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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1489**

David Bordeaux Eck, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed April 30, 2012
Affirmed
Chutich, Judge**

Wright County District Court
File No. 86-CV-11-1848

Rory Patrick Durkin, Giancola Law Office, PLLC, Anoka, Minnesota (for appellant)

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Considered and decided by Peterson, Presiding Judge; Chutich, Judge; and
Collins, Judge.*

UNPUBLISHED OPINION

CHUTICH, Judge

Appellant challenges the revocation of his driver's license under the implied-
consent law, arguing that the district court erred in deciding that reasonable, articulable

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

suspicion of impaired driving supported the stop of his car. Because the findings of fact are supported by the record and establish reasonable suspicion to justify a traffic stop, we affirm.

FACTS

Just before 5 p.m. on March 18, 2011, Wright County Deputy Jeff Olson received a call from a Wright County dispatcher about a potentially intoxicated driver. The dispatcher reported that appellant David Eck was driving a blue Toyota, with a specific license plate number, with his three young children inside the car, and had just left the Clearwater Travel Plaza. The dispatcher told Deputy Olson that the children's grandmother, who fully identified herself to police, had reported that Eck "had possibly been drinking." The grandmother was present when the oldest child asked Eck if he had been drinking because Eck smelled like beer. The deputy's report stated that the grandmother told him that Eck had "watery" or "glossy" eyes.¹

Upon receiving this information, Deputy Olson began monitoring traffic on Interstate 94 in Monticello in the direction that Eck was reported to be headed. About ten minutes later, he saw a blue Toyota matching the description of Eck's car, including the license plate number. When he confirmed that a man was driving with three small children in the car, he immediately stopped the car without first observing any improper driving behavior. Deputy Olson believed an immediate stop was necessary because of the young children in the car and the heavy traffic at that time of the day.

¹ The record is unclear as to whether the grandmother made this statement during her conversation with dispatch or during a later conversation with the deputy before he wrote his report.

Based on Eck's test results showing an alcohol concentration of .15, almost twice the legal limit, Deputy Olson filed a notice of revocation of Eck's driver's license and impoundment of his vehicle license plates. Eck petitioned for judicial review and, after an implied-consent hearing, the district court affirmed the revocation. This appeal followed.

DECISION

Eck argues that the information relayed from the grandmother did not form a sufficient basis for the deputy to have a reasonable suspicion of criminal activity to justify stopping his car. Whether this investigatory stop was justified is a legal question that we review de novo. *Wilkes v. Comm'r of Pub. Safety*, 777 N.W.2d 239, 242–43 (Minn. App. 2010). In doing so, we give deference to the district court's factual findings and will not reverse them unless they are clearly erroneous. *See State v. Wagner*, 637 N.W.2d 330, 336 (Minn. App. 2001).

Under established Fourth Amendment precedent, a stop of a motorist is justified if the police officer has a specific and articulable suspicion of a violation of the law. *See Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968); *State v. Pike*, 551 N.W.2d 919, 921–22 (Minn. 1996) (noting that an investigative stop of a car is lawful if the officer had a “particularized and objective basis” for suspecting criminal activity (quotation omitted)). The factual basis required for a routine traffic stop is minimal and “need not arise from the officer's personal observation, but may be supplied by information acquired from another person.” *Marben v. State, Dep't of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980).

In evaluating a stop based on an informant's tip, Minnesota courts focus on two factors: "(1) [I]dentifying information given by the informant, and (2) the facts that support the informant's assertion that a driver is under the influence." *Jobe v. Comm'r of Pub. Safety*, 609 N.W.2d 919, 921 (Minn. App. 2000). Courts presume that information from an identified citizen is reliable. *Id.*; *Yoraway v. Comm'r of Pub. Safety*, 669 N.W.2d 622, 626 (Minn. App. 2003). Even minor corroborated details can give credence to an informant's tip when the police know the identity of the informant. *State v. Ross*, 676 N.W.2d 301, 304–05 (Minn. App. 2004). Whether police have reasonable suspicion to conduct an investigatory stop depends on the totality of the circumstances, and a stop is not justified if it is "the product of mere whim, caprice, or idle curiosity." *In re Welfare of M.D.R.*, 693 N.W.2d 444, 448 (Minn. App. 2005) (quotation omitted), *review denied* (Minn. June 28, 2005).

Eck concedes that the information provided to the deputy is considered reliable because the complainant identified herself, but argues that the information provided was insufficient to support reasonable suspicion that Eck was driving under the influence. In particular, he contends that the language the grandmother used when reporting her concern to the police—that Eck "possibly had been drinking"—was the sole basis for the stop and was insufficient as a matter of law under *Rose v. Comm'r of Pub. Safety*, 637 N.W.2d 326 (Minn. App. 2001), *review denied* (Mar. 19, 2002). In making this argument, Eck challenges the district court's factual finding that the grandmother personally observed Eck before she called the police that afternoon.

