STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1045

State of Minnesota,
Respondent,

vs.

Dawn Marie Klitzke,
Appellant.

Filed May 14, 2012
Affirmed
Collins, Judge[*]

Carver County District Court
File No. 10-CR-09-764

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

Mark Metz, Carver County Attorney, Dawn Marie O'Rourke, Assistant County Attorney, Chaska, Minnesota (for respondent)

Melissa Victoria Sheridan, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Chutich, Judge; and Collins, Judge.

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

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

COLLINS, Judge

Deputies stopped a car driven by Toni White in which appellant Dawn Klitzke was the sole passenger. Klitzke challenges her resulting conviction of fifth-degree controlled-substance possession, arguing that the district court erred by denying her motion to suppress evidence because the traffic stop was not justified by a reasonable, articulable suspicion that either of the car's occupants was engaged in criminal activity. We affirm.

FACTS

In October 2009, officers with the Southwest Metro Drug Task Force investigated Dean Roeglin, a suspected drug dealer in Waconia. Carver County Sheriff's Deputy Douglas Schmidtke, who was assigned to the task force, received information regarding Roeglin from three informants.

Informant One had assisted the task force on drug cases for approximately three years and conducted one controlled purchase. Deputy Schmidtke found Informant One's information to generally be reliable. This informant told Deputy Schmidtke that Roeglin lives in Waconia by the lake, drives an old blue pickup truck, and sells methamphetamine that he gets from Bill Brown. Deputy Schmidtke obtained Roeglin's address through a corrections department database and verified the information provided by this informant by driving past Roeglin's residence near the lake in Waconia and seeing a blue pickup truck parked there.

Informant Two had helped Deputy Schmidtke for approximately one-and-one-half years and conducted one or more controlled purchases. This informant provided some of the same information as Informant One, adding the names of people Roeglin was selling drugs to, including White and Klitzke.

Informant Three had worked with Deputy Schmidtke for only a week or two. This informant stated that Roeglin would sell drugs to him and attempted to conduct a controlled purchase from Roeglin, but did not succeed. In addition to confirming that Roeglin lives by the lake in Waconia, drives a blue pickup truck, and sells methamphetamine, Informant Three told Deputy Schmidtke that White usually buys her methamphetamine from Roeglin on Thursdays or Fridays after she gets paid.

Roeglin's address is a multiple-dwelling house near the lake in Waconia, with three entrances in the front and one in the back. Deputy Schmidtke began surveillance there on October 8. A blue pickup truck was parked behind the house. Roeglin's apartment was believed to be the one in the back of the house, although the apartment door could not be seen from Deputy Schmidtke's surveillance position. Deputy Schmidtke watched as a series of people arrived and left the house. He recognized one of them as Bill Brown.

White and Klitzke arrived in White's car and walked to the house. Deputy Schmidtke had been told that White was a methamphetamine user and recognized White because he had seen a picture of her. He recognized Klitzke from her previous encounters with the sheriff's department and had seen a picture of her. After about 30 minutes, White and Klitzke returned to the car and drove away. Because there "was

obviously something going on," Deputy Schmidtke called for assistance. At his direction, and for no other reason, another deputy stopped White's car on the highway a short distance away.

At the scene of the traffic stop, Deputy Schmidtke spoke with White while another deputy spoke with Klitzke. Deputy Schmidtke told White that they were doing a drug investigation, and she consented to the search of her person, her purse, and her car. In White's purse, Deputy Schmidtke found two small baggies of a crystal substance, which he believed was methamphetamine. White admitted that it was hers but did not identify what it was or where she got it.

Klitzke consented to the search of her person, which yielded a methamphetamine pipe. Klitzke then told the officers that under the front passenger seat of the car they would find a small bag of methamphetamine that was hers. When asked where she got it, Klitzke replied, "[from] Deano's place, you know that." The substance was field tested and found to contain methamphetamine.

Klitzke was charged with fifth-degree controlled-substance possession under Minn. Stat. § 152.025, subd. 2(a)(1) (Supp. 2009). Klitzke moved the district court to suppress the methamphetamine, challenging the legality of the traffic stop. The district court denied the motion, finding that under the totality of the circumstances, Deputy Schmidtke had a reasonable, articulable suspicion supporting the stop of White's car.

Klitzke waived a jury trial and submitted the case to the district court for findings on a stipulated record. *See* Minn. R. Crim. P. 26.01, subd. 4. The district court found Klitzke guilty as charged, and placed her on probation for five years conditioned on

serving 180 days in jail and paying a fine and surcharge totaling $385. This appeal followed.

D E C I S I O N

Klitzke disputes the district court's refusal to suppress the evidence derived from the traffic stop, contending that the officers did not have a reasonable, articulable suspicion that either White or she was engaged in criminal activity. "When reviewing pretrial orders on motions to suppress evidence, [this court] may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing─or not suppressing─the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). The district court's findings of fact are reviewed under a clearly erroneous standard and legal determinations are reviewed de novo. *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006). "Findings of fact are clearly erroneous if, on the entire evidence, [this court is] left with the definite and firm conviction that a mistake occurred." *State v. Diede*, 795 N.W.2d 836, 846-47 (Minn. 2011).

