

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0955**

State of Minnesota,
Respondent,

vs.

Daniel Craig Guthrie,
Appellant.

**Filed April 7, 2014
Affirmed
Randall, Judge***

Clay County District Court
File No. 14-CR-12-1770

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

Brian Melton, Clay County Attorney, Johnathan R. Judd, Assistant County Attorney,
Moorhead, Minnesota (for respondent)

Stephen L. Smith, Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Hooten, Judge; and
Randall, Judge.

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

UNPUBLISHED OPINION

RANDALL, Judge

A Moorhead police officer stopped Daniel Guthrie's car after noticing its loud muffler and seeing it disappear into an undeveloped area. He arrested Guthrie and charged him with driving while impaired and an equipment violation. The district court found that the officer had a reasonable basis for the stop and found Guthrie guilty of driving while impaired. Because we agree that the noisy muffler gave the officer a reasonable basis to stop Guthrie, we affirm.

FACTS

This is a driving while impaired case. Daniel Guthrie was arrested in April 2012 and charged with driving while impaired. Moorhead Police Officer Shawn Griego stopped Guthrie's car early in the morning because it had a loud muffler. When he stopped Guthrie he smelled the odor of alcoholic beverages and noticed that Guthrie had watery, bloodshot eyes. Griego arrested Guthrie after he failed a field sobriety test and a preliminary breath test indicated an alcohol concentration of .136. Guthrie agreed to a breath test while in custody. The test indicated that his alcohol concentration was .14. Guthrie was charged with alternative counts of driving while impaired and driving with an alcohol concentration of .08 or more. He was also cited for having an excessively loud muffler.

Guthrie demanded an evidentiary hearing to challenge the basis of the stop. Griego testified that Guthrie drove past him early one morning as Griego was doing paperwork. Griego noticed the loud exhaust on Guthrie's car, which was audible over

high winds and through the rolled-up windows of Griego's car. Guthrie passed Griego's stopped car and turned onto a dead-end street in an undeveloped area. Knowing the car would have to return, Griego decided to stop the car because of the exhaust noise as soon as it returned. But as Griego watched through his rearview mirror, the car turned onto another dead-end street and apparently disappeared. Griego estimated that he waited three times as long as it should have taken for the car to return from the dead-end street before deciding to locate it. He testified that he chose to pursue the car because it had disappeared after entering an undeveloped area with no outlet and he suspected the driver was trying to elude him. When Griego entered the dead-end street, the car approached and passed him. He stopped the car and noticed that Guthrie had bloodshot, watery eyes and smelled of alcoholic beverages. Griego later arrested Guthrie for driving while intoxicated. On cross-examination, Griego acknowledged that he did not see the car engage in reckless driving or any moving violations and reiterated that it was his intent all along to stop the car because of its loud exhaust.

Guthrie moved the district court to dismiss the charges because Officer Griego lacked a reasonable, articulable basis for the stop. He based his argument on *State v. Bender*, 381 N.W.2d 896 (Minn. App. 1986), insisting that the case established the principle that loud exhaust noise is a valid reason for a stop only if supported by some additional factor. The district court concluded that under the totality of the circumstances Officer Griego had reasonable suspicion for the stop and denied Guthrie's motion to dismiss.

Guthrie agreed to a stipulated facts trial, conceding that the issue of the reasonable basis for the stop and subsequent search was dispositive in order to preserve it for appeal. The district court found Guthrie guilty of driving while impaired with an alcohol concentration of .08 or higher.

Guthrie appeals.

D E C I S I O N

We review de novo the district court's conclusion that Officer Griego had a reasonable, articulable suspicion to stop Guthrie. *See State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

Guthrie contends that the stop that led to his arrest was improper. The officer conducting the stop must be able to articulate a particular, objective basis for suspecting the person stopped of criminal activity. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). The officer's suspicion must be more than a hunch. *State v. Johnson*, 444 N.W.2d 824, 825-26 (Minn. 1989). Even an insignificant traffic violation can be sufficient to establish an objective basis for a stop. *George*, 557 N.W.2d at 578. Such a stop is valid even if the officer does not issue a citation for the suspected violation. *State v. Clark*, 394 N.W.2d 570, 572 (Minn. App. 1986). Minnesota requires all vehicles to "be equipped with a muffler in good working order," Minn. Stat. § 169.69 (2010), and an officer's suspicion that a vehicle's muffler is faulty can be a valid reason to initiate a stop, *see State v. Beardemphl*, 674 N.W.2d 430, 432 (Minn. App. 2004) (holding search initiated due to loud muffler appropriate); *State v. Pierce*, 347 N.W.2d 829, 833 (Minn. App.

1984) (affirming felon in possession of a firearm conviction stemming from a stop prompted by noisy muffler).

Guthrie urges that *State v. Bender*, 381 N.W.2d 896 (Minn. App. 1986), governs our analysis in this case. *Bender* is still good law but is distinguishable from Guthrie's case. The officer in *Bender* was assisting another officer with a stop when Bender's car passed him, "causing excessive loud noise and loud exhaust and . . . caught [his] attention." *Id.* at 896. The officer testified that he had not observed any moving violations, did not issue a citation for the noisy muffler, and did not even testify that the loud exhaust noise rose to the level of a violation. *Id.* at 897-98. We affirmed the district court's decision to dismiss because the officer's statement "that in his subjective opinion, [Bender]'s car made 'excessive noise'" did not establish a reasonable, articulable suspicion that would sustain the stop. *Id.* at 898. *Bender* does not stand for the proposition that an excessively loud muffler can never constitute an articulable suspicion for a stop unless the officer also observes traffic violations. We rejected this interpretation of *Bender* in *Clark*, where we held that an officer's testimony that he suspected a vehicle possessed a faulty muffler supported an objective inference of a violation. 394 N.W.2d at 572 n.1 (holding stop based in part on suspicion of inoperative muffler justified because supported by officer's testimony that defendant may have violated the law).

Guthrie's argument is not persuasive. Officer Griego testified that he noticed the loud exhaust of Guthrie's car and decided to stop him to investigate the muffler for a possible violation. Suspecting a car possesses a defective muffler can be part of the

reason to stop a vehicle. Unlike the officer in *Bender*, Officer Griego also cited Guthrie for a muffler violation in addition to the charges of driving while impaired. Failing to issue a citation does not prove that a search was invalid, but the inference that a stop was valid is stronger where, as here, the officer also issues a ticket for the equipment violation. Officer Griego also testified that Guthrie's car exhibited signs of evasiveness that contributed to his decision to stop the car. The totality of these circumstances suffices to show that Officer Griego had a reasonable, articulable suspicion of criminal activity when he stopped Guthrie. This may be a close case, but we defer to the district court's decision, as we deferred to the district court in *Bender*. Because we conclude that Officer Griego's stop of Guthrie was valid, we affirm the district court's decision not to dismiss the charges.

Affirmed.