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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1155**

State of Minnesota,
Appellant,

vs.

Jason Randall Owens,
Respondent.

**Filed November 30, 2010
Reversed and remanded
Wright, Judge**

Hennepin County District Court
File No. 27-CR-10-17591

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Considered and decided by Connolly, Presiding Judge; Lansing, Judge; and
Wright, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant State of Minnesota challenges the district court's pretrial order
suppressing evidence of intoxication and dismissing charges of driving while impaired.
Appellant argues that the district court erroneously concluded that the officer who

initiated a traffic stop did not have a reasonable, articulable suspicion of a motor vehicle violation or criminal activity sufficient to justify the traffic stop. We reverse and remand.

FACTS

On February 27, 2010, Golden Valley Police Sergeant Jeffrey Johnson was patrolling I-394 westbound when he observed a green Chevrolet Suburban driven by respondent Jason Owens cross twice over the double white lines separating the high-occupancy vehicle (HOV) lane from the center lane. Because crossing the double white lines is a traffic violation, Sgt. Johnson initiated a traffic stop.

According to the complaint that followed, while speaking with Owens, Sgt. Johnson detected the odor of an alcoholic beverage. The complaint alleged that Owens performed poorly during the field sobriety tests, and a preliminary breath test measured an alcohol concentration of .134. The complaint further alleged that Sgt. Johnson arrested Owens and transported him to the Golden Valley Police Department, where Owens submitted to a urine test that measured an alcohol concentration of .13. Owens subsequently was charged with driving under the influence of alcohol, a violation of Minn. Stat. §§ 169A.20, subd. 1(1), 169A.27 (2008), and having an alcohol concentration of .08 or more within two hours of driving, a violation of Minn. Stat. §§ 169A.20, subd. 1(5), 169A.27 (2008). Owens moved to suppress the evidence and dismiss the charges, arguing that the officer did not have a lawful basis to initiate a traffic stop.

At the evidentiary hearing, Sgt. Johnson testified that he initiated a traffic stop because he observed the vehicle “deviat[e] from the lane” twice by approximately one

foot and swerve within the lane. He also testified that traffic signs along I-394 warn that crossing the double white lines is a traffic violation. Owens did not deny crossing the traffic-lane lines. Rather, he testified that it was “probably possible” that his vehicle crossed or partially crossed the double white lines. He testified further that he did not believe that he crossed over the double white lines, but his vehicle “might have” touched the double white lines because it is wider than other cars and takes up most of a lane. Both Owens and his wife, who was traveling with him in the vehicle, testified that he had not swerved.

The district court granted Owens’s motion to dismiss. The district court explained:

[A]nyone who’s followed for a mile is probably going to swerve in their lane. And I think any police officer who follows anybody for up to two miles is going to see something, an articulable suspicion of a violation of some kind within the lane, because people don’t drive at a completely straight line. And I’ve watched this over and over and over again on this road. I think probably you’re acting in the time, the hour, the fact that people are coming out of town, all that’s true, but I will say this one is insufficient.

This appeal followed.

DECISION

The state challenges the district court’s decision to suppress the evidence of intoxication and dismiss the charges. The state argues that Sgt. Johnson’s testimony established a lawful basis for the stop.

When the state appeals a pretrial suppression order, “the state must clearly and unequivocally show both that the trial court’s order will have a critical impact on the

state's ability to prosecute the defendant successfully and that the order constituted error." *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998) (internal quotations omitted). Suppression of evidence leading to the dismissal of criminal charges satisfies the critical-impact requirement. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). We, therefore, consider whether the district court erred by suppressing the evidence of intoxication.

We review de novo a district court's determination of whether there was reasonable suspicion of unlawful activity to justify a limited investigatory stop. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). In doing so, we review the district court's findings of fact for clear error and give due weight to inferences drawn from those facts. *State v. Lee*, 585 N.W.2d 378, 382-83 (Minn. 1998). We also defer to the district court's assessment of witness credibility. *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *review denied* (Minn. July 15, 2003).

An investigatory stop is valid when the officer who initiated the stop articulates a "particularized and objective basis for suspecting the particular persons stopped of criminal activity." *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S. Ct. 690, 695 (1981)). "A brief investigatory stop requires only reasonable suspicion of criminal activity, rather than probable cause." *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996). A police officer's observation of even a minor traffic violation is a sufficient basis for stopping the vehicle. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). But an officer need not observe an actual violation of traffic laws to justify an investigatory stop. *Pike*, 551 N.W.2d at 921.

