**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A16-1814**

State of Minnesota,
Respondent,

vs.

Melissa Ann Donarski,
Appellant

**Filed August 21, 2017**
**Affirmed**
**Worke, Judge**

Polk County District Court
File No. 60-CR-15-1087

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

Greg Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney, Crookston, Minnesota (for respondent)

Jade M. Rosenfeldt, Vogel Law Firm, Moorhead, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Worke, Judge; and Smith, John, 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

**WORKE**, Judge

Appellant challenges her second-degree driving-while-impaired (DWI) conviction, arguing that the district court erred in determining that the stop of her vehicle was supported by a reasonable, articulable suspicion of criminal activity. We affirm.

## FACTS

On July 1, 2015, at approximately 12:32 a.m., Officer Kenneth Dionne received a call from dispatch reporting a "suspicious vehicle" that had been "parked in or near the complainant's driveway" for approximately 15 minutes. The vehicle's headlights and taillights were on, but the complainant did not see anybody in the vehicle. The complainant provided a license-plate number, which the dispatcher ran and found that the vehicle was registered to appellant Melissa Ann Donarski.

Officer Dionne knew the complainant's name and the address. As the officer approached the area, a rural and lightly traveled region, he observed the vehicle moving southbound and then turn eastbound onto County Road 23, which goes through Tabor Township. Officer Dionne observed the vehicle moving very slowly, ten or twenty miles an hour. Officer Dionne also saw the vehicle's brake lights come on several times; the vehicle appeared to "slow[] down randomly," and its reverse lights came on one time.

When Officer Dionne reached Tabor, Donarski's vehicle was no longer on the county road; rather, the vehicle was traveling on a dike, a grass-covered area that is 3 or 4 feet high and approximately 15 feet wide. The dike is not for public use, it is not paved, it has no street lights, and it is not marked with any signage. The dike has some vehicle

tracks from moving farming machinery. The purpose of the dike is to keep water out of Tabor, which is on the north end of the dike, a "large ditch that is filled with water during the flooding season" is to the south. Officer Dionne has patrolled through Tabor approximately 500 times and has never seen anyone drive on the dike.

Officer Dionne watched Donarski drive to the east end of the dike, turn around, and drive back westbound. Officer Dionne watched Donarski drive up and down the dike a couple of times. Officer Dionne drove on County Road 23 parallel to Donarski as she drove on the dike. When they reached a gravel road, Officer Dionne stopped Donarski.

Donarski told the officer that she had been drinking earlier. The officer smelled alcohol and observed that Donarski's speech was slurred and mumbled. Donarski failed a preliminary breath test. After her arrest, Donarski was read the implied-consent advisory and agreed to take a breath test, which measured Donarski's alcohol content at 0.17. Donarski was charged with two counts of second-degree DWI.

Donarski moved to suppress the test results and dismiss the charges, arguing that Officer Dionne lacked a reasonable, articulable suspicion of criminal activity to stop her. Following a hearing, the district court denied Donarski's motion, concluding that, while no single factor provided reasonable suspicion, Officer Dionne had reasonable suspicion to stop Donarski based on all of the circumstances. Donarski agreed to stipulate to the state's evidence, pursuant to Minn. R. Crim. P. 26.01, subd. 4, to preserve appellate review of the pretrial ruling. The district court found Donarski guilty of one count of second-degree DWI. This appeal followed.

## D E C I S I O N

When reviewing a district court's pretrial order on a motion to suppress evidence, this court reviews the district court's factual findings for clear error and its legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). This court reviews questions of reasonable suspicion de novo, considering the totality of the circumstances in determining whether a stop is justified. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

Donarski argues that her seizure was unconstitutional because Officer Dionne failed to state a subjective reasonable suspicion for the seizure. The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Subject to limited exceptions, warrantless searches are per se unreasonable. *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967). An investigatory stop is an exception to the warrant requirement. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) (citing *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968)).

An officer may conduct "a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 675 (2000) (citing *Terry*, 392 U.S. at 30, 88 S. Ct. at 1884). The reasonable, articulable suspicion standard is "not high." *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006) (quotation omitted); *Magnuson v. Comm'r of Pub. Safety*, 703 N.W.2d 557, 560 (Minn. App. 2005) (stating that the factual basis required to justify an investigatory stop is minimal).

