

*This opinion is nonprecedential except as provided by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
A23-0518**

Shane Todd Orth, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed August 14, 2023
Affirmed
Connolly, Judge**

Cass County District Court
File No. 11-CV-22-1008

Rich Kenly, Kenly Law Office, Backus, Minnesota (for appellant)

Keith Ellison, Attorney General, Madeline M. Sheehy, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Johnson, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

On appeal from the district court's order denying appellant's petition to rescind the revocation of his driver's license, appellant argues that the district court erred in finding that the deputy had reasonable, articulable suspicion to stop appellant's vehicle based on a police bulletin that a vehicle similar to appellant's was involved in a crime. We affirm.

FACTS

In May 2022, respondent Commissioner of Public Safety (commissioner) revoked appellant Shane Orth's driver's license after he was arrested for driving while impaired (DWI). Orth subsequently petitioned to rescind the revocation of his license under Minn. Stat. § 169A.53, subd. 2(a) (2020), arguing that law enforcement lacked reasonable, articulable suspicion to initiate a traffic stop of Orth's vehicle.

At the hearing on Orth's petition, a deputy sheriff testified that he was on patrol on May 26, 2022, when he received a text bulletin on his squad-car computer from a neighboring county regarding an assault. The bulletin report read as follows:

TXT/ATTEMPT TO LOCATE 2 BLACK MALES WHO ASSAULTED A PARTY WITH A PISTOL, LAST KNOWN WEARING BLUE JEANS AND WHITE TANK TOPS, DRIVING A OLDER STYLE SQUARE BODY SUBURBAN WITH FANCY RIMS, ONE MALE PARTY IS DESCRIBED AS HAVING A LARGE TATOO ON HIS ARM AND WEARING DIAMOND EARRINGS, GUN IS DESCRIBED AS A BROWN HANDGUN SIMILAR TO A GLOCK, POSSIBLY FROM BACKUS OR PINE RIVER AREA, POSSIBLY HEADED TO THE NORTHERN LIGHTS, IF LOCATED PLEASE STOP, HOLD, AND CONTACT OUR AGENCY THANK YOU, UPDATE BLACK SUBURBAN.

The deputy also testified that he was aware that a similar suspect vehicle had been involved in an assault in the area a few days earlier.

The deputy testified that later in the evening on May 26, around midnight, he and his partner observed a Suburban parked at a bar that matched the description of the suspect vehicle described in the bulletin. The deputy and his partner parked their vehicles in the parking area where they were able to observe the front of the bar. About ten minutes later,

the deputy observed the Suburban leave the bar. The deputy followed the vehicle and initiated a traffic stop based on suspicion that it was the suspect vehicle involved in the recent assaults. Orth was subsequently arrested on suspicion of DWI.

The district court determined that there was sufficient reasonable suspicion to conduct an investigatory stop of Orth's vehicle because the "stop was based on articulable facts that a vehicle, similar to the general description of [Orth's S]uburban, was involved in a crime committed nearby." Thus, the district court denied Orth's request to rescind the order revoking his driver's license. This appeal follows.

DECISION

This court reviews the district court's findings supporting an order sustaining a license revocation for clear error. *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002). Due regard is given to the district court's opportunity to judge the credibility of witnesses, and findings of fact will not be set aside unless clearly erroneous. *Thorud v. Comm'r of Pub. Safety*, 349 N.W.2d 343, 344 (Minn. App. 1984). Findings of fact are not clearly erroneous if there is reasonable evidence to support them. *Schulz v. Comm'r of Pub. Safety*, 760 N.W.2d 331, 333 (Minn. App. 2009), *rev. denied* (Minn. Apr. 21, 2009). We review a district court's determination regarding the legality of an investigatory traffic stop and questions of reasonable suspicion de novo. *Wilkes v. Comm'r of Pub. Safety*, 777 N.W.2d 239, 242-43 (Minn. App. 2010).

