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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1412**

State of Minnesota,
Respondent,

vs.

Brent Ashley Bosaaen,
Appellant.

**Filed May 21, 2012
Affirmed
Peterson, Judge**

Dakota County District Court
File No. 19HA-CR-10-75

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

James C. Backstrom, Dakota County Attorney, Thomas E. Lockhart, Assistant County Attorney, Hastings, Minnesota (for respondent)

Daniel S. Adkins, Adkins & Anderson, Chartered, Minneapolis, 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.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a conviction of third-degree driving while impaired, appellant argues that the district court erred in denying his motion to suppress evidence obtained as a result of a vehicle stop. We affirm.

FACTS

At about 8:21 p.m. on October 7, 2009, Dakota County Deputy Sheriff Gordon Steffel was dispatched to investigate a report of possible poaching near Biscayne Avenue and 190th Street West in Empire Township in Dakota County. While driving toward the scene, Steffel spoke with L.K. on his cell phone. L.K., who had provided his date of birth and cell-phone number, told Steffel that he saw a red Ford F-150, a dark Chevrolet, and a gray truck on 190th Street just east of Biscayne Avenue by the 90-degree turn. L.K. said that when he first saw the three vehicles, he thought they were having vehicle problems, so he stopped to offer assistance. One man asked L.K. “if he was headed to go hunting.” L.K. said that he was not “because there was no season open right now.” The man “then said that they were after big venison and that they had just seen some.” L.K. called 911 and stayed in the area.

As Steffel turned north onto Biscayne Avenue, L.K. told him that the vehicles were leaving. Steffel continued driving north toward 190th Street and saw headlights coming toward him on Biscayne Avenue. As he neared the intersection at 197th Street, Steffel saw the approaching vehicle stop at the intersection and turn right. He saw that the vehicle was a red pick-up truck, and he turned to follow it. He ran the Minnesota

license plate, which came back as belonging to a red Ford F-150. Steffel activated his emergency lights and stopped the truck.

Steffel approached the driver's window and asked the driver where he was coming from. The driver said he was coming from softball. When asked how he was getting home, the driver said that he was on a road back there and was headed to an address off of 190th Street in Farmington. Steffel asked the driver if he had seen anyone else back there, and the driver said no. When asked again what roads he had taken, the driver said that he was on a road back there and then went south on County Road 79 but he did not know the name of the first road. Steffel asked for the driver's license and identified the driver as appellant Brent Ashley Bosaaen.

While Steffel spoke with appellant, he smelled the odor of alcohol emanating from the passenger compartment of the truck. Appellant was the truck's sole occupant. Steffel asked appellant how much he had to drink, and appellant said two beers. Steffel asked appellant to step out of the truck in order to conduct field sobriety tests. After appellant failed to successfully complete any of the tests, he submitted to a preliminary breath test, which indicated an alcohol concentration of .166. Steffel placed appellant under arrest, and appellant later consented to a breath test, which registered an alcohol concentration of .13.

The state charged appellant with two counts of third-degree driving while impaired. Appellant moved to suppress the breath-test results, and the contested issues were submitted to the district court based on the police reports and letter briefs. Appellant argued that the stop was unlawful and that Steffel unlawfully expanded the

scope of the stop. The district court denied appellant's suppression motion, and, following a court trial, found appellant guilty of third-degree driving while impaired. This appeal followed.

D E C I S I O N

When reviewing the legality of a search and seizure, an appellate court will not reverse the [district] court's findings unless clearly erroneous or contrary to law. A [district] court's determinations of reasonable suspicion as it relates to limited investigatory stops . . . and probable cause as it relates to warrantless searches are subject to de novo review.

State v. Munson, 594 N.W.2d 128, 135 (Minn. 1999) (quotation and citation omitted).

Both the United States and Minnesota Constitutions protect against “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. A police officer is permitted to make a limited investigative stop if the officer has “a reasonable, articulable suspicion that the suspect might be engaged in criminal activity.” *State v. Flowers*, 734 N.W.2d 239, 250 (Minn. 2007) (citing *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968)) (quotation omitted); *see also State v. Askerooth*, 681 N.W.2d 353, 362-63 (Minn. 2004) (discussing application of *Terry* principles to vehicle stops). “The factual basis required to support a stop is minimal, and an actual violation [of the law] is not necessary.” *State v. Haataja*, 611 N.W.2d 353, 354 (Minn. App. 2000) (quotation omitted), *review denied* (Minn. July 25, 2000). “Reasonable suspicion must be based on specific, articulable facts that allow the officer to be able to articulate at the omnibus hearing that he or she had a particularized and objective basis for suspecting [a] person of criminal activity.” *State v. Diede*, 795 N.W.2d 836, 842-43 (Minn. 2011)

(quotation omitted). The stop must be more than “the product of mere whim, caprice, or idle curiosity.” *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003) (quotation omitted). In determining whether a stop was valid, an appellate court considers the totality of circumstances surrounding the stop, including the trained perspective of the officer initiating the stop. *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983).

