

The opinion summaries are not part of the Colorado Supreme Court's opinion. They have been prepared solely for the reader's convenience. As such, they may not be cited or relied upon. If there is any discrepancy between the language in the summary and the opinion, the language in the opinion controls.

ADVANCE SHEET HEADNOTE
December 9, 2024

2024 CO 73

No. 24SA168, *People v. Barnett*—Fourth Amendment—Investigatory Stops—Searches and Seizures.

The supreme court holds that a license plate registered to a different vehicle than the one it is affixed to provides reasonable suspicion of motor vehicle theft. Accordingly, the supreme court finds that deputies' investigatory stop of the defendant's vehicle and subsequent order to the defendant and passenger to exit the vehicle were lawful. The supreme court remands to the trial court for additional findings regarding how the deputies discovered the glass pipe and further rulings on the propriety of the search.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2024 CO 73

Supreme Court Case No. 24SA168
Interlocutory Appeal from the District Court
Adams County District Court Case No. 23CR3152
Honorable Jeffrey D. Ruff, Judge

Plaintiff-Appellant:

The People of the State of Colorado,

v.

Defendant-Appellee:

Travis Roland Barnett.

Order Reversed

en banc

December 9, 2024

Attorneys for Plaintiff-Appellant:

Brian S. Mason, District Attorney, Seventeenth Judicial District
Cameron Munier, Senior Deputy District Attorney
Todd Bluth, Senior Deputy District Attorney
Brighton, Colorado

Attorneys for Defendant-Appellee:

Megan A. Ring, Public Defender
James Beck, Deputy Public Defender
Brighton, Colorado

JUSTICE BOATRIGHT delivered the Opinion of the Court, in which CHIEF JUSTICE MÁRQUEZ, JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE HART, JUSTICE SAMOUR, and JUSTICE BERKENKOTTER joined.

JUSTICE BOATRIGHT delivered the Opinion of the Court.

¶1 The Fourth Amendment forbids law enforcement from conducting an investigatory stop based on a mere hunch that crime is afoot. *See People v. Wheeler*, 2020 CO 65, ¶ 13, 465 P.3d 47, 52 (citing *Terry v. Ohio*, 392 U.S. 1, 27 (1968)). In this case, the district court suppressed evidence because it found that deputies executed an investigatory stop of a vehicle based on a mere hunch. But the deputies initiated the stop only after learning that the vehicle's license plates were registered to a different vehicle. Because this constitutes reasonable suspicion rather than a mere hunch, we reverse the district court's order concluding that the stop was unlawful.

¶2 Additionally, as part of the investigatory stop, the deputies commanded both occupants to exit the vehicle. Because deputies may, for their own safety, give a command to exit a vehicle during an investigatory stop, we also reverse the district court's determination that the deputies' command was unlawful.

¶3 Finally, during the encounter, the deputies observed a glass pipe in Travis Barnett's vehicle and identified it as drug paraphernalia. The manner in which the deputies discovered the glass pipe is unclear.¹ Because we conclude that both the

¹ Understandably, the district court did not make credibility determinations on this issue after deciding that everything discovered during the search was fruit of the poisonous tree.

initial stop and the subsequent order to exit the vehicle were lawful, on remand the trial court will need to make additional findings regarding how the deputies discovered the pipe and further rulings on the propriety of the search.

¶4 Accordingly, we hold that a license plate registered to a different vehicle provides reasonable suspicion of motor vehicle theft and thus justified the investigatory stop conducted here. Additionally, we hold that under these facts, the command to exit the vehicle was justified. Therefore, we reverse the district court's suppression order and remand the case for the district court to make factual findings and conclusions of law regarding the discovery of the glass pipe that are consistent with this opinion.

I. Facts and Procedural History

¶5 Deputy Alvarado patrolled a motel parking lot because he believed it was a hot spot for crime. There, he spotted a red 2002 GMC Yukon, a model of car that he testified is commonly stolen. He then drove by the Yukon and became suspicious when its two occupants looked away. Deputy Alvarado did not initiate any contact at this time; instead, he ran a check on the Yukon's license plates and discovered that they were registered to a black 2013 Ford.

¶6 Deputy Alvarado then coordinated with his colleague, Deputy Mohr, to conduct an investigatory stop on the parked Yukon. Deputy Alvarado's bodycam captured these events: The deputies pulled their patrol cars up on either side of

the Yukon before rapidly approaching on foot. They ordered both the driver, Barnett, and the passenger to put their hands up, and then Deputy Alvarado informed Barnett that the plates did not match the Yukon. Barnett responded, "I just bought this yesterday," and began lowering his hands. Deputy Alvarado stopped him by replying, "Don't reach for nothing." He then ordered Barnett to keep his hands up and asked whether Barnett had any weapons. Barnett responded that he did not. Next, Deputy Alvarado ordered Barnett to exit the Yukon. Once Barnett was out of the car, Deputy Alvarado conducted a pat-down of Barnett and then ordered him to wait at the front bumper of one of the patrol cars. Deputy Mohr ordered the passenger to join Barnett.

