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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0590

State of Minnesota,
Appellant,

vs.

Jared Lee Radermacher,
Respondent.

Filed December 10, 2018
Affirmed
Halbrooks, Judge

Renville County District Court
File No. 65-CR-17-90

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

David Torgelson, Renville County Attorney, Laurence Stratton, Assistant County Attorney, Olivia, Minnesota (for appellant)

Anthony M. Bussa, Bussa Law, LLC, Fergus Falls, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and Bjorkman, Judge.

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

HALBROOKS, Judge

Appellant State of Minnesota challenges the district court's suppression of the evidence arising out of the warrantless search of an enclosed trailer on respondent Jared

Radermacher's property leading to his arrest. Because we conclude that the district court did not err in determining that there was no reasonable, articulable suspicion sufficient to justify an investigatory stop and because the search was not justified by an exception to the warrant requirement, we affirm.

FACTS

In March 2017, R.R. contacted the police to request a welfare check on his brother, respondent Jared Radermacher. R.R. reported that Radermacher was "possibly suicidal and making threats of violence towards family members." A deputy was dispatched to the Radermacher residence. On his way to the property, the deputy learned that Radermacher was possibly in possession of a firearm, but received conflicting information as to his location. The deputy was informed that Radermacher might be at his residence or driving a tan Chevrolet pickup truck. At the time, Radermacher lived in his parents' home.

Approximately one and one-half miles from the Radermacher residence, the deputy stopped on the side of the road to wait for information confirming whether Radermacher was at the residence or driving a vehicle. The deputy did not receive such confirmation, but learned from dispatch that several gray or tan pickup trucks were registered to both Radermacher and his father. The deputy then observed a silver Chevrolet pickup truck traveling toward him. The truck was being operated lawfully, and the deputy was not able to see the driver in order to identify him. But the deputy determined that the truck was registered to both Radermacher and his father. The deputy followed the truck, increasing his speed when he was approximately one mile behind the silver pickup with the intent of conducting a traffic stop. He did not activate his squad car lights at that time. After the

pickup turned into the driveway on the Radermacher property, the deputy activated his emergency lights and subsequently turned onto the property.

The deputy found the truck stopped between two buildings. The driver was no longer inside it. After waiting for backup to arrive, the deputy and other officers conducted a warrantless search, eventually locating Radermacher inside a windowless, closed black trailer that was located 75 yards from the pickup. Radermacher, who was not armed, smelled of alcohol and had slurred speech. After Radermacher failed field sobriety tests and a preliminary breath test, he was arrested for driving while impaired.

In a pretrial motion, Radermacher sought to suppress all evidence and dismiss the charges against him on the ground that the search of his property was unlawful. The district court granted the motion. This appeal follows.

D E C I S I O N

The state argues that the district court erred by granting respondent's suppression motion. When the state appeals a pretrial suppression order, it "must clearly and unequivocally show both that the [district] court's order will have a critical impact on the state's ability to prosecute the defendant successfully and that the order constituted error." *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998) (quotation omitted). Critical impact exists when the district court dismisses a complaint for lack of probable cause. *State v. Hanson*, 583 N.W.2d 4, 5-6 (Minn. App. 1998), *review denied* (Minn. Oct. 29, 1998). Here, it is undisputed that the state has demonstrated a critical impact.

I.

The district court concluded that the deputy lacked reasonable, articulable suspicion sufficient to justify an investigatory stop. Evidence obtained as the result of a constitutional violation must generally be suppressed. *State v. Jackson*, 742 N.W.2d 163, 177-78 (Minn. 2007). "When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

A traffic stop is lawful under the Fourth Amendment if an officer can articulate a "particularized and objective basis for suspecting the particular persons stopped of criminal activity." *Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985) (emphasis omitted) (quotation omitted). The reasonable-suspicion standard is not high. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). But reasonable suspicion is more than a whim, caprice, or idle curiosity. *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996). When determining whether a stop is justified, we consider the totality of the circumstances. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

The state argues that there was reasonable suspicion to conduct a stop based on R.R.'s tip that Radermacher was "possibly suicidal." We disagree. Because R.R. is a private citizen, his tip is presumed reliable. *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007). But while we presume that R.R.'s tip is reliable, the tip must still establish a basis for an investigatory stop. *See Olson v. Comm'r of Pub. Safety*, 371 N.W.2d 552, 556 (Minn. 1985) (stating that the factual basis of the tip must be sufficient to justify a stop).

Here, R.R.'s statement to the dispatcher was equivocal. He told the dispatcher that Radermacher was "possibly" suicidal and threatening. Later, the deputy learned that Radermacher might be driving a tan Chevrolet pickup and was "possibly" armed. R.R. did not provide any other details to support these assertions. Here, the tip itself did not provide the deputy with reasonable suspicion that Radermacher was engaged in criminal activity.

Additionally, the deputy did not gain any new information sufficient to support a traffic stop. The deputy learned that Radermacher was possibly driving a tan pickup truck. But the truck he observed and followed was silver. The deputy determined that the truck was registered to both Radermacher and his father. But the deputy was unable to identify Radermacher as the driver when the truck slowly passed by him. The deputy testified that he was "significantly far behind the vehicle."

After he conferred with his partners and was not able to confirm whether Radermacher was at his residence, the deputy "began trying to catch up to the vehicle to make contact with it" to see if it was Radermacher. He did not observe any erratic or suspicious behavior nor any unlawful driving in the nearly one and one-half miles that he followed behind the truck. In fact, the driver came to a complete stop at a stop sign and properly signaled his turns. It was only after the pickup turned into the driveway at the Radermacher residence that the deputy activated his emergency lights.

