This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0231

Henry James Johnson, Jr.,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed October 17, 2022
Affirmed
Frisch, Judge

Hennepin County District Court
File No. 27-CV-21-12240

Henry Johnson, Brooklyn Park, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Leah Hedman, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Ross, Judge; and Connolly, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant seeks reversal of the district court's order sustaining the revocation of his driver's license, arguing that law enforcement lacked (1) reasonable, articulable suspicion to expand the scope of the traffic stop to investigate possible impaired driving, and (2) probable cause to arrest appellant for driving while impaired (DWI). Because the

record supports the district court's conclusion that law enforcement had reasonable, articulable suspicion to expand the scope of the stop and probable cause to arrest for DWI, we affirm.

FACTS

In the early morning hours of July 12, 2021, a sergeant with the Robbinsdale Police Department observed a car traveling 19 miles per hour above the posted speed limit. The sergeant initiated a traffic stop and identified the driver as appellant Henry James Johnson, Jr. The sergeant detected a moderate odor of alcohol emanating from Johnson. Johnson admitted that he had consumed alcohol, his license was revoked, and he was "going through an implied consent hearing right now." The sergeant then asked Johnson to step out of the car for field sobriety testing.

The sergeant conducted a horizontal gaze nystagmus (HGN) test. Johnson exhibited six indicators of impairment during the HGN test.[1] Thereafter, Johnson refused to take a preliminary breath test (PBT). The sergeant arrested Johnson for suspicion of DWI.

Johnson contested the resulting driver's license revocation. The district court held an implied-consent hearing and sustained the revocation.

Johnson appeals.

DECISION

Johnson challenges the district court's order sustaining the revocation of his driver's license, arguing that the sergeant (1) did not have reasonable, articulable suspicion to

[1] The sergeant conducted additional field sobriety testing, but the outcomes of those tests were either inconclusive or otherwise did not reveal indicia of impairment.

expand the scope of the traffic stop to investigate for DWI, and (2) did not have probable cause to arrest him on suspicion of DWI. We address each argument in turn.

I. The record supports the district court's determination that the sergeant had reasonable, articulable suspicion to expand the scope of the traffic stop to investigate for DWI based on the totality of the circumstances.

Johnson argues the sergeant did not have reasonable, articulable suspicion to expand the scope of the traffic stop to investigate Johnson for possible DWI. Johnson does not contest the validity of the initial traffic stop for speeding. Instead, Johnson argues that the district court erred in concluding that the expansion of the stop was justified by a reasonable, articulable suspicion that Johnson was driving under the influence.

When the facts are undisputed, "we review de novo the issue of whether the stipulated facts support a determination that the police articulated a reasonable suspicion of criminal activity warranting the governmental intrusions in question." *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011). We review a district court's findings of fact for clear error and will not reverse unless we are "left with a definite and firm conviction that a mistake has been committed." *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002) (quotation omitted). A factual finding "is not clearly erroneous if it is reasonably supported by the evidence as a whole." *State v. Barshaw*, 879 N.W.2d 356, 366 (Minn. 2016). We defer to a district court's credibility determinations. *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012).

Both the United States and Minnesota Constitutions protect individuals from "unreasonable searches and seizures" by the government. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. "Generally, warrantless searches are per se unreasonable." *State v.*

Gauster, 752 N.W.2d 496, 502 (Minn. 2008). But a law-enforcement officer may initiate a limited investigatory traffic stop without a warrant if the officer has a particular and objective basis for suspecting the person stopped of criminal activity. *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). The scope of a traffic-stop investigation must be limited to the initial justification for the stop. *Id.* Any expansion of the stop is permissible only if the officer has reasonable, articulable suspicion of other criminal activity. *Id.* "The reasonable-suspicion standard is not high." *Diede*, 795 N.W.2d at 843 (quotation omitted). Reasonable suspicion is a lower standard than probable cause but "requires at least a minimal level of objective justification." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). We determine the presence of reasonable, articulable suspicion "under the totality of the circumstances." *Paulson v. Comm'r of Pub. Safety*, 384 N.W.2d 244, 246 (Minn. App. 1986).

An officer has reasonable, articulable suspicion to conduct a DWI investigation when the officer sufficiently articulates a factual basis to support a suspicion that the person may have been violating impaired-driving laws. *Id.* "The officer need not be absolutely certain of the possibility of criminal activity, but he cannot satisfy the test of reasonableness by relying on an inchoate and unparticularized suspicion or hunch." *State v. Schrupp*, 625 N.W.2d 844, 847 (Minn. App. 2001) (quotation omitted), *rev. denied* (Minn. July 24, 2001). Such an assessment must be based on the totality of the circumstances and may rely on "inferences and deductions that might elude someone without similar training." *Wilkes v. Comm'r of Pub. Safety*, 777 N.W.2d 239, 244 (Minn. App. 2010).

