STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0389

State of Minnesota,
Respondent,

vs.

Nancy Jean Feltus,
Appellant.

Filed December 22, 2014
Affirmed
Hooten, Judge

Itasca County District Court
File No. 31-CR-13-1397

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

John J. Muhar, Itasca County Attorney, Matti R. Adam, Assistant County Attorney, Grand Rapids, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Hooten, Judge; and Kirk, Judge.

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

HOOTEN, Judge

Appellant challenges the denial of her pretrial motion to suppress evidence, claiming that evidence demonstrating that she was driving while intoxicated and in

possession of a controlled substance was obtained in conjunction with an unlawfully expanded traffic stop. She also appeals the denial of her motion to dismiss the controlled substance charge for lack of probable cause. Because we conclude that law enforcement's expansion of the traffic stop was justified by a reasonable suspicion of criminal activity, and because her possession of a de minimis amount of methamphetamine was sufficient evidence of probable cause for the controlled substance charge, we affirm.

FACTS

In May 2013, Grand Rapids Police Officer Matthew O'Rourke responded to W.T.'s report that someone stole scrap metal from his property. O'Rourke noticed a vehicle heading towards him matching the description and license plate number provided by W.T., and he stopped the vehicle to investigate the reported theft. O'Rourke identified appellant Nancy Jean Feltus as the driver and observed that her pupils appeared "constricted," indicating to him that she had possibly used a stimulant. O'Rourke asked Feltus whether she was on supervised probation and she admitted to being on probation for previously using methamphetamine. He also observed that her driver's license was cut in the corner, and thought she likely did not have a valid license to drive, perhaps because of a previous driving while intoxicated (DWI) violation.[1] O'Rourke testified that Feltus slurred her words throughout their conversation.

O'Rourke also noticed scrap metal in the backseat of Feltus's vehicle. Feltus then told O'Rourke she had more metal in the trunk of her car. After examining the scrap

[1] He later learned Feltus's driver's license was valid.

metal, O'Rourke's focus turned towards determining the value of the metal to see if it exceeded the threshold for felony theft. O'Rourke called his Sergeant, Jeff Carlson, for advice on how to proceed further. Carlson told O'Rourke to wait until he arrived.

After arriving on the scene, Carlson testified that Feltus slurred her words and that her pupils appeared "dilated." The officers then required Feltus to exit her car so they could perform a field sobriety test. While exiting, the officers asked Feltus to show them her arms. The two observed a discoloration or bruise which they thought was from a recent needle injection. O'Rourke then initiated a field sobriety test, and subsequently arrested Feltus for DWI and misdemeanor theft. After a search of her vehicle yielded a spoon containing methamphetamine residue, the state charged her with fifth-degree possession of a controlled substance as well.

Feltus filed a motion to dismiss the fifth-degree controlled substance and DWI charges. She argued that the evidence used to charge her was unlawfully obtained from the improper expansion of O'Rourke's traffic stop. She also moved to dismiss the controlled substance charge because she possessed only a de minimis amount of methamphetamine. The district court denied her motions. She then proceeded with a stipulated-facts trial and admitted to possessing the scrap metal and spoon. She also admitted to a prior conviction for fifth-degree possession of a controlled substance. The district court then found Feltus guilty of fifth-degree possession of a controlled substance, fourth-degree driving while impaired, and misdemeanor theft. Her appeal follows.

D E C I S I O N

I.

Feltus argues that the district court should have suppressed all evidence obtained against her after the scope of O'Rourke's stop expanded beyond its initial purpose. When reviewing pretrial suppression motions, appellate courts review the district court's factual findings for clear error and review the district court's legal determinations de novo. *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012). Findings of fact are not clearly erroneous if there is reasonable evidence to support them. *Asfaha v. State*, 665 N.W.2d 523, 526 (Minn. 2003).

Both the United States Constitution and the Minnesota Constitution guarantee "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. Expansion of a valid traffic stop does not violate this right so long as

> each incremental intrusion during a traffic stop be tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in *Terry*.

State v. Askerooth, 681 N.W.2d 353, 365 (Minn. 2004) (citing *Terry v. Ohio*, 392 U.S. 1, 19, 88 S. Ct. 1868, 1878 (1968)). The third justification in *Askerooth* requires an officer to state specific and reasonable facts warranting the incremental intrusion. *State v. Davis*, 732 N.W.2d 173, 182 (citing *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880). Because of their special training, "police officers articulating a reasonable suspicion may make inferences and deductions that might well elude an untrained person." *State v. Smith*, 814 N.W.2d

346, 352 (Minn. 2012). We examine the totality of the circumstances and require the officer to provide at least a "minimal level of objective justification" for expansion of the traffic stop. *Id.* (quotation omitted). This standard is "not high." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quoting *Richards v. Wisconsin*, 520 U.S. 385, 394, 117 S. Ct. 1416, 1422 (1997)).

Feltus argues that O'Rourke did not have a reasonable suspicion of criminal activity necessary to expand the scope of the traffic stop. She first contends that any justification for expanding the stop based on the appearance of her pupils should be rejected because the district court's finding that her pupils appeared "constricted" to both officers is clearly erroneous. Feltus points to the conflict between O'Rourke's testimony that her pupils appeared "constricted" and Carlson's testimony that her pupils appeared "dilated." But after testifying that Feltus's pupils appeared "dilated," Carlson later stated on cross-examination that O'Rourke "had mentioned the dilated – or the constricted pupils to me and I had just observed that when I walked up." While it is not entirely clear what Carlson meant, his description is not determinative; what matters is how her pupils appeared to O'Rourke because he initiated and expanded the scope of the stop. At every point in the pretrial stage he described her pupils as "constricted." No one ever challenged this description. The district court's finding that O'Rourke described her pupils as "constricted" was, therefore, not clearly erroneous.

