**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A11-84**

State of Minnesota,
Respondent,

vs.

Toni Lynn White,
Appellant.

**Filed January 17, 2012**
**Affirmed**
**Ross, Judge**

Carver County District Court
File No. 10-CR-09-727

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

Mark Metz, Carver County Attorney, Dawn M. O'Rourke, Assistant County Attorney, Chaska, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and Ross, Judge.

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

**ROSS**, Judge

Deputies stopped Toni White's car after she left a suspected drug dealer's apartment. A deputy asked White if he could search her purse. He found

methamphetamine inside it and arrested White. White unsuccessfully moved the district court to suppress the evidence of the methamphetamine and the district court convicted her of possession of a controlled substance. She now challenges the district court's denial of her motion to suppress the evidence on the grounds that the deputies lacked reasonable suspicion to stop her and that she did not consent to the search. Because both challenges fail, we affirm.

## FACTS

In October 2009, Carver County Sheriff's Deputy Douglas Schmidtke of the Southwest Metro Drug Task Force received information from three informants that Dean Roeglin, a suspected drug dealer recently released from prison, was selling methamphetamine from his Waconia apartment. Informant One had helped the task force the previous three years and worked on three cases with Deputy Schmidtke. He had given information about drug dealers in Carver County and the Twin Cities and performed one controlled buy. Deputy Schmidtke considered Informant One's information to be generally reliable. Informant One told Deputy Schmidtke that Roeglin was dealing again and that he had been selling "to a lot of people on the west end of the county." Informant One also told him that Roeglin lives in Waconia by the lake, that he drives an old blue pickup truck, and that he gets his methamphetamine from Bill Brown. Brown had been incarcerated for drugs and other crimes around the same time that Roeglin had been incarcerated. Brown and Roeglin had been associated with the methamphetamine scene. Deputy Schmidtke verified Informant One's information. He did this by driving by the residence and observing a blue truck behind the house. Deputy Schmidtke had learned the

address from an officer in Waconia who knew where Roeglin was living. Deputy Schmidtke confirmed Roeglin's address through the department of corrections database.

Informant Two had helped Deputy Schmidtke for about a year and a half and Deputy Schmidtke considered his information to be "basically reliable and credible." During the time Informant Two worked with Deputy Schmidtke, he was involved in a controlled buy and gave information that led to warrants. Informant Two told Deputy Schmidtke that Roeglin was selling drugs, and he listed some of Roeglin's customers. Deputy Schmidtke attempted to verify this information by observing Roeglin's apartment.

The third confidential informant had been working with Deputy Schmidtke for about one to two weeks. Deputy Schmidtke did not describe Informant Three as reliable. Informant Three provided information about methamphetamine users in the Norwood area and about Roeglin. He told Deputy Schmidtke that Roeglin was selling methamphetamine and would deal to him, but his attempted controlled buy was unsuccessful. Informant Three corroborated the other two informants' reports by stating that Roeglin was dealing methamphetamine, living by the lake in Waconia in an apartment at the rear of a house, and driving a blue Chevy or GMC pickup. Informant Three also stated that Dawn Klitzke and Toni White got their methamphetamine from Roeglin, usually on Thursdays or Fridays after White was paid.

Based on the information that Deputy Schmidtke received from these three informants, he began surveillance on October 8, 2009, at Roeglin's address. The

apartment was part of a rambler house with three entrances at the front and one in the back. He believed that Roeglin's apartment was number five, in the back.

Deputy Schmidtke observed a blue GMC pickup truck parked behind the house. He saw short-term traffic to and from Roeglin's apartment, but he could not actually see Roeglin's door. He recognized one of the visitors as Brown, who was in Roeglin's residence for about 10 to 15 minutes.

Deputy Schmidtke saw a silver Chrysler or Plymouth arrive and park on the street. Two people Deputy Schmidtke recognized, Dawn Klitzke and Toni White, got out. White was the driver. Deputy Schmidtke knew Klitzke from previous law-enforcement encounters. He recognized White because he had seen a photograph of her and was told that she was a methamphetamine user. Deputy Schmidtke watched them walk around the side of the house. He believed that there "was obviously something going on" and he called for help. Sergeant Mark Williams arrived. White and Klitzke returned to their car after about 30 minutes.

