STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2395

State of Minnesota,
Respondent,

vs.

Kevin B. Holm,
Appellant.

Filed January 27, 2009
Affirmed
Hudson, Judge

Clearwater County District Court
File No. CR-07-285

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

Jeanine Brand, Clearwater County Attorney, 213 Main Avenue North, Department 301, Bagley, Minnesota 56621 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, Minnesota 55104 (for appellant)

Considered and decided by Hudson, Presiding Judge; Larkin, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

HUDSON, Judge

On appeal from his conviction of third-degree driving while impaired, appellant argues that the district court erred in ruling that the police had a reasonable articulable suspicion to stop appellant and erred when it failed to suppress evidence resulting from the stop. We affirm.

FACTS

Appellant Kevin Bradley Holm was driving a motor vehicle on June 3, 2007, at approximately 1:40 a.m. in Clearwater County. Deputy Sheriff Thomas Davis observed a vehicle traveling in the opposite direction from him. Deputy Davis testified that part of his training as a police officer was to estimate speeds of motor vehicles within three miles per hour and that he estimates vehicle speeds daily as part of his job. Based on his experience and training, he believed appellant's car was accelerating rapidly and going about 65 m.p.h. When the car reached him, he activated his radar device and clocked the car at 67 m.p.h. in a 55 m.p.h. zone. Deputy Davis had not calibrated his radar device that night, and he did not know the last time it had been calibrated, but he believed the vehicle was still accelerating as he took the reading. Once he had stopped appellant, Deputy Davis administered field sobriety tests and observed three beer cans on the floor on the passenger side of appellant's vehicle. Appellant consented to an Intoxilyzer test. The results of the Intoxilyzer test, taken at 2:39 a.m., revealed an alcohol concentration of 0.14.

The district court found that Deputy Davis's personal observations based on his experience combined with the radar reading created a reasonable suspicion of criminal activity and that the stop of appellant's vehicle was lawful. Accordingly, the district court denied appellant's motion to suppress the evidence resulting from the stop. Appellant waived his right to a jury trial and submitted the case to the district court on stipulated facts under Minn. R. Crim. P. 26.01, subd. 4. The district court found appellant guilty of two charges of third-degree driving while impaired and sentenced appellant for one of the offenses. This appeal follows.

D E C I S I O N

Appellant argues that the deputy lacked sufficient reasonable suspicion to stop his vehicle and that the district court erred in denying his motion to suppress evidence resulting from the stop. Specifically, appellant argues that because Deputy Davis's radar device had not been properly calibrated, pursuant to Minn. Stat. § 169.14, subd. 10(a) (2006), the radar readings were inadmissible. 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). "In doing so, we review findings of fact for clear error, giving due weight to the inferences drawn from those facts by the district court." *Id.* (quotation omitted).

Reasonable suspicion

The Fourth Amendment to the United States Constitution and article I, section 10 of the Minnesota Constitution prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. 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). In determining whether the reasonable-suspicion standard has been met, courts "should consider the totality of the circumstances and should remember that trained law-enforcement officers are permitted to make 'inferences and deductions that might well elude an untrained person.'" *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983) (quoting *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).

In *Sazenski v. Comm'r of Pub. Safety*, this court concluded that an officer's visual estimation of speed "amply supports the [district] court's determination that the stop was proper." 368 N.W.2d 408, 409 (Minn. App. 1985). A law-enforcement officer's observation of a traffic violation, "however insignificant," gives the officer "an objective basis for stopping the vehicle." *George*, 557 N.W.2d at 578. *See, e.g.*, *State v. Pleas*, 329 N.W.2d 329, 331 (Minn. 1983) (upholding stop based on officer's observation of

broken windshield, no front license plate, and rear plate upside down); *State v. Barber*, 308 Minn. 204, 204–05, 241 N.W.2d 476, 476 (1976) (upholding stop based on officer's observation that license plate was wired on rather than bolted on). Indeed, a police officer's observation of a traffic violation may establish the higher standard of probable cause to stop the vehicle. *Whren v. United States*, 517 U.S. 806, 810, 116 S. Ct. 1769, 1772 (1996).

Here, the district court found that Deputy Davis "both with his radar and with his personal observations and experience, had an articulable suspicion that the defendant's vehicle was traveling in excess of the posted speed limit." There is merit to appellant's claim that the radar results were arguably inadmissible because the radar device had not been calibrated. But we need not, and do not, affirm the district court based on the evidence from the radar device. Rather, we hold that the deputy's personal observations and experience were sufficient to create reasonable suspicion of criminal activity. Deputy Davis testified that he received formal training in estimating vehicle speeds and does so daily as part of his job. He personally observed that appellant's vehicle was traveling at a rate beyond the speed limit and that it continued to accelerate. Based on these observations, Deputy Davis believed that appellant was violating the traffic laws. These observations alone, without any evidence from the radar device, provided a sufficiently particularized and objective basis for Deputy Davis to make an investigatory stop of appellant's vehicle. The district court did not err by admitting evidence that resulted from the stop.

Appellant's pro se arguments

Appellant makes several arguments in his pro se supplemental brief which are either unsupported or already argued in his appellant's brief. One meritorious argument he makes, however, is that the radar records were not made available to him pursuant to Minn. Stat. § 169.14, subd. 10(b) (2006), which provides that records from the radar device "shall be available to a defendant on demand." The record does not contain evidence that the records were requested. Moreover, that appellant may or may not have had access to the radar device records is not dispositive because our decision rests on the deputy's personal observations.

The district court did not err when it ruled that the police had a reasonable articulable suspicion to stop appellant.

Affirmed.