STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1204

State of Minnesota,
Respondent,

vs.

Jeremy David Bird Horse,
Appellant.

Filed June 29, 2010
Affirmed
Halbrooks, Judge

Beltrami County District Court
File No. 04-CR-08-4587

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

Timothy R. Faver, Beltrami County Attorney, Annie P. Claesson-Huseby, Assistant County Attorney, Bemidji, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, Iris Ramos Nieves (certified student attorney), St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Willis, 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

HALBROOKS, Judge

On appeal from his conviction of third-degree driving while impaired (DWI), appellant argues that the district court erred in ruling that the police officer had reasonable articulable suspicion to stop his car. Because we conclude that the investigative stop was justified, we affirm.

FACTS

At approximately 6:49 a.m. on a Saturday in August 2008, a woman in Beltrami County called 911 to report that a dark green car, which she thought was a Monte Carlo, had pulled into her driveway and parked. The woman stated that the car was then leaving her driveway and slowly driving away. The 911 operator informed the caller that police would look into the matter for her and asked the woman to call back if she saw the car again. Within a short time, the woman called 911 a second time and reported that the car had driven by her house again "about 10 minutes ago." Beltrami County Dispatch notified the Beltrami County Sheriff's Department of the woman's calls.

Police officers, who were already in the area investigating reports of a large party, searched for the car. Deputy Tony Petrie saw and pulled over a green Monte Carlo that was driven by appellant Jeremy David Bird Horse. Appellant told Deputy Petrie that he stopped in the 911 caller's driveway because he was lost. Deputy Petrie detected a strong odor of alcohol from appellant and observed that he had watery, glassy eyes and slow speech. He asked appellant if he had been drinking, and appellant denied consuming any

alcohol. Deputy Petrie then administered field sobriety tests, which appellant failed. A preliminary breath test indicated that appellant's alcohol concentration was 0.167.

Appellant, charged with third-degree DWI, moved to have the charge dismissed on the ground that the investigative stop of his car was not justified. The district court denied this motion. Appellant was convicted following a stipulated-facts trial. He now challenges the legality of the stop on appeal.

D E C I S I O N

Unreasonable searches and seizures are prohibited by the United States and Minnesota Constitutions. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. A traffic stop is considered a seizure under both of these provisions. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004). An appellate court reviews de novo the legality of a limited investigatory stop and questions of reasonable articulable suspicion. *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999).

To justify an investigative stop, a police officer "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). Articulable, objective facts that 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." *State v. Schrupp*, 625 N.W.2d 844, 847-48 (Minn. App. 2001), *review denied* (Minn. July 24, 2001).

Minnesota courts look at the totality of the circumstances to determine whether the officer who made the stop is able to articulate a particularized and objective basis for

suspecting the stopped person of criminal activity. *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983). In applying the *Terry* standard, "Minnesota case law shows how very low the threshold is to stop a vehicle in order to carry out the duty to investigate possible violations of the law." *State v. Claussen*, 353 N.W.2d 688, 690 (Minn. App. 1984). "All that is required is that the stop be not the product of mere whim, caprice, or idle curiosity." *State v. Johnson*, 257 N.W.2d 308, 309 (Minn. 1977) (quotation omitted).

In support of his argument, appellant first cites *State v. Britton*, in which the supreme court ruled that a broken window in a car was insufficient to justify an investigative stop, despite police testimony that car thieves sometimes break car windows in order to gain access to cars. 604 N.W.2d 84, 86-89 (Minn. 2000). Appellant asserts that, as in *Britton*, nothing in this case supports a reasonable articulable suspicion of criminal activity. But the *Britton* court merely rejected "[t]he absurd conclusion . . . that any car driving anywhere could be stopped so long as it had a broken window." *State v. Victorsen*, 627 N.W.2d 655, 665 (Minn. App. 2001) (discussing the *Britton* holding), *superseded by statute on other grounds*, Minn. Stat. § 169A.53, subd. 3(g) (2004).

Appellant also cites *Doheny v. Comm'r of Pub. Safety*, 368 N.W.2d 1, 1-2 (Minn. App. 1985), in which this court held that the mere suspicion that a driver was lost did not justify an investigative stop, and *State v. Sanger*, 420 N.W.2d 241, 242-44 (Minn. App. 1988), in which we held that an investigative stop of an occupied vehicle with fogged-up windows and an open sunroof was not justified when the officer admitted that he approached the vehicle only "to see what was going on." In each of these cases, and

unlike the present case, the officer executing the stop essentially admitted to having no reasonable articulable suspicion of criminal activity.

Appellant argues that no criminal laws were implicated when he parked in the caller's driveway and later drove past her house. But even seemingly innocent activity may justify the suspicion of criminal activity. *See State v. Johnson*, 444 N.W.2d 824, 827 (Minn. 1989) (concluding that merely looking at an officer and then turning off the highway, while consistent with innocent behavior, supports a reasonable suspicion that the driver is evading the officer). In this case, police received a report that a vehicle matching appellant's car was parked in a residential driveway for an unspecified amount of time, drove slowly away, and then reversed direction and drove by. Originating as it did from a citizen who called 911 and identified herself, this report was presumptively reliable. *See State v. Davis*, 732 N.W.2d 173, 182-83 (Minn. 2007) (stating the presumption that "tips from private citizen informants are reliable," particularly when informants disclose their identity to police). Additionally, the incident occurred in the early hours of a Saturday morning, after a large party had been reported in the area. *See Kvam,* 336 N.W.2d at 528 (stating that the totality of the circumstances should be considered in evaluating whether an officer had reasonable articulable suspicion to justify a stop). We conclude on this record that the objective facts reported to the police supported a reasonable suspicion of criminal activity and that the investigative stop was justified.

Affirmed.