Deputy Schmidtke, Sergeant Williams, and Deputy Troy Carlson stopped White's car on Highway 5 before White committed any traffic violation. Deputy Schmidtke spoke with White while Sergeant Williams spoke with Klitzke. Deputy Schmidtke informed White that they were investigating drug dealing and that he "had some beliefs." He asked her permission to search her person, her purse, and her car. White agreed to the search. Deputy Schmidtke found two small baggies of a crystal substance in her purse. He believed it was methamphetamine. White acknowledged that it was hers but she did not

identify what it was or say where she had gotten it. A field test indicated methamphetamine and a laboratory test confirmed it.

The state charged White with possession of a controlled substance in the fifth degree under Minnesota Statutes section 152.025, subdivisions 2(a)(1) and 3(a) (2008). White moved the district court to suppress evidence of the methamphetamine on the ground that it was fruit of an unlawful stop and search. The district court denied the motion. It held that Deputy Schmidtke had reasonable articulable suspicion to stop White's car and that White consented to the search.

White waived her right to a jury trial and submitted her case to the district court on a stipulated record. *See State v. Lothenbach*, 296 N.W.2d 854, 857–58 (Minn. 1980); Minn. R. Crim. P. 26.01, subd. 4. The district court found White guilty. She appeals.

**D E C I S I O N**

White argues that the district court erred by not suppressing evidence of the methamphetamine found in her purse. We review pretrial orders on motions to suppress evidence by independently considering the facts and determining, as a matter of law, whether the district court erred by not suppressing the evidence. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). The material facts are not disputed, so we review only the district court's legal determinations, applying a de novo standard. *See State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006).

**I**

White contends that the district court erred because Informant Three's tip did not establish a reasonable articulable suspicion that she was engaged in criminal activity.

Unreasonable searches and seizures are prohibited under the United States and Minnesota constitutions. U.S. Const. amend. IV; Minn. Const. art. I, § 10. An officer may conduct a limited warrantless investigative stop, otherwise known as a *Terry* stop, if he has a reasonable, articulable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968). To meet the reasonable suspicion standard, the officer must show that the stop "was based upon 'specific articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *State v. Pike*, 551 N.W.2d 919, 921–22 (Minn. 1996) (quoting *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880). We determine whether the police had a reasonable basis to justify the stop by looking at the totality of circumstances. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

White argues that the district court erred because Informant Three was not reliable, and therefore his information could not establish a reasonable articulable suspicion justifying the stop. The reasonable suspicion standard is very low. *State v. Claussen*, 353 N.W.2d 688, 690 (Minn. App. 1984). An investigative stop may be based on an informant's tip so long as that tip is reliable. *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). We consider the totality of the circumstances when deciding whether a tip is sufficiently reliable. *Yoraway v. Comm't of Pub. Safety*, 669 N.W.2d 622, 626 (Minn. App. 2003). So we will consider not only Informant Three's information, but also the information provided by Informants One and Two.

Deputy Schmidtke testified that Informants One and Two were previously reliable and that they had engaged in successful controlled buys. Deputy Schmidtke also corroborated the information provided by the informants. He verified Roeglin's address

by driving there, speaking with another officer, and checking a law-enforcement database. He also saw a blue pickup truck parked at the residence and witnessed Brown visit. Deputy Schmidtke corroborated Informant Three's information that White and Klitzke bought methamphetamine from Roeglin on Thursdays or Fridays by seeing White and Klitzke at Roeglin's house on a Thursday. Although Deputy Schmidtke did not deem Informant Three independently reliable, his information was corroborated by the other two informants and by Deputy Schmidtke. The information was also against Informant Three's own interest because he admitted that Roeglin would sell him drugs. Informant Three made predictions corroborated by Deputy Schmidtke's own observations, specifically, when White and Klitzke would arrive to buy drugs from Roeglin. We are satisfied that the informants were sufficiently reliable.

