

20170462

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

FILED
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CLERK OF SUPREME COURT

Supreme Court No. 20170462
Burleigh County No. 08-2017-CR-01837

MAR 6 2018

STATE OF NORTH DAKOTA

State of North Dakota,)
)
Plaintiff and Appellee,)
)
vs.)
)
Scott Owen Parks,)
)
Defendant and Appellant.)

APPEAL FROM ORDER DENYING APPELLANT’S MOTION TO
SUPPRESS ENTERED ON NOVEMBER 30, 2017.

SOUTH CENTRAL JUDICIAL DISTRICT

HONORABLE THOMAS J. SCHNEIDER, PRESIDING

BRIEF OF APPELLEE
STATE OF NORTH DAKOTA

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ISSUE PRESENTED FOR REVIEW

[¶ 1] Whether the district court correctly found there was reasonable and articulable suspicion to stop Scott Park's vehicle.

STATEMENT OF THE CASE

[¶ 2] This case comes to this Court from an appeal brought after the district court denied Scott Parks' Motion to Suppress on November 30, 2017. Appellant's Appendix at page 18 (hereinafter "App. 18"). Parks appeals the district court's Order denying his Motion to Suppress. App. 18.

[¶ 3] Parks was charged with Possession of Methamphetamine, a Class C Felony, and Possession of Drug Paraphernalia, a Class C Felony, on June 19, 2017. App. 1-2. On August 30, 2017, Parks filed a Motion to Suppress, alleging there was not reasonable and articulable suspicion to stop his vehicle. App. 8-9. On September 11, 2017, the State filed its Response to Defendant's Motion to Suppress, arguing that there was reasonable and articulable suspicion to stop Parks' vehicle. App. 3. On November 14, 2017, the district court held a motion hearing on the Motion to Suppress. App. 3. At the motion hearing, the district court listened to testimony from Officer Adam Lane of the Bismarck Police Department. App. 10. On November 30, 2017, the district court issued its written order denying Parks' Motion to Suppress. App. 3, 10-13. On December 22, 2017, Parks entered conditional pleas to the charges. App. 3. On December 29, 2017, Parks filed a Notice of Appeal. App. 3, 18.

STATEMENT OF THE FACTS

[¶ 4] On June 18, 2017, at approximately 4:40 p.m., Officer Lane observed a vehicle pass him near the intersection of 24th Street and Rosser Avenue. Transcript at page 4 (hereinafter "Tr. 4"). The vehicle was traveling west on Rosser Avenue. Tr. 4. Lane observed the driver of the vehicle to be a white male who appeared to be approximately six feet tall. Tr. 9. Lane also observed that the male appeared to be in his late forties. Tr. 9. After observing the vehicle and the driver, Lane got behind the vehicle and ran the

license plate of the vehicle. Tr. 5. The license plate check showed that Scott Parks was the registered owner and that Parks had a suspended driver's license. Tr. 5. Lane was also given a physical description of Parks when he ran the license plate. Tr. 5. Parks' physical description was a male, six feet four inches tall, and approximately forty-eight years old. Tr. 5. After observing Parks and receiving his physical description, Lane believed that Parks was the driver of the vehicle. Tr. 6, 11.

[¶ 5] After Lane got behind the vehicle, the driver made an immediate right turn on 22nd Street. Tr. 6, 10. After turning on 22nd Street, the vehicle travelled a short distance before it pulled into a driveway. Tr. 6, 10. Lane was only following the vehicle for about a minute. Tr. 6. Lane believed the vehicle was trying to evade him due to the driver's license being suspended. Tr. 10. Lane thought it was suspicious that the vehicle pulled into the driveway because Parks did not have a local address in Bismarck. Tr. 10.

[¶ 6] Once the vehicle was parked in the driveway, Lane activated his vehicle's overhead lights and initiated a traffic stop. Tr. 6. Parks was identified as the driver of the vehicle and was arrested for driving under suspension. Tr. 11. Lane conducted a search incident to arrest in which he located methamphetamine and paraphernalia on Parks' person. App. 11.

ARGUMENT

I. Standard of review

[¶ 7] The North Dakota Supreme Court reviews a district court's decision on a motion to suppress as follows:

In reviewing a district court's decision on a motion to suppress evidence, we defer to the district court's findings of fact and resolve conflicts in testimony in favor of affirmance. We will affirm a district court's decision on a motion to suppress if there is

sufficient competent evidence fairly capable of supporting the trial court's findings, and the decision is not contrary to the manifest weight of evidence. Our standard of review recognized the important of the district court's opportunity to observe the witnesses and assess their credibility. Questions of law are fully reviewable on appeal, and whether a finding of fact meets a legal standard is a question of law.

State v. Hawkins, 2017 ND 172, ¶ 6, 898 N.W.2d 446 (internal citation and quotation omitted).

II. The district court correctly denied Parks' Motion to Suppress.

[¶ 8] The Fourth Amendment of the United States Constitution and Article I, Section 8 of the North Dakota Constitution protects “[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures.” U.S. Const. am. IV; N.D. Const. art. I, § 8. “Investigatory traffic stops are valid when the officer conducting the stop has a reasonable and articulable suspicion the motorist has violated or is violating the law.” State v. Wolfer, 2010 ND 63, ¶ 6, 780 N.W.2d 650 (internal citation and quotation omitted). Whether an officer has reasonable and articulable suspicion is evaluated under an objective standard taking into account the totality of the circumstances Id.