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "But an officer does not violate the prohibition if she stops a vehicle to conduct an investigation based on the

officer's reasonable suspicion that the driver is engaging in criminal activity.” *Soucie v. Comm’r of Pub. Safety*, 957 N.W.2d 461, 463-64 (Minn. App. 2021), *rev. denied* (Minn. June 29, 2021). “Reasonable suspicion must be ‘particularized’ and based on ‘specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.’” *State v. Taylor*, 965 N.W.2d 747, 752 (Minn. 2021) (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). The reasonable-articulable-suspicion standard is not high but requires at least a minimal level of objective justification for making the stop. *Id.* at 757-58.

Police may make a *Terry* stop to investigate a past felony crime based on a police bulletin, provided that the bulletin was “issued on the basis of articulable facts supporting a reasonable suspicion.” *United States v. Hensley*, 469 U.S. 221, 232 (1985); *State v. Rosse*, 478 N.W.2d 482, 484 (Minn. 1991). Police bulletins can support a stop “to check identification, to pose questions to the person, or to detain the person briefly while attempting to obtain further information.” *Hensley*, 469 U.S. at 232 (citation omitted).

Here, Orth acknowledges that the stop was based solely on the bulletin. But he asserts that his Suburban did not match the description of the Suburban in the bulletin because his Suburban did not have an older-style body or fancy rims. Thus, Orth argues that the stop was unlawful.

We are not persuaded. Minnesota courts have consistently upheld investigatory stops when the stopped vehicle varies somewhat from the description provided to law enforcement. For example, in *State v. Waddell*, the Minnesota Supreme Court upheld the stop of a dirty Pontiac station wagon despite the fact that the vehicle's color and number

of occupants were not identical to the description officers had of the suspect vehicle. 655 N.W.2d 803, 810 (Minn. 2003). A witness had reported seeing a dark General Motors station wagon in the parking lot of a convenience store in which a shooting subsequently took place. *Id.* at 806-07. Later, dispatched updates indicated that the vehicle was “a dark blue or black station wagon—possibly a Chevrolet Celebrity—with three black males inside.” *Id.* at 807.

Approximately two-and-one-half hours later and roughly six to eight miles from the convenience store, an officer observed “a ‘darker colored real dirty station wagon similar to a Chevy Celebrity.’” *Id.* The vehicle was in fact a silver-gray, but its color was obscured by winter road salt. *Id.* at 809-10. The vehicle was stopped, and Waddell was subsequently convicted in connection with the shooting. *Id.* at 807-08. Waddell challenged the legality of the stop on the basis that the vehicle description was too general to warrant an investigatory stop. *Id.* at 808-09. The supreme court concluded that the officer had reasonable, articulable suspicion to stop the Pontiac and observed, “[g]iven that considerable discretion will be given to an officer’s decision to conduct an investigatory stop, the decision to stop a vehicle very similar in body style but slightly lighter in color cannot be considered mere caprice or whim.” *Id.* at 810.

Similarly, in *State v. Yang*, the supreme court upheld the stop of a “dark-blue Honda Civic hatchback” when the suspect vehicle was a “black four-door Honda-type vehicle.” 774 N.W.2d 539, 549, 552 (Minn. 2009). The officer who performed the stop “testified that he thought the [hatchback] matched the description of the suspect vehicle.” *Id.* at 552. The supreme court upheld the denial of the motion to suppress, concluding that “[w]hile a

Honda Civic hatchback is different in size and style than a Honda Accord, both Hondas have somewhat similar shapes in comparison to other brands of vehicles.” *Id.*

Here, like in *Yang* and *Waddell*, Orth’s Suburban does not fit the exact description as the Suburban described in the bulletin. For example, the record indicates that Orth’s Suburban has more of a “rounder style.” In contrast, the Suburban described in the bulletin is “AN OLDER STYLE SQUARE BODY SUBURBAN.” Moreover, Orth’s son testified that Orth’s Suburban has “stock aluminum rims,” which is not consistent with the “FANCY RIMS” described in the bulletin.