¶7 Deputy Alvarado asked Barnett if he had a bill of sale for the Yukon, and Barnett answered that both the bill of sale and the title were "somewhere in the back" of the Yukon. Barnett then attempted to return to the Yukon, but Deputy Alvarado ordered him to stop, explaining that Barnett could not access the car because he did not trust Barnett or know if there were weapons in the car. Deputy Mohr then interjected, "I'll be honest with you, dude. You've got meth pipes in—we're going to search the car. Just tell him where the title's at." Barnett then pointed the deputies to the title, disclosing that it was under items on the front floorboard.

¶8 Deputy Alvarado retrieved the title from the passenger side of the car. After running the Yukon's title documents through the computer in his patrol car (and finding that the Yukon had not been reported stolen), Deputy Alvarado informed Barnett that he was going to search the car because he had seen a pipe that resembled drug paraphernalia.² During the search, he found a glass pipe containing drug residue that was "not marijuana"; he later testified that such a pipe is commonly used to smoke methamphetamine and other controlled substances. Under the driver's seat, Deputy Alvarado also found cash and plastic bags containing what appeared to be substantial amounts of methamphetamine.

¶9 Subsequently, the People charged Barnett with possession with intent to manufacture or distribute a controlled substance, criminal impersonation,³ and obstructing a peace officer. Barnett moved to suppress the evidence collected as a result of the stop. Following a hearing, the district court granted the motion. The court determined that the deputies' stop was predicated on a mere hunch and that

² It is unclear when and how the deputies first observed the glass pipe. The bodycam footage shows the pipe for the first time during the search and, at that time, it is on the floor in front of the driver's seat. But it is unclear from the record whether this was when and where the deputies first discovered it.

³ Barnett identified himself by a first name other than Travis during the investigatory stop.

both Alvarado's command to exit the vehicle and his pat-down of Barnett were unjustified. Thus, the court concluded that the subsequent search was illegal.⁴

¶10 The People then filed this interlocutory appeal. They concede that Deputy Alvarado lacked a reasonable basis for his pat-down search of Barnett, but they contest two of the district court's rulings: that Deputy Alvarado lacked reasonable suspicion to conduct an investigatory stop and that the deputies impermissibly commanded Barnett and the passenger to exit the vehicle during the stop.

II. Analysis

¶11 We begin by addressing this court's jurisdiction and the standard of review. We then assess the deputies' actions and conclude that the mismatched license plates justified the investigatory stop. Additionally, we consider whether the command to exit the vehicle was justified and conclude that, under the circumstances, it was.

A. Jurisdiction and Standard of Review

¶12 "Under section 16-12-102(2), C.R.S. (202[4]), and C.A.R. 4.1(a), the People may file an interlocutory appeal from a district court's order granting a defendant's motion to suppress evidence." *People v. Johnson*, 2024 CO 47, ¶ 21,

⁴ Presumably, the trial court did not make any factual findings regarding the search of the car because it found that the stop was unjustified.

549 P.3d 1008, 1013. Here, it is undisputed that the People properly certified this interlocutory appeal.

¶13 We review an order suppressing evidence as a mixed question of fact and law. *People v. Dacus*, 2024 CO 51, ¶ 23, __ P.3d __. We accept the trial court’s findings of fact so long as they are supported by competent evidence. *Id.* *But see People v. Bohler*, 2024 CO 18, ¶ 17, 545 P.3d 509, 514 (noting that “we may independently review recordings including police bodycam footage”). We assess the legal significance of the facts de novo. *Dacus*, ¶ 23.

B. The License Plate Discrepancy Provided Deputy Alvarado with Reasonable Suspicion of Motor Vehicle Theft

¶14 “[A] police officer may conduct a brief investigatory stop without violating an individual’s constitutional rights, so long as the officer can articulate ‘a reasonable suspicion of criminal activity.’” *People v. Moreno*, 2022 CO 19, ¶ 14, 507 P.3d 1005, 1008 (quoting *People v. Brown*, 2019 CO 63, ¶ 10, 461 P.3d 1, 3). Reasonable suspicion requires “more than a mere generalized suspicion or hunch.” *Wheeler*, ¶ 13, 465 P.3d at 52. It demands “a specific and articulable basis in fact for suspecting that criminal activity has occurred, is taking place, or is about to take place.” *Brown*, ¶ 10, 461 P.3d at 3 (quoting *People v. Perez*, 690 P.2d 853, 855 (Colo. 1984)). To determine if a deputy’s suspicion was reasonable, we analyze the totality of the information available to the deputy, and we consider whether rational inferences from those facts indicate criminal activity and thus justify the

deputy's intrusion into the defendant's privacy. *Moreno*, ¶ 15, 507 P.3d at 1008; *People v. Threlkel*, 2019 CO 18, ¶ 19, 438 P.3d 722, 727.