The state argues that the deputy's uncertainty as to who was driving does not render the stop impermissible. They cite *City of St. Paul v. Vaughn*, in which the supreme court upheld an investigatory stop that was based on mistaken identity. 237 N.W.2d 365, 368-69 (Minn. 1975). But the deputy's decision to stop the truck was not based on a mistake

of identity. He did not intend to stop Radermacher's father, and indeed he had no basis to do so. Rather, the deputy admitted that at the time he activated his emergency lights, he did not know who was driving the truck.

The state contends that the way the pickup was operated after the deputy turned on his emergency lights bolstered the deputy's suspicion that Radermacher was driving. Because a stop must be constitutional at its inception, we do not consider Radermacher's actions after the deputy activated his lights as support for the stop. *See State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (holding that a stop must be constitutional at its inception). On these facts, we conclude that the deputy's decision to stop Radermacher's vehicle was not based on a reasonable, articulable suspicion of criminal activity.

II.

The state argues that the deputy was engaged in hot pursuit of Radermacher and that the warrantless search of the trailer was therefore justified. For a warrantless entry to be justified, there must be an exception to the warrant requirement. *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992). Hot pursuit is one such exception. *State v. Lohnes*, 344 N.W.2d 605, 610 (Minn. 1984). The hot-pursuit exception to the warrant requirement applies when a suspect attempts to defeat a stop or arrest set in motion in public by fleeing into his dwelling. *State v. Koziol*, 338 N.W.2d 47, 48 (Minn. 1983).

The state argues that Radermacher attempted to evade the deputy's stop. The state relies on *State v. Paul* to support their argument. 548 N.W.2d 260 (Minn. 1996). In *Paul*, the supreme court held that the hot-pursuit exception applied when an officer followed the defendant with his emergency lights on for over two blocks and the defendant pulled into

his driveway. *Id.* at 262, 265. The defendant did not comply with police orders to stop. *Id.* at 262. Instead, he "hastily" went into his garage and locked the door behind him. *Id.* at 262-63. This case is distinguishable.

Here, the state's argument rests entirely on the deputy's testimony that Radermacher accelerated after the deputy activated his emergency lights. But unlike the defendant in *Paul*, Radermacher was already on his property when the deputy activated his emergency lights. And at the time the deputy activated his emergency lights, he was approximately one quarter of a mile behind the pickup and still on the public road. Unlike in *Paul*, the deputy did not observe any evasive or furtive conduct to suggest that Radermacher was trying to defeat the deputy's stop. In fact, nothing in the record suggests that Radermacher was aware that the deputy was trying to stop him. Radermacher had parked and exited his truck by the time the deputy pulled in behind him. On these facts, we conclude that because Radermacher had not attempted to evade a stop or defeat an arrest set in motion prior to the deputy's warrantless entry of the trailer, the hot-pursuit exception does not apply.

The state argues that the warrantless search of the trailer was justified by the emergency exception. The district court found that the emergency exception to the warrant requirement did not apply in this case. We agree. For the emergency exception to apply, a two-part test must be satisfied. First, the searching officer must be "actually motivated by a perceived need to render aid or assistance." *State v. Auman*, 386 N.W.2d 818, 821 (Minn. App. 1986) (quotation omitted), *review denied* (Minn. July 16, 1986). Second, we ask whether a reasonable person under the circumstances would have believed an emergency existed. *Id.* When evaluating whether an officer's belief that a genuine

emergency existed was reasonable, we apply an objective standard. *State v. Halla-Poe*, 468 N.W.2d 570, 572 (Minn. App. 1991).

In *Halla-Poe*, police learned that a witness observed the defendant driving erratically, including swerving and hitting the median. *Id.* The witness smelled alcohol on the defendant, who was unable to walk and talk. *Id.* The witness drove the defendant to her apartment and helped her inside. *Id.* Because the witness was worried about the defendant's condition, he contacted the police. *Id.* When police arrived and knocked on the door, they did not receive an answer. *Id.* Based on those facts, we concluded that the officers' belief that the defendant was in need of immediate aid was reasonable because they had sufficient reason to believe that there was a legitimate emergency. *Id.* at 573. The facts in that case established that "the officers' purpose for entering appellant's apartment was not a subterfuge to investigate and arrest appellant, but to see if she was in need of medical assistance." *Id.*

In this case, R.R. made a general assertion that Radermacher may need assistance. R.R. did not provide specific details and the deputy was given conflicting information as to Radermacher's location. The truck, although registered to Radermacher, was inconsistent with the description provided, and the deputy was unable to identify who was driving it. The deputy did not observe any erratic driving or traffic violations that would suggest that the driver needed assistance. The officers did not knock on the door of the home or otherwise proceed as if they were conducting a welfare check. Rather, they waited for additional officers to arrive and conducted a sweep of the property. Based on these

facts, a reasonable person would not have believed that an emergency existed or that Radermacher was in need of immediate assistance.

The state argues that a footnote in the district court's order contradicts its determination that the emergency exception does not apply. We disagree. The footnote indicates that while law enforcement's response may have been in Radermacher's best interests, that is distinct from whether their warrantless search and subsequent arrest is legally permissible. Based on our review of the record, the state failed to establish an exception to the warrant requirement. Therefore, the district court did not err in suppressing the evidence discovered during the warrantless search.

Affirmed.