STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1358

Donna Peggy Hagemann, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed April 8, 2013
Affirmed
Halbrooks, Judge

Redwood County District Court
File No. 64-CV-11-1009

Geoffrey R. Saltzstein, Appelman Law Firm, St. Louis Park, Minnesota (for appellant)

Lori Swanson, Attorney General, Mathew A. Ferche, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Kirk, Judge; and Huspeni, Judge.*

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

HALBROOKS, Judge

Appellant challenges the district court's decision sustaining the revocation of her driver's license under the implied-consent law, arguing that the arresting officer seized

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

her vehicle without reasonable, particularized suspicion of criminal activity. Because the totality of the circumstances were sufficient to support a reasonable suspicion of criminal activity, we affirm.

FACTS

On November 25, 2011, at approximately 11:17 p.m., Deputy Jason Jacobson observed appellant Donna Peggy Hagemann's vehicle traveling westbound on 206th Street outside of Milroy. Deputy Jacobson testified that appellant was driving at a "slow rate of speed" on a road with a 55 miles-per-hour speed limit. Deputy Jacobson turned onto 206th Street and began following appellant's vehicle. Appellant made the next right turn into a cemetery parking lot and parked in the back corner of the lot.

Because Deputy Jacobson considered this behavior to be suspicious, he pulled into the parking lot, activated his emergency lights, and parked perpendicular to appellant in a way that made it difficult for her to move her vehicle. Appellant told Deputy Jacobson that she was visiting the gravesite of her mother on the one-year anniversary of her death. Deputy Jacobson observed indicia of intoxication and asked appellant to perform field sobriety tests. He subsequently arrested her for driving while impaired, and her license was revoked.

Appellant petitioned for judicial review of the revocation order. At the combined omnibus and implied-consent hearing, Deputy Jacobson testified that there was "a lot of criminal activity that happens on that particular road," including drinking and driving, and that he had observed empty alcohol containers along the sides of the road. He could not name any specific criminal activity or recent arrests for driving under the influence,

but described the road as "suspicious." He testified that his primary motivation in approaching appellant's vehicle was the suspicion of criminal activity, but he also wanted to determine whether the passengers were in need of assistance.

The district court denied appellant's petition, concluding that Deputy Jacobson had sufficient reasonable suspicion of criminal activity to investigate appellant's actions and that he was "acting on more than a mere hunch." This appeal follows.

D E C I S I O N

We review de novo whether the facts support a determination of reasonable suspicion of criminal activity. *Diede*, 795 N.W.2d at 843. We will accept the district court's factual findings unless they are clearly erroneous. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005). We defer to the credibility determinations of the district court, regardless of whether those determinations are explicit or implicit. *See Umphlett v. Comm'r of Pub. Safety*, 533 N.W.2d 636, 639 (Minn. App. 1995) (determining that the district court "implicitly found that officer's testimony was more credible" based on its decision to sustain license revocation), *review denied* (Minn. Aug. 30, 1995).

The United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; *accord* Minn. Const. art. I, § 10. A police officer may temporarily seize a person if the officer "reasonably suspects that person of criminal activity." *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) (quoting *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995)).

Reasonable suspicion must be "based on specific, articulable facts" demonstrating that the officer "had a particularized and objective basis for suspecting the seized person of criminal activity." *Id.* at 842-43 (quotation omitted). This assessment may be based on the totality of the circumstances, including any inferences and deductions that might elude an untrained person. *Cripps*, 533 N.W.2d at 391. The reasonable suspicion standard is not high, but must rise above the level of an "inchoate and unparticularized suspicion or hunch of criminal activity." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted).

Articulable, objective facts sufficient to give rise to reasonable suspicion are "facts that, by their nature, quality, repetition, or pattern become so unusual and suspicious that they support at least one inference of the possibility of criminal activity." *State v. Schrupp*, 625 N.W.2d 844, 847-48 (Minn. App. 2001), *review denied* (Minn. July 24, 2001). This may include "the officer's general knowledge and experience, the officer's personal observations, information the officer has received from other sources, the nature of the offense suspected, the time, the location, and anything else that is relevant." *Appelgate v. Comm't of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987).

