ORIGINAL

No. 20-7003

IN THE

SUPREME COURT OF THE UNITED STATES

Justin Anthony Kudla,

Petitioner,

vs.

State of Minnesota,

Respondent.

On Petition for a Writ of Certiorari to
Minnesota Court of Appeals
Petition for a Writ of Certiorari

PETITIONERS PETITION FOR A WRIT OF CERTIORARI

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I. Question Presented

1. Did the district court error by denying the suppression motion where a police officer violated a rule announced in Terry v. Ohio, under the Fourth Amendment of the United States Constitution, by an intrusion which lead the officer reasonably to conclude in light of his experience that criminal activity may be afoot without pointing to specific and articulable facts which, taken together with rational inferences from those facts, to warrant that intrusion? In other words, did the officer have reasonable articulable suspicion of unlawful activity sufficient to justify the traffic stop?

II. List of Parties

The names of the parties and attorneys are set forth on the cover to this petition.

III. Related Cases

States Court of Appeals

1. Birkland v. Comm'r of Pub. Safety, 940 N.W.2d 822 (Minn. App. 2020)
2. Crooks v. State, 710 So.2d 1041 (Fla. Dis. Ct. App. 1998)
3. Kruse v. Comm'r of Pub. Safety, 906 N.W.2d 554 (Minn. App. 2018)
4. Rowe v. State, 769 A.2d 879 (Md. App. 2001)
5. State v. Ross, 149 P. 3d 876 (Kan. 2007)
6. State v. Tarvin, 972 S.W.2d 910 (TX App. 1998)
7. State v. Wagner, 637 N.W.2d 330 (Minn. App. 2001)
8. Warrick v. Comm'r of Pub. Safety, 374 N.W.2d 585 (Minn. App. 1985)

States Supreme Courts

9. State v. Caron, 534 A.2d 978 (ME. 1987)
10. State v. Lafferty, 967 P.2d 363 (MT. 1998)
11. State v. Tague, 676 N.W.2d 197 (IA. 2004)

United States Federal District Courts

12. United States v. Wendfeldt, 58 F.Supp.3d 1124 (Dist. Court D, NV 2014)

Federal Circuit Courts

13. United States v. Colin, 314 F.3d 439 (9th Cir. 2002)
14. United States v. Freeman, 209 F.3d 464 (6th Cir. 2000)

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VI. Petition for a Writ of Certiorari

Justin Kudla, a probationer through Wright County, Minnesota, respectfully petitions this court for a writ of certiorari to review judgment of the Minnesota Court of Appeals decision, and denial of Mr. Kudla's petition to the Minnesota Supreme Court.

VII. Opinions Below

The decision by the Minnesota Court of Appeals affirming Mr. Kudla's direct appeal is reported as State v. Kudla, No. A19-1940, 2020 WL 4432634, at *1 (Minn. App. Aug. 3, 2020). App.[1] 2-4. The Minnesota Supreme Court denied Mr. Kudla's petition for further review on October 20, 2020. App. 53.

VIII. Jurisdiction

Mr. Kudla's petition for hearing to the Minnesota Supreme Court was denied on October 20, 2020. Mr. Kudla invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Minnesota Supreme Court's judgment.

[1] App. stands for Appendix.

IX. Constitutional Provision Involved

The Fourth Amendment to the United States Constitution Provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

X. Statement of the Case and Facts

Justin Anthony Kudla, the petitioner was charged in Wright County District Court of Minnesota with gross misdemeanor DWI test refusal and misdemeanor DWI. He filed a motion challenging the deputy's reasonable, articulable suspicion for the stop[2] on November 13, 2018; however, Hon. Geoffrey Tenny denied the suppression motion. Kudla stipulated to the prosecution's case under Minn. R. Crim. P. 26.01, subd. 4, to obtain review of the suppression issue, and the Hon. Catherine McPherson found Kudla guilty of both counts. Soon thereafter Kudla filed a direct appeal in which was affirmed.

