STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1086

State of Minnesota,
Respondent,

vs.

Wendy Marie Cloutier,
Appellant.

Filed June 23, 2014
Affirmed
Johnson, Judge

St. Louis County District Court
File No. 69DU-CR-11-2016

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Rebekka L. Stumme, Assistant County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Michael W. Kunkel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Rodenberg, Judge; and Chutich, Judge.

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

JOHNSON, Judge

The St. Louis County district court found Wendy Marie Cloutier guilty of drug-related offenses based on evidence that she possessed methamphetamine and a methamphetamine pipe. Cloutier argues that the district court erred by denying her motion to suppress evidence. We affirm.

FACTS

On June 25, 2011, Deputy Brent Donahue of the St. Louis County Sheriff's Department was on patrol in Rice Lake Township. He observed a silver minivan and identified the driver as Cloutier. Deputy Donahue had previously reviewed Cloutier's driving status and knew that her driver's license was suspended. Deputy Donahue activated his emergency lights and stopped Cloutier's vehicle.

After Deputy Donahue approached the vehicle, he asked Cloutier whether she knew why he had stopped her. Cloutier admitted that she did not have a valid driver's license. Deputy Donahue asked Cloutier whether she had proof of insurance. While Cloutier looked for documentation in the minivan's glove box, she came across a small tire gauge and spontaneously said to the deputy that the tire gauge is "not a pipe." Deputy Donahue, who had not previously asked Cloutier any questions about drug use or the tire gauge, asked her why she would mention a drug pipe. Cloutier responded that "she didn't want [the deputy] to think that it was a drug pipe" because "she doesn't do . . . drugs." Deputy Donahue then said, "that's not what I've heard; . . . I've heard that [you

are] a user of methamphetamine." Cloutier denied being a drug user and told Deputy Donahue "that she doesn't have anything to hide and to go ahead and look."

In light of Cloutier's statements, Deputy Donahue asked her to exit the vehicle. He reminded her that she was not obligated to allow him to conduct a search. She again said that "she didn't have anything to hide." After Cloutier was outside the vehicle, Deputy Donahue asked "if she had anything on her," to which Cloutier replied, "no." He asked her whether she "would mind emptying her pockets." When Cloutier pulled out her pockets, Deputy Donahue noticed that she had a balled-up facial tissue in her left hand. He asked her to unfold the tissue. She did so, revealing what appeared to be a pipe containing methamphetamine residue. Deputy Donahue arrested Cloutier and, upon conducting a search incident to the arrest, found a baggie in her pocket that contained residue that he believed to be methamphetamine. In subsequent testing, the residue in the baggie and the residue on the pipe tested positive for methamphetamine.

The state charged Cloutier with (1) controlled substance crime in the fifth degree, in violation of Minn. Stat. § 152.025, subd. 2(a)(1) (2010); (2) possession of drug paraphernalia, in violation of Minn. Stat. § 152.092 (2010); (3) driving after suspension, in violation of Minn. Stat. § 171.24, subd. 1 (2010); and (4) having no proof of insurance, in violation of Minn. Stat. § 169.791, subd. 2 (2010). In September 2011, the district court held a contested omnibus hearing. Deputy Donahue provided the only testimony. After the hearing, Cloutier submitted a letter brief in support of a motion to suppress evidence. The district court denied the motion on the ground that Cloutier consented to the search that yielded the evidence.

The case was tried to the court in February 2013. The district court found Cloutier guilty of the first, second, and third counts. The district court found Cloutier not guilty of the fourth count. In March 2013, the district court sentenced Cloutier on the second and third counts by imposing fines and stayed adjudication of the first count. Cloutier appeals.

D E C I S I O N

Cloutier argues that the district court erred by denying her motion to suppress evidence. If the relevant facts are undisputed, as they are in this case, this court applies a *de novo* standard of review to a district court's denial of a motion to suppress. *State v. Yang*, 774 N.W.2d 539, 551 (Minn. 2009).

The Fourth Amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; *see also* Minn. Const. art. I, § 10. The Fourth Amendment also protects the right of the people to be secure in their motor vehicles. *See State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). As a general rule, a law-enforcement officer may not seize and search a person or a person's vehicle without probable cause. *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007).

