STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0656

Jamie Lee Steele, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed May 27, 2008
Affirmed
Hudson, Judge

Anoka County District Court
File No. C3-06-10647

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Considered and decided by Lansing, Presiding Judge; Toussaint, Chief Judge; and Hudson, Judge.

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

HUDSON, Judge

Appellant Jamie Lee Steele challenges the district court order sustaining the revocation of his driver's license under the implied-consent law. Because the district court's factual finding was not clearly erroneous, and because the totality of the

circumstances demonstrated a reasonable basis for the investigatory stop of appellant's vehicle, we affirm.

FACTS

On September 23, 2006, at approximately 2:34 a.m., a deputy from the Anoka County Sheriff's Department was on routine patrol in Ham Lake. He was patrolling a business-district area off a dead-end frontage road because extra night patrols had been requested due to recent burglaries and alarms: there had been 13 burglaries and numerous alarms during the previous three months.

As the deputy drove into the business district, he noticed appellant's vehicle driving in front of his squad car. He did not become suspicious because he thought appellant could have been a business owner legitimately in the area. The deputy watched appellant drive his vehicle, with its lights on, in front of "three to four" businesses, in about a minute's time, when none of the businesses were open to the public. At that point, the deputy thought that appellant's conduct was suspicious because he was driving from business to business, but then appellant's vehicle left the business district and turned back onto the frontage road. The deputy proceeded to investigate the places where appellant's vehicle had been, but found nothing out of the ordinary. He then saw appellant's vehicle return to the business district, and he later testified that he thought appellant was lost or might need help. Appellant drove his vehicle up to the front of one more closed business and then exited the business district a second time. During the time that the deputy watched appellant's vehicle, he did not observe any unlawful driving

conduct, but he testified that he had no reason to believe that appellant was in the business-district area legitimately.

The deputy followed appellant's vehicle and witnessed it sitting at a stop sign on the frontage road for about twelve seconds, which seemed out of the ordinary. He stopped appellant's vehicle after it left the stop sign. Appellant was later arrested for driving while impaired and issued a notice and order of driver's license revocation.

Appellant filed a petition for judicial review of his driver's license revocation, challenging the deputy's basis for stopping his vehicle. At a hearing, the deputy and a friend of appellant's who had been a passenger in his vehicle that night testified. The friend told the district court that appellant had driven onto the frontage road bordering the business district because he made a wrong turn on his way to drop her off. She testified that appellant was merely trying to turn around on the frontage road, was not lost, and never actually drove into the business district or near the closed businesses. She denied that appellant's vehicle stopped at the stop sign for a long period of time. She also testified that she had consumed four drinks earlier that night and was "unfamiliar with the [business district] area."

The district court made findings on the record and issued an order sustaining the revocation of appellant's driver's license, concluding that the deputy had a sufficient reasonable, articulable suspicion for the investigatory stop of appellant's vehicle.

D E C I S I O N

Appellant challenges the district court's order sustaining the revocation of his driver's license, arguing that (1) the deputy's recollection should not have been credited

over appellant's friend's recollection and (2) the deputy did not have a sufficient reasonable articulable suspicion for stopping appellant's vehicle because he merely thought appellant might be lost when appellant was turning around on the frontage road and did not violate any traffic laws.

I

We will not reverse the district court's factual findings unless they are clearly erroneous. *Thompson v. Comm'r of Pub. Safety,* 567 N.W.2d 280, 281 (Minn. App. 1997), *review denied* (Minn. Sept. 25, 1997); *see also* Minn. R. Civ. P. 52.01. Because the district court had the opportunity to observe the demeanor of witnesses, we accord deference to its determination of witness credibility. *Roettger v. Comm'r of Pub. Safety*, 633 N.W.2d 70, 73 (Minn. App. 2001).

Here, the district court found that the deputy "watched [appellant's] vehicle stop briefly at the front end of businesses three times, leave the area, and then come back." This finding is amply supported by the deputy's testimony at the judicial-review hearing and is thus not clearly erroneous.

It is implicit in the district court's finding that it found the deputy to be a more credible witness than appellant's friend. *See Umphlett v. Comm'r of Pub. Safety*, 533 N.W.2d 636, 639 (Minn. App. 1995) (holding that district court implicitly found officer's testimony more credible), *review denied* (Minn. Aug. 30, 1995). The district court was in the best position to weigh the witnesses' credibility because it was able to observe their body language and speech patterns when testifying. Appellant's friend's credibility was diminished because she had consumed four alcoholic beverages earlier in the night and

was not familiar with the area where appellant was driving. In contrast, the deputy was sober that night and is trained to make conscious observations while on patrol.