Then Kudla filed for a petition for further review in the Minnesota Supreme Court and later was denied. This petition follows.[3]

Wright County Deputy Sheriff Brandon Wenande did not have reasonable, articulable suspicion to stop Kudla's vehicle. Wenande was the state's sole witness at the suppression hearing and he testified to the following:

On November 13, 2018, around 1:00a.m., Wenande was traveling in a marked squad car on a county road in Albertville, Minnesota and saw Kudla's Dodge pickup stopped at an intersection from a distance of 150-200 feet. Kudla's truck was the only vehicle at the intersection. When the light at the intersection turned green, Wenande observed the truck accelerate into the intersection and "observed what I [He] *thought* to be tires squealing." Wenande then observed the truck "move over *slightly* into *the* right-hand northbound lane

[2] Under The 4th Amendment to the United States Constitution & Minnesota Constitution Article I § 10.
[3] A more complete version of the procedural history can be found at App. 86-87. Please note: the date of denial of petition for further review of the Minnesota Supreme Court is not in the Petition to MN Supreme court; however, that date can be found at App.53.

before correcting back into the left-hand lane". The squealing tires were not audible but Wenande was certain that he heard the sound. Wenande admitted that the lane violation was difficult to discern on the video but *testified* it was *visible*.[4] Wenande's squad-car video of the incident was admitted into evidence.

Deputy Wenande also testified that he was a "*reserve* officer for Orono and Mound Police Department for two and a half years and as a *community service* officer for the Medina Police Department for two and a half years before that.", With a "slight amount of overlap." At the time Wenande was a licensed certified peace officer in the State of Minnesota his "entire just under three years" and investigated driving-while-impaired crimes of "approximately *ten* or so."

On cross-examination, Wenande acknowledged that the squad windows were closed and the radio was on when he allegedly heard the squealing.[5] He acknowledged that the squad video does not show spinning tires on the pickup. Wenande also acknowledged that he stated in his report that he initiated the stop based on Kudla's failure to remain in his driving lane and did not refer to the city ordinance.

Wenande's squad video was received as exhibit 1, and a print out of the Albertville city ordinance was received over defense objection as exhibit 2. Defense counsel objected to the evidence of the city ordinance because it was never brought up in any of the reports or provided as a reason for the stop, and counsel first learned of the state's intent to rely on the ordinance at the hearing.[6]

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[4] The court stated in its "Conclusions of law" that the video supported the deputy's testimony; the court, however, **did not** endorse the deputy's testimony that half the pickup crossed into the right lane. App. at 48-51.

[5] Direct Examination was listening to AC/DC. App. at 22.

[6] Transcripts of the Suppression hearing can be found at App. 6-40.

The state claimed the stop was supported by reasonable suspicion because Kudla violated two different Laws: (1) Minnesota Statute § 169.18, Sub. 7 (a) in the absence of finding that he did so unsafely. The court of appeals affirmed Kudla's convictions, that there was reasonable suspicion to stop Kudla's vehicle based on his violation of Minn. Stat. § 169.18, subd. 7(a). Kudla, No. A19-1940, 2020 WL 4432634, at *3. App. 3. The court of appeals declined to articulate whether a violation of the Albertville city ordinance also provided reasonable suspicion for the stop. Id. At *3. App. at 3.

XI. Reasons for Granting Review

Kudla, respectfully asks this court to accept review of this case to clarify an important question of first impression: Does Minn. Stat. § 169.18, Sub. 7(a) along with other state statute/codes with similar if not identical wording in their statue/codes require an officer to articulate that a vehicle deviated from its driving lane *and* that such driving behavior was unsafe for an officer to have reasonable suspicion that the statute was violated? Review is necessary because a ruling by the United States Supreme Court will help clarify the law because of its national importance. Review is also necessary pursuant to:

Rules of the United States Supreme Court

Part III. Jurisdiction on Writ of Certiorari

Rule 10. Considerations Governing Review on Writ of Certiorari:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Finally, a review is also necessary because this question will continue to recur unless a decision by this court is made.

I. The decision of the Minnesota Court of Appeals is wrong.

The Fourth Amendment to the United States Constitution[7] and Article I of the Minnesota Constitution guarantee "the right of the people to be secure in their persons, houses, paper, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I § 10.

For over 50 years, this court held in Terry v. Ohio "an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a

[7] Mr. Kudla raised the 4th Amendment issue of the United States Constitution in all levels of Minnesota State Courts. App. at 42, 49, 58, 68, 3, 89.

reasonable, articulable suspicion that criminal activity is afoot." 392 U.S. 1, 30 (1968) (quoting Illinois v. Wardlow, 528 U.S. 119, 123 (2000)). The officer may make an investigatory stop if considering the totality of the circumstances; he has a particularized and objective basis for suspecting the person stopped of criminal activity. United States v. Cortez, 449 U.S. 411, 417-18 (1981). An officer can draw inferences based on knowledge gained only through law enforcement training and "in light of his" experience. Kansas v. Glover, 140 Sc.D. 1183, 1189 (2020); (quoting Terry v. Ohio, 392 U.S. 1, 27 (1968)). The officer, of course, must be able to articulate something more than an "inchoate and unparticularized suspicion or 'hunch'". United States v. Sokolow, 490 U.S. 1, 7 (1989); (quoting Terry v. Ohio, 392 U.S. 1, 27 (1968)). The burden is on the state to show a "particularized and objective basis for suspecting the person stopped of criminal activity." State v. Anderson, 683 N.W.2d 818, 822-23 (Minn. 2004) (quoting United States v. Cortez, 499 U.S. 411, 417-18 (1981)); (citing Kansas v. Glover, 140 Sc.D. 1183, 1194 (2020)).

