STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0398

State of Minnesota,
Respondent,

vs.

Eddie Morris Miller,
Appellant.

Filed August 14, 2017
Affirmed
Johnson, Judge

Hennepin County District Court
File No. 27-CR-16-4547

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Paul D. Baertschi, Tallen and Baertschi, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

The Hennepin County District Court found Eddie Morris Miller guilty of driving while impaired. Before trial, the district court denied Miller's motion to suppress evidence that arose from a traffic stop. We conclude that the district court did not err by denying

that motion because law-enforcement officers had a reasonable, articulable suspicion that Miller was speeding, which justified the traffic stop. Therefore, we affirm.

FACTS

On January 28, 2016, at 2:16 a.m., Officer Friese and Officer Weber of the Robbinsdale Police Department were on patrol on Victory Memorial Drive. The officers saw an oncoming vehicle traveling at a high rate of speed. Their radar instrument indicated that the vehicle was traveling at a speed of 50 m.p.h. in a 25-m.p.h. zone. Officer Friese made a U-turn and followed the vehicle for approximately one and one-half minutes, during which time the vehicle was traveling between 28 and 35 m.p.h.

Officer Friese activated the squad car's flashing lights to initiate a traffic stop. He identified Miller as the driver of the vehicle. Officer Friese noticed that Miller had bloodshot and watery eyes and smelled of alcohol. Officer Friese conducted three field sobriety tests, and Miller failed all three. Officer Friese administered a preliminary breath test, which indicated an alcohol concentration of 0.139. Officer Friese arrested Miller for driving while impaired. Miller later consented to a breath test, which revealed an alcohol concentration of 0.10.

The state charged Miller with one count of driving a motor vehicle with an alcohol concentration of more than 0.08, in violation of Minn. Stat. § 169A.20, subd. 1(5) (2014), and one count of driving a motor vehicle while under the influence of alcohol, in violation of Minn. Stat. § 169A.20, subd. 1(1). In August 2016, Miller moved to suppress the evidence that was obtained due to the traffic stop. The district court conducted an evidentiary hearing at which the state called Officer Friese and Officer Weber to testify,

and Miller testified on his own behalf. At the conclusion of the hearing, the district court denied Miller's motion from the bench.

In November 2016, Miller waived his right to a trial by jury and stipulated to the prosecution's case, and the parties agreed that the district court's ruling on the suppression motion would be dispositive. *See* Minn. R. Crim. P. 26.01, subd. 4. The district court found Miller guilty of one count and dismissed the other count. The district court sentenced Miller to 365 days in jail, with credit for time served and with the remaining time stayed for two years. Miller appeals.

D E C I S I O N

Miller argues that the district court erred by denying his motion to suppress evidence. Specifically, he argues that the officers' visual estimation of his speed is not a sufficient basis for a reasonable, articulable suspicion that he was speeding.

The Fourth Amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; *see also* Minn. Const. art. I, § 10. The Fourth Amendment protects the right of the people to be secure in their motor vehicles. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). As a general rule, a law-enforcement officer may not seize a person in a motor vehicle without probable cause. *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). But a law-enforcement officer may, consistent with the Fourth Amendment, conduct a brief investigatory stop of a person in a motor vehicle if the officer has a reasonable, articulable suspicion that the person might be engaged in criminal activity. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) (citing *Terry v. Ohio*,

392 U.S. 1, 88 S. Ct. 1868 (1968)). Even a minor traffic violation, "however insignificant," may justify an investigatory stop. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997); *see also Berge v. Commissioner of Pub. Safety*, 374 N.W.2d 730, 732-33 (Minn. 1985). To be specific, a reasonable suspicion of speeding justifies an investigatory stop. *See, e.g.*, *State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003); *State v. Thiel*, 846 N.W.2d 605, 610 (Minn. App. 2014), *review denied* (Minn. Aug. 5, 2014). This court applies a *de novo* standard of review to the question whether an investigatory stop is valid. *Britton*, 604 N.W.2d at 87.

Miller acknowledges in his brief that "[a]n officer's visual estimation of speed *may* support a traffic stop." Indeed, this court has upheld an investigatory stop based on an officer's observation of a speeding vehicle and visual estimate of an excessive speed. In *Sazenski v. Commissioner of Pub. Safety*, 368 N.W.2d 408 (Minn. App. 1985), we noted that the officer "had received formal training in the estimation of traffic speed" and concluded that "the record amply supports the trial court's determination that the stop was proper." *Id.* at 409. Furthermore, in *State v. Ali*, 679 N.W.2d 359 (Minn. App. 2004), we affirmed a speeding conviction by reasoning that an officer's visual estimate of the defendant's speed was, by itself, sufficient evidence to support the conviction. *Id.* at 367-68. In support of that reasoning, we cited *Lemiuex v. Bishop*, 296 Minn. 372, 209 N.W.2d 379 (1973), in which the supreme court recognized that the estimation of "the speed of an automobile lies in a field in which a lay person gifted with reasonable intelligence, given a fair opportunity to observe, and having ordinary experience with moving vehicles may give

opinion testimony." *Ali*, 679 N.W.2d at 367 (quoting *Lemieux*, 296 Minn. 378, 209 N.W.2d at 383).

In this case, both Officer Friese and Officer Weber testified that they had received formal training in making visual estimates of the speed of a moving vehicle. In addition, Officer Weber testified that he had further developed his ability to make visual estimates of speed during his five years of experience as a law-enforcement officer. Officer Weber testified that Miller's car was traveling "at a very high rate of speed." In addition, after making that observation, Officer Weber saw that the squad car's radar instrument measured Miller's speed at 50 m.p.h. The district court found Officer Weber's testimony to be credible. In light of this evidence, we have no difficulty concluding that the officers had a reasonable, articulable suspicion that Miller was speeding. Furthermore, there is additional evidence in the record that corroborates the district court's finding of reasonable, articulable suspicion. The squad car's video-recording, which includes a GPS-based measurement of speed, shows that the officers' squad car was traveling at speeds of between 28 and 35 m.p.h. while the officers were following Miller's vehicle at a constant interval. Moreover, Miller admitted in his own testimony that he was driving at "30, 32, something like that" before the officers stopped him.

Thus, the district court did not err by denying Miller's motion to suppress evidence.

Affirmed.