STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0208
A07-0786

Brian Edward Neegaard, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent,

and

State of Minnesota,
Respondent,

vs.

Brian Edward Neegaard,
Appellant.

Filed March 18, 2008
Affirmed
Poritsky, Judge[*]

Blue Earth County District Court
File No. 07-CV-06-2394

Kyle T. Wermerskirchen, Steven H. Snyder & Associates, 11270 86th Avenue North, Maple Grove, MN 55369 (for appellant)

Lori Swanson, Attorney General, Melissa J. Eberhart, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

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[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

Michael A. Hanson, Assistant Blue Earth County Attorney, 410 South Fifth Street, Mankato, MN 56002 (for respondent)

Considered and decided by Willis, Presiding Judge; Wright, Judge; and Poritsky, Judge.

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

PORITSKY, Judge

In these consolidated appeals, appellant Brian Edward Neegaard challenges the district court's order sustaining the revocation of his driver's license and subsequent verdict finding him guilty of third-degree driving while impaired (DWI). He argues that the district court erred when it concluded that the arresting deputy had reasonable, articulable suspicion of illegal conduct sufficient to support an investigatory stop of appellant. Because the district court did not err in determining that the stop was based on reasonable, articulable suspicion, we affirm.

FACTS

Appellant was arrested for DWI in July 2006 in Blue Earth County. His driving privileges were revoked under the implied consent law, and he was charged with third-degree DWI. Appellant sought timely review of his driver's license revocation, and moved to suppress evidence gained as a result of the stop. Appellant's combined implied consent and contested omnibus hearing was held in November 2006 in Blue Earth County District Court.

At the hearing, the commissioner presented the testimony of the arresting deputy, who testified that on the night of the arrest, he was on patrol in the city of Good Thunder,

Minnesota, at approximately 2:00 a.m. While driving through an alley behind a bar with his windows open, the deputy heard a vehicle screeching or squealing its tires on the pavement for two or three seconds. The noise emanated from the deputy's right. When the deputy got to the end of the alley, he saw only one car to his right, at the stop sign one-half block away. The car stopped at the stop sign and then drove past the deputy. The deputy testified that under the circumstances he believed that the driver of the vehicle had violated Minnesota's careless driving statute and that there was a reasonable, articulable suspicion that the driver of the vehicle may have been driving while impaired.

The deputy testified that he stopped appellant, who admitted to squealing his tires. The deputy observed indicia of intoxication and required appellant to perform field sobriety tests, after which he arrested appellant for DWI. The deputy read appellant the implied consent advisory and obtained a urine sample, which yielded an alcohol content of .12.

Appellant testified that he had consumed seven alcoholic drinks between 6:00 p.m. and 2:00 a.m. and that, while approaching the stop sign in his car where the deputy saw him, his foot slipped off the clutch, causing the tires to "chirp" for less than one second. Appellant denied telling the deputy that he had spun his tires, but acknowledged that he told the deputy that he was trying to impress the woman who was riding in his car.

The district court found that the stop was based on reasonable, articulable suspicion, denied appellant's motion to exclude evidence, and sustained the revocation of his driving privileges. The parties then proceeded on stipulated facts pursuant to *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). The district court found appellant guilty of

third-degree driving while impaired. Appellant received an executed sentence of 30 days in jail and a $900 fine. These appeals follow.

D E C I S I O N

Appellant argues that because the deputy's investigatory stop was not supported by a reasonable, articulable suspicion that appellant had engaged in illegal conduct, his arrest and the evidence obtained following the arrest should have been excluded. We review the district court's determination of reasonable, articulable suspicion de novo, but we review the underlying findings of fact for clear error. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

The Fourth Amendment to the United States Constitution and article I, section 10 of the Minnesota Constitution prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. An investigatory stop of a vehicle is reasonable if it is based on a reasonable, articulable suspicion of criminal activity. *Marben v. State, Dep't of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980). To establish reasonable, articulable suspicion, the state must show that the officer "had a particularized and objective basis for suspecting the particular person stopped of criminal activity." *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996) (quotation omitted). "Ordinarily, if an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle." *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). But an investigatory stop must not be "the product of mere whim, caprice, or idle curiosity." *Marben*, 294 N.W.2d at 699.

In reviewing an officer's actions, courts should consider the totality of the circumstances and remember that "trained law-enforcement officers are permitted to make inferences and deductions that might well elude an untrained person." *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983) (quotation omitted). Circumstances to consider include "the officer's general knowledge and experience, the officer's personal observations, information the officer has received from other sources, the nature of the offense suspected, the time, the location, and anything else that is relevant." *Appelgate v. Comm'r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987).