Appellant claims that the deputy's credibility should have been diminished because he did not mention the previous burglaries in the police report that he wrote the night of appellant's arrest and he allegedly conducted research just before the hearing regarding the number of burglaries and alarms in the business district. But the record indicates that, on the night that appellant was arrested, the deputy was aware of the previous criminal activity in the business district. Indeed, he testified that he was patrolling the area because his department had assigned officers to watch for "problems with alarms and burglaries." Based on this record, the district court's finding of fact was not clearly erroneous.

II

We review the legality of an investigatory stop de novo. *State v. Schrupp*, 625 N.W.2d 844, 846 (Minn. App. 2001), *review denied* (Minn. July 24, 2001). The United States and Minnesota Constitutions protect individuals from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. This constitutional protection applies to investigatory stops of motor vehicles. *See, e.g., State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

In order to make a legal investigatory stop, an officer must be able to show a reasonable suspicion based on "'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct.

1868, 1880 (1968)). Reasonable suspicion requires "something more than an unarticulated hunch, [and] that the officer must be able to point to something that objectively supports the suspicion at issue." *Id.* (quotation omitted).

Reasonable, articulable, objective facts that would justify an investigatory stop are "facts that, by their nature, quality, repetition, or pattern become so unusual and suspicious that they support at least one inference of the possibility of criminal activity . . . ." *Schrupp*, 625 N.W.2d at 847–48. The officer's suspicion may be based on the totality of the circumstances, including "the officer's general knowledge and experience, the officer's personal observations, information the officer has received from other sources, the nature of the offense suspected, the time, the location, and anything else that is relevant." *Applegate v. Comm'r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987). Suspicious activity in an area that has had problems with crime supplements the basis for a lawful investigatory stop. *See Cobb v. Comm'r of Pub. Safety*, 410 N.W.2d 902, 903 (Minn. App. 1987) (finding sufficient basis for officer to seize man observed in vehicle parked on street in area where burglaries had been reported at same time of day). But an investigatory stop cannot be "the product of mere whim, caprice or idle curiosity." *State v. Pike*, 551 N.W.2d 919, 921–22 (Minn. 1996).

Here, the deputy became suspicious when he saw appellant's vehicle approaching the entrances of several closed businesses in the middle of the night. He suspected that appellant might be engaged in casing the businesses for a potential burglary because there had been numerous recent burglaries in the same area.

Similar facts have resulted in sustained investigatory stops. *State v. Uber*, 604 N.W.2d 799, 801–02 (Minn. App. 1999) (where appellant was driving vehicle slowly through business district at 2:00 a.m., "reports of recent robberies, the time of night, the commercial nature of the area, and [appellant's] unusual driving behavior" supported conclusion that arresting officer had adequate basis for stop); *Olmscheid v. Comm'r of Pub. Safety*, 412 N.W.2d 41, 42–43 (Minn. App. 1987) (citation omitted) (upholding investigatory stop where officer observed vehicle "on a dead-end road at approximately 1:30 a.m. coming from an area behind a car dealership which had recently experienced property theft" and concluding that officers are justified in stopping vehicles late at night "to investigate whether a burglary of a closed commercial establishment is pending or had occurred when the suspect is seen in such close proximity to that establishment that he appears to be something other than a mere passerby"), *review denied* (Minn. Nov. 6, 1987). *See, e.g., Thomeczek v. Comm'r of Pub. Safety*, 364 N.W.2d 471, 472 (Minn. App. 1985) (officer had a reasonable, articulable suspicion of criminal activity when observing a vehicle in "an empty lot late in the evening in an area undergoing construction, where a burglary, vandalism or theft might occur").

Appellant argues that the deputy did not have a reasonable, articulable suspicion to stop his vehicle based only on concerns that appellant was lost. *See Doheny v. Comm'r of Pub. Safety*, 368 N.W.2d 1, 2 (Minn. App. 1985) (holding that, although aiding someone who is lost is "commendable," it is not sufficient justification for an investigatory stop). The deputy might have momentarily believed that appellant was lost; but, based on the totality of the circumstances, he had a reasonable, articulable suspicion

to suspect that appellant could have been involved in a burglary of the closed businesses. Appellant's reliance on *Doheny* is misplaced because the deputy formed a reasonable inference of criminal behavior.

We conclude that the district court did not err in determining that the deputy had a reasonable, articulable suspicion sufficient to justify the stop of appellant's vehicle given the time of night, appellant's suspicious driving behavior, and the fact that there had been numerous prior burglaries and alarms in the area.

Affirmed.