STATE OF MINNESOTA
IN COURT OF APPEALS
A10-871

State of Minnesota,
Respondent,

vs.

Richard Wayne Gustafson,
Appellant.

Filed May 9, 2011
Affirmed
Ross, Judge

Sherburne County District Court
File No. 71-CR-09-1509

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

Kathleen A. Heaney, Sherburne County Attorney, Timothy A. Sime, Assistant County Attorney, Elk River, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Mollie R. Anderson, Assistant Public Defender, Jodie L. Carlson, Assistant Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Lansing, Judge; and Connolly, Judge.

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

ROSS, Judge

A police officer watched Richard Wayne Gustafson stop his car in the lane of traffic, get out, open the trunk, remove an aluminum 12-ounce beverage can, place the can in his pocket, return to the driver's seat, then drive away. Because we are satisfied that these circumstances provide ample suspicion for a reasonable officer to initiate a traffic stop, we affirm the drunk-driving conviction that followed.

FACTS

Big Lake police officer Samuel Olson was pumping gas into his patrol car when he saw a car stop in the middle of a lane of traffic on the public road 30 to 40 yards before the next intersection. The driver got out and walked to the trunk. He opened the trunk and pulled out a 12-ounce silver aluminum beverage can. He put the can in his pocket, ambled back to the driver's door, got in, and drove away. Suspicious, Officer Olson stopped pumping gas and began to follow.

Officer Olson followed eight or nine blocks before he stopped the car. During the drive, he watched the car make a left turn using no signal light. He saw the driver's arm hanging out the car window, but he was unsure why. The driver then made a right turn, again not using his car's signal light and instead sticking his arm out the window. At the time, the officer did not realize that it is lawful for a driver to use hand signals to indicate a turn. So the officer stopped the car, ostensibly for failing to signal. He identified the driver as appellant Richard Wayne Gustafson. He noticed that Gustafson smelled strongly of the odor of an alcoholic beverage, had bloodshot eyes, and had slurred speech. The

officer administered field sobriety tests and a preliminary breath test and arrested Gustafson for driving while impaired. The silver aluminum beverage can was no longer in Gustafson's pocket; Officer Olson found a can of beer, open and already one-quarter empty, inside the car. The state charged Gustafson with two counts of third-degree driving while impaired and one count of possession of an open container of alcohol.

Gustafson challenged the legality of the stop because the officer had noted on an implied consent advisory form that he had stopped the car because the driver had failed to use a turn signal. The district court denied Gustafson's motion and concluded that Officer Olson had reasonable, articulable suspicion for the stop. After a stipulated-facts trial, the district court found Gustafson guilty. Gustafson appeals.

D E C I S I O N

The only issue that Gustafson raises on appeal is whether the district court erred by denying his motion to suppress the evidence because the state obtained the evidence during an illegal traffic stop. We review a district court's legal determinations de novo and its factual findings for clear error in appeals challenging a pretrial order denying a motion to suppress evidence. *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007).

The United States and Minnesota constitutions prohibit unreasonable seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. This prohibition applies to investigative motor vehicle stops. *State v. McKinley*, 305 Minn. 297, 299–302, 232 N.W.2d 906, 908–909 (1975). An officer may conduct an investigatory stop of a vehicle if the officer's seizure is based on a reasonable, articulable suspicion of criminal activity. *Id.* (citing *Terry v. Ohio*, 392 U.S. 1, 27, 88 S. Ct. 1868, 1883 (1968)). To establish reasonable

suspicion, the officer must have "had a particularized and objective basis for suspecting the particular person stopped of criminal activity." *State v. Pike*, 551 N.W.2d 919, 921–22 (Minn. 1996) (quotation omitted). But the factual basis needed to justify an investigatory stop is minimal, *Knapp v. Comm'r of Pub. Safety*, 610 N.W.2d 625, 628 (Minn. 2000), and even a minor traffic-law violation can meet the standard, *State v. George*, 555 N.W.2d 575, 578 (Minn. 1997). When evaluating whether a stop was justified we look at the totality of the circumstances. *State v. Britton*, 604 N.W.2d 84, 89 (Minn. 2000).

Gustafson contends that the officer stopped him relying only on the officer's mistaken belief that a driver cannot use his hand to lawfully signal a turn. But the officer also observed a different violation before stopping Gustafson. A person may not "stop, park, or leave standing any vehicle" on the highway when it is practical to stop or park it off the road. Minn. Stat. § 169.32(a) (2008). And a highway includes "the entire width between boundary lines of any way or place when any part thereof is open to the use of the public . . . for . . . vehicular traffic." Minn. Stat. § 169.011, subd. 81 (2008). The officer first noticed Gustafson when Gustafson stopped in the lane of traffic. This provided a lawful basis for the detention.

Gustafson argues that Officer Olson's reasonable suspicion of any offense was necessarily dispelled because the officer observed no additional traffic infractions after he began to follow Gustafson. Gustafson misunderstands the caselaw he offers in support. Of course it is possible that an officer's reasonable suspicion might be dispelled if the officer's original basis for suspicion is rebutted by new facts. *See Britton*, 604 N.W.2d at

88; *Pike*, 551 N.W.2d at 922 (holding that knowledge that owner of vehicle has revoked license provides reasonable suspicion for stop unless officer becomes aware of facts that would render unreasonable the assumption that the owner is driving). Several blocks of lawful driving *might* dispel an officer's reasonable suspicion that a driver is impaired, but all the lawful driving in the world could not logically have dispelled Officer Olson's observation of Gustafson illegally stopping to make his unconventional beer run.

Gustafson's focus on the officer's mistaken understanding of the turn-signal law is misdirected. We will uphold a stop if the circumstances would justify it in the mind of an objectively reasonable officer. *See State v. Anderson*, 683 N.W.2d 818, 824 (Minn. 2004). Those circumstances exist here. Based on the objective standard we employ and as already explained, the officer observed a reasonable, articulable basis for the stop regardless of his misunderstanding of the turn-signal law.

The district court also found that Officer Olson's squad car camera captured a video recording showing that Gustafson "initiated the left turn arm signal well short of 100 feet before the stop sign" in violation of the turn-signal statute. *See* Minn. Stat. § 169.19, subd. 5 (2008). This unchallenged finding provides an alternative basis for our holding.

The district court appropriately denied Gustafson's suppression motion.

Affirmed.