After carefully considering Eck’s arguments, we conclude that, under all of the circumstances of the case, Deputy Olson had sufficient information to reasonably suspect that Eck was intoxicated. As an initial matter, the record supports the district court’s factual finding that the grandmother was present and personally observed Eck before calling the police. Deputy Olson testified that the dispatcher told him that the grandmother had contact with Eck and “was present” when the children asked Eck if he had been drinking because he smelled like beer. Moreover, the deputy testified that the grandmother told him that she noticed that Eck’s eyes were “watery” or “glossy.” Even if the deputy learned this information about Eck’s appearance after he stopped Eck’s car, it provides further support for the district court’s factual finding that the grandmother had personal contact with Eck before calling the police. Thus, we reject Eck’s assertion that the grandmother had no personal contact with Eck that evening.

Nor are we persuaded that *Rose* dictates that this stop was unjustified. In *Rose*, a gas-station employee reported a “possible intoxicated driver” to the police. 637 N.W.2d at 327. The court held that reasonable suspicion to stop the driver did not exist because “the record does not support an inference that the gas-station employee personally observed appellant, and there is no information in the record regarding how the employee concluded that the driver might be drunk.” *Id.* at 330. Under these circumstances, the court concluded that a bare assertion of a “possibly intoxicated driver” was insufficient to justify the stop. *Id.*

While *Rose* noted that “an affirmative report of a drunk driver” may be enough to support articulable suspicion for a stop—as opposed to a “report of a possibly intoxicated

driver”—the decision did not turn on the language used to describe the condition of the driver. *Id.* Rather, the court concluded that the necessary support for the stop was not present when there was no indication that the employee personally observed the driver or any description of how the employee concluded that the driver might be drunk. *Id.*; see also *Olson v. Comm’r of Pub. Safety*, 371 N.W.2d 552, 555–56 (Minn. 1985) (holding no reasonable suspicion for a traffic stop when nothing was known about an anonymous caller or what led him to believe that a driver was “possibly” drunk).

Similar concerns are not present here because the grandmother personally observed Eck before calling the police to report that he had possibly been drinking. When an identified informant has personal contact with a driver and suspects impairment, traffic stops have been upheld. See *City of Minnetonka v. Shepherd*, 420 N.W.2d 887, 890–91 (Minn. 1988) (holding sufficient basis for stop where gas-station attendant’s information was based on personal observation of an impaired driver just leaving the station); *Marben*, 294 N.W.2d at 699 (holding sufficient basis for stop where trucker informant was in close proximity to the suspect’s car); *Playle v. Comm’r of Pub. Safety*, 439 N.W.2d 747, 749 (Minn. App. 1989) (holding sufficient basis for stop where Burger King employee personally observed a drunk driver).

This opportunity for personal observation is especially notable here where the grandmother had past experience with Eck and was concerned about the safety of her grandchildren. See *State v. Warren*, 404 N.W.2d 895, 897 (Minn. App. 1987) (noting that separated spouse was a reliable informant who had lived with the suspected impaired driver, recognized his impairment, and was worried about the safety of their child). An

experienced police officer could legitimately infer that, given previous interactions with Eck, the grandmother had a basis for recognizing behavior that caused alarm, even though she did not affirmatively assert that he was “drunk.”

Further, Deputy Olson had information that Eck’s oldest child smelled alcohol on his father.² The odor of alcohol can create a reasonable suspicion of criminal activity and can be considered in forming probable cause to arrest an impaired driver. *See State v. Kier*, 678 N.W.2d 672, 678 (Minn. App. 2004) (finding odor of alcohol and watery eyes supported probable cause to arrest); *State v. Lopez*, 631 N.W.2d 810, 814 (Minn. App. 2001) (finding odor of alcohol provided officer with reasonable suspicion of criminal activity to justify further investigation), *review denied* (Minn. Sept. 25, 2001). This objective observation provided Deputy Olson with information about why the grandmother believed that Eck may have been drinking and also permitted an inference that he had imbibed an intoxicating amount of alcohol.

Given the totality of the circumstances here, the grandmother’s choice of language in reporting her concern does not negate the propriety of the limited traffic stop. While she did not affirmatively state that Eck was intoxicated, the circumstances of the call gave the police sufficient facts to reasonably suspect that he was. Here, a grandmother, who fully identified herself to police and who had knowledge of Eck and the opportunity to personally observe him, was concerned enough about the safety of her grandchildren to call the police. Her report accurately identified the make, color, and license number of

² The police also learned that Eck’s eyes were glossy, but since the record is unclear whether that fact was known before the stop, we do not consider it here.

the car and was made just after Eck left a travel stop and drove on a busy freeway with his three small children. Her concern that Eck had been drinking was supported by the objective observation that Eck smelled like beer, a fact that would support reasonable suspicion if the deputy himself had discovered it.

Accordingly, we conclude that this investigatory stop was not “the product of mere whim, caprice, or idle curiosity.” *See Olson*, 371 N.W.2d at 556 (quotation omitted). Because Deputy Olson had reasonable suspicion to stop Eck’s car, the district court properly sustained the revocation of Eck’s driver’s license.

Affirmed.