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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2208**

State of Minnesota,
City of Crystal,
Appellant,

vs.

Timmie Lee Beverly,
Respondent.

**Filed June 25, 2012
Reversed and remanded
Peterson, Judge**

Hennepin County District Court
File No. 27-CR-11-28457

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(for appellant)

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Minnesota; and

Charles F. Clippert, Clippert Law Firm, St. Paul, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Peterson, Judge; and Crippen,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

PETERSON, Judge

In this pretrial appeal, the state argues that the district court erred in finding that the stop of respondent's vehicle was not supported by an articulable suspicion of criminal activity, where the officer saw the vehicle pull into an empty parking lot of a closed business at 1:00 a.m., drive to the back of the building, stop briefly, and begin to pull out of the lot when the officer came into view. We reverse and remand.

FACTS

Respondent Timmie Lee Beverly was charged with two counts of second-degree driving while impaired, in violation of Minn. Stat. §§ 169A.20, subd. 1(1), .25, subd. 1(a) (2010), following the stop of his vehicle. At approximately 1:00 a.m., Officer Sean Kwiatowski was on routine patrol, travelling west on Bass Lake Road, an east-west thoroughfare, when he saw a westbound vehicle on Bass Lake Road turn onto a north-south thoroughfare and enter the empty parking lot of a closed business. Kwiatowski turned his vehicle around and drove east on Bass Lake Road past the parking lot, where he saw the vehicle drive past the parking-lot exit to the back of the closed business, where it stopped. Kwiatowski testified that the fact that the vehicle went to the back of the building "raised [his] suspicions of why someone would be back there."

Kwiatowski turned onto a north-south thoroughfare and, from that vantage point, could "plainly see [respondent's] car was parked facing to the building and was completely stopped, lights still on, but not moving." Kwiatowski testified that as he "came around the corner and was visible to the vehicle, the vehicle proceeded to back up,

turn around, and was now backing out of the parking lot onto Bass Lake Road again and began traveling eastbound, the direction it had just come from.” Kwiatkowski turned back onto Bass Lake Road and followed respondent’s vehicle for approximately two blocks before executing a traffic stop.

Kwiatkowski frequently patrolled the area where the stop occurred. He testified that it is a commercial area and businesses there produce reports of “numerous burglaries, suspicious persons, [and] graffiti.” There was no specific criminal incident being investigated in that area at the time of the stop, and Kwiatkowski did not see criminal activity before making the stop.

Respondent moved to suppress evidence derived from the stop on the grounds that Kwiatkowski did not have reasonable suspicion to stop his vehicle. The district court granted the motion, and the state appealed.

D E C I S I O N

“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). If 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) (quoting *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995)) (other quotation omitted). It is undisputed

that the district court's order will have a critical impact on the state's ability to prosecute respondent.

The United States and Minnesota Constitutions prohibit warrantless searches and seizures, subject to certain limited exceptions. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A police officer is permitted to make a limited investigative stop if the officer has "a reasonable, articulable suspicion that the suspect might be engaged in criminal activity." *State v. Flowers*, 734 N.W.2d 239, 250 (Minn. 2007) (quotation omitted). "The factual basis required to support a stop is minimal, and an actual violation is not necessary." *State v. Haataja*, 611 N.W.2d 353, 354 (Minn. App. 2000) (quotation omitted), *review denied* (Minn. July 25, 2000). "[A] mere hunch, absent other objectively reasonable articulable facts, will not justify a seizure." *Harris*, 590 N.W.2d at 99.

When examining a district court's determination of the legality of an investigatory stop, this court reviews questions of reasonable suspicion de novo. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000); *see also Jobe v. Comm'r of Pub. Safety*, 609 N.W.2d 919, 921 (Minn. App. 2000) (stating that validity of stop on given facts presents purely legal question). In reviewing the basis for the stop, this court examines the events surrounding the stop and considers the totality of the circumstances. *Britton*, 604 N.W.2d at 87.

Suspicious driving behavior, particularly late at night, can provide the basis to stop a vehicle. *See State v. Petrick*, 527 N.W.2d 87, 87, 89 (Minn. 1995) (officer articulated sufficient basis for vehicle stop when he saw defendant's vehicle quickly pull into driveway and shut off headlights, even though vehicle was still proceeding down

driveway); *see also Haataja*, 611 N.W.2d at 355 (officer articulated sufficient basis for vehicle stop when unusually slow driving impeded traffic in residential neighborhood at 1:30 a.m.); *Thomeczek v. Comm'r of Pub. Safety*, 364 N.W. 2d 471, 471-72 (Minn. App. 1985) (officer articulated sufficient basis for vehicle stop when vehicle was legally parked near area of residential development late at night with engine running and lights on).

Suspicious driving behavior in an area where there has been recent criminal activity is generally sufficient to justify a vehicle stop. *See State v. Uber*, 604 N.W.2d 799, 800-02 (Minn. App. 1999) (upholding vehicle stop where, at 2:00 a.m., defendant slowly drove through commercial area where there had been recent reports of robberies and twice accelerated vehicle upon seeing officer's marked police vehicle); *see also Olmscheid v. Comm'r of Pub. Safety*, 412 N.W.2d 41, 43 (Minn. App. 1987) (officer's knowledge of previous theft in area and presence of defendant's vehicle during early morning hours in commercial area with no residences on road that did not connect to another roadway sufficient to justify stop of defendant's vehicle), *review denied* (Minn. Nov. 6, 1987); *Cobb v. Comm'r of Pub. Safety*, 410 N.W. 2d 902, 903 (Minn. App. 1987) (officer had sufficient basis to seize defendant when defendant's vehicle was reported to have been parked for ten minutes in area where there had been recent burglaries).

We conclude that the facts that Kwiatowski articulated provided a sufficient basis for the stop. Respondent drove through a parking lot to the back of a closed business and stopped his vehicle at 1:00 a.m. in a commercial area where crimes were known to occur. And when Kwiatowski's patrol car came into respondent's view, respondent left the

parking lot and drove in the direction from which he had just come. Under these circumstances, it was reasonable to suspect that the driver of the vehicle might be engaged in criminal activity.

Reversed and remanded.