

FILED

MAR 12 2010

STATE OF MINNESOTA
COUNTY OF RAMSEY

RAMSEY DISTRICT COURT

DISTRICT COURT
SECOND JUDICIAL DISTRICT

File No. 62-CR-09-9031

State of Minnesota,

Plaintiff,

vs.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

Richard Allen Johnson,

Defendant.

The above-entitled matter came on for hearing before the Honorable Rosanne Nathanson, Judge of District Court on, November 20, 2009.

Kaarin Long, Assistant Ramsey County Attorney, appeared representing the State.

Defendant appeared in person with his attorneys, Ryan M. Pacyga and Page J. Haswell.

Defendant moved to suppress evidence obtained after a search of a duffle bag on the grounds that the search violated his constitutional rights. The State argued that Defendant's motion should be denied. The court heard testimony from St. Paul Police Officers Jeffrey Stiff and Michael McAlpine. The court received into evidence one exhibit. Exhibit 1 is a St. Paul Police Department document containing an inventory of items found in a duffle bag, the subject of a search on April 1, 2009. The duffle bag was presented at the hearing, containing items itemized in Exhibit 1, and was subsequently returned to the St. Paul Police Department Property Room. The bag was not marked as a separate exhibit at the hearing.

The court gave counsel until January 29, 2010 to prepare written memoranda. The court provided such an extended period of time in order to allow time for a transcript of the hearing to

be prepared. Counsel submitted written memoranda on January 29, 2010 and this matter was taken under advisement by the court.

The Court, having reviewed all files, exhibits and records herein, having heard the testimony of witnesses, and having heard and read the arguments of counsel, makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On April 1, 2009, shortly after midnight, Officer Jeffrey Stiff of the St. Paul Police Department was on routine patrol near the intersection of Sinnen Street and 7th Street in St. Paul, Ramsey County, Minnesota. Officer Stiff observed a vehicle pass him at a high rate of speed, activated his emergency lights and initiated a traffic stop of this vehicle for speeding.
2. The vehicle pulled over and Officer Stiff parked his squad car behind it. The squad car's emergency lights remained flashing and a spotlight shone on the stopped vehicle. Officer Stiff approached the driver's side of the vehicle. Officer Stiff was in full police uniform, armed with a pistol and taser. The driver was identified as Trevon Dabney. The sole passenger in the vehicle was identified as Richard Allen Johnson, the Defendant.
3. Not long after Officer Stiff initiated the stop, Officer Michael McAlpine and Officer Bryan Wanshura, each driving separate squad cars, stopped to assist. Both officers parked their squad cars angled towards Mr. Dabney's vehicle. The testimony was unclear as to whether their emergency lights remained activated during this stop. Both officers were in full uniform, carrying similar equipment to Officer Stiff. Officer McAlpine also had with him a trained K-9 dog.

4. Mr. Dabney immediately admitted to Officer Stiff that his driving privileges were revoked and he could not provide proof of insurance. Upon hearing this, Officer Stiff ordered Mr. Dabney to exit his vehicle, brought him back to his squad car and sat him down in the back seat of the squad car.
5. Officer Stiff then approached the passenger side of the vehicle and spoke to Defendant. Defendant asked Officer Stiff if the vehicle would be towed. Officer Stiff responded that they may tow the vehicle. Then Officer Stiff asked Defendant to get out of the vehicle. Defendant complied and Officer Stiff directed him to stand next to a building about 20 feet from the vehicle. Defendant complied. Defendant stood next to the building with Officer Wanshura. At no time did Officer Stiff inform Defendant that he was free to leave.
6. Officer Stiff asked Defendant if he had any property in the vehicle and Defendant responded that he had a blue duffle bag. Officer Stiff asked Defendant what was in the duffle bag and whether it contained anything illegal and Defendant responded that it contained "personal property." In fact, the duffle bag contained, among other things, a laptop computer, jewelry and clothing. *See* Ex. 1.
7. Officer Stiff located the blue duffle bag in the back seat of the vehicle. He picked it up. He said that it felt "heavy." Officer Stiff testified credibly that the duffle bag weighed between 20 and 30 pounds.
8. Officer Stiff asked Defendant for consent to look in the bag. Officer Stiff testified that this request was for officer safety and because he did not want to hand Defendant a bag that might contain a weapon or narcotics. At no time did Officer Stiff inform Defendant that he was free to refuse consent to search the bag. Officer Stiff testified that there was

nothing particular about the Defendant that aroused his suspicion or led him to believe that Defendant was dangerous. He did not suspect Defendant of committing any particular crime, nor did he feel particularly threatened for his safety by Defendant. Officer Stiff did not suspect Mr. Dabney of any crime, other than the offense for which he was detained. Officer Stiff testified that nothing from the outward appearances of Mr. Dabney and Defendant suggested they were under the influence of narcotics or alcohol. Officer Stiff testified that on almost every traffic stop he suspects there are weapons in the vehicle. He testified that this concern for officer safety and the weight of the bag prompted him to ask for consent to look in the bag.