Deputy Jacobson testified that he believed that appellant could be involved in criminal activity because her vehicle was moving at a slow rate of speed on a gravel road late at night in an area with "a lot of criminal activity." When he turned onto the road behind appellant's vehicle, appellant turned at the first opportunity, drove to the far corner of the cemetery parking lot, and parked. Deputy Jacobson considered these actions to be evasive and sufficiently suspicious to justify an investigatory stop.

Mere presence in a high-crime area is insufficient to justify an investigatory stop, but may be relevant in combination with other factors. *See State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (reasonable suspicion existed when defendant made evasive movements after exiting a building with a history of drug activity). Driving unusually slowly is one such factor. *See State v. Haataja*, 611 N.W.2d 353, 355 (Minn. App. 2000) (officer articulated sufficient reasons to stop a vehicle traveling 10 to 15 miles per hour under the speed limit at 1:30 a.m. in a residential neighborhood when traffic was backed up behind appellant and reduced speed was not necessary for safety). Some types of evasive maneuvers may also be sufficient to justify an investigative stop. *See State v. Johnson*, 444 N.W.2d 824, 827 (Minn. 1989) (driver made "quick turn" off highway seconds after looking trooper "in the eye," doubled back, and returned to highway); *see also State v. Petrick*, 527 N.W.2d 87, 87 (Minn. 1995) (after police car began following him, driver turned into first available driveway, immediately shut off car lights, and continued to proceed down a "fairly long driveway").

The record lacks several details that might clarify Deputy Jacobson's decision. There is no estimate of appellant's speed, other than the observation that she was driving at a slow rate, or the distance between appellant and the deputy when he turned onto the road. Nor is there evidence regarding the amount of time that elapsed between Deputy Jacobson turning onto the road and appellant turning into the cemetery or the distance between the two vehicles when this turn occurred.

Appellant offers "more reasonable" explanations for why appellant was driving slowly and turned into the unlit cemetery entrance. But the reasonable-suspicion

standard "deals with probabilities, not hard certainties." *State v. Delaney*, 406 N.W.2d 584, 586 (Minn. App. 1987). It is only necessary that Deputy Jacobson's interpretation of appellant's actions is "reasonably inferable from what he did see." *Id.* (quotation omitted). It is reasonable for a trained officer to infer that appellant's behavior was consistent with criminal activity.

This court has previously upheld seizures under similar circumstances. In *Olmscheid v. Comm'r of Pub. Safety*, we concluded that reasonable suspicion existed where the officer stopped a vehicle on a dead-end street at 1:30 a.m. behind a car dealership with a history of property theft. 412 N.W.2d 41, 42-43 (Minn. App. 1987), *review denied* (Minn. Nov. 6, 1987). And in *Thomeczek v. Comm'r of Pub. Safety*, we concluded that an investigatory stop was legal where the officer observed a vehicle "parked near an empty lot late in the evening in an area undergoing construction, where a burglary, vandalism or theft might occur." 364 N.W.2d 471, 472 (Minn. App. 1985).

This case is less similar to *State v. Sanger*, where we held that the district court erred in failing to suppress evidence as the result of an illegal stop. 420 N.W.2d 241, 244 (Minn. App. 1988). In *Sanger*, the officer stopped alongside an occupied car parked in a residential area such that the car could not leave, flashed his lights, and honked his horn. *Id.* at 242. The officer admitted that he merely wanted "to see what was going on" and "did not claim that he suspected any criminal activity or that he thought help might be needed." *Id.* That case turned on whether the officer's actions constituted a stop or seizure such that reasonable suspicion was necessary.

Here, Deputy Jacobson observed a vehicle traveling slowly in an area known to him to be the location of criminal activity. When Deputy Jacobson began following the vehicle, it quickly turned into an isolated, unlit area and parked at the far end of the lot. The reasonable-suspicion standard requires "specific, articulable facts" demonstrating that the officer "had a particularized and objective basis for suspecting the seized person of criminal activity." *Diede*, 795 N.W.2d at 842-43 (quotation omitted). The district court credited Deputy Jacobson's testimony regarding the character of the area and the suspicious nature of appellant's conduct. Although this is a close case, based on the totality of the circumstances, we agree that reasonable suspicion existed to support an investigatory seizure.

Affirmed.