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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-659**

State of Minnesota,
Respondent,

vs.

Laurinda Rae Rowan Lee,
Appellant.

**Filed March 2, 2010
Affirmed
Larkin, Judge**

Rice County District Court
File No. 66-CR-08-524

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

G. Paul Beaumaster, Rice County Attorney, Benjamin Bejar, Assistant County Attorney, Christina M. Davenport (certified student attorney), Rice County Attorney's Office, Faribault, Minnesota (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Peterson, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges her conviction of first-degree test refusal, arguing that the district court erred by concluding that there was a lawful basis to stop her vehicle and probable cause to arrest her for driving under the influence of alcohol. Because the traffic stop and arrest were lawful, we affirm.

FACTS

On February 2, 2008, appellant Laurinda Rowan Lee's ex-husband, T.L., called 911 and reported that Rowan Lee was driving to the Twin Cities from T.L.'s home in Albert Lea and that she did not have a valid driver's license. T.L. provided Rowan Lee's name and date of birth, and described the vehicle Rowan Lee was driving as an older, Cavalier-type vehicle. T.L. also reported that his daughter was in the car with Rowan Lee. Dispatch notified Minnesota State Patrol Trooper Stephen C. Willert that Rowan Lee was driving an older, rusty, gray Toyota Camry and was traveling north on Interstate 35 from Albert Lea toward the Twin Cities. Dispatch also advised Trooper Willert that Rowan Lee was an 85-pound, 4'10" female and that her driving privileges were cancelled as inimical to public safety. After receiving the information from dispatch, Trooper Willert called T.L. to gather more information. T.L. told Trooper Willert that he believed that Rowan Lee had alcohol in the car.

Trooper Willert observed an older-model, heavily rusted Toyota Camry traveling north on I-35. He followed the vehicle for approximately one mile and observed no driving violations. The vehicle pulled into a gas station. Trooper Willert attempted to

retrieve a photograph of Rowan Lee from the Department of Vehicle Services but was unable to do so due to an equipment malfunction. But he observed that the driver of the Toyota was a short female. Trooper Willert called the Toyota's license plate number into dispatch and learned that the vehicle was registered to a male with the last name of Rowan. Based on this information, Trooper Willert stopped the vehicle and identified Rowan Lee as the driver. Trooper Willert also observed that a young girl was in the vehicle.

As he spoke to Rowan Lee, Trooper Willert observed that her eyes were bloodshot and her breath smelled of alcohol. Rowan Lee admitted that she had been drinking all day. Rowan Lee cried during the encounter, but her speech was clear. She agreed to participate in field sobriety testing and failed both the horizontal-gaze-nystagmus (HGN) test and the one-leg-stand test. She then refused to perform the walk-and-turn test or submit to a preliminary breath test. Rowan Lee complained that her feet hurt because she was wearing old shoes that were too small for her feet. She told the trooper that this compromised her ability to perform the one-leg-stand and walk-and-turn tests. Trooper Willert concluded that Rowan Lee was under the influence of alcohol and arrested her for driving while impaired (DWI).

Rowan Lee was charged by complaint with first-degree DWI, first-degree test refusal, driving after cancellation, violation of a restriction on a driver's license, and giving false identification information to a police officer. Rowan Lee moved to dismiss the charges, alleging that her seizure was not supported by reasonable, articulable suspicion and that her arrest was not supported by probable cause. The district court

denied the motion after a contested omnibus hearing. Rowan Lee was convicted of first-degree test refusal following a stipulated-facts trial to the district court. This appeal follows.

DECISION

I.

