STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0082

Jennifer Susan Kline, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed January 22, 2008
Affirmed
Toussaint, Chief Judge

Hennepin County District Court
File No. 27-CV-06-14182

David L. Valentini, Valentini & Associates, P.A., 247 Third Avenue South, Minneapolis, MN 55415; and

Jeffrey S. Sheridan, Strandemo, Sheridan & Dulas, P.A., 1380 Corporate Center Curve, Suite 320, Eagan, MN 55121 (for appellant)

Lori Swanson, Attorney General, Sean R. McCarthy, Jeffrey F. Lebowski, Assistant Attorneys General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134 (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Toussaint, Chief Judge; and Huspeni, Judge.*

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

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Chief Judge

Appellant Jennifer Susan Kline challenges the district court's order sustaining the revocation of her driving license, arguing that the officer who stopped her acted illegally. Because we conclude that the officer had a reasonable, articulable suspicion for stopping appellant, we affirm.

D E C I S I O N

This court reviews "the events surrounding the stop and consider[s] the totality of the circumstances" to determine whether an investigative stop was based on a reasonable, articulable suspicion. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).[1]

Appellant was stopped by an officer who believed appellant was driving while impaired. After the stop, the officer administered a test that showed appellant's blood alcohol concentration to be 0.10.

The officer testified that, around two in the morning, he followed appellant's car at a distance of between one and one-and-a-half car lengths and saw the right side of the car cross the fog line and continue until about half the car was off the road. Knowing that impaired drivers can have difficulty in keeping their cars on the road, the officer suspected the driver might be impaired and decided to stop appellant's car. The officer

[1] When the facts are undisputed, this court reviews *de novo* a district court's determination of reasonable, articulable suspicion as it related to an investigatory stop, *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003). But here, the facts are in dispute.

further testified that, when he asked appellant if she knew why she had been stopped, she said "for swerving off the road, or [']she had swerved off the road.[']"

Appellant testified that she had consumed a glass of wine and two margaritas. She answered, "No, absolutely not," when asked if she felt as though her car ever left the lane. She testified that, when the officer asked her if she knew why she had been stopped, she told him "No." She testified that she did not tell the officer she believed she was stopped for swerving off the road because she did not swerve off the road, and she again answered, "No," when asked if she believed that she had crossed the fog line at any point.

The district court found: "While following [appellant], [the officer] observed [her] swerve once from her lane, the passenger tires crossing the fog line to the right side of the road by approximately one-half of her vehicle's width and then returning immediately into the proper lane." This court will not reverse a district court's finding of fact unless it is clearly erroneous. *Thompson v. Comm'r of Pub. Safety*, 567 N.W.2d 280, 281 (Minn. App. 1997*), review denied* (Minn. Sept. 25, 1997); *see also* Minn. R. Civ. P. 52.01 ("[D]ue regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."). Here, the trial court found the officer to be a more credible witness than appellant.

Swerving out of one's lane and off the road is a traffic violation. Minn. Stat. § 169.18, subd. 7 (2006). Even an insignificant traffic violation provides an objective basis for an officer to stop a vehicle. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997); *see also State v. Dalos*, 635 N.W.2d 94, 96 (Minn. App. 2001) ("[W]eaving *within*

one's own lane continuously is enough, by itself, to provide a reasonable articulable suspicion . . . ." (emphasis added)).[2] Therefore, the officer's stop of appellant was justified.

Appellant relies on *State v. Brechler*, 412 N.W.2d 367, 369 (Minn. App. 1987) (concluding that, because officers' conduct had "engendered" stop, stop was not justified) to argue, in the alternative, that the officer tried to "terrify" her by following her closely "in a deserted area in the middle of the night to induce [her] improper driving." But *Brechler* is distinguishable. In that case, officers observed a car swerve only once within its own lane, which is not a traffic violation. *Id.* at 368. Here, the officer observed appellant swerve out of her lane and off the road, which is a traffic violation. In *Brechler*, the car pulled into a parking lot and stopped; the officers followed it into the lot and turned on their flashing red lights only after it had stopped. *Id.* Here, appellant did not stop her car until she saw the officer's lights. *Brechler* does not support a finding that the officer's conduct engendered appellant's improper driving.

Affirmed.

[2] *But see State v. Brechler*, 412 N.W.2d 367, 369 (Minn. App. 1987) (holding that single swerve within one's own lane is insufficient to establish reasonable, articulable suspicion).