STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1359

State of Minnesota,
Respondent,

vs.

Shane Joseph Stanina,
Appellant.

Filed July 23, 2012
Affirmed
Schellhas, Judge

Itasca County District Court
File No. 31-CR-10-1397

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

John J. Muhar, Itasca County Attorney, Heidi M. Chandler, David S. Schmit, Assistant County Attorneys, Grand Rapids, Minnesota (for respondent)

James Perunovich, Law Offices of James Perunovich, P.F., Hibbing, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Kalitowski, Judge; and Chutich, Judge.

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

SCHELLHAS, Judge

Appellant argues that a law enforcement officer's stop of his vehicle was unsupported by reasonable suspicion and that his two convictions of third-degree burglary are unsupported by sufficient evidence. We affirm.

FACTS

On April 3, 2010, while he was attempting to serve foreclosure papers at D.C.'s cabin on County Road 53 in Itasca County, Itasca County Deputy Sheriff Ryan Gunderson discovered that the cabin had apparently been burglarized. Deputy Gunderson announced on his radio that he was at "the scene of a burglary . . . that he had just discovered." Itasca County Deputy Sheriff Bob LeClair, who was on patrol in a fully marked squad car, heard the radio announcement at approximately 8:30 p.m. and drove toward the burglary. Within approximately two miles of the burglary scene, while driving toward it on County Road 53—a rural, gravel, low-traveled road—Deputy LeClair encountered only one vehicle, a pick-up truck traveling in the opposite direction. Suspicious that the pick-up truck might be involved in the reported burglary, Deputy LeClair turned around and followed the truck.

While following the pick-up truck, Deputy LeClair ran its license plate and learned that it was registered to appellant Shane Stanina, with whom Deputy LeClair was familiar. Deputy LeClair had "prior dealings" with Stanina and had personal knowledge that Stanina "had been a suspect in several of the burglaries [in the area] that had occurred up to that point that [the police] were actively investigating." Deputy LeClair

confirmed with dispatch that Stanina was on probation and that he was "subject to spot check." As Deputy LeClair followed Stanina's truck, it pulled over to the side of the road, slowed down to five or ten miles an hour for a short distance, and pulled back out onto the road. Deputy LeClair activated his squad lights and stopped Stanina's truck at approximately 9:00 p.m. Deputy LeClair did not observe any traffic violations before initiating the stop.

During the stop, Deputy LeClair observed on the truck's front seat two padlocks with missing tops—a Masterlock with a blue case and a silver padlock with a long shank—and he discovered in Stanina's jacket pocket the top part of a broken padlock. Stanina told Deputy LeClair that one padlock was from his boathouse and another was from a job site. When Deputy LeClair later executed a search warrant of Stanina's truck, he seized the two padlocks, the top of a padlock, a large pry bar, a large hammer, a metal spike, a claw hammer, a large crescent wrench, a gray tool kit, a pair of pliers, a full can of beer, and a half-full five-gallon gas can. And during a follow-up search, he recovered Fannie Mae real estate foreclosure papers that described D.C.'s cabin. A Fannie Mae representative told Deputy LeClair that he delivered the foreclosure papers to the cabin on March 13, 2010, and that he did not observe any evidence of a burglary at that time.

D.C. informed Deputy LeClair that he was missing a number of belongings from his cabin, including a "compound bow," "a Marlin .22 rifle," and "a Masterlock padlock with a blue rubber case." He also provided Deputy LeClair with a key that perfectly fit the Masterlock padlock recovered from Stanina's truck. And Deputy LeClair determined that the pry-bar marks on the door frame of D.C.'s cabin perfectly matched the pry bar

recovered from Stanina's truck and that the pry bar had white paint on it that matched the paint on the cabin's door frame. Deputy LeClair also determined that the recovered five-gallon gas can belonged to E.P., who had reported it missing after an earlier burglary of his shed. E.P. also had reported as missing a silver padlock with a long shank, and he provided Deputy LeClair with a key that opened the silver padlock seized from Stanina's truck.

One inmate at the Itasca County Jail told Deputy LeClair that, while Stanina was incarcerated with him, he admitted breaking into a cabin near his parent's place, breaking two padlocks off a building, and stealing a gas can. Another inmate said that Stanina "told of breaking into a cabin, breaking padlocks with a pry bar, stealing a gas can, and getting stopped by a deputy." That inmate also overheard Stanina telling his mother that "law enforcement would not find a compound bow and .22 rifle" because they were at a man's residence in Pengilly.[1]

Respondent State of Minnesota charged Stanina with two counts of third-degree burglary of D.C.'s cabin and E.P.'s shed in violation of Minn. Stat. § 609.582, subd. 3 (2008). Stanina moved to suppress the evidence recovered from his truck, and the district court denied his motion. Stanina agreed to a stipulated-facts trial under Minn. R. Crim. P. 26.01, subd. 3, and the district court found him guilty of both counts of third-degree burglary.

