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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0322**

State of Minnesota,
Appellant,

vs.

Carey James Jahnke,
Respondent.

**Filed July 7, 2009
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-08-41998

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

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Considered and decided by Minge, Presiding Judge; Worke, 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UNPUBLISHED OPINION

WORKE, Judge

In this pretrial appeal, the state argues that the district court erred in concluding that the stop of respondent's vehicle was an unreasonable search and seizure. We affirm.

DECISION

The state challenges the district court's pretrial ruling that the stop of respondent Carey James Jahnke's vehicle was unlawful. When reviewing a pretrial order, the state must "clearly and unequivocally" show that the district court erred and that the error will have a "critical impact on the outcome of the trial." *State v. Battleson*, 567 N.W.2d 69, 70 (Minn. App. 1997) (quotation omitted). There is no dispute that the district court's order critically impacts the outcome. The issue, then, is whether the district court clearly erred in concluding that the stop was unlawful and that the evidence must be suppressed. When "the facts are not in dispute and the [district] court's decision is a question of law, [we] may independently review the facts and determine, as a matter of law, whether the evidence need be suppressed." *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992).

The United States and Minnesota Constitutions prohibit "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. A police officer may stop and temporarily seize a person if the officer reasonably suspects that person of criminal activity. *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995). The officer must be able to show a reasonable suspicion of criminal activity based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007)

(quotation omitted). The stop or seizure cannot be the product of mere whim, caprice, or idle curiosity. *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004).

Based on our review of the record, the district court did not err in finding that the stop was unlawful. The officer testified that when he first observed respondent's vehicle sitting behind a railroad crossing, he did not observe any violation of the law. The officer left the area and returned a couple of minutes later and noticed that respondent's vehicle had not moved. The officer drove past the vehicle and saw that it had two occupants. On cross-examination, the officer testified that he was going to approach the vehicle to see if the driver was experiencing a problem with the stoplight. He stopped behind respondent's vehicle, but did not activate his emergency or parking lights. As the officer exited his squad and approached the rear of the vehicle, respondent drove over the railroad tracks and stopped at a red light at the nearest intersection. The officer returned to his squad, drove over the railroad tracks, turned on his red lights and spotlight to stop the vehicle. At this point, a stop occurred. Respondent remained stopped at the red light when the officer exited his squad and approached the vehicle. The officer was unable to identify any criminal activity he observed between the time he initially stopped behind the vehicle and when respondent drove over the railroad tracks and stopped at the signal light. The officer testified that there were a lot of "things that could be going on at [1:30 a.m.]." But the officer was unable to articulate a reasonable suspicion of criminal activity to stop respondent's vehicle.

Affirmed.