Rowan Lee challenges the district court's conclusion that there was a legal basis for her initial seizure. "When reviewing the legality of a seizure or search, an appellate court will not reverse the [district] court's findings unless [they are] clearly erroneous or contrary to law." *In re Welfare of G.M.*, 560 N.W.2d 687, 690 (Minn. 1997). But an appellate court reviews de novo a district court's determination of reasonable suspicion as it relates to investigative stops. *Id.*

Both the United States and Minnesota Constitutions prohibit unreasonable search and seizure by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A police officer may, however, initiate a limited investigative stop without a warrant if the officer has reasonable, articulable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968); *see also State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996) (noting that an investigative stop of a vehicle is lawful if the state can show that the officer had a "particularized and objective basis" for suspecting criminal activity (quotation omitted)). Whether the police have reasonable suspicion to conduct an investigatory stop depends on the totality of the circumstances, and a stop is not justified if it is "the product of mere whim, caprice, or idle curiosity." *In re Welfare of M.D.R.*, 693 N.W.2d 444, 448 (Minn. App. 2005) (quotation omitted), *review denied* (Minn.

June 28, 2005). The court may consider the officer's experience, general knowledge, and observations; background information, including the time and location of the stop; and anything else that is relevant. *Appelgate v. Comm'r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987). A traffic stop "must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) (quoting *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 695 (1981)).

Reasonable articulable suspicion of criminal activity may be based on information acquired from another person. *Marben v. State, Dep't of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980). "An informant's tip may be adequate to support an investigative stop if the tip has sufficient indicia of reliability." *Magnuson v. Comm'r of Pub. Safety*, 703 N.W.2d 557, 560 (Minn. App. 2005). "A reliable informant's factually specific report of unlawful driving will alone justify a stop." *Yoraway v. Comm'r of Pub. Safety*, 669 N.W.2d 622, 626 (Minn. App. 2003). Identified citizen informants are presumed to be reliable. *Id.* Therefore, "[a]n officer may rely on information from an informant who also provides sufficient information so that he may be located and held accountable for providing false information." *Magnuson*, 703 N.W.2d at 560 (quotation omitted).

It is undisputed that when T.L. called 911 to report Rowan Lee's criminal conduct, he identified himself to the 911 operator. Moreover, Trooper Willert contacted T.L. by phone prior to stopping Rowan Lee. T.L. spoke with Trooper Willert and provided additional information in response to the trooper's questions regarding T.L.'s initial

report. T.L. qualified as an identified citizen informant and was therefore presumed reliable. Trooper Willert could rely on T.L.'s tip as a basis for the stop. *See id.*

Rowan Lee argues that T.L.'s status as Rowan Lee's ex-husband, and his expression of frustration that previous child-endangerment charges against Rowan Lee were dismissed, undermine the presumption that he is a reliable citizen informant. But even if the motive for T.L.'s report cast doubt on his credibility, "[a]n informant's reliability may be established by sufficient police corroboration of the information supplied, and corroboration of even minor details can lend credence to the informant's information where the police knew the identity of the informant." *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998). Because dispatch confirmed that Rowan Lee's driving privileges were cancelled as inimical to public safety, T.L.'s report that Rowan Lee was driving illegally was sufficiently corroborated, and Trooper Willert had a reasonable basis to stop her for driving after cancellation.

Rowan Lee contends that the stop was unlawful because Trooper Willert did not adequately confirm that Rowan Lee was the driver of the Toyota Camry that he stopped, arguing that T.L. did not sufficiently describe the vehicle or provide the vehicle's precise location. Neither argument is persuasive. While T.L. reported that Rowan Lee was driving an older, gray, Cavalier-type vehicle and dispatch reported that Rowan Lee was driving an older, gray, Camry-type vehicle, the district court resolved this conflicting evidence with a finding that Cavaliers and Camrys are "similar appearing vehicles," and that "[t]he tip was definitely for an older model sedan, that was heavily rusted, heading toward the Twin Cities from Albert Lea, driven by a very short woman." Rowan Lee

does not challenge this finding. And the vehicle that she was driving matched this description and was traveling toward the Twin Cities. The fact that T.L. did not state exactly where along the route the vehicle was located is inconsequential. *See State v. Warren*, 404 N.W.2d 895, 896-97 (Minn. App. 1987) (upholding stop of vehicle where an identified citizen informant provided make, model, direction, and possible destination of vehicle to police). Trooper Willert observed that a female who matched the physical description of Rowan Lee was driving the Toyota Camry, and he knew that the vehicle was registered to a male who shared part of Rowan Lee's last name. Under these circumstances, it was reasonable for the trooper to suspect that Rowan Lee was the driver of the Toyota Camry.