This appeal follows.

[1] A police search of the Pengilly residence revealed nothing of evidentiary value.

D E C I S I O N

Suppression Motion

"We review de novo a district court's ruling on constitutional questions involving searches and seizures," *State v. Anderson*, 733 N.W.2d 128, 136 (Minn. 2007), and when the facts are not in dispute, this court reviews pretrial orders to suppress evidence de novo, *State v. Flowers*, 734 N.W.2d 239, 247–48 (Minn. 2007).

The United States and Minnesota Constitutions provide, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." U.S. Const. amend. IV; Minn. Const. art. I, § 10. "The touchstone of the Fourth Amendment is reasonableness . . . ." *State v. Johnson*, 813 N.W.2d 1, 5 (Minn. 2012) (quotation omitted). "Automobiles constitute 'effects' under the Fourth Amendment . . . ." *State v. Wiegand*, 645 N.W.2d 125, 131 (Minn. 2002). "[E]vidence obtained by illegal searches is inadmissible in court." *In re Welfare of B.R.K.*, 658 N.W.2d 565, 578 (Minn. 2003).

Minnesota courts determine the reasonableness of seizures during traffic stops based on the principles and framework provided by the United States Supreme Court in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968). *State v. Askerooth*, 681 N.W.2d 353, 359, 363 (Minn. 2004). Under *Terry*,

> a police officer may temporarily detain a suspect without probable cause if (1) the stop was justified at its inception by reasonable articulable suspicion, and (2) the actions of the police during the stop were reasonably related to and justified by the circumstances that gave rise to the stop in the first place.

State v. Diede, 795 N.W.2d 836, 842 (Minn. 2011) (quotations omitted). Because Stanina does not challenge the reasonableness of Deputy LeClair's conduct during the stop, we consider only whether the stop was initially justified by reasonable suspicion.

"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 the seized person of criminal activity." *Id*. at 842–43 (quotations omitted). The reasonable-suspicion standard is "not high" and "less demanding than the standard for probable cause or a preponderance of the evidence." *Id.* at 843 (quotations omitted). "We are deferential to police officer training and experience and recognize that a trained officer can properly act on suspicion that would elude an untrained eye. It is also true that wholly lawful conduct might justify the suspicion that criminal activity is afoot." *State v. Britton*, 604 N.W.2d 84, 88–89 (Minn. 2000) (citation omitted); *see State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) ("[S]eemingly innocent factors may weigh into the analysis."). "Nonetheless, the reasonableness of the officer's actions is an *objective* inquiry, even if reasonableness is evaluated in light of an officer's training and experience. The actual, subjective beliefs of the officer are not the focus in evaluating reasonableness." *State v. Koppi*, 798 N.W.2d 358, 363 (Minn. 2011) (quotation and citation omitted). "A hunch, without additional objectively articulable facts, cannot provide the basis for an investigatory stop." *Diede*, 795 N.W.2d at 843 (quotation omitted).

Minnesota courts determine whether reasonable suspicion exists to render a vehicle stop near a recent crime scene lawful based on the totality of the circumstances,

including the six *Appelgate* factors, *State v. Yang*, 774 N.W.2d 539, 551 (Minn. 2009), "among others," *Wold v. State*, 430 N.W.2d 171, 174 (Minn. 1988). "An investigatory stop of a vehicle is justified if police have a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Yang*, 774 N.W.2d at 551 (quotations omitted). The six *Appelgate* factors are:

> (1) the particularity of the description of the offender or the vehicle in which he fled;
> (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred;
> (3) the number of persons about in that area;
> (4) the known or probable direction of the offender's flight;
> (5) observed activity by the particular person stopped; and
> (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.

Appelgate v. Comm'r of Pub. Safety, 402 N.W.2d 106, 108 (Minn. 1987). The supreme court explained in *Appelgate* that such stops are necessary to enable police to "freeze the situation" because "even if the circumstances are such that no one person can be singled out as the probable offender, the police must sometimes be allowed to take some action intermediate to that of arrest and nonseizure activity." *Id.* (quotations omitted).

