

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA,

Plaintiff/Appellee,

vs.

REGINALD SCOTT,

Defendant/Appellant.

No. 31255

APPEAL FROM THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

HONORABLE
Circuit Court Judge Douglas P. Barnett

APPELLANT'S BRIEF

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Notice of Appeal Filed on October 16, 2025

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Defendant and Appellant.

PRELIMINARY STATEMENT

All references herein to the Settled Record are referred to as “SR” and will be followed by the appropriate page number. All references are followed by the appropriate page number. The transcripts are referred to as follows:

Suppression Hearing (October 16, 2024)SH1

Suppression Hearing Arguments (December 13, 2024)SH2

Jury Trial (January 15, 2025)JT

Court Trial (February 25, 2025)CT

Court’s Verdict (February 27, 2025)CV

All references to documents will be followed by the appropriate page number.

Exhibits are referred to as “Ex.” followed by the exhibit number. Defendant and

Appellant will be referred to as “Scott.”

JURISDICTIONAL STATEMENT

Scott appeals from the Judgment and Sentence filed September 29, 2025. SR 165. Notice of Appeal was filed October 16, 2025. This Court has jurisdiction over the appeal pursuant to SDCL 23A-32-2 and SDCL 23A-32-9.

STATEMENT OF LEGAL ISSUE

I. WHETHER THE CIRCUIT COURT ERRED IN DENYING SCOTT'S MOTION TO SUPPRESS.

The circuit court denied Scott's motion, finding that Officer Krohn had reasonable suspicion to conduct an investigatory stop based solely on information provided by a citizen caller.

State v. Stanage, 2017 S.D. 12, 893 N.W.2d 522

State v. Scholl, 2004 S.D. 85, 684 N.W.2d 83

U.S. v. Navarette, 572 U.S. 393, 397 (2014)

U.S. Const. Amend. IV

STATEMENT OF CASE

On May 9, 2024, a Minnehaha County grand jury returned an indictment charging Scott with Driving Under the Influence (Count 1 and 2), Driving with a Revoked License (Count 3), and Possession of an Open Container in a Vehicle (Count 4). SR 22-23. The State filed a Part II Information alleging two prior DUI convictions within ten years. SR 24-25.

On August 30, 2024, Scott filed a Motion to Suppress Evidence. SR 40. A hearing on the motion was held on October 16, 2024. SH 1-29. In a separate hearing held on December 13, 2024, both sides made their arguments, and the

circuit court indicated it would issue a written decision. SH2 45-92. The circuit court issued a Memorandum Opinion Denying Defendant's Motion to Suppress on January 10, 2025. SR 96-103.

Scott's jury trial began mid-January 2025, but the court granted Scott's motion for a mistrial due to the State's violation of the order on a motion in limine. JT 22-31. Ultimately, Scott waived his right to a jury trial, and the circuit court held a bench trial on February 25, 2025. *See* CT. The parties entered multiple evidentiary stipulations, and one witness testified. CT 5-26. The circuit court stated its factual findings as to each element of the charges and found Scott guilty on all four counts. CV 2-16. The court sentenced Scott to 180 days in the Minnehaha County Jail with 110 of those days suspended. SR 479. The circuit court filed a written Judgment and Sentence on September 29, 2025. SR 165-67.

STATEMENT OF FACTS

On a Monday night at 8:50 p.m. a Taco John's employee called the police and reported a customer in the drive-thru was "belligerent and slurring his words." SH1 1, 9-12, 15. The employee described the driver as a "black male" in a "red Kia Soul with a Kansas license plate." SH1 10. Dispatch conveyed a call for service for a potentially intoxicated driver. SH1 1, 9-12, 15. Officer Krohn and Sergeant Bakker responded. SH1 10. As Officer Krohn pulled into Taco John's, he saw a red Kia in the drive-thru, exit the drive-thru, and park in the parking lot next to Taco John's. SH1 10. Scott, the driver, parked appropriately in a parking spot, between the two lines. SH 14. He committed no traffic violations, and the

officers personally observed no bad driving that would indicate Scott could be driving under the influence. SH1 12-14.

Officer Krohn parked directly behind the red Kia, and Sergeant Bakker, parked a few spaces away. SH1 15, 28. Both officers exited their vehicles and walked towards the red Kia with flashlights. SH1 15. Officer Krohn went to the driver's side, while Sergeant Bakker approached the passenger's side. SH1 15. To get Scott's attention, Officer Krohn tapped on the driver's window, and Scott rolled down his window. SH 16. As Officer Krohn started speaking, Sergeant Bakker shined his flashlight inside the vehicle and saw an open container of alcohol in the center console. SH1 29. Once Sergeant Bakker informed Officer Krohn of the open container, he ordered Scott to exit his vehicle. *Id* at 11. The officers conducted their investigation and arrested Scott for driving under the influence. SR 1-7.

