STATE OF MINNESOTA
IN COURT OF APPEALS
A10-612

State of Minnesota,
Respondent,

vs.

Morningstar Jessica Weyaus,
Appellant.

Filed March 1, 2011
Affirmed
Kalitowski, Judge

Mille Lacs County District Court
File No. 48-CR-08-1519

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

Janice S. Jude, Mille Lacs County Attorney, Mark J. Herzing, Assistant County Attorney, Milaca, Minnesota 56353 (for respondent)

David W. Merchant, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and Huspeni, Judge.[*]

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

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

KALITOWSKI, Judge

Appellant Morningstar Jessica Weyaus challenges her conviction of third-degree controlled-substance crime, arguing that the district court erred in refusing to suppress evidence obtained after a search of the car she was driving because (1) the officer did not have reasonable, articulable suspicion to investigate the identities of her passengers and (2) the warrantless search was not a lawful search incident to arrest. We affirm.

D E C I S I O N

An agent assigned to the North Central Drug and Gang Task Force received a tip from a known informant that Morningstar Shabaash and Derrick Weyaus were traveling north on State Highway 169 in a maroon Suburban transporting narcotics. The agent was familiar with Derrick Weyaus and knew that there were felony warrants for his arrest. The agent contacted a Mille Lacs County deputy sheriff and asked that the deputy stop the car if he observed a traffic violation. The deputy spotted the car and stopped appellant after he observed two traffic infractions. Appellant produced a valid driver's license identifying her as Morningstar Jessica Weyaus.

The deputy immediately asked appellant the names of the two passengers in her car. Appellant identified the front passenger as Darwin Wilkins and the rear passenger as Devon Gilmore. The deputy then asked the passengers for identification. The passengers stated that they did not have any. The deputy questioned each of the car's occupants separately about their relationships with each other, their destination, and their travel that evening. The passengers provided vague and conflicting answers to some of these

questions. During the questioning, the dispatcher confirmed that neither name given was on file. The drug-task-force agent arrived shortly after the deputy stopped the car and identified the front passenger as Derrick Weyaus.

Derrick Weyaus was arrested, and appellant was arrested for aiding an offender to avoid arrest. The third occupant was eventually identified and arrested on an outstanding warrant. While Derrick Weyaus and appellant were secured in the back of the squad car, the drug-task-force agent led his narcotics-detection dog around the car. The dog alerted at the right rear passenger door. The agent let the dog into the car and the dog alerted at the center console, where the agent found marijuana. The car was towed to the sheriff's department, where more than 12 grams of cocaine were found in the center console in the course of a second search.

The United States and Minnesota constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art I, § 10. A brief investigatory stop is constitutionally permissible if, at the time of the stop, the officer had a particularized and objective basis for suspecting the person stopped of criminal activity. *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003). "Reasonable, articulable suspicion requires a showing that the stop was not the product of mere whim, caprice, or idle curiosity." *Id.* (quotation omitted). An officer's observation of a traffic violation provides the requisite basis for a stop. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). When reviewing a district court's pretrial order on a motion to suppress evidence where the facts are not in dispute, we "independently review the facts and determine, as a matter of law, whether the evidence need be suppressed." *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992).

To analyze the legality of an investigatory stop, we must first determine whether the stop was "justified at its inception" and then assess "whether the actions of the police during the stop were reasonably related to and justified by the circumstances that gave rise to the stop in the first place." *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004). An intrusion that is not closely tied to the initial justification for the stop is prohibited unless there is independent probable cause or reasonable, articulable suspicion of other illegal activity. *Id.*; *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002).

I.

Appellant agrees that the initial stop was justified by her traffic violations but contends that because the deputy had no grounds to ask her passengers for identification, the evidence gathered during the search of her car must be suppressed as the product of an unlawful seizure. We disagree.

