STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2185

State of Minnesota,
Respondent,

vs.

Jason P. Rushmeyer,
Appellant.

Filed March 24, 2009
Affirmed
Schellhas, Judge

Stearns County District Court
File No. T3-06-13248

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

Janelle P. Kendall, Stearns County Attorney, Kevin M. Voss, Assistant County Attorney, Administration Center, Room 448, 705 Courthouse Square, St. Cloud, MN 56303 (for respondent)

John D. Ellenbecker, Attorney at Law, 803 West St. Germain Street, P.O. Box 1127, St. Cloud, MN 56301 (for appellant)

Considered and decided by Lansing, Presiding Judge; Kalitowski, Judge; and Schellhas, Judge.

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

SCHELLHAS, Judge

Appellant challenges a pretrial ruling denying his motion to suppress evidence derived from a traffic stop. We affirm.

FACTS

Appellant Jason Paul Rushmeyer was convicted of driving while impaired (DWI) after a stipulated-facts trial. He seeks review of a pretrial ruling denying his motion to suppress evidence derived from the traffic stop that led to his arrest.

State Trooper Robyn Leagjeld conducted the traffic stop and testified at the evidentiary hearing on appellant's motion to suppress. Near 1:00 a.m., on the day of appellant's arrest, Leagjeld was parked at a Conoco gas station on Railroad Avenue in Albany, Minnesota. Leagjeld observed appellant's vehicle cross the white fog line as it proceeded eastbound toward the Conoco station on Railroad Avenue. Leagjeld positioned her squad behind appellant's vehicle, activated her in-squad camera, and immediately observed appellant's vehicle cross the fog line a second time. Leagjeld testified that because of a delay in recording that occurs after her in-squad camera is activated, the video taken from her squad car did not capture an image of appellant's vehicle crossing the fog line the second time. Leagjeld followed appellant's vehicle and observed it touch and cross over the fog line two more times. Leagjeld testified that the vehicle was traveling 30 miles per hour in a 40 mile-per-hour zone, and she suspected that the driver was impaired by either alcohol or a controlled substance because of the driving conduct that she observed and because it was close to the time that local bars

closed. Leagjeld stopped appellant's vehicle, approached the driver's side, and suspected alcohol use after interacting with appellant. After appellant failed the field-sobriety tests that Leagjeld administered to him, Leagjeld arrested him.

Appellant moved to suppress the evidence obtained from the traffic stop. On cross-examination during the suppression hearing, Leagjeld testified that she was unsure of the posted speed limit on Railroad Avenue at the Conoco station's location, and she was unsure how far she followed appellant's vehicle after she pulled out of the Conoco station onto Railroad Avenue. She testified that it "would have been a couple of miles," but she reiterated that she was not "quite sure what the distance was."

The in-squad video is grainy and unclear. The video shows appellant's vehicle twice traveling near the fog line, but it is difficult to discern whether the vehicle is within its lane or touching and crossing the fog line. When the vehicle nears the fog line in the video, Leagjeld can be heard vocalizing her observation that the vehicle touched and crossed the fog line. The video also shows appellant passing a 40 mile-per-hour speed limit sign and, roughly six seconds later, Leagjeld can be heard noting that the vehicle is traveling "30 in a 40."

Appellant testified at the suppression hearing that he retraced the course he drove on the day he was arrested and kept track of the distance traveled between various points using the odometer in his vehicle. According to appellant, the posted speed limit was 30 miles per hour at the point of the Conoco station, the speed limit then increases to 40 miles per hour .2 miles after the Conoco station, and appellant was stopped .2 miles after the speed limit increased.

The district court denied appellant's suppression motion. A stipulated-facts trial followed. The district court found appellant guilty of two counts of DWI and one count of driving without proof of insurance. Appellant was convicted and sentenced on one count of DWI and one count of driving without proof of insurance. This appeal follows.

