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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0648**

State of Minnesota,
Respondent,

vs.

Michelle Lynn Offill,
Appellant.

**Filed April 8, 2008
Affirmed
Stoneburner, Judge**

Roseau County District Court
File No. CR06437

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul,
MN 55101-2134; and

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Roseau, MN 56751 (for respondent)

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appellant)

Considered and decided by Stoneburner, Presiding Judge; Peterson, Judge; and
Wright, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges her conviction of fourth-degree driving while impaired,
arguing that the district court erred in denying her motion to dismiss for lack of probable

cause because driving over the fog line one time at 12:19 a.m. did not provide reasonable suspicion of criminal activity sufficient to support a traffic stop. We affirm.

DECISION

A district court's determination regarding the legality of an investigatory stop and questions of reasonable suspicion for a traffic stop are reviewed de novo. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). A law-enforcement officer's investigatory stop of a motorist does not violate the state or federal constitution if the state can show that the officer had a "particularized and objective basis for *suspecting* the particular persons stopped of criminal activity.'" *Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S. Ct. 690, 694-95 (1981)). "Such a suspicion . . . must be something more than a mere hunch; the officer must have objective support for his belief that the person is involved in criminal activity." *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). But law enforcement officials are permitted to make deductions that "might well elude an untrained person." *Cortez*, 449 U.S. at 418, 101 S. Ct. at 695.

Ordinarily, if an officer observes even a minor violation of a traffic law, the officer has an objective basis for stopping the vehicle. *See, e.g., State v. Pleas*, 329 N.W.2d 329, 333 (Minn. 1983) (upholding stop based on officer's observation of broken windshield, missing front license plate, and upside down rear license plate); *State v. Engholm*, 290 N.W.2d 780, 784 (Minn. 1980) (upholding stop based on officer's observation of an exceptionally slow moving car at a time just after bars closed for the evening); *State v. Barber*, 308 Minn. 204, 205-06, 241 N.W.2d 476, 477 (1976) (upholding stop based on

officer's observation that license plates were wired rather than bolted on the car). In order to determine whether an officer had reasonable suspicion to justify a traffic stop, the court must examine the totality of the circumstances. *Cortez*, 449 U.S. at 418, 101 S. Ct. at 695. The totality of the circumstances includes the officer's general knowledge and experience, his personal observations, information the officer received from other sources, the time, nature, and location of the suspected offense, and anything else that is relevant. *Appelgate v. Comm'r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987).

This case was submitted on stipulated evidence consisting primarily of the arresting officer's report. The report states that the officer saw a vehicle driven by appellant Michelle Lynn Offill cross the fog line once in Roseau at 12:19 a.m. on a Saturday whereupon he activated his red lights to stop the vehicle. Based on the officer's observations, the district court concluded that the officer had a particularized and objective basis for suspecting that Offill was driving while impaired.

Offill argues that the stop was invalid because crossing the fog line is not a traffic violation, and the officer did not articulate that he stopped her for a traffic violation. The state contends that the officer could have reasonably interpreted Offill's crossing the fog line as a violation of a number of Minnesota statutes, including: (1) Minn. Stat. § 169.18, subd. 1 (2006) (requiring vehicle to be driven on right half of the roadway except in circumstances not applicable here); (2) Minn. Stat. § 169.13, subd. 2 (2006) (describing careless driving); or (3) Minn. Stat. § 169.18, subd. 7(a) (2006) (stating that "[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be

moved from such lane until the driver has first ascertained that such movement can be made with safety”).

The record is not sufficient to support a reasonable suspicion that Offill failed to drive on the right half of the roadway or that she was driving carelessly. And Offill contends that this court’s decision in *State v. Brechler* requires that a driver must leave the road to leave the lane and must do so unsafely in order to violate Minn. Stat. § 169.18, subd. 7(a). 412 N.W.2d 367, 368-69 (Minn. App. 1987).

In *Brechler*, officers stopped a vehicle after observing it swerve once within its lane of travel. This court, in affirming the district court’s order suppressing evidence obtained after the stop, characterized the stop as “the product of whim and caprice.” *Id.* We noted that Brechler’s car neither left the road nor crossed the center line and concluded that there was “no driving conduct suggesting criminal activity.” *Id.* at 368. Offill argues that the facts of her case are identical to *Brechler*. We disagree. Brechler swerved within his lane, while Offill crossed the line that marked her lane. We also do not agree with Offill’s characterization of the holding in *Brechler*, which did not involve any discussion of whether Brechler’s driving violated Minn. Stat. § 169.18, subd. 7 (a).

Even if the record in this case is not sufficient to support a reasonable suspicion of a violation of Minn. Stat. §169.18, subd. 7 (a), an officer can legally stop a driver as long as the officer’s suspicion of criminal activity is “specific and articulable.” *Warrick v. Comm’r of Pub. Safety*, 374 N.W.2d 585, 586 (Minn. App. 1985) (quotation omitted). Here, the officer’s observation that Offill was unable to keep her car within her driving

lane just after midnight on a Saturday morning supports a reasonable suspicion that Offill was impaired or inattentive sufficient to justify the officer's investigatory stop.

Affirmed.