The state argues that Deputy LeClair had reasonable suspicion to stop Stanina's truck, based on the totality of the circumstances, including the *Appelgate* factors. Stanina counters that the *Appelgate* factors were not sufficiently satisfied. We agree with the state because Deputy LeClair's stop satisfies five of the six *Appelgate* factors and Stanina was a probationer at the time of the stop.

First Factor

Stanina argues that Deputy LeClair had no description of Stanina or his truck before stopping him. Stanina is correct but his argument is unpersuasive because when "the number of persons about in the area is so small[,] . . . a stopping for investigation may be made without any description whatsoever." *Id.* (quotation omitted) ("In this case the police had no description of the burglar or of any get-away vehicle. This fact should not put an end to the matter.").

Second and Third Factors

Stanina argues that Deputy LeClair "had no idea when the crime occurred" and stopped Stanina's truck within two or three miles of the burglary scene, which included "multiple ingress and egress routes." Stanina further argues that people normally travel public roads at around the time when Deputy LeClair stopped his truck and that Deputy LeClair admitted that he had been pursuing another vehicle when he heard the burglary report. Stanina's arguments are unconvincing "[w]hen one views the events as they unfolded to" Deputy LeClair. *See State v. Giebenhain*, 374 N.W.2d 573, 574–75 (Minn. App. 1985) (noting that, even though the appellant argued that "the police had merely been informed that there *might be* a burglary taking place" and that "[t]he police were not informed that there definitely was a burglary nor that burglars were seen in a pickup truck," the stop was valid "[w]hen one views the events as they unfolded to the officers"); *see also Britton*, 604 N.W.2d at 88 (noting that "[w]e are deferential to police officer training and experience"). Here, Deputy LeClair stopped Stanina's truck on a rural, gravel, low-traveled road at night within approximately 30 minutes of the burglary's

discovery and within approximately two miles of the burglary. Moreover, the record evidence is that Stanina's vehicle was the only vehicle that Deputy LeClair encountered on County Road 53 on his way to the burglary; the other vehicle that Deputy LeClair had been pursuing was "traveling southbound on Highway 65" when he encountered Stanina's truck traveling east on Country Road 53; and Deputy LeClair encountered no other vehicles on County Road 53. We conclude that the second and third *Appelgate* factors were satisfied.

Fourth Factor

Stanina argues that Deputy LeClair failed to provide information regarding the offender's flight. Stanina is correct that the record contains no evidence about the known or probable direction of the offender's flight. But this factor alone is insufficient to outweigh the other *Appelgate* factors that were satisfied.

Fifth Factor

Stanina argues that Deputy LeClair did not observe Stanina's truck engaging in "unusual activity" before the stop. But we conclude that the fifth *Appelgate* factor was satisfied because Deputy LeClair observed that Stanina "pulled over to the side of the road, slowed down to five or 10 miles an hour for just a short ways, [and then] pulled back out into the road." *See Appelgate*, 402 N.W.2d at 109 (supporting conclusion that stop was lawful partially because the officer was "certain" that appellant "probably" saw him in a marked squad car, "a fact that objectively gives added significance to [the appellant's] unusual driving behavior," specifically including two "prolonged" stops (quotations omitted)).

Sixth Factor

Stanina argues that Deputy LeClair admitted that he stopped Stanina's truck in part because "he mistakenly believed that [Stanina] had a prior burglary conviction when in fact it was a receiving stolen property conviction." But the deputy's mistake is immaterial because it does not change the fact that he was suspicious that Stanina had engaged in "several of the burglaries that had occurred up to that point that [the police] were actively investigating." Stanina counters that Deputy LeClair's suspicions were immaterial because the deputy "did not have any idea who was driving the vehicle." Stanina's argument is unpersuasive because "[w]hen an officer observes a vehicle being driven, it is rational for him or her to infer that the owner of the vehicle is the current operator," and there is no record evidence that may have dispelled that inference. *See State v. Pike*, 551 N.W.2d 919, 922 (Minn. 1996) (stating that "knowledge that the owner of a vehicle has a revoked license is enough to form the basis of a reasonable suspicion of criminal activity when an officer observes the vehicle being driven," and stating, "[t]his holding, of course, applies only while the officer remains unaware of any facts which would render unreasonable the assumption that the owner is driving the vehicle"). Stanina is correct that this case factually differs from *Pike*; for instance, this case does not involve license revocation. But he provides no reason for this court to deviate from the supreme court's conclusion that "[w]hen an officer observes a vehicle being driven, it is rational for him or her to infer that the owner of the vehicle is the current operator." *Id.*

We conclude that the sixth *Appelgate* factor was satisfied because Deputy LeClair had "had prior dealings with [Stanina]" and personal knowledge that Stanina "had been a

suspect in several of the burglaries in the area that had occurred up to that point that [the police] were actively investigating," and Deputy LeClair therefore had suspicion that Stanina has been involved in other criminality of the type presently under investigation. *See Appelgate*, 402 N.W.2d at 108.