However, the differences between Orth’s black Suburban and the black Suburban described in the bulletin are not significant enough to make the stop unreasonable. Orth’s vehicle was the same color, make, and model of the vehicle described in the bulletin. And according to the deputy, the Suburban had “what appear[ed] to be polished rims,” which is consistent with the bulletin’s description of the “Fancy Rims” on the suspect Suburban. Orth’s Suburban fits the general description of the Suburban described in the bulletin. This is enough to make the stop reasonable under *Yang* and *Waddell*.

Orth also contends that the stop was unlawful because he “did not fit the description of those sought by the bulletin which specified 2 black males, not a single, older, grey-haired white man.” (Emphasis and quotations omitted.) Indeed, Orth is correct that he did not fit the description of the suspects described in the bulletin. But the deputy specifically testified that he had “no idea” who was driving the Suburban that left the bar. The district court found this testimony to be credible and we defer to this credibility determination. *See*

Thorud, 349 N.W.2d at 344 (stating that due regard is given the district court’s opportunity to judge the credibility of witnesses).

Orth further argues that the deputy should have known who was driving the Suburban before he stopped it because Orth is the registered owner of the vehicle. But the deputy testified that he did not recall running the license plates before he stopped the Suburban, and claimed that he was not sure if his partner “ran” the plates. And the deputy testified that, based on his experience, “it is very common for vehicles to be registered to somebody else or people who borrow their vehicles to other people that use it and then they—you know, they get it back.” Again, the district court found the deputy’s testimony to be credible and we must defer to this determination. *See id.*

Finally, Orth argues that the district court should not have found the deputy’s testimony to be credible because a phone call made after the arrest demonstrates that the deputy “was not truthful when he gave testimony of not knowing who the bulletin was looking for,” and that the deputy “used the bulletin as a basis for the stop of [Orth].” To support his position, Orth refers to the squad-car video, and a transcript of the video, that captured a phone conversation in which the deputy discusses the individuals identified in the bulletin. But as the commissioner points out, the transcript of the squad-car video, which Orth included in his addendum, is not part of the record below. *See Minn. R. Civ. App. P. 110.01* (stating that the record on appeal consists of “documents filed in the [district] court, the exhibits, and the transcript of the proceedings”). As such, we decline to consider it. *See MacDonald v. Brodkorb*, 939 N.W.2d 468, 474 (Minn. App. 2020) (“We

generally will not consider matters outside the record on appeal or evidence not produced and received in the district court.”).

Moreover, the conversation captured on the squad-car video does not support Orth’s position. In the conversation, the deputy talks about a potential suspect in the assault described in the bulletin. He then discusses the stop of Orth’s Suburban, stating: “[T]he one we thought it was ended up . . . not being the one Turned out to be similar looking, but not associated at all [E]nded up just being a local guy at the bar.” Although the deputy speculates about the assault suspect in the conversation, there is no indication that he definitively knew the identity of the suspect in the assault. As such, there is nothing in the squad-car video conversation that is inconsistent with the deputy’s testimony, nor is there anything in the conversation that would indicate that the deputy’s testimony was untruthful. And even if the squad-car video was inconsistent with the deputy’s testimony, the district court made a credibility determination, finding the deputy’s testimony to be credible. As stated above, we defer to that determination. *See Thorud*, 349 N.W.2d at 344.

In sum, there is no evidence in the record indicating that the deputy saw the driver of the Suburban, or knew his identify, before executing the traffic stop. In addition, the stop was reasonable under *Yang* and *Waddell* because the record reflects that Orth’s Suburban fit the general description of the suspect vehicle described in the bulletin. Accordingly, the district court did not err in denying Orth’s petition to rescind his license revocation.

Affirmed.