

*This opinion is nonprecedential except as provided by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
A23-0475**

State of Minnesota,
Respondent,

vs.

Eric Anthony Klaysmat,
Appellant.

**Filed January 22, 2024
Affirmed in part, reversed in part, and remanded
Reilly, Judge***

St. Louis County District Court
File No. 69HI-CR-17-949

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

Kimberly J. Maki, St. Louis County Attorney, Jeffrey Vlatkovich, Assistant County Attorney, Hibbing, Minnesota (for respondent)

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Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Reilly, Judge.

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

NONPRECEDENTIAL OPINION

REILLY, Judge

In this direct appeal from a final judgment of conviction for second-degree driving while impaired (DWI)-test refusal, appellant challenges the district court's denial of his pretrial motion to suppress evidence and dismiss the complaint. He argues that the information provided by the unidentified 911 callers lacked sufficient indicia of reliability to give the police officer reasonable, articulable suspicion for the traffic stop. We conclude that the callers' tips contained sufficient indicia of reliability. We also conclude that the district court erred by imposing a 365-day sentence for a gross misdemeanor. Thus, we affirm in part, reverse in part, and remand.

FACTS

Respondent State of Minnesota charged appellant Eric Anthony Klaysmat with four counts: (1) second-degree DWI; (2) third-degree DWI; (3) obstructing legal process; and (4) driving after revocation.¹ The following summarizes the relevant procedural history, the district court's factual findings, and the evidence received during the omnibus hearing.

On December 23, 2017, around 10:30 p.m., the officer received a notification from dispatch that two 911 callers reported that a silver "SUV-style" vehicle was traveling on highway 169 from Buhl "with no illuminated headlights" and "swerving between the lanes of traffic." The officer did not receive any identifying information about the callers.

¹ During the jury trial, the state moved to dismiss count four, driving after revocation, and the district court dismissed the charge accordingly.

The officer was stationed “just off the east entrance to Chisholm and began watching oncoming traffic” from highway 169. The officer “observed a vehicle, matching the description of the suspect vehicle, turn into Chisholm.” The vehicle, a silver SUV, was followed by two other vehicles whose drivers “had their windows open, pointed at the SUV, and yelled to the [o]fficer that the silver SUV was the vehicle-in-question.” The SUV “pulled over to the shoulder of the roadway,” and the officer “situated his squad car about fifteen feet behind the silver SUV and activated his emergency lights.” The SUV “then pulled back onto the roadway and into traffic.”

The officer “activated his siren and began to follow the silver SUV.” The SUV traveled about “one-half to one block” before it “pulled over again.” The officer stopped behind the SUV which “pulled away once more and continued traveling on the shoulder of the road for approximately one and one-half to two blocks.” The driver of the SUV also began motioning for the officer to go around him. At no point did the officer observe the SUV “swerve between driving lanes.” Eventually, the SUV came to a stop on the shoulder, and the officer initiated a traffic stop. The officer identified the SUV driver as Klaysmat.

In June 2019, Klaysmat moved to suppress evidence and dismiss the complaint, arguing that the officer “had no legitimate basis for the stop of [Klaysmat’s] vehicle.” The state opposed Klaysmat’s motion. The district court held an omnibus hearing on Klaysmat’s motion, during which the officer testified. In a July 2019 order, the district

court denied Klaymat's motion to suppress and dismiss, determining that the officer "had reasonable articulable suspicion to justify a traffic stop."²

The case went to a jury trial in November 2022, and the jury found Klaymat guilty of second-degree DWI, third-degree DWI, and obstructing legal process. The district court convicted Klaymat of second-degree DWI and sentenced him to 365 days in jail.³

Klaymat appeals.

DECISION

Klaymat challenges the district court's order denying his motion to suppress and dismiss, arguing that the officer "lacked reasonable articulable suspicion" to stop Klaymat's SUV. When reviewing a pretrial order on a motion to suppress, appellate courts review the district court's factual findings for clear error and its legal conclusions de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). Appellate courts independently

² Klaymat's motion to suppress and dismiss also argued that "his arrest" and "the request that [he] submit to [chemical] testing" were unlawful. In its order denying Klaymat's motion, the district court determined that the officer "possessed sufficient probable cause to arrest [Klaymat] for driving under the influence and to request a breath test." Klaymat does not challenge the district court's probable-cause determination on appeal.