Finally, Rowan Lee cites *State v. Smith*, No. A07-2426 (Minn. App. Aug. 5, 2008), for the proposition that it was not reasonable for Trooper Willert to suspect that she was driving the Toyota. Because *Smith* is unpublished and not precedential, we do not address it. *See* Minn. Stat. § 480A.08, subd. 3 (2008) (“Unpublished opinions of the Court of Appeals are not precedential.”).

The investigative stop of Rowan Lee's vehicle was supported by reasonable, articulable suspicion of criminal activity and was therefore lawful.

II.

Rowan Lee also challenges the district court's conclusion that there was probable cause to arrest her for driving under the influence of alcohol.

Probable cause exists where all the facts and circumstances would warrant a cautious person to believe that the suspect was driving or operating a vehicle while under

the influence of alcohol. *State v. Harris*, 295 Minn. 38, 42, 202 N.W.2d 878, 881 (1972). In a probable-cause determination, “the issue is whether there was objective probable cause, not whether the officers subjectively felt that they had probable cause.” *State v. Speak*, 339 N.W.2d 741, 745 (Minn. 1983). Probable cause is evaluated from the point of view of a “prudent and cautious police officer on the scene at the time of arrest.” *State v. Harris*, 265 Minn. 260, 264, 121 N.W.2d 327, 331 (1963) (quotation omitted). In reviewing an officer’s actions, the district court should “consider the totality of the circumstances and should remember that trained law-enforcement officers are permitted to make inferences and deductions that might well elude an untrained person.” *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983) (quotation omitted). Great deference should be paid to the officer’s experience and judgment. *Vertina v. Comm’r of Pub. Safety*, 356 N.W.2d 412, 414 (Minn. App. 1984).

A determination of probable cause is a mixed question of fact and of law. *Clow v. Comm’r of Pub. Safety*, 362 N.W.2d 360, 363 (Minn. App. 1985), *review denied* (Minn. Apr. 26, 1985). “Once the facts have been found the court must apply the law to determine if probable cause exists.” *Id.* Appellate courts “review the district court’s findings of historical fact relating to the probable cause determination for clear error under the clearly erroneous standard but . . . independently review de novo the issue of probable cause.” *State v. Lee*, 585 N.W.2d 378, 383 (Minn. 1998).

The district court found that Rowan Lee admitted that she had consumed alcohol all day. The district court also found that Rowan Lee’s breath smelled like alcohol and that her eyes were bloodshot. Finally, the district court found that Rowan Lee failed two

field sobriety tests, although the district court recognized that her performance on the tests could be due to reasons other than intoxication.

Rowan Lee argues that the field sobriety tests were unreliable, conducted improperly, and insufficient to establish probable cause. Field sobriety tests are not required to support an officer's reasonable belief that a driver is intoxicated. *Holtz v. Comm'r of Pub. Safety*, 340 N.W.2d 363, 365 (Minn. App. 1983). And consideration of the results of Rowan Lee's field sobriety tests is not necessary to establish probable cause. Depending on the circumstances, a single indicia of intoxication may constitute sufficient probable cause for an officer to believe that a driver was operating a vehicle under the influence of alcohol. *Stiles v. Comm'r of Pub. Safety*, 369 N.W.2d 347, 351 (Minn. App. 1985). Trooper Willert observed three indicia of intoxication. Even if the evidence regarding Rowan Lee's field sobriety tests is disregarded, the odor of alcohol on her breath, her bloodshot eyes, and her admission that she had been drinking establish probable cause to believe that she was driving under the influence of alcohol. *See Reeves v. Comm'r of Pub. Safety*, 751 N.W.2d 117, 120 (Minn. App. 2008) (affirming determination that officer had probable cause to arrest driver for DWI when officer observed multiple indicia of intoxication, including bloodshot eyes, odor of alcohol and admission to drinking). Accordingly, Rowan Lee's arrest was lawful.

Affirmed.

Dated:

Judge Michelle A. Larkin