**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A21-0974**

State of Minnesota,
Respondent,

vs.

John Steven Stenbeck,
Appellant.

**Filed July 25, 2022**
**Affirmed in part, reversed in part, and remanded**
**Gaïtas, Judge**

Hennepin County District Court
File No. 27-CR-19-20497

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrew J. Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Gaïtas, Judge; and Wheelock, Judge.

**NONPRECEDENTIAL OPINION**

**GAÏTAS**, Judge

Appellant John Steven Stenbeck challenges his convictions for felony driving while impaired (DWI). He argues that his convictions resulted from an unconstitutional traffic

stop and that the district court erred in entering convictions for two counts of DWI involving the same behavioral incident. We affirm in part, reverse in part, and remand.

## FACTS

Minneapolis police officers in an unmarked car initiated a traffic stop after they were passed on a two-way city street near midnight by a car that was traveling at a high rate of speed in the lane for oncoming traffic. Stenbeck, the driver of the car, had three prior DWI convictions and a driver's license that was cancelled as inimical to public safety. Believing that Stenbeck was again driving while impaired by alcohol, the officers arrested him for suspected DWI. A subsequent breath test revealed that Stenbeck's alcohol concentration was 0.27.

Respondent State of Minnesota charged Stenbeck with two counts of felony DWI: driving under the influence of alcohol, Minn. Stat. § 169A.20, subd. 1(1) (2018), and driving with an alcohol concentration over 0.08 as measured within two hours of driving, Minn. Stat. § 169A.20, subd. 1(5) (2018). Stenbeck moved to suppress the evidence resulting from the traffic stop, arguing that the police had no lawful basis for stopping him.

Following an evidentiary hearing where both officers testified, the district court denied Stenbeck's suppression motion in a written order. The district court determined that the officers, who testified credibly, had a reasonable and articulable suspicion to stop Stenbeck for speeding and careless driving, and therefore their traffic stop comported with constitutional requirements.

Thereafter, Stenbeck had a court trial based on stipulated evidence. The district court found him guilty of both counts of DWI, entered convictions for both counts, and sentenced him to a 36-month stay of execution and local jail time on one count.

Stenbeck appeals.

## DECISION

### I. The district court did not err by denying Stenbeck's motion to suppress the evidence obtained as a result of the traffic stop.

Stenbeck argues that the district court erred in concluding that the traffic stop that led to his arrest and convictions was constitutional. An appellate court reviews de novo a district court's determination that police lawfully initiated a traffic stop. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). The district court's findings of fact are reviewed for clear error. *Id.*

The United States and Minnesota constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Here, the parties agree that the traffic stop was a seizure.

Police may lawfully initiate a traffic stop when they have "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *State v. Anderson*, 683 N.W.2d 818, 822-23 (Minn. 2004) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)). "To justify a stop an officer must be able to state something more than an unarticulated 'hunch'; the officer must be able to point to something objectively supporting that suspicion." *Britton*, 604 N.W.2d at 87. "Generally, if an officer observes a violation of a traffic law, no matter how insignificant the traffic law, that

observation forms the requisite particularized and objective basis for conducting a traffic stop." *Anderson*, 683 N.W.2d at 823. In considering whether an officer had a reasonable suspicion, Minnesota courts consider the totality of the circumstances. *State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001).

Here, the district court found that the officers stopped Stenbeck after they observed him using "the on-coming traffic lane to pass [them] at a high rate of speed" and "traveling approximately 50 miles-per-hour in a 30 miles-per-hour zone." The district court then determined that the officers reasonably stopped Stenbeck for the traffic offense of careless driving based on Stenbeck's speed in conjunction with his "act of entering the on-coming traffic lane to circumnavigate the patrol car."

Stenbeck argues that the district court erred in relying on the officers' testimony that he was speeding because an officer's visual estimation of speed must be particularly reliable to justify a traffic stop. In support of this argument, Stenbeck cites *Sazenski v. Comm'r of Pub. Safety*, 368 N.W.2d 408 (Minn. App. 1985), and two nonprecedential decisions—all cases where we determined that district courts did not err in relying on officers' visual speed estimations to conclude that resulting traffic stops were constitutional. *See Sazenski*, 368 N.W.2d at 409; *State v. Gaard*, No. C8-03-10, 2003 WL 22177251, at *1 (Minn. App. Sept. 23, 2003), *rev. denied* (Minn. Dec. 16, 2003); *State v. Branson*, No. A07-0987, 2008 WL 2796589, at *1 (Minn. App. July 22, 2008), *rev. denied* (Minn. Oct. 1, 2008). Stenbeck contends that two principles can be gleaned from these decisions: first, an officer making a visual speed estimate must have a sufficient opportunity to observe the driving behavior, and second, there must be other evidence

corroborating an officer's speed estimation. He further argues that neither of these circumstances existed here.

