appeal consists of documents "filed in the [district] court." Minn. R. Civ. App. P. 110.01. After a careful review of the district court file, we conclude that the police report is not included in the record. Moreover, any contradiction goes to witness credibility, which is for the district court to determine. *Reiss v. Comm'r of Pub. Safety*, 358 N.W.2d 740, 741 (Minn. App. 1984). Here, the district court expressly found that Trooper Dauffenbach observed Quigley's bloodshot, watery, and glassy eyes *before* Quigley exited the driver's seat of the vehicle.

warrant a [person] of reasonable caution in the belief that the action taken was appropriate" (quotation omitted)).

The district court did not err by concluding that Trooper Dauffenbach's actions during the traffic stop, including his decision to confine Quigley in the backseat of the squad car while determining his identity and whether he had a valid driver's license, were related to and justified by the totality of the circumstances encountered during the stop. The district court properly declined to suppress the evidence obtained after Quigley was placed in Trooper Dauffenbach's squad car. Because the evidence supporting the license revocation was seized without violating the Minnesota Constitution's protection against unreasonable searches and seizures, we affirm the district court's decision to sustain the revocation of Quigley's driver's license under the implied-consent law.

Affirmed.