³ In 2023, the legislature enacted Minnesota Statutes section 609.0342 which provides that "[a]ny law of this state that provides for a maximum sentence of imprisonment of one year or is defined as a gross misdemeanor shall be deemed to provide for a . . . maximum sentence of imprisonment of 364 days." 2023 Minn. Laws ch. 52, art. 6, § 6, at 736-37. Because this law applies retroactively, Klaymat's sentence should be reduced to 364 days. *Id.* Though neither party discussed this sentencing issue, "it is the responsibility of appellate courts to decide cases in accordance with law" irrespective of the parties' "oversights, lack of research, [or] failure to specify issues or to cite relevant authorities." *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (quotation omitted); *see also State v. Maurstad*, 733 N.W.2d 141, 147-48 (Minn. 2007) (stating that a defendant cannot waive or forfeit review of an illegal sentence).

review the undisputed facts to determine whether the district court erred as a matter of law by not suppressing the evidence. *Id.*

The United States and Minnesota Constitutions protect an individual's right against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "Searches and seizures conducted without warrants are presumptively unreasonable." *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016). An officer may, however, "conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). To meet the reasonable, articulable suspicion standard, an officer must "show that the stop was not the product of mere whim, caprice or idle curiosity, but was based upon 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996) (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). The threshold for meeting this standard is not high. *Timberlake*, 744 N.W.2d at 393. Appellate courts "review the events surrounding the stop and consider the totality of the circumstances in determining whether the police had a reasonable basis justifying the stop." *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

The factual basis for an investigatory stop of a vehicle "need not arise from the officer's personal observation but may be supplied by information acquired from another person." *Marben v. State, Dep't of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980). An informant's tip must have "sufficient indicia of reliability." *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). Tips from private-citizen informants are presumed

reliable, particularly “when informants give information about their identity so that the police can locate them if necessary.” *State v. Davis*, 732 N.W.2d 173, 182-83 (Minn. 2007).

The district court determined that “based on the reliable informant reports along with the [o]fficer’s own observations of [Klaysmat’s] driving conduct (i.e., [Klaysmat] repeatedly pulled away from [the officer] despite the use of [the officer’s] emergency lights),” the officer “had reasonable articulable suspicion to initiate a traffic stop” of Klaysmat’s SUV. The district court determined that the 911 callers “were reliable” based on “the specific nature” of their reports and “because their reports corroborated one another.”

In his brief to this court, Klaysmat argues that “[b]ecause the [911] callers’ information lacked sufficient indicia of reliability,” the officer “did not have reasonable articulable suspicion” for the stop. Klaysmat argues that “there is no identifying information in this case about the callers,” and the callers provided “no information about the precise location of [their] observations” of Klaysmat’s SUV, “no information about how long they observed the SUV,” and no “predictive information that [the officer] could verify.” The state argues that the 911 callers were reliable because they “gave specific information describing traffic violations,” gave a “report of where they were,” and “showed up following and pointing out [Klaysmat’s] vehicle.”

We agree with the state that the 911 callers’ tips contained sufficient indicia of reliability. In deciding whether information provided by an informant is reliable, appellate courts “look both at the informant and the informant’s source of information and judge them against all of the circumstances.” *G.M.*, 560 N.W.2d at 691 (quotation omitted); *see*

also *Jobe v. Comm'r of Pub. Safety*, 609 N.W.2d 919, 921 (Minn. App. 2000) (noting that “Minnesota cases dealing with traffic stops based on informant tips have focused mainly on two factors: (1) identifying information given by the informant, and (2) the facts that support the informant’s assertion”).

As to the informants, the officer acknowledged that dispatch did not give him the names or identifying information of the two 911 callers. The supreme court in *Davis*, however, held that a brief “face-to-face confrontation” between an officer and an informant, while the informant was “driving a car from which his identity might easily be traced” meant that “the informant was in a position to be held accountable for his intervention.” *State v. Davis*, 393 N.W.2d 179, 181 (Minn. 1986) (quotation omitted). In *Davis*, the supreme court concluded that a traffic stop was lawful when an informant leaned out her car window, motioned toward the vehicle behind her, and yelled to an officer that the vehicle had run a red light. *Id.* at 180.

