

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1538**

State of Minnesota,
Respondent,

vs.

Michael James Swanson,
Appellant.

**Filed September 11, 2023
Affirmed
Ross, Judge**

Sibley County District Court
File No. 72-CR-21-178

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kenneth G. Janssen, Gaylord City Attorney, Gavin, Janssen & Stabenow, Ltd., Glencoe,
Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Ross, Judge; and Cleary,
Judge.*

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

NONPRECEDENTIAL OPINION

ROSS, Judge

A police officer stopped behind Michael Swanson's parked car after learning from convenience-store employees that Swanson had just been in the store loudly making aggressive and vulgar comments to one of the employees before driving away drunk. The officer asked Swanson to submit to field sobriety testing, and Swanson refused. The officer arrested Swanson and searched the car, discovering a half-empty bottle of liquor near the driver's seat. The state charged Swanson with driving while intoxicated and with unlawfully possessing an open container of alcohol. Swanson unsuccessfully moved to suppress evidence obtained from the stop, arguing that the officer lacked reasonable suspicion to stop him. Because we hold that a reasonable officer would have suspected that Swanson was driving while intoxicated, we affirm.

FACTS

Gaylord police officer James Volk and Sibley County sheriff's deputy Anthony Daily responded in July 2021 to Casey's General Store to a report that a man was harassing one of the store's employees. Officer Volk spoke with the store's manager and a cashier at about 10:00 p.m. The manager told the officers that the man entered the store "drunk all the frickin time" and "rais[ing] heck" with the employees while frequently targeting a particular cashier. The manager explained that the man so frightened the cashier that she would retreat to the kitchen whenever the man entered. The manager and cashier told the officers that the man had come into the store twice that evening. The manager said that the man told the cashier that he "wanted to bend her over and f--k the s--t out of her in the

store.” The cashier told the officers that, after she told the man to leave, “he started raising his voice, not really making much sense [because] like I said he is drunk and so he’s just slurring his words . . . and saying ‘f--k you, you’re a bitch.’” She repeated her concern about his condition, reporting that “tonight he’s just . . . drunk and he’s driving.”

The cashier told the officers that the man was yelling and that the manager told him to leave the store because he was “disrupting [the] peace.” They showed the officers a photo of the man’s identification card, which he had left in the store on a previous encounter, and they informed them of the man’s personalized license plate number. The identification belonged to appellant Michael Swanson, and the plate was registered to a black Mercedes-Benz. The cashier told the officers the direction Swanson was driving:

Cashier: I believe he went that way.

Daily: Kay.

Cashier: He is also very much so intoxicated right now and driving.

. . . .

Daily: Just wanted to kinda get the gist of what made you think that he was intoxicated but when I was coming up here it sounds like he was slurring

Volk: Yup.

Cashier: Yeah, and he’s just very

Daily: Stumbling?

Cashier: Yeah, stumbling; very loud.

The officers left to locate Swanson. Officer Volk found the black Mercedes-Benz parked in an alley one-half of a mile from the store. The officer stopped behind the Mercedes and activated his squad car’s emergency lights. Swanson exited the car angry, yelling, and walking toward the officer. Officer Volk noticed that Swanson was stumbling and slurring his speech. He smelled the odor of an alcoholic beverage on Swanson. Officer

Volk asked Swanson to submit to field sobriety testing, but Swanson refused. He arrested Swanson and then searched his car, where he found a half-empty bottle of Cognac.

The state charged Swanson with second-degree driving while intoxicated based on his chemical-test refusal and unlawful possession of an open bottle of alcohol in a motor vehicle. Swanson moved to suppress all evidence obtained from the stop, arguing that the officer lacked reasonable suspicion to stop the car or ask Swanson to undergo sobriety testing. The district court held a contested omnibus hearing, where Swanson and the state stipulated to the admissibility of the audio recording of the Casey's employees reporting their encounter with Swanson to Officer Volk and Deputy Daily. The district court also heard testimony from Officer Volk. It then denied Swanson's motion to suppress, holding among other things that Officer Volk had reasonable suspicion to stop Swanson based on the report that Swanson had been harassing and threatening the cashier. The district court did not discuss the employees' report of Swanson's drunk driving.

The state dismissed the open-bottle charge, and the case proceeded to a bench trial. The district court found Swanson guilty of second-degree driving while intoxicated. The district court convicted Swanson and sentenced him to two years of supervised probation. Swanson appeals.

DECISION

Swanson appeals his conviction, arguing only that the district court erroneously held that the stop of his car was constitutionally valid. The argument fails.

Although Swanson bases his appeal only on the district court's express basis for its decision that the officer had reasonable suspicion to stop his car—harassment and threats—

we do not so limit our consideration. We review the district court's factual findings underlying its decision on a motion to suppress for clear error, but we review the district court's legal conclusions *de novo*. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). We reject Swanson's attempt to limit our review. We observe at the outset, however, based on acknowledgements made by counsel during the parties' oral argument in this appeal, that the issue of reasonable suspicion would not likely have been a subject of appeal if the prosecutor had more clearly presented, and the district court and the parties had directly addressed, the most apparent basis for reasonable suspicion—impaired driving—during the omnibus hearing.

