APPENDIX

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2020 WL 4432634
Only the Westlaw citation is currently available.

Court of Appeals of Minnesota.

STATE of Minnesota, Respondent,

v.

Justin Anthony KUDLA, Appellant.

A19-1940

Filed August 3, 2020

Wright County District Court, File No. 86-CR-18-6291

Attorneys and Law Firms

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Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijó, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

SEGAL, Chief Judge

*1 In this direct appeal from final judgment, appellant claims that his conviction for refusing to submit to chemical testing must be reversed because the district court erred when it denied his motion to suppress evidence from a vehicle stop. Appellant argues that the traffic stop of his vehicle was unconstitutional because it was not supported by reasonable, articulable suspicion. We affirm.

FACTS

In the early morning hours of November 13, 2018, Wright County Sheriff's Deputy Brandon Wenande stopped a truck driven by appellant Justin Anthony Kudla after observing two alleged traffic violations. Deputy Wenande testified that, after approaching the truck, he observed that Kudla had "impaired motor movements, bloodshot, watery eyes, slurred speech, and a faint odor of alcohol on his breath." Kudla failed several field sobriety tests and did not respond to repeated requests to provide a breath sample. After being taken into custody, Kudla declined to take a chemical test.

Respondent State of Minnesota charged Kudla with operating a motor vehicle while under the influence of alcohol and refusal to submit to a chemical test. Following his arrest, Kudla sought to suppress evidence obtained during the traffic stop, arguing that the deputy lacked sufficient reasonable, articulable suspicion to initiate the stop.

At the omnibus hearing on Kudla's motion to suppress, the state claimed that the stop was justified because Kudla violated two different traffic laws, a City of Albertville ordinance, Albertville, Minn., Code of Ordinances ch. 1, § 7-1-1 (2018), that prohibits unreasonable acceleration and erratic driving and a state traffic law that requires vehicles to "be driven as nearly as practicable entirely within a single lane," Minn. Stat. § 169.18, subd. 7(a) (2018).

Deputy Wenande testified at the omnibus hearing that, on the night of November 13, he was traveling in a marked squad car on a county road in Albertville. He stated that he observed a Dodge pickup truck stopped at an intersection. When the light at the intersection turned green, the truck accelerated rapidly into the intersection, with its tires squealing. Deputy Wenande testified that he believed this conduct constituted erratic driving and/or unreasonable acceleration in violation of the Albertville ordinance.

Deputy Wenande testified that he continued to follow the truck, which was in the left-hand northbound lane of the road. He testified that he observed the truck move to the right so that approximately half the width of the truck was over the lane line, in the right-hand northbound lane, before correcting back into the left lane. The deputy testified that he believed this violated Minn. Stat. § 169.18, subd. 7(a). Deputy Wenande's squad-car video of this incident was admitted into evidence,

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but the deputy testified that the violation was difficult to discern on the video because it was the middle of the night.

Kudla argued that Deputy Wenande's testimony was not credible, claiming that the deputy had loud music playing in the squad car so he could never have heard any tires squealing and that the squad-car video undermined Kudla's testimony about the lane violation. The district court, however, credited Deputy Wenande's testimony and denied the motion to suppress.

*2 Kudla then agreed to stipulate to the state's case pursuant to Minnesota Rule of Criminal Procedure 26.01, subdivision 4, and waived his right to a jury trial. The district court found Kudla guilty and sentenced him to 365 days in jail. Kudla appeals.

DECISION

When reviewing a pretrial order on a motion to suppress evidence, we independently review the facts and determine as a matter of law whether the district court erred in denying the motion. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We review the district court's findings of fact under a clearly erroneous standard, but we review legal determinations de novo. *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006).

The United States and Minnesota Constitutions protect against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. "Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure ...." *Whren v. United States*, 517 U.S. 806, 809, 116 S. Ct. 1769, 1772 (1996).

Law enforcement must have reasonable, articulable suspicion of criminal activity in order to justify an investigative stop of a vehicle. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999). This standard is "less demanding than probable cause or a preponderance of the evidence," and is satisfied "when an officer observes unusual conduct that leads the officer to reasonably conclude in light of his or her experience that criminal activity may be afoot." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted); *see Kansas v. Glover*, 140 S. Ct. 1183, 1187 (2020) (noting that reasonable-suspicion standard requires less proof than probable-cause standard). But the stop must be based on more than "whim, caprice, or idle curiosity." *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996).

