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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1397**

State of Minnesota,
Respondent,

vs.

Keith Ashely Doering,
Appellant.

**Filed August 26, 2024
Affirmed
Smith, Tracy M., Judge**

McLeod County District Court
File No. 43-CR-21-1364

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

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

Charles A. Ramsay, Daniel J. Koewler, Ramsay Law Firm, P.L.L.C., Roseville, Minnesota
(for appellant)

Considered and decided by Slieter, Presiding Judge; Bjorkman, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from a final judgment of conviction for third-degree driving while
impaired (DWI)—test refusal, appellant Keith Ashely Doering argues that the district court

erred by denying his pretrial motion to suppress evidence because he was unlawfully seized without reasonable, articulable suspicion of criminal activity. We affirm.

FACTS

Doering challenges the district court's pretrial order denying his motion to suppress evidence obtained during an investigatory stop and to dismiss the complaint. At the suppression hearing, the district court received into evidence an audio recording of a 911 call, testimony from responding officer Deputy Jonathan Robbin, Deputy Robbin's squad-car video, a computer-aided dispatch (CAD) entry related to the investigatory stop, and an aerial map of Doering's residence. This evidence established the following facts.

On August 9, 2021, around 11:30 p.m., a woman driving in McLeod County called 911 to report "an accident" at a residence. The woman reported that a vehicle, which she thought was an all-terrain vehicle (ATV), was lying on its side at the end of the driveway. The woman informed dispatch that she was pulling up to the driveway and that another vehicle was already pulled over; she speculated that the occupants of that vehicle had witnessed the accident.

When the woman got out of her vehicle to see if anyone was around the ATV, an occupant of the other vehicle warned her to "get back in [her] vehicle." After speaking with the occupants for about 20 seconds, the woman told dispatch, "Apparently, the guy is really, really drunk. He just ran from his [ATV]." After observing the man get onto a tractor, the woman stated, "I'm gonna back up here. I don't want to get hit by him if he's really drunk." The woman described the man as wearing shorts with no shirt.

The woman identified herself and provided her telephone number to the 911 dispatcher. Thereafter, the woman continued to relay her observations, stating that the man got off the tractor and connected it to the ATV, using the tractor to lift the ATV back onto its wheels. The woman added, "He's definitely like really panicking though. He's like running everywhere." It did not appear to the woman that the man was injured, unless he was "in shock." The call ended as the woman saw a squad car parking behind her vehicle.

The squad car was operated by Deputy Robbin, who had been dispatched to the residence. Dispatch had informed Deputy Robbin about the details of the 911 call, including that a man had crawled out of a rolled-over ATV near the residence and that the man was wearing shorts with no shirt and was "possibly drunk." Dispatch also provided Deputy Robbin with the CAD entry, which included the 911 caller's name, date of birth, and telephone number. Deputy Robbin testified that, at that point, based on the information he received from dispatch, he did not have a suspicion of criminal activity.

When Deputy Robbin arrived at the residence, it was dark and rainy, and he activated his squad car's lights. After initially parking behind the 911 caller's vehicle, Deputy Robbin moved his squad car closer to the driveway. Another parked vehicle nearby then drove away.

Deputy Robbin saw an ATV on its wheels at the end of the driveway, partially in the ditch. He also observed a man wearing shorts with no shirt who was covered in dirt. The man got onto a tractor and drove away from the ATV, toward the house. Deputy Robbin got out of his squad car and walked up the driveway. He watched as the man parked

the tractor near a large shed on the property and then tripped over a piece of farm equipment.

Deputy Robbin called out to the man, who was still by the shed, to “come here a minute.” The man complied, and Deputy Robbin identified the man as Doering. While speaking with Doering, Deputy Robbin smelled the odor of alcohol coming from Doering. Deputy Robbin testified that he had a suspicion of criminal activity after observing the man driving the tractor.

Later, respondent State of Minnesota charged Doering with third-degree DWI—test refusal, alleging that Doering refused to submit to a blood or urine test as required by a search warrant obtained after the investigatory stop. Doering moved to suppress the evidence obtained during the investigatory stop and to dismiss the complaint. The district court denied the motion. A jury found Doering guilty of third-degree DWI—test refusal. The district court entered judgment of conviction for that offense, stayed imposition of sentence, and placed Doering on probation for two years.

Doering appeals.

DECISION

Doering argues that Deputy Robbin lacked the necessary reasonable, articulable suspicion of criminal activity to conduct the investigatory stop and that the evidence that followed should have been suppressed and the complaint dismissed. “When reviewing a district court’s pretrial order on a motion to suppress evidence, [appellate courts] review the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008)

(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).

The United States and Minnesota Constitutions prohibit “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. Evidence obtained during an unconstitutional search or seizure must be suppressed. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). Warrantless seizures are generally unreasonable. *State v. Taylor*, 965 N.W.2d 747, 752 (Minn. 2021). But an officer may conduct a limited investigatory stop without a warrant if the officer has reasonable, articulable suspicion of criminal activity. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999) (citing *Terry v. Ohio*, 392 U.S. 1, 22 (1968)).