Our de novo review of the totality of the circumstances reveals that the sergeant had reasonable, articulable suspicion to expand the scope of the stop to investigate Johnson for DWI. The record shows that the sergeant observed Johnson speeding, the officer smelled alcohol emanating from Johnson, Johnson admitted to drinking, and Johnson admitted to having a revoked license and a pending implied-consent proceeding. Under Minnesota law, these facts constitute sufficient reasonable, articulable suspicion to expand the scope of the stop to investigate for DWI. *See, e.g.*, *Mesenburg v. Comm'r of Pub. Safety*, 969 N.W.2d 642, 648 (Minn. App. 2021) (explaining that observations of speeding coupled with the odor of alcohol were indicia of intoxication that established reasonable suspicion to expand the scope of a traffic stop to justify a DWI investigation), *rev. denied* (Minn. Mar. 15, 2022).

Johnson disputes that these circumstances are sufficient to create reasonable, articulable suspicion to justify expansion of the traffic stop. He argues that his speeding cannot be considered an indicia of intoxication because "people speed for all different reasons,"[2] that the sergeant did not notice other physical signs of intoxication such as bloodshot eyes, and that the "only unusual thing" the sergeant noticed was the moderate smell of alcohol. We are not persuaded. The absence of certain indicia of intoxication does not invalidate the existence of affirmative evidence of intoxication, including the presence of the odor of alcohol and Johnson's admission to drinking before driving. *See*

[2] Johnson also asserted his speedometer was broken and that was another reasonable explanation for his speeding. The district court did not make any findings of fact regarding the credibility of this assertion, but regardless, the totality of the circumstances justified the expansion of the stop.

Klamar, 823 N.W.2d at 696 (explaining that the odor of alcohol is an indicia of intoxication that contributes to reasonable suspicion).[3] Accordingly, the totality of the circumstances demonstrated that the sergeant had reasonable, articulable suspicion to expand the scope of the traffic stop to conduct a DWI investigation.

II. The sergeant had probable cause to arrest Johnson.

Johnson argues the sergeant lacked probable cause to arrest him for suspicion of DWI. An officer has probable cause to arrest a suspect for DWI "when the facts and circumstances available at the time of arrest reasonably warrant a prudent and cautious officer to believe that an individual was driving while under the influence." *Reeves v. Comm'r of Pub. Safety*, 751 N.W.2d 117, 120 (Minn. App. 2008). We determine the existence of probable cause "based on an objective inquiry and [a] review of the totality of the circumstances." *Mell v. Comm'r of Pub. Safety*, 757 N.W.2d 702, 708 (Minn. App. 2008). Our duty as a reviewing court "is simply to ensure that the officer had a substantial basis for concluding that probable cause for arrest for DWI existed." *Reeves*, 751 N.W.2d

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[3] Johnson asserts that two cases support his argument that the sergeant did not have reasonable, articulable suspicion to expand the scope of the stop. He first argues that *State v. Elmourabit,* 373 N.W.2d 290, 293 (Minn. 1985), establishes "that speeding [is] not a reliable indicia of intoxication because it [is] not uncommon for sober drivers to speed as well." But *Elmourabit* is inapplicable because it relates to the sufficiency of evidence at trial necessary for a criminal DWI conviction, not whether an officer had reasonable, articulable suspicion to expand the scope of a traffic stop to investigate for DWI. Johnson also cites *State v. Carver*, 577 N.W.2d 245 (Minn. App. 1998), for the proposition that speeding and parking diagonally are not sufficient indicia of intoxication to provide probable cause to arrest an individual for DWI. *Carver* too is inapplicable because there the district court addressed probable cause to arrest, not the existence of reasonable, articulable suspicion to expand the scope of the stop. Even so, Johnson's speeding was not the only or even primary circumstance leading to the sergeant's reasonable, articulable suspicion to support expansion of the traffic stop here.

at 120 (quotation omitted) (discussing basis for reviewing probable-cause determination under Minnesota's implied-consent law). "[An] officer must observe one or more indicia of intoxication to form probable cause sufficient to arrest a person for driving while under the influence of alcohol." *O'Neill v. Comm'r of Pub. Safety*, 361 N.W.2d 471, 473 (Minn. App. 1985).

The sergeant observed at least one indicia of intoxication in Johnson. Johnson exhibited six indicators of impairment during the HGN, affording the sergeant sufficient probable cause to arrest Johnson for driving while impaired. The district court credited the sergeant's testimony regarding the HGN test. That Johnson may not have exhibited signs of impairment at other points during his interaction with the sergeant is not determinative as to whether the sergeant had probable cause. And although Johnson disputes the method of administration and accuracy of the HGN test, the district court expressly discredited these challenges and credited the validity of the administration and results of the HGN test. We do not second-guess such credibility determinations on appeal. *Klamar*, 823 N.W.2d at 691.

Accordingly, the sergeant had sufficient probable cause to arrest Johnson for suspicion of DWI.

Affirmed.