STANDARD OF REVIEW

This Court reviews the denial of a motion to suppress de novo. *State v. Rosa*, 2022 S.D. 76, ¶ 12, 983 N.W.2d 562, 566. The circuit court's findings of fact are reviewed under the clearly erroneous standard with "no deference to its conclusions of law when applying the de novo standard." *State v. Mousseaux*, 2020 S.D. 35, ¶ 10, 945 N.W.2d 548, 551 (quoting *State v. Condon*, 2007 S.D. 124, ¶ 15, 742 N.W.2d 861, 866).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN DENYING SCOTT'S MOTION TO SUPPRESS BECAUSE THE INFORMATION PROVIDED BY THE CALLER WAS INSUFFICIENT TO JUSTIFY THE STOP.

The Fourth Amendment protects against “unreasonable searches and seizures” and permits brief investigative traffic stops when law enforcement has a “particularized and objective basis for suspecting the particular person stopped of criminal activity.” U.S. Const. Amend. IV; *United States v. Cortez*, 449 U.S. 411, 417-1 (1981). The court must look at the totality of the circumstances to determine if reasonable suspicion justified the stop. *Id.* Reasonable suspicion is more than a mere hunch, but less than a preponderance. *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

A two-part analysis applies when police rely on a call from a citizen to form reasonable suspicion. *U.S. v. Navarette*, 572 U.S. 393, 397 (2014); *State v. Burkett*, 2014 S.D. 38, ¶¶ 50-51, 849 N.W.2d 624, 637. First, the court must determine whether the tip was sufficiently reliable or credible, and second, whether it created a reasonable suspicion that criminal activity was afoot. *Id.* “Reasonable suspicion, like probable cause, is dependent upon both the content of the information possessed by police and its degree of reliability. Both factors – quantity and quality – are considered in the ‘totality of the circumstances – the whole picture,’ that must be taken into account when evaluating whether there is

reasonable suspicion.” *Alabama v. White*, 496 U.S. 325, 330 (1990) (quoting *Cortez*, 449 U.S. 411 at 417).

During the hearing on the motion to suppress, the State conceded that a seizure occurred the moment the officers contacted Scott. SR 480-81. Accordingly, the circuit court determined the State “conceded that a seizure occurred before the Officers view the open container.” SR 98; Ex. 1, 2. Thus, the sole issue on appeal is whether the officers had reasonable suspicion to detain Scott based only on the information provided by the caller.

Three cases provide the most relevant authority for this case: *U.S. v. Navarette*, 572 U.S. 393, 397 (2014) (911 caller reported a vehicle ran her off the road.), *State v. Stanage*, 2017 S.D. 12, 893 N.W.2d 522 (Hardee’s employee observed bloodshot eyes, slurred speech, difficulty grasping drink), and *State v. Scholl*, 2004 S.D. 85, 684 N.W.2d (caller personally observed driver stumbling badly from a bar late at night and having difficulty getting into his vehicle).

Stanage is the most directly applicable authority because it arose from an almost identical factual scenario. A Hardee’s employee, Adam Hill, was working at the drive-thru window when he noticed that Stanage’s eyes were bloodshot, his speech was slurred, and he had difficulty grasping the drink he ordered. *Id.* ¶ 2, 893 N.W.2d at 524. Hill told his manager what he saw, and his manager called 911, and told dispatch a “potentially drunk driver was at the window.” *Id.* The manager did not relay the specific behavioral observations made by Hill to the police, namely slurred speech, bloodshot eyes, and motor control issues. *Id.* ¶ 8,

893 N.W.2d at 525. Since none of these indicia of intoxication were relayed to the police, the Court in *Stanage* reversed the conviction and held that the deputy lacked sufficiently detailed information to form reasonable suspicion because a tip of only a “potentially drunk driver” was too conclusory. *Id.* ¶ 18, 893 N.W.2d at 530. However, the Court in *Stanage* noted, “[h]ad Hill’s observations been relayed to Deputy Kriese, the result of this case would likely be different.” *Id.* ¶ 18, 893 N.W.2d at 530 n.8. Here, dispatch relayed some observations, but they were insufficient to support a finding of reasonable suspicion of drunk driving.

The contemporaneous timing, description of the vehicle, license plate, and location of Scott’s vehicle corroborated the information given by the caller and indicated that the caller was credible in *identifying* Scott. However, “[t]he reasonable suspicion here at issue requires that the tip be reliable in its assertion of illegality, not just its tendency to identify a determinate person.” *Florida v. J.L.*, 529 U.S. 266, 272 (2000) (invalidating a search based on a tip that a black male wearing a plaid shirt was standing at the bus stop with a concealed gun).

While timing, description, and location of the vehicle corroborated identification, whether the tip was reliable in its assertion of *illegality* is still in question. The basis of the employee’s knowledge is absent from the record. “[T]he primary determinant of a tipster’s reliability is the basis of his knowledge.” *United States v. Wheat*, 278 F.3d 722 (8th Cir. 2001).