“The reasonable suspicion standard can also be met based on information provided by a reliable informant. But information given by an informant must bear indicia of reliability that make the alleged criminal conduct sufficiently likely to justify an investigatory stop by police.” *State v. Timberlake*, 744 N.W.2d 390, 393-94 (Minn. 2008) (citation omitted). Citizen informants are presumed to be reliable. *State v. Jones*, 678 N.W.2d 1, 11 (Minn. 2004). Minnesota cases dealing with investigatory stops based on informant tips have focused on two factors when evaluating the reliability of the tip: (1) identifying information given by the informant, and (2) objective facts supporting the informant’s assertion that the suspect is engaging in criminal activity. *Rose v. Comm’r of Pub. Safety*, 637 N.W.2d 326, 328 (Minn. App. 2001), *review denied* (Minn. Mar. 19, 2002). Neither of these factors is dispositive, and ultimately the basis for an investigatory stop must be analyzed in light of the totality of the circumstances. *Jobe v. Comm’r of Pub. Safety*, 609 N.W.2d 919, 921 (Minn. App. 2000) (citing *Alabama v. White*, 496 U.S. 325, 330, 110 S. Ct. 2412, 2416 (1990)).

Appellant argues that there was not an adequate basis for the investigatory stop of his vehicle. We first consider whether L.K.’s tip provided Steffel with a reasonable basis to suspect that the men L.K. encountered were engaged in criminal activity.

Appellant concedes that L.K. adequately identified himself, and we presume the reliability of L.K.'s tip. *See Jones*, 678 N.W.2d at 11 (presumption of reliability). It is undisputed that it was not open season for hunting deer with a firearm and taking deer without a license is prohibited. *See Minn. Stat. § 97B.301, subd. 1* (2010) (requiring license to take deer). It is also undisputed that L.K. saw the vehicles on the side of the road in a rural area. The record establishes that Steffel spoke with L.K. while Steffel was driving toward the location where L.K. saw the vehicles and spoke with the occupants. L.K. provided specific facts about his conversation with the occupants. These facts, which are documented in Steffel's report, include that when L.K. asked if the occupants needed help, "[o]ne of the guys asked [L.K.] if he was headed to go hunting. [L.K.] told them no because there was no season open right now. The guy then said that they were after big venison and that they had just seen some." Under the totality of the circumstances, these statements provided a reasonable basis for Steffel to suspect that the men were hunting deer out of season. *See Haataja*, 611 N.W.2d at 354 (recognizing factual basis supporting reasonable suspicion is minimal and violation of law is not necessary).

Because the men left before Steffel arrived, we must consider whether Steffel also had a reasonable basis to suspect that appellant had been involved in the incident reported by L.K. *See Appelgate v. Comm'r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987) (stating that officer must have "a particularized and objective basis for suspecting the particular person stopped of criminal activity" (quotation omitted)). The record establishes that, while en route to the 190th-and-Biscayne location where L.K.

encountered the men, Steffel had just turned north onto Biscayne Avenue when L.K. told him that the vehicles were leaving. Steffel continued driving north, and he saw headlights coming toward him southbound on Biscayne Avenue. The approaching vehicle stopped at a stop sign and turned right just as Steffel neared the intersection. As the vehicle turned, Steffel saw that it was a red pick-up truck. Steffel turned, followed the truck, and ran the Minnesota license plate, which came back as belonging to a red Ford F-150. L.K. had reported that one of the vehicles he saw was a red Ford F-150.

We conclude that because appellant's truck matched the description of one of the vehicles reported by L.K. and Steffel saw the truck traveling away from L.K.'s location a short time after L.K. reported that the vehicles had left, Steffel had a particularized and objective basis to suspect that the truck was one of the vehicles that L.K. had seen. *Cf. Appelgate*, 402 N.W.2d at 108 (identifying factors that may be considered in determining propriety of investigative stop of motor vehicle in vicinity of recent crime as including particularity of description of vehicle, size of area, time elapsed, and number of persons in area). Based on the totality of the circumstances, Steffel had a reasonable basis to conduct an investigatory stop of appellant's vehicle.

Appellant challenges the legality of the stop on the basis that because the bow-hunting season for deer was open, the men could have been lawfully hunting deer, and the men's actions did "not exclusively comport with the commission of a crime." But wholly lawful conduct can justify a suspicion that criminal activity is afoot. *State v. Britton*, 604 N.W.2d 84, 89 (Minn. 2000); *see also Timberlake*, 744 N.W.2d at 394-95 (holding that because lawful possession of firearm in public place requires permit,

informant's tip that person in motor vehicle possessed firearm created reasonable suspicion of criminal activity—possession of firearm without permit—for police to conduct lawful investigatory stop).

