STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2017

State of Minnesota,
Appellant,

vs.

Abdihakin Ali Farah,
Respondent.

Filed May 12, 2014
Reversed
Peterson, Judge

Hennepin County District Court
File No. 27-CR-13-6593

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

Susan L. Segal, Minneapolis City Attorney, Sarah Becker, Assistant City Attorney, Minneapolis, Minnesota (for appellant)

Gretchen Gurstelle, Gretchen Gurstelle Attorney at Law PLC, Minneapolis, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Peterson, Judge; and Stauber, Judge.

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

PETERSON, Judge

In this pretrial appeal, the state challenges the district court's order suppressing evidence that resulted from respondent's seizure and arrest for driving while impaired

(DWI), based on a lack of evidence that respondent was driving the vehicle involved. Because the district court clearly erred by finding that police lacked reasonable suspicion to administer a preliminary breath test (PBT), and because probable cause existed for respondent's arrest, we reverse.

FACTS

Following a motor-vehicle accident that involved two vehicles in a Minneapolis gas-station parking lot, the state charged respondent Abdihakin Ali Farah with two counts of DWI in violation of Minn. Stat. §§ 169A.27, subd. 1, .20, subd. 1(1) (2012). At an evidentiary hearing on Farah's motion to suppress evidence, the gas-station supervisor testified that a customer entered the store and reported the accident. The supervisor testified that although he did not see the accident occur, he saw people from the two vehicles arguing with each other, and he identified "the driver" of "the vehicle" as Farah, a frequent customer of the store. He testified that he was 10-15 feet away from the vehicle, a smaller four-door sedan, and that nothing obstructed his view of the driver, who was seated in the car with four or five women. He testified that people got out of both vehicles and were talking and yelling, but Farah did not get out of the car. He sent two security guards outside and then called 9-1-1. He testified that the security cameras were working that evening, but he did not review the recordings.

The vehicles moved from the front of the store into the back parking lot, where a responding state trooper located them. The trooper saw both vehicles, a Toyota Highlander and a Honda Accord, with minor damage to one, and about six people standing in the parking lot. The driver of the Highlander came forward, but no one could

firmly state who had been driving the Accord. The trooper testified that he established the identity of the Accord's driver based on the supervisor's call to dispatch, in which the supervisor described the driver as a person with facial scars, who was wearing a blue and red jacket. The trooper located Farah, who matched this description and was sitting in the rear passenger seat of the Accord. He pulled Farah from the car and asked him whether he was the driver. He testified that Farah first stated that he had occupied the rear passenger seat, then that he had occupied the front passenger seat, and then denied that he had been driving and stated that he wished to go home.

Farah showed indicia of intoxication, and the trooper asked if he had been drinking; Farah stated that he had consumed a small amount of wine. The trooper then administered a field sobriety test, which, the trooper testified, showed that Farah most likely had an alcohol concentration greater than .10, and a preliminary breath test, which produced a reading of .17. The trooper arrested Farah for DWI and placed him in a squad car. He testified that the supervisor approached the squad car and identified Farah as the driver. The trooper did not evaluate other people at the scene to determine whether they showed signs of intoxication or ask other people where Farah had been seated in the car.

The district court initially issued an order granting Farah's motion to suppress evidence resulting from the seizure and dismissing the charges for lack of probable cause. The district court found that the trooper had a particular and objective basis for seizing Farah and probable cause to conduct chemical testing, but that no probable cause existed for the charges, based on a lack of evidence that Farah was driving the vehicle involved. *See State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011) (stating that in order to request

chemical testing, officer must have probable cause to believe person was driving or in control of motor vehicle). The district court also rejected Farah's challenge to a show-up identification by the supervisor.

The state moved to reconsider and clarify the ruling, arguing that it had not been placed on notice that probable cause for the charges was being challenged and that the supervisor's tip, corroborated by the officer's observations, provided reasonable suspicion for the seizure. The district court denied reconsideration but issued an amended order suppressing the evidence, finding that the record lacked specific and articulable facts to support a belief that Farah was operating a vehicle while impaired, as needed to justify the trooper's administration of testing. This appeal follows.