Here, the only evidence on the record is that the caller was a Taco John’s employee. The State did not introduce the employee’s recorded call or the

dispatch call for service. The State presented no evidence that the employee was working at the drive-thru window, as opposed to somewhere else in the restaurant.

In fact, a reasonable inference from Sergeant Bakker's testimony is that the information relayed from the caller was based on Scott's interaction with an employee at the intercom, rather than the window. Sergeant Bakker testified that he saw Scott receive his food at the drive-thru window. SH1 26-27. Presumably it took time for the Sergeant to arrive on scene because he received the call for service, drove to the scene, and then parked across the street before observing Scott. *Id.* A reasonable inference from this testimony is that the employee interacted with Scott on the intercom, then called the police, and in the time it took for the police to arrive, Scott moved from the intercom to the window. Thus, the auditory observations reported by the employee occurred over the intercom which weighs against credibility and reliability. People notoriously cannot hear well over intercoms at fast food restaurants, partly because of the nature of the devices and partly because of the distance a customer is from the speaker. As the Court previously noted, "[t]o avoid situations like this, we encourage law enforcement to simply ask for details..." *Stanage*, 2017 S.D. 12, ¶ 18, 893 N.W.2d at 530 n.8.

Importantly, the lack of detail in Scott's case is in contrast to the specific and detailed information outlined in *Stanage*. Evidence was introduced that the Hardee's employee was "working at the window," and thus was able to

personally observe the customer. *Stanage*, 2017 S.D. 12 at ¶ 2, 893 N.W.2d 522 at 524 (2017). The Court in *Stanage* even detailed the employee's first and last name, the manager's name, the fact that the employee relayed the information to the manager, and the manager called the police. *Id.* Here, there is no reason to believe that the tipster was accurate in his observations without knowing the specifics of how the observations were made and consequently, the lack of specificity weighs against reliability.

The reliability of the information relayed by the caller proportionally impacts the reasonable suspicion analysis. "Thus, if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable." *Adams v. White*, 446 U.S. 325, 330 (1990). Slurred speech and belligerence, when viewed under the totality of circumstances amounts to a "hunch" that the Scott was drunk, not reasonable suspicion.

Neither the officers nor the employee observed any *driving* conduct indicative of intoxication. Unlike *Navarette*, where running another car off the road established reckless driving, the tip here is limited to non-driving conduct. Moreover, the officers only observed good driving, which was enough to dispel suspicions of drunk driving. Officer Krohn watched as Scott drove away from the drive-thru to an adjacent parking lot, pulled into a parking space (not too far forward and not too far back), and stayed within the yellow lines. SH1 12-14.

It was a Monday night, not a night commonly associated with drinking like Friday and Saturday. Scott was at a restaurant that does not serve alcohol, not a bar like in *Scholl*. *Id.* 2004 S.D. 85, ¶¶ 13–14, 684 N.W.2d at 88. The Court emphasized this distinction in *Stanage*, “[w]e perceive a distinction between the observations at a fast-food restaurant such as in *Miller*, *supra*[,] or at a convenience Store as in *Stewart*.” *Stanage*, 2017 S.D. 12, ¶ 15, 893 N.W.2d at 528-29 (citing *Scholl*, 2004 S.D. 85, ¶¶ 13–14, 684 N.W.2d at 88; *State v. Miller*, 510 N.W.2d 638 (N.D. 1994); *Stewart v. State*, 22 S.W.3d 646 (Tex. Ct. App. 2000)).

Here, the time of night, 8:50 p.m., is not late enough to be indicative of drinking. For example, *Scholl* was at 10:30 p.m., and *Stanage* was just before 2 a.m. *Stanage*, 2017 S.D. 12, ¶ 2, 893 N.W.2d at 524; *Scholl*, 2004 S.D. 85, ¶ 2, 684 N.W.2d at 84. By 10:30 p.m. the only establishments open are bars and fast-food restaurants, and at 2 a.m. bars stop serving alcohol. Those times are indicative of alcohol use, but 8:50 p.m. is not.

“Belligerent” is vague and does not necessarily indicate intoxication, especially under the circumstances of this case. It is defined as “being hostile, aggressive, or eager to fight.” *Belligerent*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/belligerent#dictionary-entry-1> (last visited June 10, 2026). The police did not have specific information about what conduct the employee felt was belligerent. It gets even murkier when viewed in light of Officer Krohn’s testimony. Officer Krohn testified that “Taco John’s said there was a *disorderly*, belligerent individual in the drive through.”

SH1 24 (emphasis added). It was clear from all the testimony and the circuit court's findings of fact that the information was limited to "slurred speech" and "belligerent," not disorderly conduct. A fair reading of the record leads to the conclusion that Sergeant Bakker confused disorderly with belligerent and misspoke when he said disorderly, thus the comma between the words. The Sergeant mistakenly interchanging those words, disorderly and belligerent, exemplifies the vagueness of the word belligerent in this context.

