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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1577**

Kathleen Margaret Eileen Ochs, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed May 4, 2020
Affirmed
Cochran, Judge**

Dakota County District Court
File No. 19AV-CV-19-1560

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(for appellant)

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Considered and decided by Cochran, Presiding Judge; Ross, Judge; and
Segal, Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

In this appeal from the district court's order sustaining the revocation of her driver's
license, appellant Kathleen Margaret Eileen Ochs argues that the district court erred when

it concluded that the officer had a legal basis to expand the scope of the initial traffic stop and pursue a driving-while-impaired (DWI) investigation. We affirm.

FACTS

At 9:40 p.m. on a Friday night, an officer stopped Ochs for a suspected driving-after-revocation violation. The officer approached the car and asked the driver if she was Kathleen Ochs, the registered owner of the vehicle. In response, Ochs laughed and looked away. After further questions from the officer, Ochs confirmed that she did not have a valid driver's license or insurance. The officer noticed that Ochs had glassy eyes, avoided eye contact, and appeared to be angry that the officer had pulled her over. The officer knew that glassy eyes can indicate impairment. He also saw that Ochs had a child in the car. This initial interaction lasted about twenty-five seconds. The officer returned to his squad car to print a citation for driving after revocation.

From his squad car, the officer observed Ochs in the driver's seat "jumping around" and acting erratically. While watching Ochs from his squad car, the officer realized that Ochs was exhibiting behaviors similar to those he observed during a previous encounter with Ochs a few months earlier. During that encounter, Ochs was intoxicated. The officer shared his concerns with his partner, and decided to confirm whether Ochs was impaired before giving her a citation for driving after revocation.

The officer approached the car and asked Ochs if she had been drinking alcohol. Ochs, while crying, denied drinking alcohol. The officer asked if she had a "single drop," and Ochs again denied drinking alcohol. The officer then performed a modified horizontal gaze nystagmus (HGN) test while Ochs was seated in her car. The officer observed that

Ochs's eyes were jerking, which indicated impairment. The officer asked Ochs to exit the car to conduct full field sobriety testing. Ochs failed field sobriety tests, and a preliminary breath test. As a result, the officer arrested Ochs for DWI.

Respondent Commissioner of Public Safety subsequently revoked Ochs's driver's license. Ochs petitioned the district court to rescind the revocation order, arguing that the officer unlawfully exceeded the initial scope of the traffic stop and therefore the revocation was unlawful. Following a hearing and after considering written memoranda and the evidence in the record, the district court sustained the revocation. The district court concluded that the expansion of the stop was supported by a reasonable, articulable suspicion that Ochs was driving while impaired and therefore was lawful.

Ochs appeals.

D E C I S I O N

Ochs challenges the district court's order sustaining the revocation of her driver's license. Ochs does not contest the validity of the initial stop for driving after revocation. Instead, Ochs argues that the district court erred in concluding that the expansion of the scope of the stop was justified by a reasonable, articulable suspicion that Ochs was driving under the influence. Ochs maintains that the district court's conclusion was based on erroneous factual findings and that the officer had no legal basis for expanding the stop.

We review de novo a district court's ruling on whether an officer had a reasonable, articulable suspicion for an investigatory stop. *Hoekstra v. Comm'r of Pub. Safety*, 839 N.W.2d 536, 539 (Minn. App. 2013); *see also Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 920 (Minn. App. 2010). We review the district court's findings of fact

for clear error and will not reverse unless this court is “left with a definite and firm conviction that a mistake has been committed.” *Jasper v. Comm’r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002) (quotation omitted). A factual finding “is not clearly erroneous if it is reasonably supported by the evidence as a whole.” *State v. Barshaw*, 879 N.W.2d 356, 366 (Minn. 2016). And we defer to district court’s credibility determinations. *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012) (citing *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989)).

Both the United States and Minnesota Constitutions protect individuals from “unreasonable searches and seizures” by the government. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. “Generally, warrantless searches are per se unreasonable.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). However, a law enforcement officer may initiate a limited investigatory traffic stop without a warrant if the officer has a reasonable, articulable suspicion of criminal activity. *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). The scope of a traffic-stop investigation must be limited to the initial justification for the stop. *Id.* Any expansion of the scope or duration of a traffic stop “must be justified by a reasonable articulable suspicion of other criminal activity.” *State v. Fort*, 660 N.W.2d 415, 419 (Minn. 2003) (quotation omitted).

The reasonable-suspicion standard is “not high.” *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011) (quotation omitted). Reasonable suspicion is a lower standard than probable cause, but it still “requires at least a minimal level of objective justification.” *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted); *see also Hoekstra*, 839 N.W.2d at 538-39. It is an objective standard that must be “determined

under the totality of the circumstances.” *Paulson v. Comm’r of Pub. Safety*, 384 N.W.2d 244, 246 (Minn. App. 1986) (citing *State v. Lande*, 350 N.W.2d 355, 357-58 (Minn. 1984)).

