STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0342

Siona S. Sireno, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed October 15, 2012
Affirmed
Toussaint, Judge*

Washington County District Court
File No. 82-CV-11-508

Charles A. Ramsay, Daniel J. Koewler, Ramsay Law Firm, P.L.L.C., Roseville, Minnesota (for appellant)

Lori Swanson, Attorney General, Natasha Karn, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Stauber, Judge; and Toussaint, Judge.

*Retired judge of the Minnesota Court of Appeals, serving 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

TOUSSAINT, Judge

In this implied-consent appeal, appellant Siona S. Sireno argues that (1) the stop of a vehicle, in which she was a passenger, was illegal because the deputies stopped the vehicle based on whim and caprice, not on a reasonable articulable suspicion of criminal activity, and (2) her arrest was unconstitutional because the deputies lacked probable cause to arrest her mere seconds after confronting her in the vehicle. Because the officers had reasonable grounds to believe that appellant may have suffered a head injury and was in need of medical attention when the stop was made and the driver of the vehicle in which appellant was a passenger engaged in conduct that supported a reasonable suspicion of criminal activity, and because probable cause existed at the time of appellant's arrest, we affirm.

D E C I S I O N

I.

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 12. A search conducted without a warrant is presumptively unreasonable. *State v. Othoudt*, 482 N.W.2d 218, 221-22 (Minn. 1992).

An exception to the warrant requirement is that a police officer may make a limited investigatory stop of an individual if the officer has "a reasonable, articulable suspicion that a suspect might be engaged in criminal activity." *State v. Flowers*, 734 N.W.2d 239, 250 (Minn. 2007) (quotation omitted); *see Terry v. Ohio*, 392 U.S. 1, 30, 88

S. Ct. 1868, 1884-85 (1968). A determination of reasonable suspicion for a traffic stop presents a mixed question of fact and law. *State v. Lee*, 585 N.W.2d 378, 382-83 (Minn. 1998). This court reviews de novo a district court's legal determination of reasonable suspicion of unlawful activity to justify an investigatory stop. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). But a district court's findings of fact are reviewed for clear error. *Lee*, 585 N.W.2d at 383.

A second exception to the warrant requirement exists for emergency situations. *State v. Lopez*, 698 N.W.2d 18, 23 (Minn. App. 2005). A three-part test applies to determine whether a warrantless search is justified:

> (1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property.
>
> (2) The search must not be primarily motivated by intent to arrest and seize evidence.
>
> (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.

State v. Lemieux, 726 N.W.2d 783, 788 (Minn. 2007) (applying test to determine whether warrantless entry was justified).

T.F. witnessed a single-vehicle rollover car accident near her home. After talking to the female driver, who was standing near the car and was not answering questions correctly, T.F. was concerned that the woman might be in shock or have suffered a head injury, so she called 911. Washington County Sheriff's Deputy Bjorn Erickson responded to the 911 call, but the woman was gone when he arrived at the accident scene. After running a license-plate check and learning that appellant was the car's registered

owner and finding appellant's driver's license in the car's glove compartment, Deputy Erickson dispatched Washington County Sheriff's Deputies Angela Hanson and Russell Fox to appellant's residence to check on the woman's welfare.

Deputies Hanson and Fox went to appellant's residence and spoke to S.S., who said that appellant was not at home. After being told about the accident, S.S. said that appellant would likely get a ride home from her boss. At the same time, a sport-utility vehicle (SUV) matching the description given by S.S. approached the house, and S.S. identified it as belonging to appellant's boss. The SUV slowed down in front of the house, coming to an almost complete stop, and then sped away. Both officers' squad cars were parked in the driveway. Deputies Hanson and Fox got into their squad cars, followed, and stopped the SUV.

Based on the accident and the information received from T.F. and S.S., the officers were justified in stopping the SUV both under the emergency exception to the warrant requirement and because the conduct of the SUV's driver gave rise to a reasonable suspicion of criminal activity. The testimony of Deputies Erickson and Hanson supports a finding that the stop and detention of appellant were motivated by a concern for her welfare. Although the district court did not make a finding to that effect, absent express findings, factual and credibility determinations may be inferred from the district court's resolution of the contested issue. *See, e.g.*, *Umphlett v. Comm'r of Pub. Safety*, 533 N.W.2d 636, 639 (Minn. App. 1995) (determining that the district court "implicitly found that officer's testimony was more credible" based on its decision to sustain license revocation), *review denied* (Minn. Aug. 30, 1995).

