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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-1875**

John Cortland Robinson, petitioner,  
Appellant,

vs.

Commissioner of Public Safety,  
Respondent.

**Filed June 18, 2018  
Affirmed  
Hooten, Judge**

Hennepin County District Court  
File No. 27-CV-17-3670

Scott J. Strouts, Scott J. Strouts LLC, Minneapolis, Minnesota (for appellant)

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Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Hooten,  
Judge.

**UNPUBLISHED OPINION**

**HOOTEN**, Judge

Appellant John Robinson challenges the revocation of his driver's license, arguing that the stop of his vehicle violated his Fourth Amendment rights because it was not supported by reasonable, articulable suspicion. We affirm.

## **FACTS**

On March 16, 2017, Officer Donahue of the Edina Police Department was on routine patrol in the area of Edina High School and Valley View Middle School. At approximately 12:55 a.m., while conducting a directed patrol of the area, Officer Donahue pulled into the east entrance of the parking lot to the west of Valley View Middle School. As he entered the parking lot, Officer Donahue observed a dark passenger car drive by the western edge of the parking lot the officer had just entered, and drive out the west entrance. The vehicle's lights were on, and the road the vehicle was driving on encircles the schools and connects all of the school parking lots. Officer Donahue testified that "there was a large construction site near that part of the [high] school where the vehicle came out."

At the time Officer Donahue saw the vehicle, there were no other cars in the area and the lights in the high school were off; the school appeared closed. Officer Donahue testified that he found the vehicle's presence suspicious because it was late, the high school was closed, and there was a construction site at the high school near where the vehicle was located. Officer Donahue has worked for the Edina Police Department for about two years and has been a licensed peace officer in Minnesota for about nine years, and in Officer Donahue's training and experience, "construction sites are often sought out by thieves for theft and damage-related crimes." The district court found Officer Donahue's testimony credible.

After observing the vehicle, Officer Donahue followed it. Officer Donahue saw the vehicle cross Valley View Road onto Chapel Lane, where he caught up to it and ran a license plate check, which showed that a lease company owned the vehicle and that the

lessee lived on the 5500 block of Goya Lane. Goya Lane is approximately one mile north of Edina High School.

Officer Donahue continued following the vehicle and thought that the route taken by the vehicle was suspicious because it was not the most direct route from the school to the address on Goya Lane. Robinson crossed Valley View Road, drove along several residential streets to the south of Valley View Road, and then turned onto Valley View Road. Officer Donahue initiated a traffic stop on Valley View Road, the vehicle stopped almost immediately, and Officer Donahue identified Robinson as the driver. From when Officer Donahue first observed the vehicle, until he stopped it on Valley View Road, he did not observe any traffic or equipment violations, inappropriate, unusual, or unlawful driving, and found no outstanding warrants. Officer Donahue also acknowledged that a driver does not have to take the most direct route to or from his home even if it is 1:00 a.m.

Robinson submitted to a breath test which disclosed an alcohol concentration of 0.10, in excess of the legal limit, and his driver's license was revoked for 90 days. *See* Minn. Stat. § 169A.52, subd. 4(a) (2016). He filed a timely petition for judicial review, and the district court held a hearing. After the parties submitted briefs, the district court sustained the revocation of Robinson's license, holding that Officer Donahue had "specific and articulable" suspicion to stop Robinson's vehicle.

### **D E C I S I O N**

A judicial challenge to revocation of a driver's license under the implied-consent statute is civil, not criminal. *Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 919–20 (Minn. App. 2010). However, the exclusionary rule applies to license-revocation

proceedings under the implied-consent law if the petitioner's Fourth Amendment rights are violated. *See id.* at 920. We review de novo a district court's ruling on whether an officer had reasonable, articulable suspicion for an investigatory stop. *Hoekstra v. Comm'r of Pub. Safety*, 839 N.W.2d 536, 539 (Minn. App. 2013). "[A] district court's findings of fact will not be set aside unless clearly erroneous . . . ." *Kramer v. Comm'r of Pub. Safety*, 706 N.W.2d 231, 235 (Minn. App. 2005).