Feltus next argues that the district court's finding that she slurred her speech was clearly erroneous because she coherently responded to O'Rourke's questions. We reject her argument because she asks us to find facts contrary to the description of her speech as

developed in the record by the uncontradicted testimony of the two officers. Her argument does not ask us to review the district court's findings for clear error, but requires us to sit as an independent fact-finder. An appellate court is only authorized to review the district court's findings of fact to determine if those findings are clearly erroneous. *See State v. Colvin*, 645 N.W.2d 449, 453 (Minn. 2002) (noting that "[a]ppellate courts have no more business finding facts after a court trial than after a jury trial"). Because there is evidentiary support in the record, we conclude that the district court's finding that Feltus slurred her speech was not clearly erroneous.

Based on the district court's findings, we conclude O'Rourke articulated reasonable and specific justifications warranting expansion of the stop. Within less than two minutes of stopping her vehicle, O'Rourke observed that her pupils were constricted, her speech was slurred, and her driver's license was clipped in the corner. During the stop, Feltus admitted to being on probation for previous methamphetamine use and O'Rourke noticed that she had a discolored bruise on her arm that looked like a recent injection site.

O'Rourke took these specific and articulable facts and made a number of rational inferences. O'Rourke testified that, based on his experience, slurred speech and constricted pupils are often the result of drug use. He suspected Feltus was under the influence of a stimulant in this particular case. Upon observing her clipped driver's license, O'Rourke suspected that Feltus's driving privileges were suspended for a previous DWI charge. This heightened his belief that she was intoxicated. He testified that her statement that she was on probation for prior methamphetamine use and her

admission of recent methamphetamine use indicated she was possibly still under the influence. When he saw a bruise on her arm that looked like an injection site he concluded she recently injected methamphetamine. His justifications for expanding the scope of the stop are clearly more than "minimal," *Smith*, 814 N.W.2d at 352, and pass the "not high" standard for reasonable suspicion, *Timberlake*, 744 N.W.2d at 393. Based upon these specific and articulable facts, and the reasonable inferences of such facts, the district court correctly denied Feltus's suppression motion.

II.

Feltus also argues that the district court erred when it refused to dismiss the state's fifth-degree possession of a controlled substance charge for lack of probable cause. She argues a recent statutory change suggests that de minimis possession of a controlled substance is no longer criminal under Minnesota law. To evaluate her claim we must look to the language of the fifth-degree possession of a controlled substance statute. We review the interpretation of statutes de novo. *State v. Garcia-Gutierrez*, 844 N.W.2d 519, 521 (Minn. 2014). "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2012). When the legislature's intent is clear from plain and unambiguous statutory language, courts should not engage in any further construction, but instead look only to the plain meaning of the statutory language. *State v. Leathers*, 799 N.W.2d 606, 608 (Minn. 2011) (quotation omitted); *State by Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn. 1996). A statute is ambiguous if its language is subject to more than one reasonable interpretation. *State v. Mauer*, 741 N.W.2d 107, 111 (Minn. 2007).

Feltus was convicted of fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(b)(1) (2012). A person violates that statute by "unlawfully possess[ing] one or more mixtures containing a controlled substance classified in Schedule I, II, III, or IV, except a small amount of marijuana." *Id.* A mixture is a "preparation, compound, mixture, or substance containing a controlled substance." Minn. Stat. § 152.01, subd. 9a (2012). Methamphetamine is a controlled substance under Schedule II. Minn. Stat. § 152.02, subd. 3(d)(2) (2012). Marijuana is a controlled substance under Schedule I. *Id.*, subd. 2(h) (2012). A "small amount" of marijuana is defined as 42.5 grams or less. Minn. Stat. § 152.01, subd. 16 (2012). The statutory definition of "small amount" further provides that "[t]he weight of fluid used in a water pipe may not be considered in determining a small amount except in cases where the marijuana is mixed with four or more fluid ounces of fluid." *Id.*

Feltus does not argue that the language contained in these statutes is subject to more than one reasonable interpretation. Instead, she contends that this statutory definition exempting the weight of fluid used in a water pipe reflects a "legislative intent to decriminalize non-usable residual methamphetamine" in line with other state's decriminalization efforts. Under classic rules of statutory construction, this argument is unpersuasive.

Here, the statutes clearly and unambiguously provide that, except in the case of a statutorily defined "small amount" of marijuana, a person who possesses a controlled substance, or any mixture containing a controlled substance is guilty of a crime. There is no similar exception in the statutes for possession of a small amount or de minimis

amount of methamphetamine. Feltus has requested that we extend the "small amount" exception as applied to marijuana to also include methamphetamine. But, we are not authorized to do so. *See Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987) (holding task of extending the law falls to the supreme court or the legislature, not the court of appeals). The clear and ambiguous language of the statutes fails to support the claim of Feltus that the legislature intended to decriminalize possession of a small amount of methamphetamine.

Because there was an expansion of the traffic stop based upon specific and reasonable facts warranting the incremental intrusion by law enforcement, the district court did not err in denying Feltus's motion for suppression. And, based upon her possession of a spoon with methamphetamine residue and the clear language of that statute criminalizing possession of methamphetamine without regard to the amount possessed, there was probable cause to charge Feltus with fifth-degree possession of a controlled substance.

Affirmed.