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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-455**

State of Minnesota,
Respondent,

vs.

Jason Isaac Robertson,
Appellant.

**Filed December 14, 2010
Affirmed
Klaphake, Judge**

Ramsey County District Court
File No. 62SU-CR-08-10531

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

Thomas R. Hughes, Hughes & Costello, St. Paul, Minnesota (for respondent)

Robert A. Lengeling, Beito & Lengeling, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Klaphake, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Jason Isaac Robertson challenges his conviction for second-degree driving while impaired (DWI), Minn. Stat. § 169A.20, subd. 1(1), (5) (2008), arguing that

the district court erred by refusing to suppress evidence acquired after an investigatory stop.

Because the police officer had a reasonable, articulable suspicion of criminal activity that supported an investigatory stop, we conclude that the district did not err. We therefore affirm.

D E C I S I O N

When the facts are not in dispute, we review the district court's suppression order de novo, to "determine whether the police articulated an adequate basis for the search or seizure at issue." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). Although unreasonable searches and seizures are prohibited by both the federal and state constitution, U.S. Const. amend. IV, Minn. Const. art. I, § 10, a police officer may make a brief, investigatory stop if the officer has a reasonable, articulable suspicion that a person is engaged in criminal activity. *Timberlake*, 744 N.W.2d at 393.

The standard of reasonable, articulable suspicion is not high and requires only a "minimal" factual basis. *Knapp v. Comm'r of Pub. Safety*, 610 N.W.2d 625, 628 (Minn. 2000). A police officer must be able to articulate an "objective justification for making the stop." *Timberlake*, 744 N.W.2d at 393 (quotation omitted). This standard is met when an officer "observes unusual conduct that leads the officer to reasonably conclude in light of his or her experience that criminal activity may be afoot." *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). This determination is made by examining the totality of the circumstances. *Knapp*, 610 N.W.2d at 628.

The totality of the circumstances can include such things as evasive or furtive conduct, suspicious activity in a high-crime area, an unusual time of day, and minor driving or equipment infractions. *State v. Uber*, 604 N.W.2d 799, 801-02 (Minn. App. 1999). Even “wholly lawful conduct might justify the suspicion that criminal activity is afoot” given other circumstances. *State v. Britton*, 604 N.W.2d 84, 89 (Minn. 2000). In *Uber*, a police officer observed the defendant twice drive slowly through an area where there had been recent burglaries. 604 N.W.2d at 800. We cited several cases in *Uber* in which relatively minor conduct supported a reasonable, articulable suspicion of criminal activity: *State v. Petrick*, 527 N.W.2d 87, 88-89 (Minn. 1995) (driver evaded police by suddenly turning into a driveway and shutting off his lights); *State v. Johnson*, 444 N.W.2d 824, 827 (Minn. 1989) (driver evaded eye contact with trooper and made sudden evasive turn); *Cobb v. Comm’r of Pub. Safety*, 410 N.W.2d 902, 903 (Minn. App. 1987) (driver sat for 10 minutes in car parked on street where burglaries had been reported at same time of day); *Olmscheid v. Comm’r of Pub. Safety*, 412 N.W.2d 41, 43 (Minn. App. 1987), *review denied* (Minn. Nov. 6, 1987) (police officer observed defendant driving on a dead-end road behind closed businesses in the early morning in area where thefts had been common).

Here, New Brighton Police Officer John Kaiser testified at the omnibus hearing that at about 2:30 a.m. on December 14, 2008, he was patrolling Old Highway 8 in New Brighton, approaching the intersection with Highway 96. From his position at the crest of a small hill, he could see the parking lot of Beisswenger’s Hardware Store, which closed at about 9:00 p.m. He observed a white car travelling through the parking lot.

Kaiser testified that Beisswenger's had been robbed in the past, and his attention was caught because of the late hour. Kaiser did not include this in his report but testified knowledgeably about burglaries at Beisswenger's and the areas of the store that had been broken into. Kaiser stated that the car was not stopped in the parking lot, but was driving toward the exit. Kaiser stopped and waited for the car, which was travelling at a legal speed and made a legal stop at a stop sign. After appellant passed Kaiser, the officer pulled him over and told appellant that he thought it was suspicious that he was driving through the parking lot at that time of night. During the stop, Kaiser noticed signs of intoxication and called another officer to conduct field sobriety tests and administer chemical testing to appellant. The result of a blood test showed that appellant had an alcohol concentration of .19.

Only a minimal factual basis is necessary to create a reasonable, articulable suspicion of criminal activity. *Knapp*, 610 N.W.2d at 628. The facts here are similar to the facts in *Olmscheid*, in which the defendant was driving on a dead-end road behind some businesses after hours and the officer knew that the businesses had a history of property theft; we held that these circumstances provided a basis for a reasonable, articulable suspicion of criminal activity. 410 N.W.2d at 42-43.

The officer here articulated similar grounds for suspicion of criminal activity: the time of night and a deserted parking lot next to a closed business, which recently had been the target of burglaries. On these facts, the officer was permitted to make an investigatory stop.

Affirmed.