Moreover, in addition to the *Appelgate* factors, before stopping Stanina's truck, Deputy LeClair confirmed with dispatch that Stanina was a probationer subject to spot checks. *See United States v. Knights*, 534 U.S. 112, 118–20 122 S. Ct. 587, 588, 591–92 (2001) (noting that "search condition" was "salient circumstance" when determining whether search of probationer was reasonable and concluding that it "significantly diminished [appellant's] reasonable expectation of privacy"); *Anderson*, 733 N.W.2d at 139 ("Our presumption that [appellant's] probation condition was validly imposed and that he therefore was unambiguously informed of it supports a conclusion that the condition significantly diminished [appellant's] reasonable expectation of privacy." (quotations omitted)). And a probationer's "reasonable expectation of privacy [is] diminished merely by virtue of his status as a probationer." *Anderson*, 733 N.W.2d at 139; *accord Knights*, 534 U.S. at 120–21, 122 S. Ct. at 592 ("The State has a . . . concern, quite justified, that [the probationer] will be more likely to engage in criminal conduct than an ordinary member of the community. . . . Its interest in apprehending violators of the criminal law, thereby protecting potential victims of criminal enterprise, may therefore justifiably focus on probationers in a way that it does not on the ordinary citizen.").

Stanina complains about Deputy LeClair's admission that he ran Stanina's license plate number to see if he "could find a reason to pull [Stanina's truck] over to ID the driver and figure out what the person was doing in the area." But it is lawful for a police officer to base an objectively reasonable suspicion on "information obtained from his mobile computer." *State v. Cox*, 807 N.W.2d 447, 452 (Minn. App. 2011) ("Because Officer Thompson properly relied on information obtained from his mobile computer and because that information created a suspicious discrepancy concerning [appellant's] license-plate tabs, Officer Thompson had an objectively reasonable basis to stop [appellant]."). Stanina argues that it is material that Deputy LeClair "clearly and unequivocally testified that he did *not* stop the [truck] to conduct a spot check," but Deputy LeClair's subjective beliefs about the stop are immaterial because they did not dispel the objective reasons that warranted the stop. *See Koppi*, 798 N.W.2d at 363 ("The actual, subjective beliefs of the officer are not the focus in evaluating reasonableness."); *State v. Faber*, 343 N.W.2d 659, 660 (Minn. 1984) (stating that a motor vehicle "stop must be upheld if there was a valid objective basis for it").

We conclude that reasonable suspicion supported the stop in light of the *Appelgate* factors and Stanina's status as a probationer. The stop was therefore constitutional.[2]

[2] We note that Stanina challenges the district court's conclusion that the spot-check condition in Stanina's amended-probation agreement permitted searches unsupported by probable cause or reasonable suspicion. But we do not reach this argument because we conclude that the stop was supported by reasonable suspicion.

Sufficiency of the Evidence

Stanina argues that his two third-degree-burglary convictions are not supported by sufficient evidence. Minn. R. Crim. P. 26.01, subd. 3, authorizes defendants in stipulated-facts trials to appeal convictions and "raise issues on appeal the same as from any trial to the court," Minn. R. Crim. P. 26.01, subd. 3, including sufficiency-of-the-evidence claims, *State v. Eller*, 780 N.W.2d 375, 379 (Minn. App. 2010), *review denied* (Minn. June 15, 2010). But Stanina has failed to satisfy his burden of providing this court with a transcript or other record of the facts to which he stipulated. *See State v. Heithecker*, 395 N.W.2d 382, 383 (Minn. App. 1986) ("Under Minn. R. Civ. App. P. 110.02, it is the appellant's responsibility to provide this court with a trial transcript."). "A reviewing court cannot consider a sufficiency-of-evidence issue unless provided with a trial transcript." *Hoagland v. State*, 518 N.W.2d 531, 534 (Minn. 1994). The absence from the appellate record of the stipulations prevents this court from engaging in sufficiency-of-the-evidence review because Stanina's convictions are based on circumstantial evidence and the absence of the stipulations prevents us from engaging in the first step of our analysis: "identify[ing] the circumstances proved." *See State v. Gatson*, 801 N.W.2d 134, 144 (Minn. 2011) ("With respect to circumstantial evidence, our first task is to identify the circumstances proved." (quotations omitted)). Therefore, "[o]ur review is limited to consideration of whether [the district court's legal conclusions] are supported by the findings." *Duluth Herald & News Tribune v. Plymouth Optical Co.*, 286 Minn. 495, 498, 176 N.W.2d 552, 555 (1970).

