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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1588**

State of Minnesota,
Respondent,

vs.

Jeremy David Dickey,
Appellant.

**Filed July 9, 2018
Affirmed
Stauber, Judge***

Becker County District Court
File No. 03-CR-16-2345

Lori Swanson, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Tammy L. Merkins, Becker County Attorney, Detroit Lakes, Minnesota (for respondent)

Luke T. Heck, Severson, Wogsland & Liebl, PC, Fargo, North Dakota (for appellant)

Considered and decided by Kirk, Presiding Judge; Peterson, Judge; and Stauber, Judge.

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

UNPUBLISHED OPINION

STAUBER, Judge

Jeremy Dickey appeals from the denial of his motion to suppress evidence that he fled police who responded to a report that he stole items from a hotel. Dickey argues that police lacked reasonable suspicion to seize him because he had not stolen anything from the hotel on that day—instead, witnesses recognized Dickey as the suspect in a theft that had occurred three weeks earlier. He argues that because police were misinformed by the dispatcher that a theft had occurred on that day they lacked reasonable suspicion to seize him, and therefore evidence that he fled from the seizure must be suppressed as fruit of the poisonous tree. But because we conclude that police had reasonable suspicion to seize Dickey in connection with the earlier theft even if they were misinformed about its timing, we affirm the denial of his suppression motion.

FACTS

Before the incident that gave rise to this case, Dickey was a suspect in several ongoing theft investigations at the Holiday Inn in the City of Detroit Lakes. The hotel's surveillance video had captured Dickey attempting to steal a briefcase. Dickey was also suspected of stealing a set of hotel keys and a wallet; that theft was reported to the Detroit Lakes Police Department on September 20, 2016. On October 14, 2016, Holiday Inn employees saw Dickey on the premises, recognized him from earlier video-surveillance footage, and attempted to confront him about the previous thefts. Dickey fled on foot toward his black pick-up truck. An employee called 9-1-1. It is not clear what precisely the employee said to the dispatcher. But the dispatcher informed Officer Josie Johnson of the

Detroit Lakes Police Department that a theft had “just occurred” at the Holiday Inn and the victim was following the suspect to his black pick-up truck with a North Dakota license plate. When Officer Johnson heard that one of the victims was following the suspect as he left the parking lot heading east, she activated her lights and sirens.

Officer Johnson spotted Dickey’s truck near the hotel about a quarter of a mile away from her traveling at a high rate of speed. The truck sped away and made a sharp left turn into a field. Officer Wayne Tolbert, who was driving an SUV squad car, was able to cut Dickey off in the field, and the officers apprehended him at gunpoint. After Officer Gary Kuhn went to the Holiday Inn to investigate, the officers learned that nothing was reported stolen on *that* day. Officer Kuhn learned that the Holiday Inn had reported a theft by a suspect matching Dickey’s description on September 20, 2016, and when employees saw Dickey on the premises on October 14, they recognized him from video images and reported him to the police.

The state charged Dickey with Fleeing a Peace Officer in a Motor Vehicle. Dickey moved to suppress evidence that he fled from law enforcement, arguing that it was fruit of an illegal seizure that occurred when the officers pursued his vehicle with activated lights and sirens. The district court denied the motion. Dickey proceeded to a stipulated-fact trial, and the district court found Dickey guilty.

Dickey appeals from the denial of his suppression motion.

D E C I S I O N

Dickey argues that police lacked reasonable suspicion to seize him as he drove away from the Holiday Inn because the dispatcher incorrectly informed the officers who pursued

him that he was suspected of having “just” stolen something from the hotel. When reviewing a district court’s reasonable-suspicion determination, this court reviews findings of fact for clear error and the ultimate reasonable-suspicion determination de novo. *Wilkes v. Comm’r of Pub. Safety*, 777 N.W.2d 239, 242-43 (Minn. App. 2010). We consider whether the police had reasonable suspicion to seize Dickey.

Dickey asserts that police did not have reasonable suspicion to seize him because the dispatcher incorrectly informed them about the timing of the theft they were called to investigate. But the reasonable-suspicion standard does not require police officers to be absolutely sure or correct in their suspicions. “All that is required is that the stop be not the product of mere whim, caprice, or idle curiosity. It is enough if the stop is based upon specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.” *Marben v. State, Dept. of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980) (quotations and parentheses omitted) (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)). Dickey asserts that *Olson v. Comm’r of Pub. Safety*, 371 N.W.2d 552 (1985), a case involving an anonymous tip about a drunk driver, requires us to conclude that the police lacked reasonable suspicion because the witness who called the dispatcher eventually revealed that he did not know if Dickey had stolen anything on that day. *Olson* does not sustain Dickey’s argument.

In *Olson*, two police officers received a radio dispatch reporting that a citizen had observed a “possible” drunk driver. *Id.* at 553. The caller described the car and the license plate number, and the officers eventually spotted the car. *Id.* The officers followed the car for about half a mile, during which time they noticed no erratic driving, but they stopped

the car anyway. *Id.* Because the officers did not observe any erratic driving themselves following the non-specific anonymous tip, the *Olson* court determined that the admissibility of the evidence uncovered in the course of the stop depended on whether the dispatcher was in possession of specific and articulable facts supporting reasonable suspicion. *Id.* at 555. The *Olson* court concluded that the tip on its own did not have sufficient indicia of reliability because it was anonymous and lacked specificity. *Id.* at 556. Because there were no specific and articulable facts supporting reasonable suspicion, the seizure was unlawful.

But *Olson* does not eliminate reasonable suspicion of criminality simply because police are misinformed about when the criminal act occurred. *Olson* merely requires police to have a specific and articulable basis for seizing a person, not some vague concern about a “possible drunk driver.” *Id.* at 553. It is true that reasonable suspicion “evaporates” if police learn information that dispels earlier suspicion. *See State v. Pike*, 551 N.W.2d 919, 922 (Minn. 1996). But *Dickey* does not suggest that either the police or the dispatcher learned information that dispelled reasonable suspicion that *Dickey* had committed a crime; he only argues that they eventually learned that no crime had been committed on that day. *Dickey*’s asserted distinction based on the timing of the suspected criminality is of such little consequence that the Supreme Court has treated it as a foregone conclusion. *See United States v. Cortez*, 449 U.S. 411, 417 n.2, 101 S. Ct. 690, 695 n.2 (1981) (“Of course, an officer may stop and question a person if there are reasonable grounds to believe that person is wanted for past criminal conduct.”).

The hotel's employee called police because the employee recognized Dickey as the prime suspect in an earlier theft they had reported to police. While the witness's report and the dispatcher's relay might have been incorrect as to the timing of the complained-of theft, both contained specific, articulable facts tying Dickey to alleged criminal activity which justified seizing Dickey for a brief investigatory stop. On the facts reported to the dispatcher and relayed to the officers—that a suspect in a theft was fleeing the scene of the theft, even if the theft did not occur on that day—the reasonable-suspicion standard was satisfied.

Affirmed.