Additionally, Officer Krohn testified that he did *not* in fact have reasonable suspicion to detain Scott based on the information from the 911 call alone. SH1 24-25. While the standard is an objective one, this officer's subjective belief exemplified that an officer with knowledge and awareness of the totality of the circumstances and acting under those circumstances did not believe he had sufficient suspicion to detain. During his testimony, Sergeant Bakker testified that when he first contacted Scott it was a "consensual" encounter. SH1 24. When asked when it became non-consensual, the officer responded, "[w]hen we saw the open container. Based on that we had reasonable suspicion he might be under the influence of alcohol." SH 25. Sergeant Bakker did not have a reasonable suspicion to detain until he saw the open container. Therefore, he did not have a reasonable suspicion based solely on the information provided by the caller. The State conceded that it was not a consensual encounter. SR 480-81. The officer's subjective belief buttresses the argument that a reasonable officer, in the

position of this officer, lacked the requisite details to raise a reasonable suspicion that criminal activity was afoot.

CONCLUSION

The circuit court erred in denying Scott's motion to suppress. For the aforementioned reasons, authorities cited, and upon the settled record, Scott respectfully asks this Court to remand the case to the circuit court with an Order directing the court to reverse the Order denying Scott's motion to suppress evidence.

REQUEST FOR ORAL ARGUMENT

The attorney for the Appellant, Reginald Scott, respectfully requests thirty (30) minutes for oral argument.

Respectfully submitted on this 10th day of June, 2026.

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Book Antiqua typeface in 12 point type. Appellant's Brief contains 2,713 words.
2. I certify that the word processing software used to prepare this brief is Microsoft Word.

Dated this 10th day of June, 2026.

/s/ Justine Avtjoglou
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Appellant's Brief were electronically served upon:

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THE HONORABLE DOUGLAS P. BARNETT
Circuit Court Judge

APPELLEE'S BRIEF

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Notice of Appeal filed October 14, 2025

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REGINALD SCOTT, JR.,

Defendant and Appellant.

PRELIMINARY STATEMENT

In this brief, Appellant, Reginald Scott, Jr., is referred to as “Scott.” Appellee, the State of South Dakota, is referred to as “State.”

References to documents will be designated as follows:

Settled Record (Minnehaha Criminal File No. 24-2497).....	SR
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Motion Hearing (October 16, 2024)	MH
Suppression Hearing (December 13, 2024)	SH
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All document designations will be followed by the appropriate page number(s).

JURISDICTIONAL STATEMENT

Scott appeals the Judgment of Conviction entered by the Honorable Douglas P. Barnett, Circuit Court Judge, Minnehaha County, Second Judicial Circuit. SR 168. The Judgment of Conviction was filed on September 29, 2025. SR 165-67. He filed a Notice of Appeal on October 14, 2025. SR 168. This Court has jurisdiction as provided in SDCL 23A-32-2.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

WHETHER LAW ENFORCEMENT HAD REASONABLE SUSPICION TO STOP SCOTT?

The circuit court found law enforcement had reasonable suspicion to stop Scott.

People v. Shafer, 372 Ill. App. 3d 1044, 868 N.E.2d 359 (2007)

State v. Scholl, 2004 S.D. 85, 684 N.W.2d 83

United States v. Wheat, 278 F.3d 722 (8th Cir. 2001)

STATEMENT OF THE CASE

The Minnehaha County grand jury indicted Scott on two counts of driving under the influence, one count of driving with a revoked license, and one count of having an open container in a motor vehicle. SR 22-23. The State also filed a Part II Information alleging two prior DUI convictions, making the charged DUI Scott's third. SR 24.

Scott filed a motion to suppress, arguing that law enforcement lacked reasonable suspicion to conduct an investigatory stop. SR 40,

50-53. The State opposed the motion, asserting that reasonable suspicion existed based on a called in tip. SR 54-58.

A suppression hearing was held on October 16, 2024. *See* MH. Both responding officers stated that their initial encounter with Scott was consensual. MH 11. They stated that the encounter became investigatory once an open container was observed. MH 24. After the hearing, both parties filed additional briefing. SR 65-74.

The circuit court heard arguments from the parties. SH 49-93. The prosecuting attorney stated his feeling that the encounter was not consensual but that the officers had reasonable suspicion. SH 56-57. In its memorandum decision, the circuit court noted that the encounter appeared to be consensual but based on the State's concession, proceeded to determine whether reasonable suspicion existed. SR 102-03. It concluded that law enforcement had reasonable suspicion for the stop and denied Scott's motion to suppress. *Id.*

The case proceeded to a jury trial that resulted in a mistrial when a witness testimony contained details that were previously determined to be inadmissible. JT 22-30. The matter was retried to the circuit court, which found Scott guilty of all four counts in the indictment. CT2 2-17. Scott admitted to the Part II Information. CT2 24-28. The court sentenced Scott to two years in prison, with two years suspended. SR 165.