For a defendant to be guilty of third-degree burglary, the fact-finder must find that (1) the defendant "enter[ed] a building," (2) "without consent," and (3) stole or "inten[ded] to steal" "while in the building." Minn. Stat. § 609.582, subd. 3.

First Element

As to the first element of the D.C. burglary, the district court found that Stanina's entry into D.C.'s cabin may be inferred because the cabin had not yet been broken into when the Fannie Mae representative posted the foreclosure paper on the cabin door on March 13, 2010, and because Deputy Gunderson discovered the break-in on April 3, 2010, when he attempted to serve foreclosure papers at the cabin. The court's finding of entry is further supported by its findings that the pry-bar marks on the cabin's door frame were a "perfect match" with the pry bar recovered from Stanina's truck, the pry bar had white paint on it that matched the door frame's paint, D.C.'s padlock key was a "perfect fit" with the Masterlock padlock recovered from Stanina's truck, and the police recovered the foreclosure notice from Stanina's truck.

As to the first element of the E.P. burglary, the district court found that Stanina's entry into E.P.'s shed may be inferred from the shed's "proximity to the [D.C.] cabin, making it likely that both were broken into around the same time, and from the fact that [Stanina] had a gas can from the [E.P.] shed in his possession when he was stopped on April 3, 2010." The court's finding of entry is further supported by its finding that E.P. had stored the gas can in his locked shed, Stanina was in possession of the shed's silver padlock when stopped, and E.P. provided Deputy LeClair with a key that opened the padlock.

Stanina argues that his alleged conduct did not satisfy the first element of third-degree burglary for the E.P. burglary, arguing that E.P.'s shed is not a "building" because "a storage shed is not a structure suitable for affording shelter but [rather] is nothing more than a depository for personal property items." We disagree. Third-degree burglary requires that a defendant enter "a building," Minn. Stat. § 609.582, subd. 3, and a structure is a "building" if it is "suitable for affording shelter for human beings," Minn. Stat. § 609.581, subd. 2 (2008). In *In re Welfare of R.O.H.*, we held that "a mini storage unit" was a building, even though it included "no heat or air conditioning, no electricity, and no plumbing" and there were "no offices and no other buildings on the property," because "[i]t is obvious that the purpose of the storage units, which is the storage of personal property, required that the units provide shelter from the elements." 444 N.W.2d 294, 294–95 (Minn. App. 1989). Likewise, the record evidence shows that E.P. was using his shed for the purpose of storing personal property, his gas can, and further shows that he padlocked the shed. Therefore, in light of *R.O.H.*, E.P.'s use of the shed for storing personal property rendered it "a building" under Minn. Stat. § 609.581, subd. 2.

We are not persuaded by Stanina's argument that, under the supreme court's holding in *Tahash*, E.P.'s shed is not a building. In *Tahash*, the court held that "a tool shed" was not a building because the shed owner gave testimony that "[took] the shed out of [the] definition" of "building" and "[n]one of the structures on the farm were suitable for human shelter, nor were they accommodated for housing people." *State ex rel. Webber v. Tahash*, 277 Minn. 302, 303, 306, 152 N.W.2d 497, 499, 501 (1967). *Tahash* is inapplicable to this case because no evidence "takes the shed out of [the] definition" of

a building, *id*. at 306, 152 N.W.2d at 501, and, consistent with *R.O.H.*, E.P.'s use of the shed for storing personal property is sufficient to infer that it is suitable for affording shelter for human beings.

Second Element

The district court found that the absence of consent may be "inferred from the fact that [Stanina] broke into both buildings in order to gain entry, that [Stanina] denied being at either property, that both [D.C.] and [E.P.] considered the entry to be a burglary, and that personal property was missing from both buildings."

Third Element

The district court found that Stanina's act of stealing or intent to steal from the buildings "is established beyond a reasonable doubt" because, among other reasons, Stanina was "apprehended while in possession of a gas can taken from the [E.P.] shed" and "locks from the doors to the [D.C.] cabin and the [E.P.] shed," and because of his admission overheard by one of the inmates that he had "taken the bow and rifle from the [D.C.] cabin."

We conclude that the district court's findings support its conclusions that Stanina committed third-degree burglary of D.C.'s cabin and E.P.'s shed.

Affirmed.