For a DWI investigation to be lawful, the officer must reasonably suspect that the person may have been violating the impaired-driving laws, and the officer must be able to sufficiently articulate a factual basis for his suspicion. *Paulson*, 384 N.W.2d at 246. “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) (quotation omitted), *review denied* (Minn. July 24, 2001). Officers may make assessments based on the totality of the circumstances, “appropriately relying on inferences and deductions that might elude someone without similar training.” *Wilkes v. State*, 777 N.W.2d 239, 244 (Minn. App. 2010).

In its order sustaining the revocation of Ochs’s driver’s license, the district court found that the officer observed that Ochs had glassy eyes, avoided eye contact, and appeared angry. The district court also found that the officer “observed [Ochs] flailing and demonstrating erratic behavior,” consistent with a prior encounter with the officer during which Ochs was intoxicated. Based on the totality of the circumstances, the district court concluded that “the expansion of the stop was supported by a reasonable, articulable suspicion of illegal activity and therefore was proper.” In reaching this conclusion, the district court relied on the officer’s testimony, which it found to be credible.

Ochs first argues that the district court clearly erred when it found that the officer “observed [Ochs] flailing and demonstrating erratic behavior.” Ochs’s argument lacks merit. At the hearing, the officer testified that after speaking with Ochs, he returned to his squad car to print a citation for driving after revocation. The officer further testified that while preparing the citation, the officer was able to see Ochs in her driver’s seat and observed her “jumping around” and acting erratically. The officer testified that he can see people “pretty well” and observe “a lot” when a car is parked in front of his squad car. At the time, the officer’s squad car was parked directly behind Ochs’s vehicle and the squad car’s headlights were on, illuminating Ochs’s vehicle. The officer’s testimony supports the district court’s finding that the officer observed Ochs flailing and acting erratically.

Ochs acknowledges the officer’s testimony but argues that the district court erred by finding the officer’s testimony credible. Ochs relies on the squad car video, contending that the video does not support the officer’s testimony. But Ochs does not argue and the record does not suggest that the officer’s view of Ochs from the squad car was identical to the limited perspective of the squad car video. Further, the video is not inconsistent with the officer’s testimony. The video shows Ochs moving in and out of view. After reviewing the evidence in the record, the district court found the officer’s testimony credible. Because we afford considerable deference to the district court’s credibility determination and the squad car video does not clearly contradict the officer’s testimony, we conclude that the district court’s factual finding regarding the officer’s observation of Ochs “flailing and demonstrating erratic behavior” was not clearly erroneous. *See Klamar*, 823 N.W.2d at 691 (“Deference must be given to the district court’s credibility determinations.”); *see*

also Barshaw, 879 N.W.2d at 366 (a factual finding “is not clearly erroneous if it is reasonably supported by the evidence as a whole”).

Ochs next argues that the district court erred when it concluded that the expansion of the stop was supported by a reasonable, articulable suspicion that Ochs was driving while impaired. Ochs contends that the district court’s conclusion is erroneous because the officer’s suspicion was based solely on Ochs “flailing and demonstrating erratic behavior,” which Ochs maintains is not supported by the record. According to Ochs, the officer had only a “hunch” that Ochs was driving under the influence. We are not persuaded.

First, as discussed above, the district court’s finding that the officer observed Ochs “flailing and demonstrating erratic behavior” is supported by the record. Second, the officer did not rely solely on his observation of Ochs flailing and demonstrating erratic behavior when he concluded that he had a basis to expand the stop. The officer testified to a number of facts that support a reasonable, articulable suspicion that Ochs was driving under the influence. Again, the officer testified that Ochs had glassy eyes. The officer further testified that glassy eyes can indicate impairment. The officer also observed that Ochs was trying to avoid eye contact when he first spoke with her and testified that, based on his experience, the most common reason a person avoids eye contact is if the person has been drinking or doing drugs and wants to avoid showing the officer his or her eyes. The officer further testified that when he was in his squad car completing the citation, he observed Ochs acting erratically. Based on his observations and his familiarity with Ochs from an encounter a few months earlier, the officer suspected that Ochs was impaired at the time of the traffic stop. Officers may make “inferences and deductions that might elude

someone without similar training.” *Wilkes*, 777 N.W.2d at 244. Moreover, the stop occurred on a Friday night around 9:40 p.m. *See State v. Lee*, 585 N.W.2d 378, 383 (Minn. 1998) (considering the time of day as one factor in determining whether warrantless blood test was justified by probable cause). Considering the totality of the circumstances, we conclude that the officer had a reasonable, articulable suspicion that Ochs was driving while impaired and that the district court therefore did not err in concluding that the expansion of the stop was justified.

And even if we assume that the district court’s finding regarding Ochs “flailing and demonstrating erratic behavior” was clearly erroneous, the totality of the other circumstances are more than sufficient to support the expansion of the stop. *See Otto v. Comm’r of Public Safety*, 924 N.W.2d 658, 661 (Minn. App. 2019) (noting that an officer needs only one objective indication of impairment to expand the scope of the stop) (citing *Holtz v. Comm’r of Public Safety*, 340 N.W.2d 363, 365 (Minn. App. 1983)).

In sum, we conclude that the factual findings challenged by Ochs are not clearly erroneous. We further conclude that the district court did not err in its determination that the officer had a lawful basis to expand the stop.

Affirmed.