STATEMENT OF THE FACTS

On April 8, 2024, Officer Kevin Krohn of the Brandon Police Department was dispatched to Taco John's in response to a report of a possible intoxicated driver. CT1 18-19. A Taco John's employee reported that the driver of a red Kia Soul with Kansas license plate 174MTF was acting belligerent and was slurring his speech. CT1 19; MH 12.

Officer Krohn arrived less than two minutes later and saw the vehicle leave the Taco John's drive-thru and pull into the adjacent Sunshine Foods parking lot. CT1 19. Officer Krohn parked behind the vehicle. He did not activate any of the patrol vehicle lights, and the car had room to drive forward and leave. MH 10; EX 1. Officer Krohn approached the driver's side window. MH 16. The driver of the vehicle did not respond when Officer Krohn approached the vehicle. MH 16; EX 1. Even after shining his flashlight into the window, the driver did not respond, prompting Officer Krohn to knock on the window. CT1 20; MH 15-17.

As this occurred, Sergeant Andrew Bakker, with the Brandon Police Department, arrived and approached the passenger side of the vehicle. EX 1. While Officer Krohn was speaking with the driver, Sergeant Bakker saw an open container of alcohol inside the car and notified Officer Krohn. EX 1; MH 24. Officer Krohn detained the driver and identified him as Reginald Scott Jr. MH 7; CT1 22. After

administering a series of field sobriety tests, Officer Krohn arrested Scott for driving under the influence of alcohol. CT1 32-49.

ARGUMENT

LAW ENFORCEMENT HAD REASONABLE SUSPICION TO STOP SCOTT.

Law enforcement had reasonable suspicion to stop Scott because a known Taco John's employee provided a detailed, contemporaneous eyewitness report describing Scott's belligerent behavior, slurred speech, and the specific vehicle he was driving. The caller's reliability was strengthened by the fact that he identified himself, offered firsthand observations, and supplied precise vehicle and driver details that Officer Krohn corroborated within minutes. Courts consistently uphold investigatory stops based on such reliable informant tips, even when officers do not personally observe erratic driving. Scott's attempts to undermine the tip's reliability rely on viewing isolated factors in a vacuum rather than considering the totality of the circumstances, which is the proper standard. When viewed collectively, the caller's detailed observations, the rapid corroboration by law enforcement, and established precedent all support the circuit court's conclusion that the stop was justified.

A. *Standard of Review.*

The denial of a motion to suppress alleging violations of a

constitutionally protected right is reviewed de novo. *State v. Grassrope*, 2022 S.D. 10, ¶ 7, 970 N.W.2d 558, 560 (citing *State v. Short Bull*, 2019 S.D. 28, ¶ 10, 928 N.W.2d 473, 476). “Findings of fact are reviewed under the clearly erroneous standard.” *State v. Sharpfish*, 2019 S.D. 49, ¶ 23, 933 N.W.2d 1, 10 (quoting *State v. Fierro*, 2014 S.D. 62, ¶ 12, 853 N.W.2d 235, 239). But “the application of the facts to the law is subject to de novo review.” *Id.* A finding is clearly erroneous when the reviewing court is “left with the definite and firm conviction that a mistake has been committed.” *Grassrope*, 2022 S.D. 10, ¶ 7, 970 N.W.2d at 561 (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 542, 92 L. Ed. 746 (1948)). “As a general matter determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal.” *State v. Rosa*, 2022 S.D. 76, ¶ 12, 983 N.W.2d 562, 566 (quoting *State v. Rolfe*, 2018 S.D. 86, ¶ 10, 921 N.W.2d 706, 709)

B. *Law enforcement had reasonable suspicion to stop Scott.*¹

¹ As the circuit court noted, the encounter between law enforcement and Scott was consensual. SR 102-03. However, the prosecuting attorney conceded the issue of his own accord. SH 56-57. Accordingly, the circuit court determined the State waived that argument. SR 102-03. Thus, on appeal, the State is limited to arguing that law enforcement had reasonable suspicion for the stop. *State v. Heer*, 2024 S.D. 54, n. 4, 11 N.W.3d 905, 910 (citing *United States v. Olano*, 507 U.S. 725, 733, 113 S. Ct. 1770, 1777, 123 L. Ed. 2d 508 (1993) (defining waiver as the “intentional relinquishment or abandonment of a known right”)).

The circuit court properly held that officers had reasonable suspicion to stop Scott because the Taco John's employee's tip was detailed, reliable, and corroborated. While Scott attempts to mischaracterize the tip as a conclusory one asserting possible intoxication, his suggestion is wrong. The informant offered a detailed and useful description. Finally, Scott ignores the totality of the circumstances and attempts to dissect each factor of the stop in isolation. But the circuit court's ruling was directly in line with this Court's authority.

