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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0549**

State of Minnesota,
Respondent,

vs.

Douglas Lee Juelson,
Appellant.

**Filed March 3, 2009
Affirmed
Collins, Judge***

Itasca County District Court
File No. 31-CR-07-2111

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

John J. Muhar, Itasca County Attorney, Todd S. Webb, Assistant County Attorney, Itasca County Courthouse, 123 Fourth Street Northeast, Grand Rapids, MN 55744 (for respondent)

Frank L. Orton, 514 America Avenue Northwest, Bemidji, MN 56619 (for appellant)

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

UNPUBLISHED OPINION

COLLINS, Judge

Appellant challenges the denial of his motion to suppress evidence, arguing that the law-enforcement officers lacked a sufficient reason for the traffic stop. We affirm.

FACTS

Douglas Juelson was operating an all-terrain vehicle (ATV) on an Itasca county road when law-enforcement officers stopped him because “it’s illegal to operate an ATV on any county roadway.” Juelson was subsequently charged with first-degree (felony) DWI and other violations. Juelson disputed the legality of the traffic stop as the sole basis of his motion to suppress evidence. Following a contested omnibus hearing, the district court ruled that the traffic stop was supported by reasonable and articulable suspicion of a violation of a traffic law and denied Juelson’s motion. Juelson then waived his right to a jury and submitted to a stipulated-facts trial pursuant to Minn. R. Crim. P. 26.01, subd. 3, preserving the evidence-suppression issue for appeal. Following his conviction, Juelson appealed.

DECISION

To lawfully stop a motorist, an officer must have a specific, articulable, and objective basis for suspecting the particular person stopped of criminal activity. *State v. Anderson*, 683 N.W.2d 818, 822-23 (Minn. 2004). “Generally, if an officer observes a violation of a traffic law, no matter how insignificant the traffic law, that observation forms the requisite particularized and objective basis for conducting a traffic stop.” *Id.* at 823. This general rule, however, presumes that the officer’s conclusion that the motorist

violated a traffic law is based on a correct interpretation of that law. *Id.* at 823-24. “[A]n officer’s mistaken interpretation of a statute may not form the particularized and objective basis for suspecting criminal activity necessary to justify a traffic stop.” *Id.* at 824.

The officers saw Juelson operating an ATV on a public roadway and stopped him because they believed this violated Minn. Stat. § 84.928, subd. 1(a) (Supp. 2007). “Unless otherwise allowed in sections 84.92 to 84.929, a person shall not operate an all-terrain vehicle in this state along or on the roadway, shoulder, or inside bank or slope of a public road right-of-way of a trunk, county state-aid, or county highway.” Minn. Stat. § 84.928, subd. 1(a). Focusing on the “[u]nless otherwise allowed” clause, Juelson argues that the officers acted on the mistaken belief that operating an ATV on a public road was “in and of itself” illegal despite multiple exceptions set forth in the statute.

In *State v. Timberlake*, 744 N.W.2d 390 (Minn. 2008), our supreme court considered a nearly identical argument. The police in *Timberlake* had stopped the defendant’s vehicle after receiving a 911 call from a person who observed the defendant pick up a gun that had apparently fallen out of his vehicle. *Id.* at 392. The defendant argued that “because it is legal in Minnesota for a private citizen to carry a permitted gun in public, police may not conduct an investigatory stop without additional evidence that the possession itself is illegal.” *Id.* at 394. The supreme court rejected this argument, however, because the operative language of the statute generally prohibits carrying a firearm; the “without a permit” language is not an element of the offense but rather an exemption from criminal liability that must be proven by the defendant. *Id.* at 395.

Here, Juelson essentially argues that the officers were required to have a reasonable suspicion that none of the exceptions referenced in the “[u]nless otherwise allowed” clause of section 84.928, subd. 1(a), applied. For example, he suggests that the officers required an objective factual basis for believing that he was not using the ATV for agricultural purposes. *See* Minn. Stat. § 84.928, subd. 1(g) (Supp. 2007) (permitting ATV “used for agricultural purposes” to be operated on public road). Juelson’s argument parallels the one rejected in *Timberlake* that “the police would need to suspect that the person carrying the gun does not have a valid permit or that some other criminal activity is afoot to warrant an investigatory stop.” 744 N.W.2d at 394. The argument fails here as well. The operative language of section 84.928, subd. 1(a), is a general prohibition on operating an ATV on public roadways, which applies *unless* the defendant shows that he is “otherwise allowed.” Like the “without a permit” clause in *Timberlake*, the “otherwise allowed” provision is not an element of the offense but rather an exemption from criminal liability that must be proven by the defendant. Thus, the act of operating an ATV on a public roadway is a *prima facie* violation of Minn. Stat. § 84.928, subd. 1(a), and provides a sufficient basis for a lawful investigatory traffic stop. Even if Juelson could prove that at the time and place of the stop he was “otherwise allowed” to operate the ATV despite the statute’s general prohibition, it would provide a defense to criminal liability but would have no bearing on the lawfulness of the stop.¹

Affirmed.

¹ Juelson makes additional arguments in his brief, but because they require us to accept his incorrect interpretation of Minn. Stat. § 84.928, subd. 1(a), we need not address them.