[¶ 9] This Court takes into account inferences and deductions that an investigating officer would make that may elude a lay person. City of West Fargo v. Ross, 2001 ND 163, ¶ 7, 634 N.W.2d 527. “The question is whether a reasonable person in the officer’s position would be justified by some objective manifestation to suspect the defendant was, or was about to be, engaged in unlawful activity.” Id. Police are not required to point to a single factor which, alone, signals a potential violation of the law. Id. at ¶. Rather, police may assess the situation and based upon their inferences and deductions drawn from their

experience and training make the determination whether all the circumstances viewed together create reasonable and articulable suspicion.” Id.

[¶ 10] In this case, Lane clearly had reasonable and articulable suspicion to stop Parks’ vehicle. Lane observed the driver of the vehicle was a white male who appeared to be in his late 40s and was approximately six feet tall. Lane ran the license plate on the vehicle which showed that the registered owner, Parks, had a suspended license. Lane was also informed of Parks’ physical description which matched the driver of the vehicle. After viewing the driver and receiving Parks’ physical description, Lane believed that Parks was the driver of the vehicle. Additionally, Lane believed that Parks was trying to evade Lane due to Parks’ license being suspended because of the way that Parks was driving and pulling into a driveway.

[¶ 11] The facts leading to the stop in this case are similar to the facts leading to the stop that occurred in City of West Fargo v. Ross, 2001 ND 163, N.W.2d 527; see also City of Fargo v. Gullekson, 2001 ND 165, 634 N.W.2d 525 (concluding Ross is dispositive with similar facts). In Ross, a law enforcement officer ran license plate check on the vehicle and noticed that the registered owner of the vehicle had his license suspended. Id. at ¶ 2. The officer then drove up to the vehicle and noticed the driver matched the physical description of the registered owner. Id. The officer then conducted a traffic stop on the vehicle. Id. This Court upheld the stop because the officers had reasonable and articulable suspicion that a crime was occurring when the stop was made. Id. at ¶ 12. The facts in this case are very similar to Ross, so this Court should conclude Lane had reasonable and articulable suspicion to stop Parks’ vehicle.

[¶ 12] Parks claims this it is not enough to determine that the registered owner is under suspension, but that the officer must determine that the driver is the registered owner. That assertion is contrary to this Court's precedents which hold that police have reasonable and articulable suspicion to stop a vehicle associated with a person whose license is suspended. Id. at ¶ 11 (holding that a license check that showed the owner's license was suspended along with observing a driving that matched the owner's physical description clearly provided reasonable and articulable suspicion to stop the vehicle); see State v. Kenner, 1997 ND 1, ¶ 20, 559 N.W.2d 538 (holding that if police have reasonable and articulable suspicion a certain moving vehicle belonged to a driver whose licensed was suspended, then an investigatory stop is valid); see State v. Rodriguez, 454 N.W.2d 726 (N.D. 1990) (holding that a stop of a vehicle associated with a person who had a warrant for his arrest was valid); see Geiger v. Backes, 444 N.W.2d 692 (N.D. 1989) (holding that a stop of a vehicle that was associated with an owner whose license was suspended was valid).

[¶ 13] Parks tries to articulate minor differences between the facts of Ross and this case to support his position. However, the proposed requirements that Parks outlines are not required by Ross. To support his position, Parks claims that an officer observing a driver for three to five second is not a long enough period of time to gain reasonable and articulable suspicion that the driver matches the physical description of the registered owner. The Ross decision, however, never stated how long an officer must observe the driver before initiating a traffic stop. In fact, this Court held that an officer does not even need to actually observe the driver in order to gain reasonable and articulable suspicion to stop a vehicle. Id. at ¶ 10-12 (citing State v. Kenner, 1997 ND 1).

[¶ 14] Police have reasonable and articulable suspicion to stop a vehicle associated with a person whose license is suspended. Kenner, 1997 ND 1, at ¶ 20; See Ross, 2001 ND 163, at ¶ 10. Similar to the officer in Ross, Lane went above and beyond that requirement by: (1) running a license check which established the owner's driving privileges were actually suspended, (2) taking the time to view the driver, and (3) matching his observation of the driver with the physical description of the registered owner. For these reasons, Lane clearly had reasonable and articulable suspicion to stop Park's vehicle.

CONCLUSION

[¶ 15] The district court was correct in denying Parks' Motion to Suppress. The district court considered all the circumstances surrounding the stop of Parks' vehicle and found that Lane clearly had reasonable and articulable suspicion to stop the vehicle. Additionally, the facts of this case are similar to other cases in which this Court held that officers had reasonable and articulable suspicion to stop vehicles. Therefore, the State respectfully requests that this Court affirm the district court's Order denying Parks' Motion to Suppress.

RESPECTFULLY SUBMITTED:

Dated this 28th day of February, 2018.



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)

I, Elvedina Papalichev, being first duly sworn, depose and say that I am a Legal Resident over 21 years old, and on the 2 day of ^{March} February, 2018, I deposited in a sealed envelope a true copy of the attached:

1. Brief of Plaintiff-Appellee
2. Affidavit of Mailing

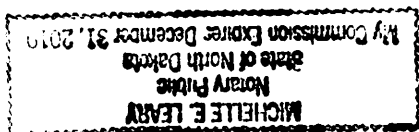
in the United States mail at Bismarck, North Dakota, postage prepaid, addressed to:

Scott Diamond
Attorney at Law
Diamond Law Firm
3523 45th St. S., Ste. 100
Fargo, ND 58104

which address is the last known address of the addressee.

Elvedina Papalichev
Elvedina Papalichev

Subscribed and sworn to before me this 2 day of ^{March} February, 2018.



[Signature]
Notary Public
Burlingame County, North Dakota