White relies on *State v. Munson* 594 N.W.2d 128 (Minn. 1999), *State v. Ross*, 676 N.W.2d 301 (Minn. App. 2004), and *State v. Cook*, 610 N.W.2d 664 (Minn. App. 2000), in support of her urging that Informant Three was unreliable. But these cases all involve the probable-cause standard, not the less onerous reasonable-suspicion standard at issue here. *See Alabama v. White*, 496 U.S. 325, 328–29, 110 S. Ct. 2412, 2415 (1990) (stating informant's reliability is important in both the reasonable-suspicion context and the probable-cause context but "an allowance must be made in applying [reliability factors] for the lesser showing required to meet [the reasonable-suspicion standard]."). The district court did not err by concluding that Deputy Schmidtke had reasonable suspicion to stop White's car.

## II

White also argues that the warrantless search of her purse was unlawful. Under the United States and Minnesota constitutions, warrantless searches are per se unreasonable unless an established exception applies. *Katz v. U.S.*, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967); *Munson*, 594 N.W.2d at 135. Consent is an exception to the warrant requirement, but the state must show by a preponderance of the evidence "that consent was given freely and voluntary." *State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011). Whether consent was voluntary is a question of fact determined from the totality of circumstances. *State v. Dezso*, 512 N.W.2d 877, 880 (Minn. 1994). Determining whether consent is voluntary involves balancing an officer's "legitimate need to search against the requirement that consent not be coerced." *State v. Harris*, 590 N.W.2d 90, 103 (Minn. 1999). In other words, we ask whether "a reasonable person would have felt free to decline the officer[']s requests or otherwise terminate the encounter." *Florida v. Bostick*, 501 U.S. 429, 438, 111 S. Ct. 2382, 2388 (1991). But consent is not involuntary merely because the circumstances made the person uncomfortable. *Dezso*, 512 N.W.2d at 880. White maintains that she did not feel free to decline Deputy Schmidtke's request to search her purse.

Whether consent is voluntary calls for a fact-specific inquiry, but three cases illustrate when consent is and is not voluntary. In *State v. George*, the supreme court held that consent was not voluntary because the defendant was stopped for a minor traffic violation, was unaware he had a right to refuse consent, was confronted by two law-

enforcement officers, and each of his responses led to additional inquiries by the officers. 557 N.W.2d 575, 581 (Minn. 1997). In *Deszo*, the defendant's consent to search his wallet was also not voluntary. 512 N.W.2d at 880–81. The officer's language was persistent and official, the encounter took place "at night, on a highway, and in the front seat of a parked squad car" after the defendant had been stopped for speeding, the defendant was not aware he could refuse to let the officer see his wallet, and the officer asked twice if he could take a look at the wallet as he leaned toward the defendant attempting to look into it. *Id*. at 880. But this court held that consent was voluntary in *State v. Doren*, 654 N.W.2d 137 (Minn. App. 2002). Although the defendant's driver had been arrested, the patrol lights were flashing, there were two officers, and police ordered the defendant to get out of the car, the requesting officer did not use an intimidating tone or draw his gun, and before asking the defendant to get out of the car the focus had been on the driver. *Id.* at 142–43. We concluded that the defendant could not have felt coerced. *Id*. at 143.

These cases inform our decision that the consent here was voluntary. Although three deputies were present when White's car was stopped, a single deputy pulled her aside to speak with her alone. And although Deputy Schmidtke did not inform White that she could refuse consent, informing the defendant is not required before consent is deemed voluntary; it is merely one factor among many constituting totality of the circumstances. *George*, 557 N.W.2d at 581 n.3. The record does not suggest that the deputy asked White more than once for consent to search her purse, or that he displayed a

weapon, or spoke in a demanding tone. A reasonable person would have felt free to decline. We affirm the district court's conclusion that White's consent was voluntary.

**Affirmed.**