**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A21-1337**

State of Minnesota,
Respondent,

vs.

Rebecca Ann Jones,
Appellant.

**Filed May 2, 2022**
**Affirmed**
**Frisch, Judge**

Wright County District Court
File No. 86-CR-20-1439

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Scott C. Baumgartner, Buffalo City Prosecutor, Sarah M. Kimball, Hannah B. Spencer, Assistant City Prosecutors, Berglund, Baumgartner, Kimball & Glaser, LLC, Anoka, Minnesota (for respondent)

Max A. Keller, Barry S. Edwards, Keller Law Offices, Minneapolis, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Bjorkman, Judge; and Frisch, Judge.

**NONPRECEDENTIAL OPINION**

**FRISCH**, Judge

In this direct appeal from the judgment of conviction for gross-misdemeanor driving while impaired (DWI), appellant argues the stop of her car by law enforcement was not

supported by reasonable, articulable suspicion, and the district court therefore erred by denying her motion to suppress evidence. We affirm.

## FACTS

In March 2020, appellant Rebecca Ann Jones was arrested on suspicion of DWI following a traffic stop. Respondent State of Minnesota charged Jones with two counts of DWI in violation of Minn. Stat. § 169A.20, subd. 1(1), (5) (2018).

Jones moved to suppress the evidence and dismiss the charges against her, arguing that the stop was unlawful. In October 2020, the district court held an evidentiary hearing on the motion to suppress and received testimony from the Minnesota State Patrol trooper who conducted the traffic stop. The trooper testified to the following facts.

Around 11:00 p.m., the trooper was following a car traveling northbound on Highway 25 when the car turned left into the parking lot of a closed business. At the next opportunity, the trooper made a U-turn and parked along the right shoulder of southbound Highway 25 to observe the car. The trooper saw the car park in the front section of the dimly lit lot, which abutted the highway. After approximately 30 seconds, he saw the car drive further into the lot and move to a darker area between two buildings where the trooper lost sight of the car. About 30 seconds later, the trooper observed the car travel back to the front section of the lot, come to a complete stop, exit the lot, and reenter Highway 25, continuing northbound. The trooper initiated a traffic stop and arrested the car's sole occupant, later identified as Jones, after detecting signs of intoxication.

At the evidentiary hearing, the trooper testified that he considered Jones's driving conduct to be suspicious. The trooper testified that he became suspicious because he knew

the business was closed, the lot was not well-lit, and there were other lots along the highway with much better lighting. The trooper also testified that although he considered the driver might be custodial staff or have pulled over to look at a map, he no longer thought that was the case when he observed the vehicle travel from the dimly lit front area of the lot to a darker area of the lot hidden from his view. The trooper testified that he became particularly suspicious when the vehicle moved to the dark area of the lot out of his view because the trooper knew that buses were parked in that area, and he thought it was possible that someone could be vandalizing the building, stealing tires, or engaged in drug use.

The trooper testified that tires had been stolen "in the dealership lots here" and that he has "come across [people doing drugs] in some empty lots." And while the trooper conceded that there could be a legitimate reason for someone to stop in the front lot of the closed business at that time of night, he also testified that he did not believe that Jones was affiliated with the business based on her conduct.

The district court denied Jones's motion. It determined that the trooper "provided articulable, objective facts indicating why he reasonably believed [Jones] was acting evasively due to criminal activity, and therefore, had reasonable, articulable suspicion to support the traffic stop."

Jones appeals.[1]

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[1] After oral argument, Jones improperly attempted to supplement the record with a separate district court order related to the revocation of her driver's license. That opinion is not part of the criminal record, and it is not a proper citation to supplemental authority under our rules. *See* Minn. R. Civ. App. P. 128.05 1983 cmt. (providing for citation of "pertinent and significant authorities"); *see also State v. Miller*, 849 N.W.2d 94, 98 (Minn. App. 2014) (stating that determinations in civil implied-consent proceedings "shall not give rise to an

## DECISION

Jones challenges the district court's order denying her motion to suppress. When reviewing a pretrial order on a motion to suppress, we review the district court's factual findings for clear error and its legal conclusions de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). We independently review the facts to determine whether the district court erred as a matter of law by not suppressing the evidence. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004).

The United States and Minnesota Constitutions protect an individual's right against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A traffic stop is considered a seizure. *Askerooth*, 681 N.W.2d at 359 (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). Under *Terry*, an officer may "stop and temporarily seize a person to investigate that person for criminal wrongdoing if the officer reasonably suspects that person of criminal activity." *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) (quotation omitted).

For a stop to be supported by reasonable suspicion, there must be "specific, articulable facts" showing that the officer "had a particularized and objective basis for suspecting the seized person of criminal activity." *Id.* at 842-43 (quotations omitted). The standard for reasonable suspicion is "not high," but it requires more than "an inchoate and unparticularized suspicion or hunch." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn.

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estoppel on any issues arising from the same set of circumstances in any criminal prosecution" (quotation omitted)). Even so, the order in the civil proceeding standing alone is not helpful in part because we are unable to review the underlying record supporting the order.

2008) (quotations omitted). This standard is satisfied when the officer "observes unusual conduct that leads the officer to reasonably conclude in light of his or her experience that criminal activity may be afoot." *Id.* (quotation omitted). If a seizure is not supported by reasonable suspicion, however, all evidence obtained because of the seizure must be suppressed. *Diede*, 795 N.W.2d at 842.