In determining whether reasonable, articulable suspicion exists to justify a stop, Minnesota courts "consider the totality of the circumstances and acknowledge that trained law-enforcement officers are permitted to make inferences and deductions that would be beyond the competence of an untrained person." *State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001); *see also State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012) ("The court may consider the officer's experience, general knowledge, and observations; background information, including the nature of the offense suspected and the time and location of the seizure; and anything else that is relevant."). "The factual basis required to justify an investigative seizure is minimal." *Klamar*, 823 N.W.2d at 691.

"[I]f an officer observes a violation of a traffic law, no matter how insignificant ..., that observation forms the requisite particularized and objective basis for conducting a traffic stop." *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004); *see, e.g.*, *State v. Poehler*, 935 N.W.2d 729, 734 (Minn. 2019) (upholding traffic stop when driver failed to wear a seatbelt); *Kruse v. Comm'r of Pub. Safety*, 906 N.W.2d 554, 560-61 (Minn. App. 2018) (upholding traffic stop when driver violated traffic law by driving on the fog line); *State v. McCabe*, 890 N.W.2d 173, 177 (Minn. App. 2017) (upholding traffic stop for driver's failure to illuminate headlights in the rain), *review denied* (Minn. Apr. 26, 2017).

*3 We turn first to the alleged violation of Minnesota Statutes section 169.18, subdivision 7(a), which states that, when any roadway has been divided into two or more clearly marked lanes of traffic, a "vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." We have previously determined that "observing a motor vehicle weaving within its own lane in an erratic manner can justify an officer stopping a driver." *Richardson*, 622 N.W.2d at 826. But a single swerve by a vehicle within its own lane of traffic does not establish an adequate basis to stop the vehicle. *State v. Dalos*, 635 N.W.2d 94, 96 (Minn. App. 2001).

Kudla claims that the district court erred by crediting Deputy Wenande's testimony because it is contradicted by the squad-car video. We conclude, however, that the squad-car video is at most inconclusive and, thus, does not contradict Deputy

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Wenande's testimony. The district court credited the deputy's testimony and, as an appellate court, we defer to the district court's credibility determinations. *Kruse*, 906 N.W.2d at 557. Thus, the district court did not err in crediting the deputy's testimony.

Kudla also argues, however, that a swerve into another lane of traffic does not constitute a violation of Minn. Stat. § 169.18, subd. 7(a). Kudla relies on two cases of this court, *State v. Brechler*, 412 N.W.2d 367 (Minn. App. 1987), and *Birkland v. Comm'r of Pub. Safety*, 940 N.W.2d 822 (Minn. App. 2020), as his authority. Neither case, however, supports his claim. The *Brechler* case involved a car that swerved slightly, but never crossed a lane line and stayed within a single lane of traffic. 412 N.W.2d at 368. And this court's recent decision in *Birkland* deals with lane changes while making a left turn. 940 N.W.2d at 825-26. Here, Deputy Wenande testified that Kudla's truck crossed over the lane line into the right-hand lane and the alleged lane violation here did not involve a turn.

This court's opinion in *Kruse* provides ample precedent in support of the district court's conclusion. In *Kruse*, the officer stopped a vehicle after observing the vehicle cross onto the right-hand fog line and then return to the center of the lane of travel. 906 N.W.2d at 557. This court held that crossing over from the lane of travel onto the fog line constitutes a violation of Minn. Stat. § 169.18, subd. 7(a), and thus supports a reasonable, articulable suspicion of unlawful activity to justify a vehicle stop. *Id.* at 559-61. Here, Kudla's driving arguably created a greater public safety risk by crossing over not just onto a fog line, but crossing over into the right-hand lane of traffic. Under *Kruse*, this alleged swerve into another lane clearly constitutes a violation of Minn. Stat. § 169.18, subd. 7(a) and supports the district court's conclusion that Deputy Wenande had a reasonable, articulable suspicion of unlawful activity sufficient to justify the traffic stop of Kudla's vehicle. [1]

Accordingly, we conclude that the district court did not err by denying the motion to suppress.

Affirmed.

All Citations

Not Reported in N.W. Rptr., 2020 WL 4432634

Footnotes

1 Because the lane violation provided Deputy Wenande with the requisite reasonable, articulable suspicion to sustain the traffic stop, we need not determine whether the alleged violation of the City of Albertville ordinance also provided a basis for the stop.

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APPENDIX E

STATE OF MINNESOTA

IN SUPREME COURT

A19-1940

State of Minnesota,

Respondent,

vs.

Justin Anthony Kudla,

Petitioner.

ORDER

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of Justin Anthony Kudla for further review be, and the same is, denied.

Dated: October 20, 2020

BY THE COURT:

Lorie S. Gildea
Chief Justice

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Additional material from this filing is available in the Clerk's Office.