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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0145**

Mitchell James Luebbe, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed July 1, 2013
Affirmed
Huspeni, Judge***

Washington County District Court
File No. 82CV125117

Richard L. Swanson, Chaska, Minnesota (for appellant)

Lori Swanson, Minnesota Attorney General, Joseph M. Simmer, Assistant Attorney
General, St. Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Rodenberg, Judge; and
Huspeni, Judge.

UNPUBLISHED OPINION

HUSPENI, Judge

In this appeal from an order sustaining the revocation of his driver's license,
appellant argues that he was unlawfully seized when a police officer approached his

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

parked car without cause. Because an officer may approach a parked car without converting the encounter into a seizure and because the officer's investigative stop was supported by a reasonable, articulable suspicion of criminal activity, we affirm.

FACTS

In the early morning hours of Sunday, August 12, 2012, a private citizen called the Woodbury Police Department to report an underage drinking party near an intersection in Woodbury. The caller provided his or her name and address, but asked to remain anonymous. At 1:45 a.m., Officer Marc Olson was dispatched to the location, where he noticed cups, paper products, and other debris on the street and lawn of one house. Olson, who was familiar with the area, stated that such debris was not typical and supported the caller's report of a party.

As Olson drove down the road, he passed a parked car whose headlights suddenly came on. Olson did a U-turn and stopped parallel to this car, but facing the opposite direction, about 8-10 feet away from the car. Using a spotlight, Olson illuminated the car and then approached to speak with the driver. The driver, appellant Mitchell James Luebbe, had bloodshot and watery eyes, and a strong odor of alcohol emanated from the car. Olson questioned appellant, who stated that he was 20 years old and had consumed four beers. Olson arrested appellant for driving while under the influence (DWI); a chemical test revealed an alcohol concentration above the legal limit. Appellant's driver's license was revoked pursuant to Minn. Stat. § 169A.52, subd. 4(a)(2) (2012). Appellant petitioned for judicial review of the license revocation. At the conclusion of the hearing, the district court sustained the license revocation and this appeal followed.

DECISION

This appeal presents the limited question of whether appellant was unlawfully seized when a police officer approached his stopped car while investigating a report of an underage drinking party. We review the district court's decision regarding the legality of an investigative stop de novo. *Magnuson v. Comm'r of Pub. Safety*, 703 N.W.2d 557, 559 (Minn. App. 2005).

A police officer may make a limited investigatory stop of a motor vehicle if he can point to specific and articulable facts and reasonable inferences from those facts that proved a justifiable basis for the stop. *Id.* “The factual basis required to support an investigatory stop is minimal.” *Id.* at 560. An informant's tip, if reliable, can provide a factual basis for an investigatory stop. *Jobe v. Comm'r of Pub. Safety*, 609 N.W.2d 919, 921 (Minn. App. 2000). A citizen informant is considered reliable if he is identified or identifiable. *Yoraway v. Comm'r of Pub. Safety*, 669 N.W.2d 622, 626 (Minn. App. 2003); *Rose v. Comm'r of Pub. Safety*, 637 N.W.2d 326, 328 (Minn. App. 2001), *review denied* (Minn. Mar. 19, 2002). The citizen informant here gave his or her name and address and is therefore identifiable.

We must first address whether a seizure occurred. Not every interaction between the police and a citizen is considered to be a seizure. “[C]ourts generally have held that it does not by itself constitute a seizure for an officer to simply walk up and talk to . . . a driver sitting in an already stopped car.” *Klamar*, 823 N.W.2d at 692 (quotation omitted); *see also State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980); *Crawford v. Comm'r of Pub. Safety*, 441 N.W.2d 837, 839 (Minn. App. 1989). A seizure occurs when

police make a show of authority or force such that a person does not feel free to leave. *State v. Johnson*, 645 N.W.2d 505, 510 (Minn. App. 2002). A show of authority could include using flashing lights and parking the squad close to the detained car, or officers positioning themselves on either side of the car, and ordering the driver not to leave. *Id.*; *see also State v. Lopez*, 698 N.W.2d 18, 22 (Minn. App. 2005) (concluding that officer made a show of authority by partially blocking appellant's car with the squad, activating emergency lights, ordering appellant to unlock her door, and opening the car door). Here, Olson merely approached an occupied car sitting close to an area where a party had been reported to question the driver. We conclude, therefore, that no seizure occurred at this point in the encounter. *See Vohnoutka*, 292 N.W.2d at 757; *Klamar*, 823 N.W.2d at 692; *Crawford*, 441 N.W.2d at 839.

The officer had a reasonable, articulable suspicion supporting a brief investigatory stop: (1) Olson had a tip from a reliable citizen informant; (2) the tip was confirmed by the party debris; (3) it was 1:45 a.m. in a residential neighborhood; and (4) Olson observed an occupied car in close proximity to the reported party location. Once Olson noticed indicia of alcohol consumption, the additional facts provided a basis for the expanding the stop. *See State v. Syhavong*, 661 N.W.2d 278, 281 (Minn. App. 2003) (“Expansion of the scope of the stop to include investigation of other suspected illegal activity is permissible under the Fourth Amendment only if the officer has reasonable, articulable suspicion of such other illegal activity.”).

Appellant argues that the informant's tip here was too vague, describing a “possible” drinking party involving juveniles. To provide a proper basis for a stop, a

citizen informant's tip must give enough information to support the informant's assertion that a suspect is engaged in criminal conduct. *Rose*, 637 N.W.2d at 328. This court rejected a similar tip in *Rose*, when a gas station attendant reported a "possible intoxicated driver," as being too vague to provide a reasonable basis for a stop. *Id.* at 330. But this matter differs factually from *Rose*, because Olson went to the location described by the informant and confirmed the information by observing an unusual amount of debris that could be associated with a drinking party. Once Olson approached appellant and noticed indicia of alcohol consumption, the additional facts provided a basis for the seizure for suspected DWI. See *State v. Syhavong*, 661 N.W.2d 278, 281 (Minn. App. 2003) ("Expansion of the scope of the stop to include investigation of other suspected illegal activity is permissible under the Fourth Amendment only if the officer has reasonable, articulable suspicion of such other illegal activity."). The general smell of alcohol, appellant's bloodshot and watery eyes, and his admission that he had four beers provided a sufficient basis for his arrest for DWI and the revocation of his driver's license.

The district court did not err by sustaining the revocation of appellant's driver's license.

Affirmed.