Under the United States and Minnesota Constitutions, unreasonable searches and seizures are prohibited. U.S. Const. amend. IV; Minn. Const. art. I, § 10. With a few exceptions, warrantless searches are per se unreasonable. *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967). An officer may conduct a limited investigative stop if the officer has a reasonable, articulable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 20-21, 88 S. Ct. 1868, 1879-80 (1968). To meet the reasonable suspicion standard, an officer must "show that the stop was not the product of mere whim, caprice, or idle curiosity" but rather "was based upon 'specific and articulable facts which, taken

together with rational inferences from those facts, reasonably warrant that intrusion.'" *State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996) (quoting *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880). We determine whether the officer had a reasonable basis to justify the stop by looking to "the events surrounding the stop and consider[ing] the totality of the circumstances." *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). The threshold for meeting the reasonable suspicion standard is very low. *State v. Claussen*, 353 N.W.2d 688, 690 (Minn. App. 1984). And the driver is not required to be in violation of any "vehicle and traffic laws." *Pike*, 551 N.W.2d at 921.

Klitzke argues that because Informant Three was not established as reliable and, thus, his information was insufficient to establish a reasonable, articulable suspicion to justify the stop of White's car, the district court erred by refusing to suppress the resulting evidence. We disagree. An investigative stop may be based on an informant's tip if that tip is sufficiently reliable. *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). But we look to the totality of the circumstances in deciding whether a tip is sufficiently reliable. *Yoraway v. Comm'r of Pub. Safety*, 669 N.W.2d 622, 626 (Minn. App. 2003). There are six factors for courts to consider when determining the reliability of an informant:

> (1) a first-time citizen informant is presumably reliable; (2) an informant who has given reliable information in the past is likely also currently reliable; (3) an informant's reliability can be established if the police can corroborate the information; (4) the informant is presumably more reliable if the informant voluntarily comes forward; (5) in narcotics cases 'controlled purchase' is a term of art that indicates reliability; and (6) an informant is minimally more reliable if the informant makes a statement against the informant's interest.

State v. Ross, 676 N.W.2d 301, 304 (Minn. App. 2004).

In *State v. Cook*, we held that an informant's past reliability is not of itself enough for probable cause and that the court must also consider the basis of the informant's knowledge. 610 N.W.2d 664, 668 (Minn. App. 2000), *review denied* (Minn. July 25, 2000). The basis of an informant's knowledge "may be supplied directly, by first-hand knowledge" or it may be supplied "indirectly through self-verifying details that allow an inference that the information was gained in a reliable way." *Id.* To assess an informant's basis of knowledge, a court must consider "the quantity and quality of detail in the [informant]'s report and whether police independently verified important details of the informant's report." *Id.*

Klitzke focuses inordinate attention on Informant Three. Because we are to look to the surrounding events and consider the totality of the circumstances to determine whether Deputy Schmidtke had a reasonable suspicion to justify the traffic stop, we take into account the information provided by all three informants and Deputy Schmidtke's efforts to corroborate it.

Deputy Schmidtke testified that Informants One and Two had been reliable in the past, and it is not necessary that he articulate "specifics of the informant's past veracity" to confirm that they have in fact provided accurate information. *See Ross*, 676 N.W.2d at 304 (stating that law enforcement officers are not required to provide specific facts of the informant's past veracity). The reliability of these two informants was further established by virtue of their completion of drug purchases under Deputy Schmidtke's control.

Moreover, Deputy Schmidtke was able to corroborate details provided by all three informants. Deputy Schmidtke verified that Roeglin lives near the lake in Waconia by obtaining his address and driving past the house, where he saw a parked blue pickup truck. On October 8, Deputy Schmidtke again saw the blue pickup truck parked near the back of the house, and he observed a number of short-term visitors to Roeglin's residence, including Bill Brown. And his observation of White and Klitzke's arrival at Roeglin's residence on that date, a Thursday, corroborated Informant Three's predictive account that White usually deals with Roeglin on Thursdays or Fridays. Although Deputy Schmidtke did not have a sufficient basis to deem Informant Three to be independently reliable, much of what was provided by this informant was in accord with information from the other two informants and corroborated by Deputy Schmidtke, and was against Informant Three's own interest inasmuch as this informant admitted that Roeglin would sell drugs to him.

Viewed in its totality, this information establishes that the informants were individually and collectively reliable. As analyzed above, the basis of Deputy Schmidtke's reasonable suspicion for directing the stop of White's car does not have to be limited to the information obtained from Informant Three; it is sufficient that the traffic stop was based on a reasonable suspicion derived from the totality of the circumstances. Here the totality of the circumstances created a reasonable suspicion that both White and Klitzke may have been engaged in criminal activity.

Klitzke relies on *State v. Munson* 594 N.W.2d 128 (Minn. 1999), *Ross*, 676 N.W.2d at 301, and *Cook*, 610 N.W.2d at 664, in calling into question Informant Three's

reliability. But these cases all implicate the probable-cause standard, not the less stringent reasonable-suspicion standard applicable here. *See Alabama v. White*, 496 U.S. 325, 328-29, 110 S. Ct. 2412, 2415 (1990) (stating informant's reliability is important in both the reasonable-suspicion context and the probable-cause context but an "allowance must be made in applying [reliability factors] for the lesser showing required to meet [the reasonable-suspicion] standard."). We conclude that the district court did not err by denying Klitzke's suppression motion, based on its well-founded determination that Deputy Schmidtke had reasonable suspicion supporting the stop of White's car.

Affirmed.