The officer here observed a “vehicle matching the description” from dispatch and saw “two cars following directly behind that vehicle” with their windows down. The drivers were “pointing out the window” and yelling that the vehicle in front of them “was the vehicle in question.” The drivers’ behavior suggests that they were the two 911 callers, and like in *Davis*, their face-to-face confrontation with the officer makes them more accountable. Moreover, the callers’ use of the 911 system is “[a]nother indicator of veracity.” *Navarette v. California*, 572 U.S. 393, 400 (2014). While 911 calls are not per se reliable, the 911 system has “features that allow for identifying and tracing callers, and thus provides some safeguards against making false reports with immunity.” *Id.* at 400. As a

result, although the officer lacked information about the callers' identities, the callers' face-to-face encounter with the officer and use of the 911 system contribute to their reliability.

We next consider the information provided by the callers. The officer received information from dispatch that two 911 callers saw a "silver-colored SUV" that had no headlights on and was swerving all over the road. Dispatch relayed that the callers indicated the SUV was on highway 169 coming from Buhl. When the officer saw the SUV, its headlights were on, and the officer did not see any swerving.

"Stops based upon informant's tips have been found valid upon a showing that there was a basis for the informant's knowledge." *Playle v. Comm'r of Pub. Safety*, 439 N.W.2d 747, 748 (Minn. App. 1989). The 911 callers' descriptions of Klaysmat's SUV, its location, and Klaysmat's specific driving infractions, together with physically pointing at Klaysmat's SUV, show "eyewitness knowledge of the alleged dangerous driving," which "lends significant support to the tip's reliability." *Navarette*, 572 U.S. at 399. Indeed, Minnesota appellate courts have repeatedly concluded that an investigatory stop was lawful when the informant's tip was based on personal observations. *See City of Minnetonka v. Shepherd*, 420 N.W.2d 887, 891 (Minn. 1988); *Magnuson v. Comm'r of Pub. Safety*, 703 N.W.2d 557, 562 (Minn. App. 2005); *Jobe*, 609 N.W.2d at 922-23.

The officer's corroboration of the callers' descriptions of Klaysmat's SUV and its location, as well as the callers' proximity to Klaysmat's SUV, further enhances the reliability of the callers' tips. *See Marben*, 294 N.W.2d at 699 (stating that "the reliability of the [informant's] information" was "enhanced" when "the trooper was able to verify

that the [informant] was in the area, and in close proximity to the subject car”). Because the 911 callers’ information was based on personal observations and was corroborated in part by the officer, the information was sufficiently reliable.

Klaysmat contends that “[t]he facts of this case are similar to those in *Olson v. Comm’r of Pub. Safety*, 371 N.W.2d 552 (Minn. 1985).” We disagree. In *Olson*, dispatch informed officers that an anonymous caller reported “having observed a possible drunk driver” and gave “a location and description of the car.” 371 N.W.2d at 556. The officers stopped the alleged drunk driver after following him “for about half a mile, during which time they noticed no erratic driving.” *Id.* at 553. The supreme court held that the officers lacked reasonable suspicion for the stop because there were no “minimal specific and articulable facts from the anonymous caller to support the caller’s bare assertion of a possibly drunk driver.” *Id.* at 556. The supreme court concluded that there was “a complete lack of even the most minimal indicia of reliability for the anonymous tip.” *Id.*

Here, by contrast, the 911 callers supplied more than a bare assertion, specifying that Klaysmat was driving without his headlights on and swerving all over the road. Both driving behaviors observed by the callers would give an officer reasonable suspicion to conduct a traffic stop. *See* Minn. Stat. § 169.48, subd. 1(a)(1) (2016) (requiring vehicle headlights to be turned on “at any time from sunset to sunrise”); Minn. Stat. § 169.13, subds. 1, 2 (2016) (prohibiting reckless or careless driving). In addition, while the officer did not receive any identifying information about the 911 callers, they had a face-to-face confrontation in which the 911 callers pointed at Klaysmat’s SUV and stated it was the vehicle in question. This face-to-face confrontation distinguishes the 911 callers from the

anonymous caller in *Olson*. For these reasons, Klaymat's comparison to *Olson* is unpersuasive.

In sum, we affirm the district court's denial of Klaymat's motion to suppress and dismiss because the 911 callers' tips contained sufficient indicia of reliability and provided reasonable suspicion for the stop. We reverse Klaymat's 365-day sentence and remand for the district court to impose a sentence of 364 days consistent with the legislature's definition of a gross misdemeanor as providing for a maximum sentence of 364 days.

Affirmed in part, reversed in part, and remanded.