A law enforcement officer may, however, "'consistent with the Fourth Amendment, conduct a brief, investigatory stop'" of a motor vehicle if "'the officer has a reasonable, articulable suspicion that criminal activity is afoot.'" *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 675 (2000) (citing *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884-85

(1968))). A reasonable articulable suspicion exists if, "in justifying the particular intrusion the police officer [is] able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880. The reasonable-suspicion standard is not high, but the suspicion must be more than an "inchoate and unparticularized suspicion," *Timberlake*, 744 N.W.2d at 393 (quotation omitted), and "something more than an unarticulated hunch," *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quotation omitted). An officer "must be able to point to something that objectively supports the suspicion at issue." *Id*. (quotation omitted); *see also Terry*, 392 U.S. at 21-22, 88 S. Ct. at 1880.

A proper investigatory stop generally must be limited in scope and duration to the original purpose of the stop. *State v. Diede*, 795 N.W.2d 836, 845 (Minn. 2011). An investigatory stop "'must be temporary and last no longer than is necessary to effectuate the purpose of the stop.'" *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002) (quoting *Florida v. Royer*, 460 U.S. 491, 500, 103 S. Ct. 1319, 1325 (1983) (plurality opinion)). The scope of an investigatory stop may be expanded "'to the investigation of only those additional offenses for which the officer develops a reasonable, articulable suspicion within the time necessary to resolve the originally-suspected offense.'" *Diede*, 795 N.W.2d at 845 (quoting *Wiegand*, 645 N.W.2d at 136). Otherwise, the duration of an investigatory stop may be extended only if doing so would be "reasonably related to the investigation of an offense lawfully discovered or suspected during the stop." *State v. Askerooth*, 681 N.W.2d 353, 369-70 (Minn. 2004).

Cloutier does not challenge the initial stop of her vehicle. Rather, she argues that Deputy Donahue unlawfully expanded the scope of the stop, for three reasons.

A.

Cloutier contends that Deputy Donahue "impermissibly expanded the scope of this otherwise-routine traffic stop by asking why she had remarked that the tire pressure gauge was not a drug pipe and by his stating that he had heard that Cloutier was a methamphetamine user."

To reiterate, a law-enforcement officer "may expand the scope of a traffic stop to 'include investigation of other suspected illegal activity . . . only if the officer has reasonable articulable suspicion of such other illegal activity.'" *State v. Smith*, 814 N.W.2d 346, 351 (Minn. 2012) (quoting *Wiegand*, 645 N.W.2d at 135). Investigative questioning unrelated to the original purpose of a traffic stop constitutes an expansion of the stop. *See id.* at 351 n.1; *State v. Fort*, 660 N.W.2d 415, 419 (Minn. 2003). A court must measure the "reasonableness" of an expansion objectively by considering the totality of the circumstances. *Smith*, 814 N.W.2d at 351. The key question is whether "the facts available to the officer at the moment of the seizure [would] warrant a man of reasonable caution in the belief that the action taken was appropriate." *Id.* at 351-52 (alteration in original) (quotation omitted).

Assuming that Deputy Donahue's response to Cloutier's "not-a-pipe" comment was an expansion of the traffic stop, the expansion was reasonable in light of the circumstances. Cloutier raised the issue of drug use by stating, without any prompting, that the tire gauge was not a pipe. Her statement was entirely unrelated to Deputy

Donahue's request for proof of insurance. Deputy Donahue responded reasonably by asking her why she would mention criminal activity that is unrelated to the purpose of the stop. Cloutier again referred to the issue of drugs by saying that she did not want Deputy Donahue to think that she uses drugs. Deputy Donahue, who had contrary information, responded reasonably to Cloutier's second statement about drugs. Cloutier then provided consent to a search, without any request. Thus, Deputy Donahue did not impermissibly expand the scope of the stop. *See id.*

B.

Cloutier next contends that the district court erred by reasoning that her consent, by itself, justified the search. Cloutier does not dispute that she consented to a search. Rather, she contends that the search to which she consented was unreasonable because Deputy Donahue did not also have reasonable suspicion to justify the search.