1. *The law supports the circuit court's reasonable suspicion determination.*

“The Fourth Amendment protects a person from ‘unreasonable searches and seizures.’” *Sharpfish*, 2019 S.D. 49, ¶ 25, 933 N.W.2d at 10 (quoting *State v. Stanage*, 2017 S.D. 12, ¶ 7, 893 N.W.2d 522, 525). A general principle from the Fourth Amendment is that law enforcement “must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure.” *Grassrope*, 2022 S.D. 10, ¶ 8, 970 N.W.2d at 561 (quoting *State v. Schumacher*, 2021 S.D. 16, ¶ 20, 956 N.W.2d 427, 432). But courts have recognized exceptions to the warrant requirement, finding that a “warrant is not required to effect a temporary seizure of a vehicle by means of a traffic stop.” *Grassrope*, 2022 S.D. 10, ¶ 8, 970 N.W.2d at 561 (quoting *Short Bull*, 2019 S.D. 28, ¶ 12, 928 N.W.2d at 476).

To stop a vehicle, law enforcement must have a reasonable suspicion “based on specific and articulable facts which taken together with rational inferences from those facts, reasonably warrant the intrusion.” *State v. Bowers*, 2018 S.D. 50, ¶ 10, 915 N.W.2d 161, 164 (quoting *State v. Burkett*, 2014 S.D. 38, ¶ 45, 849 N.W.2d 624, 635). Officers may “draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that ‘might well elude an untrained person.’” *Rosa*, 2022 S.D. 76, ¶ 16, 983 N.W.2d at 567 (quoting *State v. Herren*, 2010 S.D. 101, ¶ 7, 792 N.W.2d 551, 554). “The stop may not be the product of mere whim, caprice or idle curiosity.” *Burkett*, 2014 S.D. 38, ¶ 45, 849 N.W.2d at 635 (quoting *Herren*, 2010 S.D. 101, ¶ 8, 792 N.W.2d at 554). “Under these standards, it is well established that a traffic violation, however minor, creates sufficient cause to stop the driver of a vehicle.” *State v. Scholl*, 2004 S.D. 85, ¶ 6, 684 N.W.2d 83, 85 (quoting *State v. Chavez*, 2003 S.D. 93, ¶¶ 15–16, 668 N.W.2d 89, 95). This Court looks at the “totality of the circumstances of each case to see whether the detaining officer had a particularized and objective basis for suspecting legal wrongdoing.” *Bowers*, 2018 S.D. 50, ¶ 11, 915 N.W.2d at 164 (quoting *State v. Olson*, 2016 S.D. 25, ¶ 5, 877 N.W.2d 593, 595).

Reasonable suspicion is “common-sense and non-technical concept dealing with the practical considerations of everyday life.”

Herren, 2010 S.D. 101, ¶ 8, 792 N.W.2d at 554 (quoting *State v. Quartier*, 2008 S.D. 62, ¶ 10, 753 N.W.2d 885, 888). It is an objective standard. *Id.* Reasonable suspicion does not rise to the level of probable cause and “falls considerably short of satisfying a preponderance of the evidence standard.” *State v. Olson*, 2016 S.D. 25, ¶ 5, 877 N.W.2d 593, 595 (quoting *Herren*, 2010 S.D. 101, ¶ 7, 792 N.W.2d at 554).

Reasonable suspicion for an investigatory stop need not be based on an officer’s observations alone. An informant’s tip may provide an officer with the reasonable suspicion needed to support a traffic stop. *Scholl*, 2004 S.D. 85, ¶ 6, 684 N.W.2d at 85 (citing *State v. Olhausen*, 1998 S.D. 120, ¶ 7, 587 N.W.2d 715, 717-18). “The stop may be legal if the tip contains more than conclusory allegations and offers specific and detailed allegations of criminal conduct, even if the officer does not corroborate the criminal conduct before the seizure.” *Rosa*, 2022 S.D. 76, ¶ 19, 983 N.W.2d at 568 (quoting *Sharpfish*, 2019 S.D. 49, ¶ 26, 933 N.W.2d at 10).

“Whether an anonymous tip suffices to give rise to reasonable suspicion depends on both the *quantity* of information it conveys as well as the *quality, or degree of reliability*, of that information, viewed under the totality of the circumstances.” *Scholl*, 2004 S.D. 85, ¶ 9, 684 N.W.2d at 86 (citing *United States v. Wheat*, 278 F.3d 722, 726 (8th Cir. 2001)). A tip must provide enough detail to allow officers to identify the

reported vehicle, such as the make, model, plate, or location. *Scholl*, 2004 S.D. 85, ¶ 9, 684 N.W.2d at 86 (quoting *Wheat*, 278 F.3d at 731–32). The timing between the report and law enforcement locating the vehicle may also be a factor in reliability. *Id.* And an informant’s credibility increases when the informant places their anonymity at risk. *Stanage*, 2017 S.D. 12, ¶ 9, 893 N.W.2d at 526.