The deputy was justified in requesting appellant's driver's license. *See State v. White*, 489 N.W.2d 792, 793-94 (Minn. 1992) (stating that an officer may direct a lawfully stopped person to provide identification). And having determined that appellant's license was valid, appellant is correct that identification of the passengers was not related to the purpose of the traffic stop, which was limited in scope to processing the traffic violations. *See Askerooth*, 681 N.W.2d at 364 (stating that "the basis for justifying an intrusion during a minor traffic stop [must be] individualized to the [person] to whom the intrusion is directed"); *State v. Fort*, 660 N.W.2d 415, 419 (Minn. 2003) (suppressing evidence gathered after questioning of car's passenger during traffic stop if officer lacked reasonable, articulable suspicion of additional criminal activity); *State v. Johnson*, 645

N.W.2d 505, 508, 510 (Minn. App. 2002) (stating that police may investigate whether a vehicle's passengers have valid driver's licenses if the driver cannot legally operate the vehicle). Thus, because the passengers would not reasonably feel free to decline the deputy's request or terminate the encounter and the request was not within the scope of the traffic stop, the additional intrusion of requesting identification from the passengers required at least reasonable, articulable suspicion of criminal activity beyond the traffic violations. *See Askerooth*, 681 N.W.2d at 365 (holding that each incremental intrusion must be justified by the original legitimate purpose of the stop, independent probable cause, or reasonableness); *Fort*, 660 N.W.2d at 418 (concluding that passengers in a car were seized during traffic stop); *Johnson*, 645 N.W.2d at 510 (concluding same).

Although the deputy did not have reasonable, articulable suspicion of additional criminal activity that would justify his request for identification, the drug-task-force agent did. And if more than one officer is involved in an investigation, the officer who conducts the search or seizure is imputed with knowledge of the facts known by other officers so long as the officers have some degree of communication between them. *State v. Lemieux*, 726 N.W.2d 783, 789 (Minn. 2007). Actual communication of information to the officer conducting the search or seizure is unnecessary. *Id.*

Here, the record indicates that the two officers involved in the investigation of appellant and Derrick Weyaus were in close communication. Consequently, the drug-task-force agent's knowledge of the tip and of Derrick Weyaus's outstanding felony warrants can be relied on to support the expansion of the traffic stop.

Appellant argues that even if the knowledge of the drug-task-force agent is imputed to the deputy, there was not an adequate basis for the expanded investigative stop. We disagree.

The information that appellant was traveling with Derrick Weyaus and that they were transporting drugs came from a confidential informant. "[P]olice can base an investigative stop on an informant's tip if it has sufficient indicia of reliability." *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). The reliability of a confidential informant's tip depends on the totality of the circumstances, including the veracity of the informant and the informant's basis of knowledge of the facts contained in the tip. *Id.*; *State v. McCloskey*, 453 N.W.2d 700, 702-03 (Minn. 1990) (citing *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)).

An informant's track record is one of the primary indicia of veracity. *State v. Maldonado*, 322 N.W.2d 349, 351 (Minn. 1982). Here, the drug-task-force agent testified that tips from the informant have led to arrests and convictions in the past. Although the record does not contain specific details of the informant's accuracy rate, further elaboration is preferable but not typically required. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999); *State v. Wiley*, 366 N.W.2d 265, 269 & n.1 (Minn. 1985).

Also, independent corroboration of even innocent details of a tip can support an investigatory stop. *Munson*, 594 N.W.2d at 136. Assessment of an informant's basis of knowledge involves consideration of the quality and quantity of detail in the informant's report and whether police independently verified important details. *State v. Cook*, 610 N.W.2d 664, 668 (Minn. App. 2000), *review denied* (Minn. July 25, 2000).