D E C I S I O N

If the state appeals a pretrial suppression order, it "must 'clearly and unequivocally' show both that the [district] court's order will have a 'critical impact' on the state's ability to prosecute the defendant successfully and that the order constituted error." *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998) (quoting *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995)). "[T]he standard for critical impact is that the lack of the suppressed evidence significantly reduces the likelihood of a successful prosecution." *State v. Edrozo*, 578 N.W.2d 719, 723 (Minn. 1998) (quotation omitted). The state has met the critical-impact test.

"When reviewing pretrial orders on motions to suppress evidence, [appellate courts] may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*,

590 N.W.2d 90, 98 (Minn. 1999). We review the district court's findings of fact under the clearly erroneous standard, but review its legal determinations de novo. *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006).

Reasonable suspicion to conduct testing

The Fourth Amendment to the United States Constitution and Article I, section 10, of the Minnesota Constitution guarantee a person's right to be free from unreasonable searches and seizures. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). "Evidence obtained as a result of a seizure without reasonable suspicion must be suppressed." *Id.* Officers conducting a warrantless investigatory seizure "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)). We review de novo the legal issue of whether reasonable, articulable suspicion exists. *Wilkes v. Comm'r of Pub. Safety*, 777 N.W.2d 239, 242-43 (Minn. App. 2011).

The parties agree that Farah was seized when the trooper administered sobriety testing. *See In re Welfare of E.D.J.*, 502 N.W.2d 779, 781 (Minn. 1993) (stating that a seizure occurs "when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen") (quotation omitted). A police officer "may require [a] driver to provide a sample of the driver's breath for a [PBT]" if the "officer has reason to believe from the manner in which a person is driving, operating, controlling, or acting upon departure from a motor vehicle, or has driven, operated, or controlled a motor vehicle, that the driver may be violating or has violated section 169A.20 (driving while impaired)." Minn. Stat. § 169A.41, subd. 1 (2012). We have

held that "an officer may request a [PBT] if he possesses specific and articulable facts that form a basis to believe that a person is or has been driving, operating or controlling a motor vehicle while under the influence of an intoxicating beverage." *State v. Viervering*, 383 N.W.2d 729, 730 (Minn. App. 1986), *review denied* (Minn. May 16, 1986). Similarly, field sobriety tests are a type of limited intrusion that must be justified by a reasonable suspicion that a person was driving while under the influence. *See State v. Klamar*, 823 N.W.2d 687, 696 (Minn. 2012).

Because it is undisputed that Farah showed signs of intoxication, we consider whether specific and articulable facts formed a basis for the trooper to believe that Farah was driving when the accident occurred. Articulable suspicion is an objective standard and is determined from the totality of the circumstances. *Paulson v. Comm'r of Pub. Safety*, 384 N.W.2d 244, 246 (Minn. App. 1986). We "may consider the officer's experience, general knowledge, and observations; background information, including the nature of the offense suspected and the time and location of the seizure; and anything else that is relevant." *Klamar*, 823 N.W.2d at 691 (quotation omitted).

An informant's tip may be adequate to support an investigative seizure if the tip has sufficient indicia of reliability. *In re Welfare of G. M.*, 560 N.W.2d 687, 691 (Minn. 1997). Caselaw regarding traffic stops based on informants' tips has addressed two factors: sufficient identification of the informant and facts supporting the informant's basis of knowledge. *Rose v. Comm'r of Pub. Safety*, 637 N.W.2d 326, 328 (Minn. App. 2001), *review denied* (Minn. Mar. 19, 2002). Neither factor is independently dispositive, and the overall determination of reasonable suspicion is based on 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)). Thus, we have concluded that reasonable suspicion for a stop existed when an identified restaurant employee saw a car leave a drive-through window and reported a "drunk driver." *Playle v. Comm'r of Pub. Safety*, 439 N.W.2d 747, 748 (Minn. App. 1989), and that no reasonable suspicion for a stop existed when a gas-station employee reported a "possible drunk driver" but the record lacked information as to the employee's basis of knowledge. *Rose*, 637 N.W.2d at 327-28.