Here, the reliability indicators were strong. A known Taco John’s employee called dispatch at 8:48 p.m. to report a customer appeared intoxicated, acting “belligerently,” and “slurring his words.” MH 9-10. The employee described the driver and vehicle: a Black male driving a red Kia Soul with Kansas license plate 174MTF. MH 7, 10; SR 54. Officer Krohn arrived on scene just two minutes later, at 8:50 p.m. MH 15.

First, the informant was a known witness rather than an anonymous tipster. An informant who identifies himself is considered more reliable than an anonymous tipster. *State v. Dubois*, 2008 S.D. 15, ¶ 15, 746 N.W.2d 197, 203 (citing *State v. Thomas*, 267 Neb. 339, 673 N.W.2d 897, 908–09 (2004), *abrogated by State v. Rogers*, 277 Neb. 37, 760 N.W.2d 35 (2009)). In fact, a tipster who “openly risks liability by accusing another person of criminal activity may not need further law enforcement corroboration.” *State v. Ostby*, 2020 S.D. 61, ¶ 17, 951 N.W.2d 294, 299 (quoting *Dubois*, 2008 S.D. 15, ¶ 15, 746 N.W.2d

at 203). The Taco John's employee did not attempt to conceal their identity.

Second, the caller provided specific, firsthand observations of impairment and a detailed description of the driver and vehicle. “[E]xplicit and detailed description of alleged wrongdoing, along with a statement that the event was observed first hand, entitles the informant's tip to greater weight than might otherwise be the case.” *State v. Sweedland*, 2006 S.D. 77, ¶ 21, 721 N.W.2d 409, 414 (quoting *State v. Raveydt*s, 2004 S.D. 134, ¶ 11, 691 N.W.2d 290, 295). The caller did not merely assert Scott was drunk—he described his behavior.

Third, Officer Krohn immediately corroborated the information given by the tipster. Within two minutes, he saw the red Kia Soul leaving the Taco John's drive-thru and proceeding to the Sunshine Foods parking lot. MH 11, 13-15. He also confirmed the driver was a black male, as reported. MH 7, 10; EX 1. Officers did not wait and blindly assume the informant's information was correct. They responded immediately and verified the information shared with dispatch.

The “basis of the tipster's knowledge is likely to be apparent” and “[a]lmost always, it comes from his eyewitness observations.” *Wheat*, 278 F.3d at 734. It was reasonable for Officer Krohn to infer the caller personally witnessed Scott's behavior. *See Navarette v. California*, 572

U.S. 393, 399, 134 S. Ct. 1683, 1689, 188 L. Ed. 2d 680 (2014) (finding the basis of an informant's knowledge can be inferred from the details provided). Indeed, the caller reported conduct observable only firsthand: Scott's belligerence, slurred speech, and identifying vehicle details.

This Court has consistently upheld investigatory stops initiated solely on reliable informant tips. In *State v. Scholl*, law enforcement stopped a vehicle without observing any independent traffic violations after an identifiable tipster reported seeing a driver stumble out of a bar and struggle to enter a pickup truck. 2004 S.D. 85, ¶¶ 2-3, 684 N.W.2d 83, 84. This Court upheld the stop because the caller provided "an extensive description of the vehicle that, based on his contemporaneous eyewitness observations, he believed was being operated dangerously." *Id.* ¶ 12, 684 N.W.2d at 88. The caller also provided details on the truck and location updates. *Id.* Law enforcement was able to corroborate the details provided by the caller including innocent details, which led law enforcement to confirm they had the correct vehicle. *Id.*

The circuit court properly relied on this Court's authority in determining reasonable suspicion existed. Even other jurisdictions apply the same principles to drive-thru incidents. In *People v. Shafer*, a Wendy's employee reported an intoxicated, disruptive customer in the drive-thru. 372 Ill. App. 3d 1044, 866 N.E.2d 359 (2007). The court looked at several factors including: the timing of the tip, the officer's

response time,² that the tip was based on contemporaneous, eyewitness testimony, and that the tip provided enough detail that the tipster witnessed the conduct described. *Id.* at 367. Based on the several factors it examined, the court concluded the tip was reliable and justified the stop of Shafer. *Id.*

The same considerations apply here. The Taco John's employee described Scott's *behavior*—not simply a conclusion that he was drunk—while he remained in the drive-thru. MH 9-10. Officer Krohn arrived quickly enough to see Scott leaving the window. MH 10. The tip was contemporaneous, eye-witness-based, and detailed, which law enforcement corroborated. Under the totality of the circumstances, Officer Krohn had reasonable suspicion that Scott was the driver described in the tip.