An investigatory stop is valid if it “was not the product of mere whim, caprice or idle curiosity, but was based upon ‘specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.’” *Id.* at 921-22 (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)). When determining whether this standard is met, the district court examines the totality of the circumstances. *Kvam*, 336 N.W.2d at 528.

The district court acknowledged that the evidence presents a close case, but it determined that Sgt. Johnson failed to articulate a sufficient basis for initiating an investigatory stop. In support of this ruling, Owens argues that the district court discredited Sgt. Johnson’s testimony because it found Owens’s conflicting testimony to be more credible. The record does not support this contention. Owens presented no evidence contradicting Sgt. Johnson’s observations that Owens twice crossed the double white lines into the HOV lane and that signs on the highway prohibit such driving. Indeed, Owens conceded that he may have strayed onto some portion of the double white lines, and he presented evidence that the size of his large vehicle makes it difficult for him to stay within his lane. The district court did not make an express credibility determination. But it implicitly credited Sgt. Johnson’s testimony that Owens’s driving gave rise to reasonable suspicion when it observed that “people don’t drive at a completely straight line” and an officer who follows a motorist for up to two miles is going to observe conduct that forms “an articulable suspicion of a violation of some kind.”

Minnesota law provides that it is a traffic violation to cross the double white lines into another lane when there are signs that prohibit doing so. *See* Minn. Stat. §§ 169.18, subd. 7(a) (requiring that a vehicle be driven “as nearly as practicable entirely within a single lane”), 169.06, subd. 4(a) (requiring that drivers “obey the instructions of any official traffic-control device”), 169.011, subd. 49 (defining “official traffic-control device” as “all signs, signals, markings, and devices . . . placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic”) (2008). A violation of any traffic law, however insignificant, provides the objective basis needed to stop a vehicle. *George*, 557 N.W.2d at 578. The undisputed facts establish that Owens committed a traffic violation. Thus, Sgt. Johnson had a reasonable basis to stop Owens’s vehicle to investigate further.

Moreover, the law permits investigatory stops even when there is no obvious traffic violation, as long as an officer can articulate specific facts which, together with rational inferences from those facts, reasonably justify the investigatory stop. *Pike*, 551 N.W.2d at 921. It is well established that swerving, weaving, or other unusual driving behavior can provide a reasonable, articulable suspicion to justify an investigatory stop. *See, e.g., State v. Richardson*, 622 N.W.2d 823, 825-26 (Minn. 2001) (holding that vehicle crossing fog line gave officer reasonable suspicion of careless driving and driving under the influence, both violations of Minnesota statutes); *Kvam*, 336 N.W.2d at 528 (stating that officer who observes a driver weaving within his lane in an erratic manner is justified in stopping the driver to investigate); *State v. Dalos*, 635 N.W.2d 94, 96 (Minn. App. 2001) (holding that continuous weaving within the lane for one-half mile provides

reasonable, articulable suspicion of criminal activity to justify a stop). Even when we disregard Sgt. Johnson's disputed testimony that Owens swerved, Sgt. Johnson's uncontroverted observation that Owens twice crossed the double white lines is independently sufficient to establish a reasonable, articulable suspicion that Owens was violating Minnesota law. *See, e.g.,* Minn. Stat. §§ 169.13, subd. 2 (operating vehicle in manner likely to endanger persons or property), 169A.20, subd. 1(1) (operating vehicle under the influence of alcohol) (2008).

Owens argues that *State v. Brechler*, 412 N.W.2d 367 (Minn. App. 1987), is dispositive support for the district court's decision. In *Brechler*, we held that an officer did not have a reasonable, articulable basis for initiating a traffic stop founded solely on observing a car swerve once in its lane. 412 N.W.2d at 369. But the facts here are distinguishable from those in *Brechler* because, without considering the contested driving conduct, Sgt. Johnson observed Owens's vehicle deviate from its lane twice, thereby committing at least two traffic violations. Thus, Owens's reliance on *Brechler* is misplaced.

Here, the district court erred when it granted the motion to dismiss. The evidentiary record and the district court's statement as to reasonable, articulable suspicion establish that the stop was based on Sgt. Johnson's observation of Owens committing a traffic violation. Because the district court erred by suppressing evidence of intoxication that arose from that stop and by dismissing the charges against Owens, we reverse and remand for further proceedings.

Reversed and remanded.