Appellant contends that because L.K. did not provide license-plate information, the relative age of the truck, or any other identifying details, and because the color of appellant's Ford F-150 is burgundy, not red, there was no factual basis that connected appellant to the suspicious conduct. But nothing in the record establishes that appellant's truck is burgundy, and, even if the truck is burgundy, it was reasonable for Steffel to suspect that a burgundy truck had been described as red. *See State v. Yang*, 774 N.W.2d 539, 551-52 (Minn. 2009) (holding that officer reasonably stopped dark blue Honda Civic hatchback based on description of black Honda Accord); *Waddell*, 655 N.W.2d at 809-10 (holding that officer reasonably stopped gray vehicle when suspect vehicle was described as dark blue or black). Steffel stopped appellant's truck because it matched L.K.'s description of one of the vehicles he had seen and Steffel saw the truck traveling away from the location where L.K. had encountered the men a short time after L.K. reported that the men were leaving. These facts connected the truck to the suspicious conduct that L.K. reported.

Finally, appellant argues that L.K.'s tip is similar to the informant's tip in *State v. Cook*, 610 N.W.2d 664, 666 (Minn. App. 2000), that a suspect was selling crack cocaine at a YMCA and that he had the crack cocaine in the waistband of his pants. In *Cook*, this court concluded that the informant's tip, which included a description of the suspect's clothing, physical appearance, vehicle, and present location, was insufficient to establish

probable cause to arrest the suspect because the details of the tip failed to offer any explanation for the basis of the informant's claim that the suspect was selling drugs. *Id.* at 668-69. Because there was no probable cause for the arrest, this court affirmed the district court's order suppressing crack cocaine found in the suspect's waistband following his arrest. *Id.* at 669.

Appellant incorrectly states that, in *Cook*, "[t]his Court affirmed the order to suppress, on the grounds that the informer's information did not predict any future suspicious behavior on Cook's part, and because the police arrested the suspect before verifying his identity." Based on this incorrect statement, appellant argues that "[h]ere, as in *Cook*, there was no prediction of suspicious behavior," and "just as in *Cook*, the police seized [appellant] before verifying his identity."

But, unlike *Cook*, the issue here is whether Steffel had reasonable suspicion to support an investigative stop, not whether he had probable cause to arrest appellant. As we have already discussed, the record demonstrates that Steffel had a reasonable basis to suspect that the men that L.K. saw were engaged in poaching and that the Ford F-150 that Steffel stopped was one of the vehicles that L.K. saw. The district court did not err in concluding that when appellant was stopped, Steffel had a reasonable articulable suspicion that appellant might be engaged in criminal activity.

Expansion of the stop

Expansion of the scope of a routine traffic stop to investigate other suspected criminal activity is permissible only if the officer has a reasonable, articulable suspicion of other criminal activity. *State v. Fort*, 660 N.W.2d 415, 419 (Minn. 2003). And the

officer must develop a reasonable, articulable suspicion of other illegal activity during the time necessary to resolve the originally suspected offense. *State v. Wiegand*, 645 N.W.2d 125, 136 (Minn. 2002).

Appellant argues that Steffel unreasonably expanded the scope of the stop. We disagree. Steffel's report states that he

approached the driver's side window and spoke to the driver asking him where he was coming from. He told me that he was coming from softball. I asked how he was getting home and he told me that he was on the roads back there and was going over to an address off 190th Street in Farmington. I asked him if he had seen anyone else back there and he said no. I asked him what road he had taken and he said he was on a road back there and then went south on County Road 79 but he did not know the name of that road. I then asked him for his driver's license

While effectuating the purpose of the stop, which was to investigate L.K.'s tip about possible poaching, Steffel reasonably sought to determine where appellant was coming from, what roads he drove, where he was headed, and whether appellant had seen any others on his route. Steffel's report states that "[a]s we spoke together, I could smell the odor of an alcoholic beverage emanating from the passenger compartment of the truck in which [appellant] was the lone occupant." Thus, the record shows that Steffel smelled the odor of alcohol during the time needed to investigate L.K.'s tip.

Because appellant was the lone occupant of the truck, the odor of alcohol emanating from the passenger compartment established a reasonable, articulable suspicion that appellant was driving under the influence of alcohol. Thus, Steffel lawfully expanded the scope of the stop.

Appellant argues that he “readily and credibly exculpated himself” from the conduct L.K. described, and “once Deputy Steffel confirmed that the truck he had stopped was utterly innocent of involvement in any activities related to poaching, the proper action was to release the truck and allow appellant to continue homeward.” Appellant emphasizes that no physical evidence of poaching was found on or near his truck. Officers, however, may continue a stop “as long as the reasonable suspicion for the detention remains provided they act diligently and reasonably.” *Wiegand*, 645 N.W.2d at 135 (quotations omitted). When investigating L.K.’s tip about possible poaching, Steffel was not required to assume that appellant’s initial response to questioning was credible. It was reasonable for Steffel to ask additional questions after appellant said that he was coming from softball, and nothing in the record indicates that Steffel did not act diligently.

Appellant also argues that Steffel smelled the odor of alcohol only after he impermissibly expanded the scope of the stop. But, as we have already discussed, the record demonstrates that Steffel smelled the odor of alcohol while diligently investigating L.K.’s tip about possible poaching. Because Steffel’s stop of appellant’s vehicle and his expansion of the stop were lawful, the district court did not err in denying appellant’s suppression motion.

Affirmed.