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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1981**

State of Minnesota,
Respondent,

vs.

Robert Orville Huhnerkoch,
Appellant.

**Filed July 20, 2020
Affirmed
Bjorkman, Judge**

Redwood County District Court
File No. 64-CR-19-59

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Jenna M. Peterson, Redwood County Attorney, Redwood Falls, Minnesota; and

Travis J. Smith, Special Assistant Redwood County Attorney, Slayton, Minnesota (for respondent)

Steven P. Groschen, David A. Samb, Kohlmeyer Hagen Law Office, Chtd., Mankato, Minnesota (for appellant)

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

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his convictions for driving while impaired (DWI), asserting that the traffic stop was not supported by reasonable, articulable suspicion of criminal activity. We affirm.

FACTS

At about 8:00 p.m. on January 9, 2019, appellant Robert Orville Huhnerkoch's Ford pickup came to the attention of a Minnesota State Trooper because it "appeared to be stopped . . . in the lane of traffic" on County Road 7, a two-lane highway in Redwood County. The trooper was stopped at an intersection about a quarter mile from the truck. It was completely dark outside, and the trooper saw the truck's cargo lights were on, suggesting that a door was open. And he observed that the truck did not "appear to be advancing down the roadway." As the trooper approached the truck, he saw the cargo lights go off and the brake lights briefly flashed on. The truck did not veer or signal as it began to drive down the highway. As he passed the spot where the truck had stopped, the trooper observed a large wet mark on the center line; the highway was otherwise dry.

The trooper pulled the truck over for "stopping in the roadway." After Huhnerkoch identified himself, the trooper asked if he had stopped to urinate "in the middle of the road." Huhnerkoch replied that he had.

Respondent State of Minnesota charged Huhnerkoch with two counts of fourth-degree DWI under Minn. Stat. § 169A.20, subd. 1(1), (5) (2018). Huhnerkoch moved to suppress all evidence obtained during the traffic stop on the ground that the stop was illegal.

The district court denied the motion. Following a stipulated-facts trial, the district court found Huhnerkoch guilty on both counts. Huhnerkoch appeals.

D E C I S I O N

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).

But an officer may stop a vehicle if he has reasonable, articulable suspicion of criminal activity. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999). “[I]f an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle.” *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). Such stops must be based on more than “whim, caprice, or idle curiosity.” *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996). We review a district court’s legal conclusion regarding the existence of reasonable suspicion de novo and its findings of fact for clear error. *State v. Morse*, 878 N.W.2d 499, 502 (Minn. 2016).

The trooper stopped Huhnerkoch’s truck for stopping in the middle of the highway. Minn. Stat. § 169.32(a) (2018) governs the stopping and parking of vehicles on a public highway. The traffic statute provides:

Upon any highway outside of a business or residence district no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or improved or main-traveled part of the highway when it is practical to stop, park, or so leave such vehicle off such part of said

highway, but in every event a clear and unobstructed width of at least 20 feet of such part of the highway opposite such standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle be available from a distance of 200 feet in each direction upon such highway.

Minn. Stat. § 169.32(a).

Huhnerkoch does not challenge the district court's findings of fact. Rather, he contends that the trooper did not reasonably suspect that he violated the traffic statute because (1) the highway shoulder was "too narrow to safely park a vehicle off the highway" and (2) the evidence does not establish how much of his truck was parked on the highway and whether it was "positioned more or less than 20 feet from the opposite end of the highway." We are not persuaded for two reasons.

First, Huhnerkoch suggests a standard for investigative stops that would require an actual violation of a traffic law rather than an officer's reasonable belief that a violation occurred. The law requires only reasonable suspicion of a violation. *Pike*, 551 N.W.2d at 921 (stating that reasonable suspicion to support a traffic stop does not require an "actual violation" of a traffic law). Indeed, the Supreme Court recently reiterated that "[t]he reasonable suspicion inquiry falls considerably short of 51% accuracy," and stated that "[t]o be reasonable is not to be perfect." *Kansas v. Glover*, 140 S. Ct. 1183, 1188 (2020) (alteration in original) (quotations omitted).

Second, the district court's unchallenged findings of fact establish that the trooper had reasonable suspicion to stop Huhnerkoch's truck. The trooper saw a truck parked in its lane of traffic on a highway. The cargo lights were on, suggesting that it was parked or at least stopped. As the trooper approached the truck, he saw the brake lights flash and the truck began moving down the road. And as he passed the location where the truck had stopped, the trooper saw a wet mark on the road. Under these circumstances, we are satisfied that the trooper's suspicion that the driver had violated the traffic statute by parking on the highway is reasonable.

This court considered similar circumstances in *Johnson v. Comm'r of Pub. Safety*, where a law-enforcement officer stopped a vehicle that was parked on a county road at night with its lights off. 388 N.W.2d 759, 759 (Minn. App. 1986). The driver had parked in the middle of his lane, and the shoulder area was no more than a foot wide because of snow. *Id.* The driver began to pull away as the officer approached. *Id.* Because the driver's behavior was "unusual" and "could have been in violation of section 169.32," we upheld the traffic stop. *Id.* at 760. And we observed that the stop was not "the product of mere whim, caprice, or idle curiosity." *Id.* at 761. This case likewise involves a nighttime stop of a vehicle that was stopped or parked in the middle of a road with little shoulder area as a police car approached. As in *Johnson*, we conclude the trooper did not stop Huhnerkoch's truck based on idle curiosity; he stopped the truck because he reasonably

believed the driver violated the traffic statute. Accordingly, we affirm Huhnerkoch's conviction.¹

Affirmed.

¹ Huhnerkoch also suggests that the trooper's testimony that the truck "appeared stopped" calls into question whether it was actually stopped. This language-based argument is unavailing. In *State v. Poehler*, the supreme court rejected the driver's contention that the arresting officer's "phrasing that 'it appeared' [the driver] was not wearing a seat belt [was] too equivocal to conclude that the officer actually saw [the driver] without a seat belt on," concluding that the language was "clear enough" to indicate that the officer had actually made the observation. 935 N.W.2d 729, 734 (Minn. 2019). Likewise here, the "appeared" language is merely a passive form of speech, not an equivocal observation.