“The factual basis necessary to maintain a routine traffic stop is minimal and need not arise from an officer’s personal observations.” *Rose v. Comm’r of Pub. Safety*, 637 N.W.2d 326, 328 (Minn. App. 2001), *rev. denied* (Minn. Mar. 19, 2002). Information obtained by an officer from another person, including an informant, may supply the factual basis. *Id.* A private citizen providing relevant information for a stop is presumed to be reliable. *Id.* In evaluating a stop based on an informant’s tip, Minnesota courts focus on two factors: “(1) identifying information provided by the informant; and (2) the facts supporting the informant’s assertion that a driver is under the influence.” *Id.* Neither factor is dispositive, and the overall determination of reasonable suspicion is based on the totality of the circumstances. *Id.*

The parties agree that Doering was seized when Deputy Robbin asked Doering to “come here a minute.” The district court determined that, based on the totality of the

circumstances, the seizure was supported by reasonable, articulable suspicion of criminal activity. The district court explained its decision as follows:

At the time Deputy Robbin seized [Doering], Deputy Robbin had information through dispatch from [the 911 caller] that a male was drunk and had run from a flipped vehicle. The supplied information included that the involved vehicle was located at the address of [House Number] US Hwy 212; the involved male was wearing shorts and no shirt; and the male drove a tractor to the flipped vehicle, connected the tractor to the vehicle, and appeared to be panicking. Upon arrival at the scene, Deputy Robbin observed a male, wearing shorts and no shirt, drive a tractor at approximately 11:35 p.m. Deputy Robbin also observed the male stumble over farm equipment after exiting the tractor. Based on the totality of the circumstances, Deputy Robbin had reasonable articulable suspicion that [Doering] had violated the law, making it further reasonable for Deputy Robbin to conduct a brief investigatory detention to determine whether criminal activity had occurred. Therefore, the investigatory seizure was proper, and [Doering's] motion is denied.

Doering argues that the 911 caller's tip was too unreliable to support reasonable, articulable suspicion and that nothing that Deputy Robbin observed upon arrival supplied a sufficient factual basis.

Doering contends that the tip was unreliable because the caller was merely repeating what she was told by a stranger when she told dispatch, "Apparently, the guy is really, really drunk," and that she provided no factual basis for that statement. Doering compares his case to two cases in which a Minnesota appellate court held that an informant's tip did not provide the requisite reasonable suspicion for an investigatory stop: *Olson v. Commissioner of Public Safety*, 371 N.W.2d 552 (Minn. 1985), and *Rose*, 637 N.W.2d 326.

In *Olson*, two officers received a dispatch that an anonymous caller had reported “possibly a drunken driver” and gave the location and description of the vehicle. 371 N.W.2d at 553. There was no information about how the informant concluded that the driver was “possibly” drunk. *Id.* at 556. The officers located the vehicle and followed it for about a half mile but observed no erratic driving behavior. *Id.* at 553. Based on the tip alone, the officers stopped the driver. *Id.* The Minnesota Supreme Court held that there was no reasonable suspicion for the traffic stop because the anonymous tip lacked the requisite minimal indicia of reliability, stating, “If the police chose to stop on the basis of the tip alone, the anonymous caller must provide at least some specific and articulable facts to support the bare allegation of criminal activity.” *Id.* at 556.

In *Rose*, an identified gas-station employee reported that a “possible intoxicated driver” was driving a vehicle, which the employee described, along a highway near the intersection where the gas station was located. 637 N.W.2d at 327. A police officer located the vehicle, observed no erratic or illegal driving conduct, and stopped the vehicle based on the tip alone. *Id.* at 327-28. We held that reasonable suspicion to stop the driver did not exist because “the record does not support an inference that the gas-station employee personally observed appellant, and there is no information in the record regarding how the employee concluded that the driver might be drunk.” *Id.* at 330.

Contrary to Doering’s argument, neither case compels reversal here. The caller’s tip here was not limited to a mere statement that a driver might be drunk. The 911 caller both identified herself to police and personally observed Doering. She also remained at the residence until Deputy Robbin arrived. While on the phone with dispatch, she reported that

she had pulled up to an accident; that there was another vehicle present and the occupant of that vehicle warned her to “get back in [her] vehicle”; that she saw a man run from the crashed vehicle, retrieve a tractor, and hook up and pull the vehicle; and that the man was “really panicking” and “running everywhere.” When an informant has personally observed a driver and reports a suspected violation of a traffic law, investigatory stops have been upheld. *See Marben v. State, Dep’t of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980) (holding that sufficient basis existed for stop where unidentified trucker, who reported being tailgated, was in close proximity to driver); *City of Minnetonka v. Shepherd*, 420 N.W.2d 887, 890-91 (Minn. 1988) (holding that sufficient basis existed for stop where identified gas-station employee’s report of “intoxicated driver” was supported by inference that informant personally observed driver); *Jobe v. Comm’r of Pub. Safety*, 609 N.W.2d 919 (Minn. App. 2000) (holding that sufficient basis existed for stop where motorist described personally observing driving conduct of drunk driver, despite inability to confirm informant’s identity). Moreover, Deputy Robbin did not stop Doering on the basis of the tip alone. Deputy Robbin observed Doering driving the tractor and tripping over farm equipment before stopping him.

Given the totality of the circumstances here, we conclude that Deputy Robbin had reasonable, articulable suspicion to stop Doering to investigate a possible DWI offense.

Affirmed.