Minnesota Statute § 169.18, Subd. 7(a), (consistent with numerous state statutes/codes, etc.) states that "a vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that such movement can be made with safety." Courts in Minnesota have routinely held that a violation of this statute can serve as reasonable, articulable suspicion for a traffic stop. Kruse v. Comm'r of Pub. Safety, 906 N.W.2d 554, 560-61 (Minn. App. 2018) ("Kruse moved from his lane of traffic when he drove on the fog line. That conduct provided reasonable grounds to suspect a violation of Minn. Stat. § 169.18, subd. 7(a),

and a constitutional basis for the ensuing traffic stop."); State v. Wagner, 637 N.W.2d 330, 336 (Minn. App. 2001) (finding reasonable and articulable basis for a traffic stop under Minn. Stat. § 169.18, subd. 7(a) when the defendant crossed the center line and drove on the shoulder).

In Birkland v. Comm'r of Pub. Safety, the district court found that Minn. Stat. § 169.18, Subd. 7(a) provided a statutory basis for stopping Birkland's vehicle after he turned left into the outermost lane of a four-lane roadway and may have crossed the center line. 940 N.W.2d 822, 827 (Minn. App. 2020). The court of appeals disagreed, holding in part "the statute allows a driver to change lanes once the driver can do so safely. The district court's findings, which are supported by the record, indicate no other vehicles were present at this intersection. If such lane change occurred, there is no indication Birkland did so unsafely." Id.

The recent decision by the Minnesota Court of Appeals in Birkland suggests that a violation of Minn. Stat. § 169.18, subd. 7(a) requires two separate findings: (1) that a vehicle moved from its driving lane, and (2) the movement was not made safely. The Minnesota Court of Appeals analysis in Birkland is consistent with the court's policy to "construe a statute as a whole and interpret its language to give effect to all of its provisions." State v. Riggs, 865 N.W.2d 679, 683 (Minn. 2015)

In Birkland, Kudla argued that because there were no other vehicles present at the intersection when the alleged lane violation occurred, even if the lane change did occur, the officer certainly did not articulate that he did so unsafely and therefore he did not violate Minn. Stat. § 169.18, Subd. 7(a). The Minnesota Court of Appeals reasoned

simply that Birkland was inapposite because it involved a lane change during a turn. Kudla, No. A19-1940, 2020 WL 4432634, at *3. App. at 3.

It is very true that the alleged lane violation in Birkland, occurred during a left-hand turn at an intersection. Birkland, 940 N.W.2d at 824. However, Minn. Stat. § 169. 18, subd. 7(a) is applicable to driving lane deviations regardless of where they occur. The Minnesota Court of Appeal's cursory analysis, and Birkland leave open the question of whether a violation of Minn. Stat. § 169.18 subd. 7(a) requires an officer to articulate that a vehicle deviated from its driving lane and such driving behavior was unsafe.

In Kudla the video showed a curve in the road at the point where the alleged driving violations occurred. The curve was not addressed in the hearing testimony or the court's order. App. at 6-40; 48-51. In Warrick v. Comm'r of Pub. Safety, the Minnesota court of appeals held, (Even multiple swerves over a considerable distance on a winding road and windy conditions and subtle weave involving inches over a five-mile drive is insufficient cause to seize the driver). 374 N.W.2d 585-586 (Minn. App. 1985).

II. The decision by the Minnesota Court of Appeals directly conflicts with numerous higher state courts throughout the United States and lower federal courts.