At the heart of our review is a person's constitutional right to be free of certain government intrusions. The United States and Minnesota Constitutions prohibit unreasonable searches and seizures, and warrantless searches or seizures are presumed unreasonable. U.S. Const. amend. IV; Minn. Const. art. I, § 10. But an officer may, without a warrant, perform an investigatory stop of a vehicle if he has a reasonable, articulable suspicion of criminal activity. *State v. Pike*, 551 N.W.2d 919, 921–22 (Minn. 1996) (citing *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968)). Swanson's contention that we are limited to the district court's rationale and fact findings miscomprehend the nature of the constitutional right. The Fourth Amendment prohibits officers from effecting “unreasonable . . . seizures.” U.S. Const. amend. IV. And “the Fourth Amendment's concern with ‘reasonableness’ allows certain actions to be taken in certain circumstances, *whatever* the subjective intent.” *Whren v. United States*, 517 U.S. 806, 814 (1996). For this reason, “[s]ubjective intentions play no role in ordinary, probable-cause Fourth

Amendment analysis,” *id.* at 813, and the same is so in ordinary, reasonable-suspicion analysis, *United States v. Knights*, 534 U.S. 112, 122 (2001). We apply this objective standard here.

For that reason, we do not limit our review to the explanation the officer articulated as the basis for the stop. As the United States Supreme Court explained, “the constitutional reasonableness of traffic stops” cannot turn on “the actual motivations of the individual officers involved.” *Whren*, 517 U.S. at 813; *see also Knights*, 534 U.S. at 122 (extending *Whren*’s objective test to reasonable suspicion review). Although appellate courts frequently consider the actually *articulated* rationale that the seizing officer relied on for the stop, *see, e.g., State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011), the more accurately described objective test is “whether a reasonable, *articulable* suspicion exists *from the perspective of a trained police officer*.” *State v. Lemert*, 843 N.W.2d 227, 230 (Minn. 2014) (emphasis added). For that reason, “[i]t is enough that *a law enforcement officer can articulate* specific facts which, taken together with rational inferences from those facts, objectively support the officer’s suspicion.” *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016) (emphasis added). We are not restricted to the officer’s stated rationale in our review.

And because our review of the district court’s decision is *de novo*, in addition to being based on objective analysis, we do not limit our review to the reason the district court relied on when it determined the stop’s validity. We demonstrated this approach in *State v. Poehler*, 921 N.W.2d 577 (Minn. App. 2018), *aff’d*, 935 N.W.2d 729 (Minn. 2019). In *Poehler*, we recognized that the district court deemed a traffic stop constitutional on an invalid ground. 921 N.W.2d at 582. But based on the *de novo* nature of our review and the

objective framing of our analysis, we explained, “Although Officer Giese lacked reasonable suspicion to stop Poehler for having a vision-impairing cracked windshield, and the district court mistakenly validated the stop on that ground, the officer nevertheless had reasonable suspicion to stop him for not wearing his seat belt.” *Id.* We are not restricted to the district court’s stated rationale in our review.

The district court received as evidence in the omnibus hearing the audio recording of the Casey’s employees’ report to the officers and the transcript of the discussion. The parties stipulated to the admissibility of this evidence at that hearing, and it was admitted without redaction. The recording is an undisputed fact establishing what the officers were told. And based on the content of the recording and the circumstances related to it, we are confident that a trained police officer would reasonably suspect that Swanson had engaged in driving while impaired. An informant’s tip with sufficient “indicia of reliability” will justify a traffic stop. *Olson v. Comm’r of Pub. Safety*, 371 N.W.2d 552, 556 (Minn. 1985). The supreme court has held that reasonable suspicion of drunk driving existed on far less compelling facts than we have here. *City of Minnetonka v. Shepherd*, 420 N.W.2d 887, 888, 891 (Minn. 1988). In *Shepherd*, the court held that police had “sufficient information to reasonably suspect that the driver of the car in question was intoxicated” after a gas-station attendant called police near midnight and reported “that he had observed an intoxicated driver leave the gas station heading north on Williston Road in a white Honda with Minnesota license plate No. NKD 098.” *Id.* (emphasis omitted). Here police learned much more. They were told that Swanson frequently entered the store drunk and that he was drunk that night, that he had slurred speech, that he was loud, that he was belligerent,

and that he was vulgar and confrontational. Officer Volk then found the car the witnesses said Swanson was driving stopped in an alley within minutes of the report. We hold that these circumstances afforded the officer reasonable suspicion to seize Swanson and investigate whether Swanson had been driving drunk. We therefore need not consider Swanson's contention that his conduct in the store falls short of criminal harassment, criminal threats, or disorderly conduct.

We are not persuaded to a different conclusion by Swanson's argument that, because the state relied only on a theory of reasonable suspicion of disorderly conduct during the omnibus hearing in the district court, it cannot rely on reasonable suspicion of driving while intoxicated when urging us to affirm the district court's decision denying Swanson's motion to suppress. An appellate court may affirm a district court's order on alternative grounds when "there are sufficient facts in the record for the appellate court to consider the alternative theories, there is legal support for the arguments, and the alternative grounds would not expand the relief previously granted." *State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003); *see also* Minn. R. Crim. P. 29.04, subd. 6 ("The court may permit a party, without filing a cross-petition, to defend a decision or judgment on any ground that the law and record permit that would not expand the relief that has been granted to the party.") The law and the record support our holding that reasonable suspicion of impaired driving existed before the stop. And affirming on that ground would not expand the relief granted. We reject Swanson's effort to foreclose the impaired-driving rationale for the stop.

Affirmed.