STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0416

Michael Scott Torfin, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed November 20, 2017
Affirmed
Rodenberg, Judge

Carver County District Court
File No. 10-CV-16-925

Richard L. Swanson, Chaska, Minnesota (for appellant)

Lori Swanson, Attorney General, Maria N. Zaloker, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Rodenberg, Judge; and Reilly, Judge.

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

RODENBERG, Judge

Appellant Michael Scott Torfin challenges the district court's order sustaining the revocation of his driving privileges and the impoundment of his license plates. Appellant argues that, after he was stopped for speeding, the police officer did not have a reasonable and articulable suspicion of other criminal activity sufficient to justify expansion of the

traffic stop. Because ample evidence in the record shows that the officer had reasonable, articulable suspicion of an impaired-driving offense, we affirm.

FACTS

On September 27, 2016, at approximately 1:52 a.m., while on regular patrol, a Victoria police officer "heard the aggressive acceleration of a vehicle from [a] stop sign . . . [at] the intersection of 78th Street and County Road 13" on an otherwise "very quiet, peaceful" night. In that area, the posted speed limit is 45 miles per hour. Based on his experience observing the speed of moving cars, the officer estimated the car was going "[o]ver 50 miles an hour." He was able to get a radar indication of the car's speed and clocked it at 57 miles per hour. The officer pursued and signaled the speeding car's driver and only occupant to stop. He did.

The officer approached the car and identified appellant, the driver. Appellant "was very cooperative throughout the process." Yet, the officer "could smell the odor of consumed alcohol coming from inside the vehicle." Appellant "admitted to having a couple of beers." Appellant looked straight ahead and did not maintain eye contact with the officer as the two conversed. The officer moved closer to the car and "took a . . . deep breath from inside the vehicle and detected . . . the odor of consumed alcohol." Appellant again admitted to consuming alcohol before driving that night, and refused to take a preliminary breath test because he did not want to "find himself in trouble."

The officer had appellant step from the car to perform four field sobriety tests. Appellant's performance on the tests suggested impairment. The officer then arrested appellant for driving while impaired. A later breath test, not challenged on appeal, revealed

excessive alcohol in appellant's system, and his driving privileges were revoked and his license plates impounded.

Appellant challenged the revocation and license-plate impoundment in the district court. The district court sustained the revocation and impoundment, finding that the officer had reasonable, articulable suspicion sufficient to expand the scope of the traffic stop to include an impaired-driving investigation because he "noticed an odor of consumed alcohol emanating from [appellant's] vehicle . . . and [appellant] admitted to having had 'a couple' of beers." It also concluded that appellant's arrest was supported by probable cause.

This appeal followed, challenging only the stop-expansion issue.

D E C I S I O N

Appellant argues on appeal that the district court erred in determining that the officer had a reasonable, articulable suspicion of criminal activity to justify the expansion of the traffic stop for speeding. He concedes that, if the expansion was permissible, the results of the expansion were sufficient to justify his arrest.

We apply a de novo standard of review to a district court's determination of reasonable suspicion of criminal activity, *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *review denied* (Minn. July 15, 2003), and a clear-error standard to a district court's factual findings, considering the "totality of the circumstances pertaining to the issue, including possible innocent explanations for the alleged suspicious activity," *State v. Baumann*, 759 N.W.2d 237, 240 (Minn. App. 2009) (citing *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007)).

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "A search conducted without a warrant issued upon probable cause is generally unreasonable." *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). In some instances, a police officer may conduct a limited, investigative traffic stop without a warrant when the officer has reasonable, articulable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880 (1968).

A traffic stop initially supported by reasonable suspicion may be expanded, so long as the expansion is "strictly tied to and justified by the circumstances which rendered the initiation of the stop permissible." *State v. Asherooth*, 681 N.W.2d 353, 364 (Minn. 2004) (quotations omitted). Justification comes from "(1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in *Terry v. Ohio*." *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012) (discussing the scope of a traffic stop under Minn. Const. art. I, § 10). Reasonable suspicion for the expanded stop must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *Baumann*, 759 N.W.2d at 240 (quoting *Davis*, 732 N.W.2d at 182).

Minnesota courts have articulated several bases on which an officer may permissibly expand the scope of a traffic stop to investigate a driver's possible intoxication. Some indicators of intoxication include the odor of alcohol, slurred speech, glassy eyes, and poor balance. *Johnson v. State, Dept. of Pub. Safety*, 351 N.W.2d 2, 5 (Minn. 1984); *see e.g., State v. Klamar*, 823 N.W.2d 687, 694-96 (Minn. App. 2012) (observing the odor

of alcohol and bloodshot and watery eyes, facts which gave the trooper a reasonable basis to suspect impairment). The parties cite numerous cases discussing factors that may support an officer's reasonable, articulable suspicion. We apply the rule of law identified in *State v. Wiegand* to the evidence here. 645 N.W.2d 125, 136 (Minn. 2002). The *Wiegand* court construed

> the reasonableness requirement of the Fourth Amendment and Article I, Section 10 of the Minnesota Constitution to limit the scope of a *Terry* investigation to that which occasioned the stop, . . . and to the investigation of only those additional offenses for which the officer develops a reasonable, articulable suspicion within the time necessary to resolve the originally-suspected offense.

Id.

Here, the officer initially stopped appellant's car for speeding but, given the hour and the driver's aggressive acceleration, the officer suspected from the outset that this might be a drunk driver. Upon approaching the car, the officer could smell consumed alcohol, appellant admitted to drinking alcohol before driving, and appellant stared straight ahead while the two talked. The officer expanded the stop to determine whether the driver was impaired only after having developed a reasonable suspicion of impairment. The officer expanded the stop based on a number of factors including driving conduct, odor of alcohol, admitted consumption of alcohol, and appellant's somewhat unusual behavior in avoiding eye contact. Considering the totality of the circumstances, the evidence in the record supports the district court's determination that the officer had reasonable, articulable suspicion of impaired driving when he expanded the traffic stop to include field sobriety tests. As noted, appellant concedes on appeal that, if the expansion of the stop was

permissible, then the officer arrested him on probable cause; the field sobriety testing yielded additional evidence of impairment sufficient to merit an arrest for impaired driving. The district court did not err.

Affirmed.