Appellant argues that at the time of the stop the deputies had no evidence that she was the driver of her vehicle when the accident occurred. However, the vehicle was registered to appellant, and she left her driver's license in the vehicle. Given this and the fact that the vehicle was driven by a female when it rolled over, it was reasonable for the officers to begin their investigation by contacting the vehicle's registered female owner, and S.S. identified the SUV as the vehicle that appellant was likely to be in.

Further, the SUV driver also demonstrated evasive driving by coming to an almost complete stop in front of appellant's house and then speeding away. Evasive driving may give rise to a reasonable, articulable suspicion of criminal activity. *See State v. Johnson*, 444 N.W.2d 824, 826 (Minn. 1989) ("[I]f the driver's conduct is such that the officer reasonably infers that the driver is deliberately trying to evade the officer and if, as a result, a reasonable police officer would suspect the driver of criminal activity, then the officer may stop the driver."); *see also State v. Petrick*, 527 N.W.2d 87, 88-89 (Minn. 1995) (stop valid when driver suddenly turned into driveway and shut off lights).

In determining whether a reasonable suspicion exists, 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). Applying this standard, we conclude that a reasonable suspicion that appellant had been driving while impaired existed when Deputy Erickson instructed appellant to exit the SUV and Deputy Hanson placed appellant in the back of the squad car. Although the stop began as a welfare check, the facts giving rise to a reasonable suspicion justified the expansion of the scope of the stop into a DWI investigation. *See State v. Wiegand*, 645 N.W.2d 125,

135 (Minn. 2002) (permitting officers to expand scope of stop to include investigation of illegal activity provided reasonable, articulable suspicion of illegal activity exists).

II.

A warrantless arrest is reasonable if it is supported by probable cause. *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011). Probable cause to arrest exists when the objective facts and circumstances would lead a person of ordinary care and prudence to "entertain an honest and strong suspicion that a crime has been committed." *State v. Wynne*, 552 N.W.2d 218, 221 (Minn. 1996) (quotation omitted). We give due weight to inferences drawn from the facts by the district court and review de novo the legal conclusion of whether probable cause to arrest existed. *State v. Kier*, 678 N.W.2d 672, 678 (Minn. App. 2004).

Indicia of intoxication include bloodshot and watery eyes and an odor of alcohol. *Id.* This court has upheld probable cause determinations when no field sobriety tests were administered. *See, e.g.*, *State v. Mellett*, 642 N.W.2d 779, 788 (Minn. App. 2002) (stating that driver's refusal to perform field sobriety tests is relevant in evaluating totality of circumstances to establish probable cause); *Holm v. Comm'r of Pub. Safety*, 416 N.W.2d 473, 474 (Minn. App. 1987) (including indicia of intoxication of odor of alcohol, bloodshot and watery eyes, slurred speech, and deliberate and slow movements).

Appellant argues that she was arrested the moment she was instructed to exit the SUV and get into the squad car. But, because the officers had a basis for continuing the limited investigatory stop, the arrest did not occur at that time. The evidence supports the district court's finding that Deputy Hanson was still investigating the case and

undertaking acts to safeguard appellant's welfare. When appellant was arrested, Deputy Fox had observed bloodshot and watery eyes, and Deputy Hanson had observed bloodshot and watery eyes and the odor of alcohol. Deputy Erickson had smelled a strong odor of alcohol and observed that appellant had bloodshot and watery eyes, difficulty answering questions asked by ambulance personnel and signing a release, and "a thousand yard stare." These observations by the officers were sufficient to support a probable-cause determination.

Appellant argues that her refusal to submit to the field sobriety tests requested by Deputy Erickson was reasonable given the weather conditions and that Deputy Erickson should have offered her the opportunity to perform alternative tests. Deputy Erickson requested that appellant perform horizontal gaze nystagmus, counting, and alphabet tests. Appellant cites no authority supporting the position that cold weather conditions are a valid basis for refusing to submit to field sobriety tests, and the evidence does not show that, due to the weather conditions, it would have been unsafe for appellant to perform the tests outside.

Affirmed.