Contrary to Donarski's assertion, an officer's suspicion must satisfy an objective test, rather than a subjective test. *See State v. Smith*, 814 N.W.2d 346, 351 (Minn. 2012) ("To be reasonable, the basis of the officer's suspicion must satisfy an objective, totality-of-the-circumstances test."). This objective test requires consideration of whether "'the facts available to the officer at the moment of the seizure [would] warrant a man of reasonable caution in the belief that the action taken was appropriate.'" *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (quoting *Terry*, 392 U.S. at 21-22, 88 S. Ct. 1880).

Further, Officer Dionne articulated a subjective belief of reasonable suspicion. At the hearing on Donarski's motion, Officer Dionne testified that, after considering the information he received from dispatch and his observations, he "didn't know if it was somebody looking for some place to break into. . . . [I]f there was some kind of a medical situation. . . . [Or] if it was a drunk driver." Officer Dionne stated that his "first inclination was that it might be somebody looking to break into something." He testified that he "didn't know if the person who had been in the vehicle had gotten out and . . . went over to the reporting party's house or garage or broke into something." Thus, Officer Dionne indicated a subjective basis for developing "a reasonable, articulable suspicion that criminal activity [was] afoot." *See Wardlow*, 528 U.S. at 123, 120 S. Ct. at 675.

Donarski asserts that even if an objective basis is required, the district court still erred in finding that Officer Dionne possessed reasonable suspicion to seize her because the totality of the circumstances did not create reasonable suspicion.

An investigatory stop is justified if it "was not the product of mere whim, caprice or idle curiosity, but was based upon specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004) (quotations omitted); *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995) (stating that reasonable suspicion must be based on "specific, articulable facts" that permit the officer to articulate his "particularized and objective basis for suspecting the seized person of criminal activity"). Appellate courts consider the totality of the circumstances, recognizing that the "special training of police officers may lead them to arrive at inferences and deductions that might well elude an untrained person." *Askerooth*, 681 N.W.2d at 369 (quotations omitted); *see State v. Morse*, 878 N.W.2d 499, 502 (Minn. 2016) (stating that an officer's reasonable, articulable suspicion of criminal activity to conduct a stop is based on the totality of the circumstances).

Here, a citizen called 911 to report a suspicious vehicle parked in or near his driveway. An investigatory stop "need not arise from the personal observations of the police officer but may be derived from information acquired from another person." *Magnuson*, 703 N.W.2d at 560. An informant's tip may justify an investigatory stop if it has "sufficient indicia of reliability." *Id.* "Identified citizen informants are presumed to be reliable," *id.*, and officers may rely on an informant if he "provides sufficient [identifying] information so that he may be located and held accountable for providing false information." *Playle v. Comm'r of Pub. Safety*, 439 N.W.2d 747, 748 (Minn. App. 1989). Use of a 911 call system is an "indicator of veracity," because a 911 call system has "features that allow for identifying and tracing callers," which provides "safeguards

against making false reports with immunity." *Navarette v. California*, 134 S. Ct. 1683, 1689 (2014).

The citizen identified himself to the dispatcher. He described the vehicle and provided the license-plate number. He reported that the vehicle had been parked for approximately 15 minutes with its headlights and taillights on. In addition to this information from dispatch, Officer Dionne observed the vehicle drive very slowly; brake sporadically; shift into reverse (as indicated by the reverse lights); and drive on a dike, which in his 15 years of patrolling the area at least 500 times he had never observed. *See State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001) (stating that an officer's personal observations, coupled with police dispatch information, may provide a sufficient particularized and objective basis to suspect the driver is engaged in criminal activity). As the district court found, much of this conduct is "highly unusual." *See In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997) (stating that the reasonable-articulable-suspicion standard may be 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").

The district court determined that no single factor provided reasonable suspicion to conduct a stop. But an officer may have reasonable suspicion to conduct an investigatory stop based on a combination of factors even when no single factor alone would justify a stop. *Terry*, 392 U.S. at 22, 88 S. Ct. at 1880-81. The district court here "correctly assessed the totality of the circumstances" in concluding that, when combined, the facts sufficiently supported an objective determination of reasonable suspicion. *See Morse*, 878 N.W.2d at 502 (stating that Morse's argument relied "on the contention that neither the wide right

turn nor the single weave alone would have justified the stop, but the district court did not rely on any single factor"; instead, it correctly assessed the totality of the circumstances).

**Affirmed.**