Tips from identified citizen informants are presumed reliable. *State v. Jones*, 678 N.W.2d 1, 11 (Minn. 2004). Because the supervisor could be found and held accountable for the information he provided, his tip is accorded enhanced reliability. *Playle*, 439 N.W.2d at 748. The district court found, however, that because no additional facts supported Farah's identification as the driver, the trooper lacked reasonable suspicion to administer a PBT. We disagree.

A court must assess whether a seizure is reasonable from the point of view of a trained officer at the time the seizure occurred. *Thomeczek v. Comm'r of Pub. Safety*, 364 N.W.2d 471, 472 (Minn. App. 1985); *see Jobe*, 609 N.W.2d at 923 (stating that "[i]t is axiomatic that hindsight may not be employed in determining whether a prior arrest or search was made on probable cause") (quoting Wayne R. LaFave, *Search and Seizure*, § 3.2(d) (3d ed. 1996)). When the trooper arrived a few minutes after the accident, he received information from dispatch that the supervisor had personally observed the driver, whom he knew from prior contact, and had noted the driver's facial scars and blue

jacket with red accents. The trooper found Farah, who matched this description, in the back seat of an involved vehicle. We conclude that under an objective standard, the trooper, based on the information he received and corroborated by his own observations, had a reasonable articulable suspicion that Farah had been driving while impaired, which justified sobriety testing. *See Minnetonka v. Shepherd*, 420 N.W.2d 887, 891 (Minn. 1988) (concluding that when a gas-station employee reported an intoxicated driver had just left the station, and a few minutes later, an officer saw a vehicle parked in the middle of the road, the officer had sufficient information to justify a stop). Thus, the district court erred by finding that the trooper lacked reasonable suspicion to seize Farah to administer a PBT.

Probable cause to arrest

In the DWI context, probable cause to arrest exists when "facts and circumstances known to the officer . . . would warrant a prudent man in believing that the individual was driving or was operating or was in physical control of a motor vehicle while impaired." *Koppi*, 798 N.W.2d at 362 (quotation omitted). "[T]he probable cause standard asks whether the totality of the facts and circumstances known would lead a reasonable officer to entertain an honest and strong suspicion that the suspect has committed a crime." *Id.* at 363 (quotation omitted). This objective inquiry is conditioned by the officer's own observations, information, and experience. *Id.* at 362-63. "Probable cause is not to be evaluated from a remote vantage point of a library, but rather from the viewpoint of a prudent and cautious police officer on the scene at the time of arrest." *City of St. Paul v. Johnson*, 288 Minn. 519, 523, 179 N.W.2d 317, 320 (1970) (quotation omitted).

Circumstantial evidence may support a finding that a person was operating or in physical control of a vehicle. *See, e.g., Hunt v. Comm'r of Pub. Safety*, 356 N.W.2d 801, 803 (Minn. App. 1984) (affirming a license revocation on strong circumstantial evidence that the defendant had been driving while impaired, when an officer located the defendant, who was intoxicated, walking within two blocks of a vehicle registered to him). Citing *Becker v. Comm'r of Pub. Safety*, 374 N.W.2d 303, 305-06 (Minn. App. 1985), Farah argues that the trooper lacked probable cause to arrest him. In *Becker*, this court upheld a district court's determination that police lacked probable cause to arrest for DWI a defendant who was found in the back seat of a stopped vehicle, even though the other occupants of the vehicle identified him as the driver. But in *Becker*, unlike this case, the record showed that the other occupants were intoxicated and could have been charged with DWI if they had admitted driving. *Id*. at 305. The supervisor's identification of Farah as the driver and the trooper's observations of Farah established "an honest and strong suspicion that [Farah had] committed a crime" and, therefore, provided probable cause for his arrest. *Koppi*, 798 N.W.2d at 363. The district court erred in suppressing the evidence.

Reversed.