STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2104

State of Minnesota,
Respondent,

vs.

Peter Jahan Lehmeyer,
Appellant.

Filed October 5, 2010
Affirmed
Hudson, Judge

Hennepin County District Court
File No. 27-CR-08-48403

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

Kevin Staunton, Excelsior City Attorney, Kenneth N. Potts, Assistant City Attorney, Minnetonka, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and Larkin, Judge.

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

HUDSON, Judge

Appellant challenges his conviction of third-degree driving with an alcohol concentration of .08 or more, arguing that the district court erred by denying his motion

to suppress evidence gained after police stopped his vehicle based on a tip from a citizen informant. Appellant also raises additional issues in a pro se supplemental brief. Because the investigatory stop of appellant's vehicle was supported by reasonable suspicion, which was not dispelled by additional police observation, and because appellant's additional arguments lack merit, we affirm.

FACTS

The state charged appellant Peter Jahan Lehmeyer with one count of second-degree driving while impaired and one count of second-degree driving with an alcohol concentration of .08 or more, after police stopped appellant's vehicle based on a tip from a citizen informant. Appellant moved to suppress evidence resulting from the stop, arguing that the informant's tip did not provide reasonable, articulable suspicion for the stop and that police improperly failed to give appellant a *Miranda* warning prior to custodial interrogation.

At a *Rasmussen* hearing, a South Lake Minnetonka police officer testified that, while on patrol during late-evening hours, he overheard a radio transmission of a driving complaint in the area of County Highways 15 and 19. The dispatcher advised that a person calling from his cell phone was following a vehicle and described the conduct of that vehicle's driver as "being all over the road," stating that the vehicle had almost struck another car. The caller stated that the vehicle had turned south onto County Highway 19. The caller gave his name and cell-phone number and identified the vehicle as a white Buick with a specific license plate number.

The officer testified that he ran the license plate on his computer to identify the vehicle's owner and address. Based on that information, he surmised the direction that the vehicle might be going, moved to that location, and spotted the vehicle. He followed it for about three blocks and did not observe independent driving conduct that would justify a stop, but, based on the radio transmission, he conducted a traffic stop.

The officer testified that he identified the driver as appellant, based on prior contact and appellant's license. He advised appellant that someone had complained about appellant's driving; appellant replied that he did not think his driving was "that bad." The officer noticed that appellant's speech was somewhat slurred, his eyes were bloodshot and watery, and he had an odor of an alcoholic beverage coming from his breath. The officer asked appellant to exit the car and inquired about his alcohol consumption that evening; appellant replied that he had had four to five cocktails. The officer testified that he did not read appellant any *Miranda* rights at that point and that appellant had not yet been placed under arrest.

The officer testified that he started to administer field sobriety testing, but after two tests, appellant stated that further field testing would not be necessary because of his level of intoxication. Appellant stated that he would prefer to submit to blood-alcohol testing. The officer asked appellant to submit to a preliminary breath test, which appellant failed.

The officer then arrested appellant and transported him to the police station. During the transport, appellant made no statements relating to his drinking or driving. At the station, the officer started the booking process and read appellant the implied-consent

advisory. Appellant agreed to testing, which showed an alcohol concentration of .13. About an hour later, the officer read appellant his *Miranda* rights and placed him under formal arrest.

Appellant did not testify and submitted no evidence at the *Rasmussen* hearing. The district court denied the motion to suppress. The court concluded that the information provided by the citizen informant provided reasonable suspicion for the stop and that, during the stop, appellant was not in custody so as to trigger *Miranda* protection, so that his statements were legally obtained. Appellant agreed to submit the matter on stipulated facts to obtain review of the pretrial ruling under Minn. R. Crim. P. 26.01, subd. 4, and appellant waived his rights associated with trial. The district court found appellant guilty of an amended count of gross-misdemeanor, third-degree driving with an alcohol concentration of .08 or more, in violation of Minn. Stat. § 169A.20, subd. 1(5) (2008). The additional driving-while-impaired count was dismissed. This appeal follows.

D E C I S I O N

When a suppression order is challenged on appeal, this court independently reviews the facts and the law to determine whether the district court erred by suppressing or refusing to suppress the evidence. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). To justify an investigative stop, an 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). A decision to conduct a stop must be based on more than "mere whim, caprice,

or idle curiosity." *Marben v. Minn. Dep't of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980) (quotation omitted). A reviewing court considers the totality of the circumstances surrounding the stop, giving due regard to the officer's experience and training in law enforcement. *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983).

The factual basis to support an investigatory stop need not arise from the officer's personal observations but may be derived from information acquired from another person. *Marben*, 294 N.W.2d at 699. A stop may be predicated on an informant's tip if the tip has sufficient indicia of reliability. *Jobe v. Comm'r of Pub. Safety*, 609 N.W.2d 919, 922 (Minn. App. 2000). "A reliable informant's factually specific report of unlawful driving will alone justify a stop, [and] [t]he reliability of an identified citizen informant is presumed." *Yoraway v. Comm'r of Pub. Safety*, 669 N.W.2d 622, 626 (Minn. App. 2003). But the ultimate reliability of a tip also depends on the nature of the information supporting an informant's assertion of illegal conduct. *Id*. (citing *Olson v. Comm'r of Pub. Safety*, 371 N.W.2d 552, 555 (Minn. 1985)). To support a stop for suspected driving while impaired, the evidence must show that the person providing the tip "was in possession of specific and articulable facts supporting a reasonable suspicion that there was a drunk driver on the road." *Olson*, 371 N.W.2d at 555.

Appellant does not directly challenge the reliability of the informant or the information provided. But appellant argues that, under the totality of the circumstances, the officer lacked reasonable suspicion to stop his vehicle because any reasonable suspicion to stop his vehicle dissipated after the officer followed appellant and saw no indication of possible criminal activity.

If police have an initial reason for a stop and that reason is dispelled by further investigation, an investigatory stop is not justified. *State v. Britton*, 604 N.W.2d 84, 88 (Minn. 2000); *see also State v. Pike*, 551 N.W.2d 919, 922 (Minn. 1996) (stating that if officer has information that a vehicle's owner has a revoked license and observes a clearly different person driving the vehicle, reasonable suspicion to stop vehicle on that ground evaporates). Here, the citizen informant's tip was specific, identifying the make of appellant's car and its license number. It also identified erratic driving conduct, including that the car almost struck another vehicle. Therefore, the tip established reasonable suspicion to stop appellant's vehicle for a driving violation. While following appellant for approximately three blocks, the police officer saw no independent conduct that would justify a stop. Nevertheless, the record contains no evidence that the officer observed any behavior to *dispel* the reasonable suspicion that appellant had been engaged in illegal driving activity. Based on the record presented, we conclude that the district court did not err by denying the motion to suppress on the ground that the officer had reasonable suspicion to perform the stop.

Appellant raises several issues in a pro se supplemental brief, including arguments based on facts not before the district court and on alleged violations of his constitutional rights. We note, however, that appellant did not testify or submit evidence at the *Rasmussen* hearing, and he agreed to a procedure submitting the matter on a stipulated record to obtain review of the suppression ruling. *See* Minn. R. Crim. P. 26.01, subd. 4 (outlining procedure for obtaining review of pretrial ruling). As part of that procedure, appellant also agreed to waive rights associated with trial. *Id.*, subd. 4(d)*; see also id.*,

subd. 3(a) (specifying rights waived). We decline to consider arguments based on information not part of the district court record or on rights that appellant has previously waived. We have carefully considered appellant's additional arguments and conclude, based on the record, that they lack merit.

Affirmed.