Evasive conduct may be a legitimate reason for an officer to form a reasonable, articulable suspicion of criminal activity to justify an investigatory stop. *See State v. Smith*, 814 N.W.2d 346, 351-54 (Minn. 2012). Such conduct "may be taken into account by the police and . . . together with other suspicious circumstances . . . may well justify a stopping for investigation." *State v. Johnson*, 444 N.W.2d 824, 826 (Minn. 1989) (quotation omitted). In some circumstances, evasive conduct by itself may be enough to allow an officer to form a reasonable, articulable suspicion of criminal activity. *Id.* at 826-27.

The district court found that the trooper had reasonable, articulable suspicion that Jones "was acting evasively due to potential criminal activity." Jones argues that the district court's finding is clearly erroneous because the trooper did not testify that Jones's conduct was "evasive." *See State v. Schultz*, 676 N.W.2d 337, 341 (Minn. App. 2006) ("Clearly erroneous means manifestly contrary to the weight of the evidence or not supported by the evidence as a whole." (quotation omitted)). We disagree. Although the trooper did not use the term "evasive" in his testimony, Jones conceded at oral argument, and we agree, that law enforcement is not required to specifically use the word "evasive" to describe observed evasive conduct. Evasion is a type of conduct that can arouse

suspicion, and here the record supports the district court's finding that the trooper stopped Jones's car in part because of suspicions aroused by Jones's evasive conduct.

The district court found that the trooper credibly testified to the following relevant facts. The trooper was following Jones's vehicle on Highway 25 when Jones turned off the highway into a parking lot of a closed business. The lot was not well-lit and other lots in the same area had better lighting. She stopped her car in the front lot when the trooper was parked and watching her. She then drove from the dimly lit front lot to a darker area of the lot out of the trooper's view, even though it was possible to turn the car around in the front lot and exit back onto the highway. And when she exited back onto the highway, she continued northbound. It was reasonable for the district court to infer from the trooper's testimony that Jones's conduct was evasive. Such a finding is not clearly erroneous.

We also conclude that Jones's conduct aroused reasonable, articulable suspicion for the trooper to seize Jones for purposes of an investigatory stop. Two cases from this court bolster our conclusion. In *Thomeczek v. Commissioner of Public Safety*, an officer observed a driver inside of a car parked in an empty lot, with the headlights on, after 11:00 p.m., "in an area undergoing construction, where a burglary, vandalism or theft might occur." 364 N.W.2d 471, 472 (Minn. App. 1985). We held that the officer had reasonable suspicion that the defendant may have been involved in unlawful activity and was thus justified in stopping him. *Id.* Similarly, in *Olmscheid v. Commissioner of Public Safety*, an officer stopped a driver who was traveling along a dead-end road at 1:30 a.m., behind a car dealership that had a history of property theft. 412 N.W.2d 41, 42 (Minn.

App. 1987), *rev. denied* (Minn. Nov. 6, 1987). We reasoned that "[t]he officer's knowledge of previous theft from [the car dealership] and the presence of the vehicle in the early morning hours in a commercial area with no residences on a road that does not connect to another roadway provide an objective and particularized basis" for the officer to suspect criminal activity. *Id.* at 43.

The facts here are like those in *Thomeczek* and *Olmscheid*. Around 11:00 p.m., the trooper saw Jones drive into the front section of the lot of a closed business and, 30 seconds later, drive out of sight between two buildings. According to the trooper, there was no apparent reason for someone to enter the parking lot at that time of night because the business was closed. The trooper also concluded from his observations that Jones was not an employee because instead of entering the business, she proceeded to drive into the dimly lit area between the two buildings. The trooper articulated that he suspected Jones of vandalism, tire theft, or taking drugs when she drove from the front parking lot to the darker area of the parking lot specifically based on his knowledge that tire thefts had occurred at "dealership lots here," and in his experience, "people do[] drugs . . . in some empty lots." Like the behaviors of the drivers in *Thomeczek* and *Olmscheid*, Jones's conduct caused the trooper to form a reasonable belief that she could be engaged in criminal activity.

Jones's arguments do not convince us otherwise. She argues that the trooper's articulated suspicion was speculative and that he offered no evidence of specific concerns of burglaries or recent crimes committed in the area. But the trooper testified that, as to his suspicion about vandalism and tire theft, "we've had that in the dealership lots *here*." And as to his suspicion about potential drug use, the trooper testified that he had "come

across that in some empty lots." Even so, the reasonable-suspicion standard does not require that the driver be in an area where crimes have occurred. In *Thomeczek*, the defendant was parked in an empty lot in an area "where a burglary, vandalism or theft *might* occur." 364 N.W.2d at 472 (emphasis added). While there was no evidence that Jones was actually involved in criminal activity, reasonable suspicion may be based on conduct consistent with innocent activity. *State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998).

Jones also argues that the trooper's suspicion of criminal activity was not reasonable because of the short time that her vehicle was in the parking lot. We disagree. We defer to the training and experience of the trooper in his formation of reasonable suspicion of possible criminal activity, and in particular suspected drug use, given the circumstances. *See State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000) (stating that a reviewing court is to be "deferential to police officer training and experience and recognize that a trained officer can properly act on suspicion that would elude an untrained eye").

Accordingly, based on our de novo review of the record, we conclude that the trooper had reasonable, articulable suspicion to stop Jones, and the district court did not err by denying Jones's motion to suppress and dismiss.

**Affirmed.**