Corroboration of easily obtained facts does not enhance an informant's credibility because it does not indicate the informant's access to "inside information." *Id.* at 668-69 (concluding that corroboration of defendant's appearance, car, and current location was insufficient to support arrest); *State v. Albrecht*, 465 N.W.2d 107, 109 (Minn. App. 1991) (concluding that corroboration of defendant's address and ownership of pickup truck was insufficient to support search warrant). But a tip that would fall short of supplying probable cause can give rise to reasonable, articulable suspicion. *Munson*, 594 N.W.2d at 136; *Cook*, 610 N.W.2d at 669.

> Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.

Alabama v. White, 496 U.S. 325, 330, 110 S. Ct. 2412, 2416 (1990).

At the time the deputy requested identification from the passengers in appellant's car, he had corroborated the description of the car, its location and direction of travel, the fact that one occupant was "Morningstar Weyaus"—a combination of the two names the informant had given—and the fact that she was traveling with at least one other person. The tip did not include predictive information and would be insufficient to support probable cause but it provided the deputy with reasonable, articulable suspicion that appellant was traveling with Derrick Weyaus, the subject of felony warrants, and was transporting drugs. *See Cook*, 610 N.W.2d at 669 (emphasizing absence of predicted activity in tip to provide probable cause but suggesting tip was sufficient to support

investigative stop). We conclude that the tip and knowledge of Derrick Weyaus's felony warrants justified the limited intrusion of directing the passengers to provide identification. *See Askerooth*, 681 N.W.2d at 357, 363, 367 (requiring, in traffic stops, balancing of individual and government interests and concluding that confining driver not in possession of license in back of locked squad car was not reasonable); *Fort*, 660 N.W.2d at 417-19 (concluding that escorting passenger to squad car and questioning him about narcotics activity was not reasonable absent the required level of suspicion). In addition, the deputy's actions after requesting identification and being told the passengers did not have any were related to and justified by the reasonable, articulable suspicion that one of the passengers might be Derrick Weyaus and that the occupants might be transporting narcotics.

II.

Appellant also challenges the warrantless search of the car she was driving, arguing that it does not fall under the search-incident-to-arrest exception to the warrant requirement as it was interpreted in *Arizona v. Gant*, 129 S. Ct. 1710 (2009). But the search was supported by probable cause, and not dependent on the search-incident-to-arrest exception.

Law-enforcement officers may conduct a narcotics-detection dog sniff around a car stopped for a traffic violation if they have reasonable, articulable suspicion of drug-related criminal activity. *Wiegand*, 645 N.W.2d at 137. Based on the exigent character of evidence in a vehicle and a person's reduced expectation of privacy in a vehicle, an officer has authority to search a vehicle without a warrant if that officer has probable

cause to believe the search will produce evidence of a crime or contraband. *California v. Acevedo*, 500 U.S. 565, 569-71, 580, 111 S. Ct. 1982, 1986-87, 1991 (1991); *State v. Search*, 472 N.W.2d 850, 852 (Minn. 1991). Probable cause exists if there is a "'fair probability that contraband or evidence of a crime will be found in a particular place.'" *State v. Carter*, 697 N.W.2d 199, 205-06 (Minn. 2005) (quoting *Gates*, 462 U.S. at 238, 103 S. Ct. at 2332). A drug-detection dog's reaction can establish probable cause to search a vehicle. *State v. Pederson-Maxwell*, 619 N.W.2d 777, 781 (Minn. App. 2000).

The corroborated tip that appellant and Derrick Weyaus were in the process of transporting narcotics in a maroon Suburban gave rise to a reasonable, articulable suspicion that appellant's car might contain drugs. Consequently, the drug-task-force agent was acting lawfully when he circled the car with his narcotics dog. The dog's reaction, along with the tip, gave the officers probable cause to believe the car contained contraband. The search of the interior of the car, which led to the discovery of marijuana and cocaine, was valid under the automobile exception to the warrant requirement.

Because the expansion of the stop was supported by reasonable, articulable suspicion and the search of the car was supported by probable cause, the district court did not err when it denied appellant's motion to suppress.

Affirmed.