2. *Scott's arguments do not align with Fourth Amendment standards.*

Scott argues his case is more like *State v. Stanage*, but his reliance is misplaced. AB 6-7. In *Stanage*, this Court found law enforcement lacked reasonable suspicion because the tip was entirely conclusory, containing only a mere assertion of possible intoxication. 2017 S.D. 12, ¶ 2, 893 N.W.2d at 524. Here, by contrast, the informant

² While the exact time gap was not specified in *Shafer*, the court stated, “the time interval between (law enforcement) receiving the tip and his locating the suspect car could hardly be smaller.” *Shafer*, 868 N.E.2d at 367. So too, here.

did not merely offer a legal conclusion; the caller articulated concrete, observable signs of impairment—specifically, that Scott was acting belligerently and slurring his speech. These specific details provided Officer Krohn with an objective, particularized basis to investigate.

Central to his argument, Scott makes several claims questioning the reliability of the tip, but each one examines a single fact in isolation rather than the totality of the circumstances. For instance, he argues that law enforcement did not observe any driving misconduct and instead saw “good driving.” AB 9. But this argument ignores the tipster’s reported observations and disregards the fact that law enforcement does not need to witness a driving infraction to stop a vehicle when they receive a reliable tip. *See Scholl*, 2004 S.D. 85, ¶ 17, 684 N.W.2d at 89 (upholding a stop when the informant “describe[d] *non-driving conduct* that yielded a reasonable suspicion that the driver was driving while under the influence of alcohol”).

Scott also asserts that the time and day of the week do not support a person being intoxicated. AB 10. While DUI arrests are statistically more common late at night or in the early morning, *Blow v. Comm’r of Motor Vehicles*, 83 S.D. 628, 634, 164 N.W.2d 351, 354 (1969), time of day is not a factor this Court uses when analyzing the reliability of a tipster’s information. Rather, the relevant factor is “[t]he *time interval* between receipt of the tip and location of the suspect vehicle . . .” *Scholl*, 2004 SD 85, ¶ 9, 684 N.W.2d at 87 (emphasis

added). *See also State v. Satter*, 2009 S.D. 35, ¶ 14, 766 N.W.2d 153, 157. As stated, the time interval was nearly immediate.

Lastly, Scott argues that the term “belligerent” is vague and suggests that drive-thru speakers are difficult to hear. AB 8, 10. Such assumption negates the tipster’s personal observations and the specificity in his description. Again, there was not simply a blanket assumption by the caller that Scott was drunk. Rather, the description was that Scott was acting “belligerently” and was “slurring his words.” MH 9-10. *See Scholl*, 2004 S.D. 85, ¶ 17, 684 N.W.2d at 89 (affirming reasonable suspicion based on the tipster’s personal observation of the driver); *Shafer*, 372 Ill. App. 3d 1044, 866 N.E.2d 359 (affirming reasonable suspicion after a tipster reported an intoxicated, disruptive customer); *State v. Oney*, No. C-940332, 1995 WL 59695, at *1 (Ohio Ct. App. Feb. 15, 1995) (finding law enforcement had reasonable suspicion based on a tipster’s observations that the defendant who just left the drive-thru was intoxicated, disorderly, verbally abusive, and smelled of alcohol).

This Court must review the totality of the circumstances when determining whether the officer had an objective basis for suspecting misconduct. *Bowers*, 2018 S.D. 50, ¶ 11, 915 N.W.2d at 164. When doing so, the record shows law enforcement responded to an identifiable tipster who reported signs of intoxication, including slurred speech and belligerent behavior, based on their contemporaneous observations.

The caller provided detailed information about the driver and vehicle, and officers corroborated those details before initiating the stop. Viewed collectively, these facts provided a particularized and objective basis for the stop.

CONCLUSION

State respectfully requests that Scott's convictions and sentences be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 3,306 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2016.

Dated this 23rd day of July 2026.

/s/ Erin E. Handke
Erin E. Handke
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this July 23, 2026, a true and correct copy of Appellee's Brief in the matter of *State of South Dakota v. Reginald Scott Jr.* was served electronically through Odyssey File and Serve on Justine P. Avtjoglou at Justine.Avtoglou@state.sd.us.

/s/ Erin E. Handke
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August 24, 2026

Ms. Shirley Jameson-Fergel
Clerk of the Supreme Court
500 E. Capitol Avenue
Pierre, SD 57501

RE: State of South Dakota v. Scott, Appeal No. 31255

Dear Ms. Jameson-Fergel,

Please be advised that upon reviewing the brief submitted by Appellee in the above-entitled matter, Appellant has decided not to reply to Appellee's Brief. Appellant requests this Court to rely on arguments and issues addressed in Appellant's brief submitted to the Court on June 10, 2026.

Sincerely,

/s/ Justine Avtjoglou

South Dakota Office of Indigent Legal Services