The Fourth Amendment 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. "The Fourth Amendment applies to seizures of the person, including brief investigatory [vehicle] stops . . . . An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 694–95 (1981). Based upon the totality of the circumstances, "the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Id.* at 417–18, 101 S. Ct. at 695. Courts must not evaluate the sufficiency of each observation that could support reasonable suspicion in isolation because doing so would not take into account the totality of the circumstances. *United States v. Arvizu*, 534 U.S. 266, 274, 122 S. Ct. 744, 751 (2002).

Reasonable suspicion is not a high standard, requiring less than probable cause. *Hoekstra*, 839 N.W.2d at 538–39. But it still "requires at least a minimal level of objective justification for making the stop." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 676 (2000)). "The officer

need not be absolutely certain of the possibility of criminal activity, but he cannot satisfy the test of reasonableness by relying on an inchoate and unparticularized suspicion or hunch.” *State v. Schrupp*, 625 N.W.2d 844, 847 (Minn. App. 2001) (quoting *Terry v. Ohio*, 392 U.S. 1, 27, 88 S. Ct. 1868, 1883 (1968)) (quotation marks omitted), *review denied* (Minn. July 24, 2001); *see also State v. Harris*, 590 N.W.2d 90, 101 (Minn. 1999) (“A hunch, without additional objectively articulable facts, cannot provide the basis for an investigatory stop.”).

Officer Donahue had a particularized and objective basis to stop Robinson. Robinson was driving on school grounds around 1:00 a.m., near a construction site at the high school, when the school was closed. He was driving on a road that encircled both schools and does not provide access to anywhere other than the schools, their parking lots, and the construction site at the high school—the road is more akin to a driveway than to a public thru-street. And when Robinson drove out of the school area, he drove across a main road, through several residential roads, only to return to the main road—which he could have turned directly on to as he left the school area. Standing alone, each individual fact may not be sufficient to support reasonable suspicion of wrongdoing. But viewed together, and through the eyes of Officer Donahue’s experience and training that construction sites are often targeted for theft and vandalism crimes, Officer Donahue had a particularized and objective basis for an investigatory stop.

Minnesota courts have found reasonable suspicion for an investigatory stop in a similar situation. In *Thomeczek v. Comm’r of Pub. Safety*, this court held that a stop was reasonable where the appellant was in a car with the headlights on and “parked near an

empty lot [at 11:18 p.m.] in an area undergoing construction, where a burglary, vandalism or theft might occur.” 364 N.W.2d 471, 471–72 (Minn. App. 1985). The area where the car was parked was the site of residential development, with some homes occupied and others unoccupied or being built, and the appellant was parked in front of a vacant lot. *Id.* at 472. Here it was even later at night—very early in the morning in fact—and instead of being parked on a public street, Robinson was driving through the school complex on a road that only provides access to school grounds.

While Robinson was driving and the appellant in *Thomeczek* was parked, both placed themselves near areas where theft or vandalism might occur, and the area where Robinson was driving only gave access to the schools, their parking lots, and the construction site at the high school. The fact that Robinson was not stopped when Officer Donahue observed the vehicle is not a relevant distinction because the road he was driving on was not a public thru-street and the high school was closed with no other cars observed in the parking lot. It was therefore reasonable for Officer Donahue to infer that Robinson was coming from the construction site and that he likely did not have a legal reason to be there at that time of night, providing reasonable suspicion that Robinson was engaged in criminal activity. Police need not be certain that an individual is engaging in criminal activity to conduct an investigative stop, and Officer Donahue’s description of the entire encounter—which the district court found credible—contained enough particularized and objective facts that criminal activity may have been afoot to support an investigative stop. *See Schrupp*, 625 N.W.2d at 847; *see also Terry*, 392 U.S. at 30, 88 S. Ct. at 1884. Because

the stop was valid, we affirm the district court's decision not to rescind the driver's license revocation.

**Affirmed.**