STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1010

Michael David Groschen,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed December 26, 2017
Affirmed
Larkin, Judge

Carver County District Court
File No. 10-CV-17-90

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

Lori Swanson, Attorney General, Joan M. Eichhorst, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Larkin, Judge; and Smith, Tracy M., Judge.

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

LARKIN, Judge

Appellant challenges the district court's order sustaining the revocation of his license to drive, arguing that law enforcement unlawfully exceeded the scope of a traffic stop by conducting a driving while impaired (DWI) investigation. We affirm.

FACTS

Respondent Commissioner of Public Safety revoked appellant Michael David Groschen's license to drive following his arrest for DWI on January 14, 2017. Groschen petitioned the district court for rescission of the license revocation. The district court held an implied-consent hearing, and the following individuals testified at the hearing: Officers Dominic Belmares and Kurt Schoening of the Carver County Sheriff's Office, Groschen, and M.L., Groschen's passenger at the time of the arrest.

Officer Belmares testified that on January 13, at approximately 11:30 p.m., he was traveling westbound on Highway 212 in Norwood Young America with his field-training officer, Officer Schoening. He observed a southbound vehicle approach an intersection with Highway 212. The vehicle slowed, but did not stop, at a stop sign at the intersection. The vehicle crossed into Highway 212, in front of the officers' squad car, which was 25 to 50 yards away from the intersection. Officer Belmares braked to avoid hitting the vehicle and initiated a traffic stop.

Officer Belmares approached the driver's side of the vehicle and stood between its front and rear doors. Officer Schoening approached the vehicle on the passenger's side. Groschen was driving the vehicle. Officer Belmares testified that Groschen's eyes were "watery and slightly bloodshot." Officer Belmares also testified that he asked Groschen if he understood why he had been pulled over and that Groschen replied that he "kind of rolled the stop sign," and that he had turned to his passenger at the time and said, "I just cut that guy off."

Officer Belmares returned to his squad car to run computer checks on Groschen. Officer Schoening also returned to the squad car. He told Officer Belmares that he had smelled an odor of consumed alcohol coming from the vehicle. Officer Belmares testified that he did not smell alcohol when he initially approached the car. The officers returned to Groschen's vehicle, and Officer Belmares asked Groschen if he had consumed any alcohol. Groschen replied, "[F]our or five beers." Officer Belmares asked Groschen where he was coming from and when he consumed his last beer. Groschen answered that he had been shooting pool and that he consumed his last alcoholic drink approximately a half hour earlier. Officer Belmares testified that Groschen agreed to field sobriety tests and performed poorly on the tests. Groschen submitted to a preliminary breath test, which registered a 0.099 alcohol concentration.

Officer Belmares acknowledged that his traffic stop of Groschen was his first DWI stop as a licensed peace officer. But Officer Schoening testified that he had six years of experience as a licensed police officer and over two and a half years of experience as a licensed officer in Minnesota. Officer Schoening testified that the officers' squad car was traveling approximately 50 miles per hour when Groschen's vehicle entered the intersection and Officer Belmares braked to avoid hitting the vehicle. Officer Schoening also testified that during the traffic stop, he was "right up to the passenger window" and that it was partially open. Officer Schoening testified that he "could smell some alcohol coming from inside the vehicle," but he did not know whether Groschen or his passenger was the source of the odor.

Groschen testified that he was "pretty sure [he] came to a complete stop" at the stop sign. Groschen testified that when Officer Belmares asked him if he knew why he had been pulled over, Groschen stated that he "maybe rolled a stop sign" but that he did not tell his passenger that he "cut this guy off." Groschen testified that he told Officer Belmares that he probably consumed "four to five beers" before he drove his vehicle.

M.L. testified that he was the passenger in Groschen's vehicle at the time of the traffic stop. M.L. testified that he and Groschen had each consumed approximately four or five beers at the bar. M.L. acknowledged that Groschen may not have completely stopped the vehicle at the stop sign.

At the hearing, Groschen's counsel questioned the officers regarding the basis for their expansion of the scope of the original traffic stop into a DWI investigation. The district court sustained the revocation of Groschen's license to drive, concluding that "[t]he peace officer did have reasonable and probable cause to believe that [Groschen] violated [the criminal DWI statute]" before conducting field sobriety tests and the preliminary breath test. The district court did not make specific factual findings in support of this conclusion. Groschen requested reconsideration and submitted a memorandum in support of his argument that the officers unlawfully expanded the scope of the traffic stop. The district court denied Groschen's request and ruled that its order would remain in effect. Groschen appeals.

D E C I S I O N

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. However,

a police officer may initiate a limited, investigative stop without a warrant if the officer has reasonable, articulable suspicion of criminal activity. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999) (citing *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968)). In determining whether reasonable suspicion exists, Minnesota courts "consider the totality of the circumstances and acknowledge that trained law enforcement officers are permitted to make inferences and deductions that would be beyond the competence of an untrained person." *State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001); *see also Appelgate v. Comm'r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987) (noting that relevant circumstances include "information the officer has received from other sources"). The grounds for an investigative stop can be based on the collective knowledge of all investigating officers, so long as there is some communication between them. *In re Welfare of G. (NMN) M.*, 542 N.W.2d 54, 57 (Minn. App. 1996), *aff'd*, 560 N.W.2d 687 (Minn. 1997); *see State v. Lemieux*, 726 N.W.2d 783, 789 (Minn. 2007) (discussing communication requirement in context of warrantless search).