Cloutier relies on *Fort*, in which the supreme court held that officers exceeded the scope of a traffic stop when they asked the appellant to consent to a search without having reasonable suspicion of criminal activity. 660 N.W.2d at 419. The supreme court concluded that "the investigative questioning, consent inquiry, and *subsequent search* went beyond the scope of the traffic stop and was unsupported by any reasonable articulable suspicion." *Id.* (emphasis added). Cloutier contends that this portion of the *Fort* opinion, especially the highlighted portion, demonstrates that any search conducted during a traffic stop must be supported by reasonable suspicion "irrespective of the suspect's consent."

Cloutier misreads *Fort*. In that case, the officer improperly expanded the scope of the traffic stop by asking investigative questions and requesting consent without a reasonable suspicion of criminal activity. *Id.* After the officer had unlawfully exceeded the scope of the stop, all subsequent interactions with the suspect were unconstitutional, including the search. *See id.* *Fort* is consistent with other cases in which a *request* for consent to a search is deemed an expansion of a traffic stop that must be supported by reasonable suspicion. *See, e.g.*, *Diede*, 795 N.W.2d at 846; *State v. Burbach*, 706 N.W.2d 484, 488 (Minn. 2005). We are unaware of any cases in which a defendant's spontaneous, unrequested consent to a search was deemed to be an expansion of a traffic stop that must be supported by reasonable suspicion. Because Cloutier provided consent to a search on her own initiative, and because Deputy Donahue did not pose any questions or make any request that expanded the scope of the stop, the district court did not err by reasoning that Cloutier's consent is sufficient, regardless whether Deputy Donahue previously had a reasonable suspicion of criminal activity.

C.

Cloutier last contends that, even if she provided valid consent to a search, Deputy Donahue exceeded the scope of her consent. Specifically, she contends that her consent was limited to a search of her vehicle but did not extend to a search of her person.

A search based on consent must be limited in scope to the terms of the consent given. *Walter v. United States*, 447 U.S. 649, 656, 100 S. Ct. 2395, 2401 (1980); *State v. Bunce*, 669 N.W.2d 394, 399 (Minn. App. 2003), *review denied* (Minn. Dec. 16, 2003). The scope of a person's consent is measured by an objective-reasonableness standard:

"what would the typical reasonable person have understood by the exchange between the officer and the [individual]?" *Florida v. Jimeno*, 500 U.S. 248, 251, 111 S. Ct. 1801, 1803-04 (1991). The fact that a person does not place any limitations on her consent to a search, and does not subsequently object to the search, suggests that the search was within the scope of the person's consent. *See id.* at 251, 111 S. Ct. at 1804 (holding that officer did not exceed scope of consent where appellant "did not place any explicit limitation on the scope of the search"); *see also United States v. Siwek*, 453 F.3d 1079, 1085-86 (8th Cir. 2006) (holding that officer did not exceed scope of consent where appellant "made no effort to withdraw or limit the scope of his consent and did not protest in any manner the continuation of the search"); *United States v. Meza-Gonzalez*, 394 F.3d 587, 592 (8th Cir. 2005) (holding that officer did not exceed scope of consent where appellant could observe search but did not object); *United States v. Alcantar*, 271 F.3d 731, 738 (8th Cir. 2001) ("We have previously held that failing to object to the continuation of a consent search makes the continued search 'objectively reasonable.'").

In this case, Cloutier told Deputy Donahue "that she doesn't have anything to hide and to go ahead and look." Deputy Donahue interpreted her comment to be consent to a search of her person. Cloutier did not object when Deputy Donahue asked her to empty her pockets. The record reveals that Cloutier's consent was broad and general enough that it could reasonably cause an officer to believe that she had consented to a search of her person. In fact, it appears that Cloutier conceded as much in the district court; her letter brief makes express reference to her "consent to search her person." Thus, the

district court did not err by not concluding that Deputy Donahue's search exceeded the scope of Cloutier's consent.

In sum, the district court did not err by denying Cloutier's motion to suppress evidence.

Affirmed.