D E C I S I O N

"In general, the state and federal constitutions allow an officer to conduct a limited investigatory stop of a motorist if the state can show that the officer had a particularized and objective basis for suspecting the particular person stopped of criminal activity." *State v. Anderson*, 683 N.W.2d 818, 822-23 (Minn. 2004) (quotation omitted). If an officer has specific and articulable reasons to suspect a driver is under the influence of an intoxicant, a stop of the driver is justified. *State v. Engholm*, 290 N.W.2d 780, 784 (Minn. 1980). Driving conduct that will support such a stop includes driving at an exceptionally slow speed and weaving within a lane in an unusual or erratic manner. *Id.*; *see also State v. Ellanson*, 293 Minn. 490, 490-91, 198 N.W.2d 136, 137 (1972) (concluding that an officer had a right to stop a vehicle that weaved within its lane to investigate the cause of the unusual driving); *State v. Richardson*, 622 N.W.2d 823, 826 (Minn. 2001) ("Even observing a motor vehicle weaving within its own lane in an erratic manner can justify an officer stopping a driver.").

In reviewing the district court's determination of the legality of the limited investigatory stop of appellant, we review the question of reasonable suspicion 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). "A trial court's finding is erroneous if this court, after reviewing the record, reaches the firm conviction that a mistake was made." *State v. Kvam*, 336 N.W.2d 525, 529 (Minn. 1983).

Here, the district court found that "the facts articulated by the trooper, specifically that [appellant] was driving slower than the posted limit and repeatedly crossing over the fog line, are specific, articulable facts from which the trooper could reasonably suspect [appellant] of criminal activity." The district court concluded: "Thus, the trooper had sufficient basis to stop [appellant]'s vehicle."

Appellant argues that: (1) the video does not support a finding that he crossed the fog line; (2) Leagjeld lacked credibility as a witness because her testimony was contradicted by the video and appellant's testimony and thus, Leagjeld's testimony fails to support a finding that he crossed the fog line; and (3) appellant's slow rate of speed did not justify the stop.

We conclude that the video supports the finding that appellant's vehicle crossed the fog line. The combination of the video footage showing the vehicle nearing and possibly touching or crossing the fog line and Leagjeld's contemporaneous statements voicing her observation of the vehicle touching and crossing the fog line support the district court's finding. Appellant argues that Leagjeld lacked credibility because her testimony and the video content are inconsistent and her testimony about the distance she followed appellant in her vehicle is inconsistent with appellant's testimony. But Leagjeld's testimony is not inconsistent with the video content. And, although Leagjeld's estimate of the distance she followed appellant is inconsistent with appellant's

measurements, Leagjeld twice acknowledged during her testimony that she was unsure of the distance traveled. This inconsistency does not so impair Leagjeld's credibility that her testimony on other points must be discredited. Further, this court leaves questions of "the weight and believability of witness testimony" to the district court and defers to the district court's credibility determinations. *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *review denied* (Minn. July 15, 2003).

Appellant argues that his slow rate of speed did not justify the stop because it is explained by a change in the speed limit on Railroad Avenue and his preparation to make a left-hand turn. We disagree. Under this court's application of *Engholm* in *Shull v. Comm'r of Pub. Safety*, 398 N.W.2d 11, 14 (Minn. App. 1986), a reasonable inference that a driver is impaired that is based on specific, objective facts will not be negated simply because the same facts could give rise to a different inference. In *Shull*, this court applied *Engholm* and concluded that weaving over the center line and driving at a slower than necessary speed supported a reasonable inference of impaired driving. *Id.* The driver argued that the bad weather explained his driving conduct, but this court concluded that the reasonable inference of impaired driving was not negated by the fact that an alternate inference could also be drawn from the same facts. *Id.*

Appellant's driving conduct is analogous to the conduct presented in both *Shull* and *Engholm* and supported a reasonable inference of impaired driving. Like in *Shull* and *Engholm*, here the officer observed that appellant's vehicle was weaving and traveling at a slow rate of speed, and the officer's observation of this driving conduct gave rise to reasonable suspicion of impaired driving. And like in *Shull*, appellant's

alternate explanation for his driving conduct does not negate the officer's reasonable suspicion of impaired driving.

Affirmed.