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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2288

Todd C. Banks, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed July 29, 2013
Affirmed
Cleary, Judge

Wilkin County District Court
File No. 84-CV-12-261

Christopher J. Cadem, Cadem Law Group, PLLC, Fergus Falls, Minnesota (for appellant)

Lori Swanson, Attorney General, Joseph M. Simmer, Mathew Ferche, Assistant Attorneys General, St. Paul, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Cleary, Judge; and Willis, Judge.[*]

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[*] 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

CLEARY, Judge

Appellant challenges the district court's order sustaining the revocation of his driving privileges under the implied-consent law. He contends that the deputy who stopped and arrested him lacked reasonable, articulable suspicion to justify the traffic stop and lacked probable cause to believe that he was driving while under the influence of alcohol. We affirm.

FACTS

On July 13, 2012, an informant called 911 to report the driving conduct of a male driver of a red motorcycle traveling westbound on I-94. The informant identified himself and stated that the motorcycle was weaving within its lane of traffic, swerving outside of its lane, and becoming a hazard. The informant stated that he was traveling near milepost 45 and that the motorcycle was approximately a one-half of a mile behind him at the time of the call.

Wilkin County Deputy Sheriff Rick Teberg, who was running stationary radar along I-94, was advised of the informant's call. He then saw a red motorcycle pass by on I-94 near milepost 37, drifting and correcting within its lane of traffic, and he inferred that this was the motorcycle that had been described by the informant. Deputy Teberg began to follow the motorcycle in his squad car and observed it drifting within its lane without touching either the center line or the fog line. He also observed the motorcycle fluctuate in speed between 62 and 72 miles per hour. After following it for

approximately 1.5 miles, Deputy Teberg decided to stop the motorcycle out of concern for the safety of the driver and the other traffic.

After stopping near milepost 35, Deputy Teberg observed that the driver, appellant Todd Banks, had difficulty dismounting the motorcycle. When the deputy approached and spoke with appellant, he detected a strong odor of alcohol, slurred speech, and bloodshot and watery eyes. When Deputy Teberg asked to see appellant's driver's license, appellant opened a saddle bag attached to the motorcycle, and the deputy could see an open, partially full bottle of vodka inside the bag. Deputy Teberg asked whether appellant had been drinking, and appellant responded that he had. The deputy then asked appellant to perform field sobriety testing and to submit to a preliminary breath test (PBT), and appellant refused to do so. Based upon his observations, the informant's call, and appellant's refusal to perform field sobriety testing or submit to a PBT, Deputy Teberg arrested appellant for driving while impaired (DWI). Appellant later submitted to a breath test, which revealed that his alcohol concentration was .18.

Appellant's driving privileges were subsequently revoked, and he filed a petition for judicial review of the revocation. The district court held a hearing on the petition, during which Deputy Teberg testified. The court received a video recording from the deputy's squad car into evidence during the hearing, and received an audio recording of the informant's 911 call and radio traffic by law enforcement into evidence following the hearing. The court later issued an order sustaining the revocation of appellant's driving privileges. The court determined that Deputy Teberg had reasonable, articulable

suspicion to stop appellant and had probable cause to believe that appellant was driving while under the influence of alcohol. This appeal follows.

D E C I S I O N

When reviewing an implied-consent matter, an appellate court should not set aside a district court's findings of fact unless they are clearly erroneous. *Ellingson v. Comm'r of Pub. Safety*, 800 N.W.2d 805, 806 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011). Findings of fact are clearly erroneous when the appellate court is "left with a definite and firm conviction that a mistake has been committed." *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002) (quotation omitted). Due regard should be given to the district court's opportunity to judge the credibility of witnesses. *Snyder v. Comm'r of Pub. Safety*, 744 N.W.2d 19, 22 (Minn. App. 2008). A district court's determinations as to whether reasonable, articulable suspicion and probable cause existed are subject to de novo review. *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999).

I. Deputy Teberg had reasonable, articulable suspicion to justify the traffic stop.

Appellant argues that Deputy Teberg lacked reasonable, articulable suspicion to stop him and that the stop therefore violated his right to be free from unreasonable seizures. Both the United States Constitution and the Minnesota Constitution guarantee the "right of the people to be secure in their persons, houses, papers, and effects" against "unreasonable searches and seizures." U. S. Const. amend. IV; Minn. Const. art. I, § 10. The temporary detention of an individual during the stop of a vehicle by law enforcement

is a seizure under both constitutions. *See Whren v. United States*, 517 U.S. 806, 809–10, 116 S. Ct. 1769, 1772 (1996); *State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003).