Specifically, appellant argues that (1) the deputy did not actually observe driving conduct giving a reason to stop appellant, and (2) squealing one's tires is not a sufficient reason to stop a vehicle in absence of statutory prohibition. In our view, it is more logical to determine the issues in reverse order: First, whether the deputy's observations could give rise to a reasonable, articulable suspicion that criminal activity had occurred, regardless of who had committed it, and, second, whether the deputy's observations could support a reasonable, articulable suspicion that it was appellant who committed it.

A. Criminal Activity

Appellant contends that the conduct observed here, specifically a vehicle squealing its tires for two to three seconds, was not a violation of the careless driving statute.

Minnesota's careless driving statute provides:

> Any person who operates or halts any vehicle upon any street or highway carelessly or heedlessly in disregard of the rights of others, or in a manner that endangers or is likely to

> endanger any property or any person, including the driver or passengers of the vehicle, is guilty of a misdemeanor.

Minn. Stat. § 169.13, subd. 2 (2004).

Even though the careless driving statute does not specifically prohibit a driver from squealing the car's tires, the statute is broadly worded and has been interpreted to prohibit a wide range of conduct.[1] In *City of St. Paul v. Olson*, the Minnesota Supreme Court considered whether an "unreasonable acceleration" ordinance—which prohibited the "unnecessary exhibition of speed" and provided that "[p]rima-facie evidence of such unnecessary exhibition of speed shall be unreasonable squealing or screeching sounds emitted by the tires"—conflicted with the careless driving statute. 300 Minn. 455, 455-57, 220 N.W.2d 484, 484-85 (1974). The court concluded that "the act of unreasonable acceleration does fall within the general prohibition contained in § 169.13, subd. 2, against careless driving. In other words, the ordinance specifically covers what [chapter] 169 covers generally." *Id*. at 456-57, 220 N.W.2d at 485 (footnote omitted). Thus, the fact that the careless driving statute does not *specifically* prohibit squealing tires does not determine whether appellant's conduct violated the careless driving statute.

The deputy testified that the squealing sound lasted for two to three seconds, that it occurred at bar-closing time near a bar, and that it was a clear, dry night. The district court rejected appellant's characterization of the tire squealing as an unintentional

[1] Prior to 1983, the careless driving statute prohibited operating or halting a vehicle carelessly or heedlessly but only if the driving was "in disregard of the rights or the safety of others." Minn. Stat. § 169.13, subd. 2 (1982). In 1983, the legislature substantially expanded the scope of the statute to include conduct that endangers "any person, including the driver or passengers of the vehicle." 1983 Minn. Laws ch. 236, § 1, at 829-30.

"chirp." We conclude that under the circumstances the deputy had a reasonable, articulable suspicion that the driver had operated the vehicle in a manner that endangered or was likely to endanger property or persons.[2]

Further, we conclude that the deputy's observations, considered together with the circumstances, establish reasonable, articulable suspicion that the driver of the vehicle was operating the vehicle in violation of Minnesota's driving-while-impaired laws. *See Paulson v. Comm'r of Pub. Safety*, 384 N.W.2d 244, 246 (Minn. App. 1986) (in assessing reasonable, articulable suspicion of a driving-while-impaired violation, an officer may consider that the observed conduct occurred at or around bar-closing time on a road commonly used by bar patrons).

B. Suspicion of Appellant

Appellant argues that because the deputy did not actually see the driving conduct, the deputy could not have a reasonable suspicion that it was appellant who squealed his car's tires. In evaluating reasonable, articulable suspicion, "[t]he ultimate determinative issue . . . is not whether the officer saw the violation but whether his 'belief' (or 'suspicion' or 'assumption') that the violation occurred was reasonably inferable from what he did see." *Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 733 (Minn. 1985).

Considering the totality of the circumstances, we conclude that the deputy's suspicion of appellant was reasonable. The deputy testified that he heard a vehicle squealing its tires for two to three seconds near a bar at bar-closing time on a dry summer

[2] This is not to say, however, that squealing tires is a per se violation of Minnesota's careless driving statute. The attendant circumstances here, and the deputy's clear testimony, aid us in our analysis of appellant's conduct.

night. When he got to the end of the alley, the deputy saw appellant's vehicle in the area from which the noise had emanated. The deputy saw only appellant's vehicle; he did not see any other vehicles in that area, and he believed that appellant's vehicle was the vehicle that had squealed its tires.

Appellant also argues that the district court erred by subjecting him to a higher degree of scrutiny because the stop occurred in Good Thunder. Appellant relies on the district court's reasoning that "I think the stop was valid in that context. In Mankato, I doubt it would be because there's a lot of activity and a lot of cars, so identifying a particular car would be more difficult." But appellant mischaracterizes the court's reasoning. We read the district court's reasoning as an evaluation of all the circumstances present, including the absence of other vehicles, when it determined that the deputy had reasonable, articulable suspicion. *See Appelgate*, 402 N.W.2d at 108 (circumstances to be considered include "the nature of the offense suspected, the time, the location, and anything else that is relevant"). On this record, we see no error.

Affirmed.