Minn. Stat. § 169.18 subd. 7(a) has "identical statutes by courts that have considered the issue under similar facts". (quoting State v. Tague, 676 N.W.2d 203 (2004)) See. Rowe v. State, 769 A.2d 879, 889 (MD. 2001) (holding a driver's momentary crossing of edge line of roadway and later touching of that line did not constitute probable cause that defendant violated the unsafe lane change provision of Maryland law); State v. Caron, 534 A.2d 978, 979 (ME. 1987) (holding that there was not

reasonable suspicion to justify a stop because a vehicle's "one time straddling of the centerline of an undivided highway is a common occurrence"); United States v. Gregory, 79 F.3d 973, 978 (10th Cir.1996) (holding an isolated incident of a vehicle crossing into emergency lane of roadway did not constitute probable cause that defendant violated the unsafe lane change provision of Utah law); United States v. Guevara-Martinez, 2000 WL 33593291, at *2 (D. Neb. May 26, 2000) (interpreting a similar Nebraska statute and concluding that touching, but not crossing, the broken line between two southbound lanes twice in a half mile did not violate the statute's "near as practicable" requirement), aff'd, 262 F.3d 751 (8th Cir.2001); State v. Tarvin, 972 S.W.2d 910, 912 (1998) (holding that police officer did not have reasonable suspicion to stop the defendant's vehicle where the defendant's car "touch[ed] the right-hand white line"); State v. Ross, 149 P. 3d 876, 879-880 (Kan. 2007) (defining "nearly as practicable" connotes something less than the absolute. Automobiles are not railway locomotives, and holding that crossing the fog line only briefly, for only a short distance, and only once wasn't enough to stop Ross's vehicle). These cases suggest that to violate a lane straddling statute, a driver must do more than simply touch, even for 10 seconds, a painted line on a highway. US v. Colin, 314 F.3d 439, 444 (9th Cir. 2002); Crooks v. State, 710 So.2d 1041, 1042-43 (Fla.Dist.Ct.App.1998) (holding three occasions of drifting over the right edge line did not constitute probable cause that defendant violated the unsafe lane change provision of Florida law); State v. Lafferty, 967 P.2d 363, 366 (MT. 1998) (holding crossing of the edge line twice and driving on the edge line once did not constitute probable cause that the defendant violated the unsafe lane change provision of Montana law); United States v.

Wendfeldt, 58 F.Supp.3d 1124, 1128 (Dist. Court D, NV 2014) (holding that the stop was unreasonable where the defendant crossed over the fog line twelve to fourteen inches and did not endanger other motorists); United States v. Freeman, 209 F.3d 464, 466-67 (6th Cir.2000) (holding the mere passage of defendants vehicle across the line separating the emergency lane of a highway from the right lane of travel did not constitute probable cause that defendant violated the unsafe lane change provision of Tennessee law).

This open question of whether a violation of Minn. Stat. § 169.18 subd. 7(a) and other state statute/codes requires an officer to articulate that a vehicle deviated from its driving lane and such driving behavior was unsafe creates a conflict with other state courts and lower federal court cases.

III. This case of first impression creates a national importance.

There are 47,304 miles of interstate roadways in the contiguous lower 48 states.[8] There are even county roads that are contiguous to border states.[9] App. 99. Now, keeping our attention on App. 99, if we as motorists are traveling on County Road 52[10] from East to West in Bigelow, Minnesota the Law would be different vs. from traveling West to East on County Road 52 in Bigelow Iowa. This is just one example of an area of the Minnesota and Iowa border. See State v. Tague, 676 N.W.2d 197 (IA. 2004). This also includes the contiguous interstates, U.S. Highways, State highways, County Highways, and any other local government roads throughout The United States of America. See App. 106.

[8] See. (U.S. Department of Transportation Federal Highway administration website at, https://www.fhwa.dot.gov/policyinformation/statistics/2018/hm20.cfm.).
[9] See https://www.google.com/earth/; Also See https://www.google.com/maps/
[10] 43°29'59.6"N 95°40'59.9"W

Even though Hawaii and Alaska are not contiguous states to the lower 48 states because of being surrounded by the ocean or another country; however, they have similar if not identical language in their state codes/statutes as talked about in this present case and cases talked about in this petition. See App. 100, 103-104.

In addition the court should grant review of this case because it presents a clean vehicle to address the clear conflict among numerous state supreme courts, state court of appeals, and federal courts on this important Fourth Amendment issues nationwide significance. The issue was raised and decided in numerous state and lower federal courts and because so many courts have already decided the issue, if the court does not take this case, the inconsistent application of the Fourth Amendment likely will persist for years to come.

Last but not the very least these interstates, U.S. Highways, State highways, County Highways, and any other local government roads are like the neurons (App. 106) in our American brains that connect like, our states connect together in which makes us, "We The People" one nation under [G]od with Liberty and Justice for All.

XII. Conclusion

For the forgoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

Justin Kudla

Justin Kudla

Date: 1/16/2021