"[E]ach incremental intrusion during a stop must be 'strictly tied to and justified by the circumstances which rendered the initiation of the stop permissible.'" *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (quoting *Terry*, 392 U.S. at 19, 88 S. Ct. at 1878) (other quotation omitted). Under the Minnesota Constitution, "an intrusion not strictly tied to the circumstances that rendered the initiation of the stop permissible must be supported by at least a reasonable suspicion of additional illegal activity." *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012). The extension of a traffic stop does not violate Minn. Const. art. I, § 10 "so long as each incremental intrusion during the stop is tied to and

justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in *Terry v. Ohio*." *Id.* (quotation omitted).

This court reviews a district court's determination of reasonable suspicion de novo, but accepts the district court's factual findings unless they are clearly erroneous. *Id.* In this case, the district court did not make any findings to support its order. A lack of findings sometimes prevents effective appellate review and necessitates a remand for findings. *See, e.g.*, *State v. Wicklund*, 295 Minn. 402, 402-03, 201 N.W.2d 147, 147 (1972) (remanding to district court where district court failed to make findings of fact regarding suppression issue). Other times, we can decide the constitutionality of a seizure de novo, based on the existing record, if we are "able to infer the findings from the [district] court's conclusions." *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983). In the absence of explicit factual findings, this court may derive implicit findings, including implicit credibility findings, from the district court's final resolution of a matter. *E.g., Umphlett v. Comm'r of Pub. Safety*, 533 N.W.2d 636, 639 (Minn. App. 1995), *review denied* (Minn. Aug. 30, 1995). Groschen does not assign error to the lack of findings or request a remand for findings. Under the circumstances, we consider the constitutionality of the expanded DWI investigation based on the existing record.

As to the expansion of the traffic stop, Groschen contends that Officer Belmares did not reasonably suspect that Groschen was under the influence of alcohol because the officer "did not detect an odor of alcohol after he approached [Groschen's] vehicle on two separate occasions." Groschen also argues that because Officer Belmares was inexperienced in

DWI investigations, we should not defer to his inferences and deductions regarding whether Groschen was intoxicated. *See Richardson*, 622 N.W.2d at 825 (noting that in assessing reasonable suspicion, Minnesota courts "acknowledge that trained law enforcement officers are permitted to make inferences and deductions that would be beyond the competence of an untrained person").

Regardless of Officer Belmares's lack of experience, Officer Schoening had six years of experience as a police officer and Groschen does not dispute that Officer Schoening smelled an odor of alcohol. Officer Schoening told Officer Belmares that he smelled an odor of alcohol coming from inside the vehicle. Under the collective knowledge doctrine, the reasonable suspicion necessary to expand the traffic stop into a DWI investigation can be based on the knowledge of both Officer Belmares and Officer Schoening. *See G. (NMN) M.*, 542 N.W.2d at 57.

This court has held that an odor of alcohol, observation of a driver's bloodshot and watery eyes, and a driver's admission of drinking establish reasonable suspicion justifying an officer's expansion of a traffic stop into a DWI investigation. *See, e.g.*, *State v. Klamar*, 823 N.W.2d 687, 696 (Minn. App. 2012) (odor of alcohol and bloodshot and watery eyes); *State v. Vonderharr*, 733 N.W.2d 847, 854 (Minn. App. 2007) (odor of alcohol and admission of drinking); *State v. Lopez*, 631 N.W.2d 810, 814 (Minn. App. 2001) (odor of alcohol), *review denied* (Minn. Sept. 25, 2001).

Officer Belmares testified that he observed that Groschen's eyes were "watery and slightly bloodshot" and that Groschen admitted that he had consumed "four or five beers" before driving. Officer Belmares also testified that Groschen failed to stop at a stop sign

and entered an intersection 25 to 50 yards in front of his squad car, forcing him to brake to avoid hitting Groschen's vehicle. Officer Schoening testified that the officers' squad car had been traveling approximately 50 miles per hour before Groschen forced Officer Belmares to brake and that he detected an odor of alcohol coming from inside Groschen's vehicle. Although the district court did not make specific factual findings regarding these circumstances, we read its determination that the officers had "reasonable and probable cause to believe that [Groschen] violated [the DWI statute]" before conducting field sobriety tests and the preliminary breath test, as an implicit finding that the officers' testimony was credible.

Groschen compares the circumstances of this case to those in *State v. Fort*. 660 N.W.2d 415, 416 (Minn. 2003). In *Fort*, police stopped a vehicle for speeding and having a cracked windshield. *Id.* After determining that neither the driver nor the passenger had a valid driver's license, the officers decided to tow the vehicle. *Id.* at 417. One of the officers asked the passenger if there were any drugs or weapons in the vehicle or in his possession, and if the officer could search him for drugs or weapons. *Id.* The passenger consented to the search, which resulted in the recovery of crack cocaine. *Id.*

The supreme court noted that the officer's only proffered grounds for the expansion of the traffic stop in *Fort* were that the stop occurred in a "high drug area" and that the officer intended to offer the passenger a ride home and therefore conducted the search for officer safety purposes. *Id.* at 419. The supreme court further noted that the officer did not communicate his intent to offer the passenger a ride home and did not suspect any crime other than the traffic violations. *Id.* The supreme court concluded that there was not a

valid basis to expand the traffic stop because the investigation of the presence of narcotics and weapons had no connection to the basis for the stop, and there was no reasonable, articulable suspicion of any other crime. *Id.*

The facts in this case are distinguishable from those in *Fort*. Groschen admitted recent alcohol consumption. His act of rolling past a stop sign into the path of a vehicle approaching at 50 miles per hour reasonably suggested that he was driving while impaired. The totality of the circumstances therefore provided reasonable suspicion sufficient to justify the expansion of the traffic stop into a DWI investigation, and the district court did not err in sustaining the revocation of Groschen's license to drive.

Affirmed.