¶15 Barnett argues that Deputy Alvarado possessed only the “barest hunch” that the Yukon might be stolen. We disagree. Deputy Alvarado discovered that the license plates on the Yukon were registered to a different vehicle, and such a discrepancy presents a reasonable suspicion that the motor vehicle may be stolen. *See* § 18-4-409(3)(e), C.R.S. (2024) (providing that a person commits second degree motor vehicle theft when they knowingly obtain another's vehicle without authorization and “unlawfully attach[] or display[] a license plate . . . other than those plates officially issued for the motor vehicle”). Mismatched plates are as suspicious as missing registration papers, which provide reasonable suspicion. *See People v. H.J.*, 931 P.2d 1177, 1181 (Colo. 1997).

¶16 Therefore, because Deputy Alvarado possessed reasonable suspicion of criminal activity, he was authorized to initiate the investigatory stop.

C. Concern for the Deputies' Safety Justified the Command to Exit the Vehicle

¶17 During an investigatory stop, deputies may order drivers and passengers to exit vehicles, which possess a unique potential for escape and concealment of weapons, so long as the order constitutes a reasonable safety precaution. *Maryland v. Wilson*, 519 U.S. 408, 412-14 (1997) (citing *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977) (describing an officer's order to vacate a vehicle during a

lawful investigatory stop as “at most a mere inconvenience . . . when balanced against legitimate concerns for the officer’s safety”). And while restraints on a person’s liberty during an investigatory stop must be reasonable, deputies are not obliged to employ the least intrusive means possible. *People v. White*, 2023 CO 43, ¶ 53, 531 P.3d 397, 408.

¶18 Here, the district court determined that the command to exit was not reasonable—and, therefore, its fruits required suppression—because “peace officers [cannot] remove people from their cars, when there is no reasonable belief that a defendant is armed and dangerous, for the mere purpose of getting a better look at the contents of the car that may not otherwise be in plain view while the car is occupied.” The district court hinged its reasoning on *People v. Sandoval*, No. 20CA1285 (Jan. 11, 2024), which pertained to evidence obtained from a pat-down.

¶19 Although we agree (and the People concede) that *the pat-down* of Barnett was improper, pat-downs demand greater justification than exit orders. Pat-downs, during which a deputy touches a person’s body, are more invasive than the “mere inconvenience” of being ordered to briefly exit a stopped vehicle. *See Mimms*, 434 U.S. at 111. Therefore, to conduct a pat-down, a deputy must have “an articulable and objectively reasonable belief” that the person “is armed and dangerous.” *Johnson*, ¶ 27, 549 P.3d at 1014. By contrast, orders to exit a vehicle

during an investigatory stop do not constitute an additional seizure and thus do not require a deputy to reasonably believe that the passengers are armed and dangerous. See *People v. Harmon*, 2019 COA 156, ¶ 23, 461 P.3d 618, 623; see also *People v. Chavez-Barragan*, 2016 CO 66, ¶ 29, 379 P.3d 330, 337 (citing *People v. Carlson*, 677 P.2d 310, 312 (Colo. 1984) (“We conclude that a police officer in the course of a valid traffic stop may order the driver to get out of the car and walk to the rear of the vehicle”). Therefore, the order that the occupants exit the car was lawful.

D. Further Findings Necessary

¶20 Finally, although we have determined that both the initial stop and subsequent exit command were lawful, we cannot conclude from the existing record whether the motion to suppress should have been granted. That is because it is unclear exactly *how* the deputies discovered the glass pipe—the ultimate evidence at issue in this case. Was it in plain view when Barnett and his passenger left the vehicle? Or did the deputies’ search of the vehicle reveal the pipe? If the latter, at what point in the search did the pipe emerge? How the deputies discovered the pipe impacts the legality of the search. See *People v. Alameno*, 193 P.3d 830, 834 (Colo. 2008) (citing *People v. Pitts*, 13 P.3d 1218, 1222 (Colo. 2000)) (“[E]vidence that is not supported by a valid search warrant may still be admissible if it falls under one of several exceptions to the warrant requirement,

such as the plain view exception.”). Accordingly, on remand, the trial court should make further findings regarding the discovery of the glass pipe and then decide, consistent with those findings, whether the evidence must be suppressed.⁵

III. Conclusion

¶21 We hold that a license plate registered to a different vehicle provides reasonable suspicion of motor vehicle theft and thus justified the investigatory stop here. Additionally, we hold that under these facts, the command to exit the vehicle was justified. Accordingly, we reverse the suppression order and remand this case to the district court with instructions to make factual findings and conclusions of law regarding the discovery of the glass pipe that are consistent with this opinion.

⁵ To be clear, we are not directing the trial court to return this matter to this court after it makes its conclusion about the search of the car.