9. Officer Stiff testified that Defendant told him he could look in the bag. Officer Stiff unzipped the bag and observed plastic bags containing white residue that he suspected to be a controlled substance. At this point he asked Officer McAlpine to conduct a K-9 dog sniff of the bag. The K-9 indicated the bag contained a controlled substance. Officer McAlpine opened the bag and conducted a thorough search of the bag. As a result of this search he discovered a metal box and rolled up jeans which contained what was later determined to be 427 grams of cocaine. This amount of cocaine found in the bag is the basis for the current charge against Defendant: Controlled Substance Crime in the First Degree in violation of Minn. Stat. § 152.021, subd. 2(1).
10. The Minnesota and United States Constitutions protect against unreasonable searches and seizures. U.S. Const. amends. IV, XIV; Minn. Const. art. I, § 10. “[A] ‘seizure’ may occur when a police officer, ‘by means of physical force or show of authority, has in some way restrained the liberty of a citizen.’” *State v. Day*, 461 N.W.2d 404, 406 (Minn. Ct. App. 1990) (quoting *Terry v. Ohio*, 392 U.S. 1, 19, n.16 (1968)). A person is

“seized,” by police when a reasonable person, under the circumstances, would not feel free to terminate a police encounter. *See State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995).

11. In this case, the traffic stop involved three uniformed, armed officers. A trained K-9 dog was on the scene. All three squad cars were pointing towards the stopped vehicle. At least one car had its flashing lights activated and shone its spotlight on the stopped vehicle. Defendant was ordered to exit the vehicle and asked to stand near a building 20 feet away next to one of the officers. Defendant was never told he was free to leave. The court finds that the show of police authority was palpable. A reasonable person would not have felt free to terminate the encounter and leave. Based on the totality of the circumstances, Defendant was “seized” prior to the search of the duffle bag. *Cripps*, 533 N.W.2d at 391.
12. The issue then is the legality of the search of the duffle bag. Warrantless searches are presumed unreasonable. *See State v. Munson*, 594 N.W.2d 128 (Minn. 1999). Consent of the person subject to the search is an exception to the warrant requirement. *State v. Hanely*, 363 N.W.2d 735, 738 (Minn. 1985). The State argues that Defendant consented to the search of the blue duffle bag, and, therefore, a warrant was not necessary to search the bag. However, evidence obtained as a result of a search based on consent obtained by exploitation of an impermissibly expanded traffic stop must be suppressed. *State v. Fort*, 660 N.W.2d 415, 419 (Minn. 2003). It is unlawful for police to expand a routine traffic stop beyond the underlying justification unless there is a reasonable and articulable suspicion of criminal activity beyond the traffic offense. *Id.*

13. The justification for the traffic stop was that the vehicle was observed speeding. Later, the driver, Mr. Dabney, was determined to have a revoked license and lacked proof of insurance. Mr. Dabney was detained. Beyond the traffic offense for which Mr. Dabney was detained, there was no articulated suspicion of criminal activity by either Mr. Dabney or Defendant. The officers did not testify to any specific behavior by Defendant or Mr. Dabney that would lead them to believe that either posed a threat to officer safety. Officer Stiff expressed general concerns about officer safety during most traffic stops. He did not identify a particularized belief that Defendant posed a threat to officer safety or was engaged in criminal behavior. Officer Stiff's general concerns do not provide the specific and articulable facts that would warrant an expansion of the scope of the traffic stop. *Fort*, 660 N.W.2d at 416.
14. This court does not find the question of who initiated conversation about the duffle bag to be an overriding consideration in determining whether the scope of the stop was justifiably expanded and whether it was lawful for Officer Stiff to ask Defendant for consent to search the bag. Viewed objectively, under the circumstances, Defendant's questions about what would happen with the car and whether he could retrieve his property from the car were reasonable and should not, in themselves, have aroused suspicion. Nothing about Defendant's behavior is found to have aroused reasonable, articulable suspicion of criminal activity to justify the expansion of the scope of the traffic stop and the inquiry over consent to search the duffle bag.
15. Under *State v. Fort*, Officer Stiff's characterization of the bag as "heavy," combined with his belief that most vehicles contain weapons, was not enough to justify seeking consent

to search the bag. *Id.* Neither Mr. Dabney's nor Defendant's behavior rose to the level required to seek consent for a search under Minnesota law.

16. The traffic stop was impermissibly expanded to include an investigation of Defendant and his duffle bag. Although Defendant consented to the search of the bag, that consent was impermissibly obtained. Therefore, all evidence obtained as a result of the search of the duffle bag should be suppressed.

ORDER

1. Defendant's motion to suppress evidence is GRANTED.
2. All evidence obtained upon search of the blue duffle bag is SUPPRESSED
3. This case is set for pre-trial hearing on April 8, 2010 at 1:30 p.m. before the undersigned at the Ramsey County Courthouse, 15 West Kellogg Boulevard, St. Paul, Minnesota.

Date: 3-12-10

By the Court:



Rosanne Nathanson
Judge of District Court