Although Stenbeck does not explicitly argue that the district court's factual findings are clearly erroneous, his argument could be construed as calling those findings into question. An appellate court only finds clear error where, "on the entire evidence, [the court is] left with a definite and firm conviction that a mistake has been committed." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021). We defer to the district court's credibility determinations. *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012). And the appellate court does not reweigh the evidence in reviewing for clear error. *In re Civ. Commitment of Edwards*, 933 N.W.2d 796, 803 (Minn. App. 2019), *rev. denied* (Minn. Oct. 15, 2019).

The district court credited the officers' testimony at the suppression hearing that Stenbeck was speeding, stating, "The Court . . . finds that the Officers credibly testified as to [Stenbeck]'s speed." It also rejected Stenbeck's assertion that the officers were mistaken in their assessment of speed because they were also in a moving car, or alternatively, because their car was slowing at the time Stenbeck passed. Given our standard of review and our review of the record, we determine that the district court did not clearly err in finding that Stenbeck was speeding when he passed the officers.

We review de novo whether the officers had the requisite reasonable and articulable suspicion of criminal activity to initiate the traffic stop. *See Britton*, 604 N.W.2d at 87. As noted, an officer's observation of a traffic violation provides an objectively reasonable basis for a traffic stop. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). Because the

officers observed Stenbeck speed and engage in careless driving,[1] they had an objectively reasonable basis for stopping him. Thus, we agree with the district court that there was no constitutional violation.

## II. The district court erred by entering convictions on two counts of felony DWI where both offenses stemmed from the same criminal act.

Stenbeck argues, and the state concedes, that we must vacate his conviction for count two, driving with an alcohol concentration of 0.08 within two hours of driving, Minn. Stat. § 169A.20, subd. 1(5). The parties agree that the entry of a conviction for this offense violates Minnesota Statutes section 609.04, which bars multiple convictions for included offenses, defined as a "lesser degree of the same crime" or "a crime necessarily proved if the crime charged were proved." Minn. Stat. § 609.04, subd. 1 (2018).

Whether the entry of multiple convictions violates section 609.04 is a question of law that we review de novo. *State v. Bonkowske*, 957 N.W.2d 437, 443 (Minn. App. 2021). Although Stenbeck did not raise his challenge to the entry of a second DWI conviction before the district court, the law allows him to raise the issue for the first time on appeal. *See Spann v. State*, 740 N.W.2d 570, 573 (Minn. 2007).

"[S]ection 609.04 bars multiple convictions under different sections of a criminal statute for acts committed during a single behavioral incident." *State v. Jackson*, 363 N.W.2d 758, 760 (Minn. 1985). Thus, a district court errs by entering convictions for both

[1] Careless driving is defined as "operat[ing] or halt[ing] any vehicle upon any street or highway carelessly or heedlessly in disregard of the rights of others, or in a manner that endangers or is likely to endanger any property or any person, including the driver or passengers of the vehicle." Minn. Stat. § 169.13, subd. 2(a) (Supp. 2019).

driving under the influence of alcohol and driving with an alcohol content above the legal limit when the offenses stemmed from "one behavioral incident." *See State v. Clark*, 486 N.W.2d 166, 170-71 (Minn. App. 1992) (quoting *Jackson*, 363 N.W.2d at 760) (vacating one conviction under such circumstances); *see also Bonkowske*, 957 N.W.2d at 443 (holding that district court's entry of separate convictions for DWI and refusal to submit to chemical testing, offenses that arose from a single incident, was error).

Here, the district court's sentencing order and the warrant of commitment indicate that convictions were entered for both charged DWI offenses, although the district court did not sentence Stenbeck for count two, driving with an alcohol concentration of 0.08 within two hours of driving. The entry of separate convictions was error. We therefore reverse and remand for the district court to vacate the conviction entered for count two. *See State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984) (stating "the proper procedure to be followed by the trial court when the defendant is convicted on more than one charge for the same act is for the court to adjudicate formally and impose sentence on one count only," retaining the guilty verdicts on remaining charges, but not formally adjudicating those charges).

**Affirmed in part, reversed in part, and remanded.**