A brief investigatory stop of a motorist is constitutionally permissible when the officer making the stop has reasonable, articulable suspicion, based upon his or her experience, that criminal activity may be afoot. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). The reasonable-suspicion standard is not high, but the suspicion must have particularized and objective support and be more than merely a hunch. *Id.* Reasonableness is evaluated by looking at the totality of the circumstances. *State v. Burbach*, 706 N.W.2d 484, 488 (Minn. 2005).

"The information necessary to support an investigative stop need not be based on the officer's personal observations, rather, the police can base an investigative stop on an informant's tip if it has sufficient indicia of reliability." *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997); *see also Jobe v. Comm'r of Pub. Safety*, 609 N.W.2d 919, 920–23 (Minn. App. 2000) (holding that an informant's 911 call created a reasonable basis for the stop of a vehicle when the informant identified himself, stated that the vehicle in front of him was swerving on the road, and described the vehicle and where it could be found). Law enforcement may presume that a tip from a private-citizen informant is reliable, and this is especially true when the informant gives identifying information, as the informant did here, such that the police can locate the informant if necessary. *Timberlake*, 744 N.W.2d at 394.

When Deputy Teberg decided to stop appellant, he had been told that an informant had called to report the driving conduct of a red motorcycle traveling toward him on I-94.

He then saw a red motorcycle pass by that was drifting and correcting within its lane of traffic. As he followed the motorcycle, Deputy Teberg observed it continue to drift within its lane and also observed it fluctuate in speed. *See State v. Engholm*, 290 N.W.2d 780, 784 (Minn. 1980) (holding that a vehicle's slow speed and weaving within its lane of traffic gave officers reasonable, articulable suspicion to conduct a traffic stop). The deputy became concerned for the safety of the driver and the other traffic. Based on the informant's call and his own observations, Deputy Teberg had reasonable, articulable suspicion to justify the traffic stop.

II. Deputy Teberg had probable cause to believe that appellant was driving while under the influence of alcohol.

Appellant next argues that Deputy Teberg lacked probable cause to believe that he was driving while under the influence of alcohol. A chemical test for the purpose of determining the presence of alcohol "may be required of a person when an officer has probable cause to believe the person was driving, operating, or in physical control of a motor vehicle in violation of [Minn. Stat. § 169A.20 (2010) regarding DWI offenses]" and an additional condition exists, such as that the person has been lawfully placed under arrest for DWI or has refused to take a PBT. Minn. Stat. § 169A.51, subd. 1(b) (2010).

Probable cause to make an arrest and to require a chemical test exists when "there are facts and circumstances known to the officer which would warrant a prudent man in believing that the individual was driving or was operating or was in physical control of a motor vehicle while impaired." *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011) (quotation omitted). "[T]he probable cause standard asks whether the totality of the facts

and circumstances known would lead a reasonable officer to entertain an honest and strong suspicion that the suspect has committed a crime." *Id.* at 363 (quotation omitted). This is an objective inquiry that is conditioned by the officer's own observations, information, and experience. *Id.* at 362–63.

When Deputy Teberg decided to arrest appellant for DWI, he had been told of the informant's call and had observed appellant's driving conduct. He observed that appellant had difficulty dismounting the motorcycle. He detected a strong odor of alcohol, slurred speech, and bloodshot and watery eyes while speaking with appellant. *See, e.g.*, *O'Neill v. Comm'r of Pub. Safety*, 361 N.W.2d 471, 472–73 (Minn. App. 1985) (holding that a strong odor of alcohol, slurred speech, and bloodshot eyes gave an officer probable cause to arrest a motorist for DWI and invoke the implied-consent law). He saw an open, partially full bottle of vodka inside appellant's bag, and appellant admitted that he had been drinking. Appellant refused to perform field sobriety testing or submit to a PBT. Based on these circumstances, Deputy Teberg had probable cause to believe that appellant was driving while under the influence of alcohol.

Appellant contends that Deputy Teberg's testimony regarding several aspects of the traffic stop was not credible. Specifically, he points to the deputy's testimony regarding the location of the motorcycle and the informant's vehicle, the extent of the motorcycle's weaving and speed fluctuation, the extent of appellant's difficulty in dismounting the motorcycle, and the request that appellant submit to a PBT. The district court had the opportunity to observe Deputy Teberg testifying, review the exhibits, weigh the evidence, and make credibility determinations. In its order, the court identified points

on which the deputy's testimony and the squad car video were inconsistent, but nonetheless determined that the deputy's testimony on other points was credible. We will not disregard the district court's credibility determinations. *See Snyder*, 744 N.W.2d at 22.

Affirmed.