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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1737**

State of Minnesota,
Appellant,

vs.

Jon Nicholas Benson,
Respondent.

**Filed April 1, 2013
Reversed and remanded
Hudson, Judge**

Hennepin County District Court
File No. 27-CR-12-14205

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

Peter A. MacMillan, MacMillan, Wallace, Athanases & Patera, P.A., Minneapolis, Minnesota (for appellant)

Lauren Campoli, The Law Office of Lauren Campoli, P.L.L.C., Minneapolis, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

The state challenges the district court's suppression of evidence arising from a traffic stop, arguing that the district court erred by concluding that a police officer lacked

reasonable suspicion to conduct the stop because a squad-car video did not show evidence of a traffic violation. Because the officer's testimony established a reasonable articulable basis for the stop, the district court erred by suppressing the evidence, and we reverse and remand for further proceedings.

FACTS

The state charged respondent Jon Nicholas Benson with third-degree gross-misdemeanor driving while impaired and second-degree gross-misdemeanor test refusal as a result of evidence obtained when police performed a traffic stop of a vehicle he was driving. Respondent moved to suppress the evidence, arguing that police lacked a reasonable, articulable suspicion of criminal activity to justify the stop.

At the suppression hearing, a Crystal police officer testified that at about 3:25 a.m. on May 7, 2012, while parked on his break at a gas station in New Hope, he observed two vehicles, one white and one dark, proceeding eastbound on 42nd Avenue. He testified that the dark vehicle, which was closely following the white vehicle, sounded its horn as it passed. The officer believed this to be significant because there was no obvious reason for using the horn at that hour, and he suspected that the drivers may have been in an altercation or that the driver of the dark vehicle was signaling to the driver of the white vehicle that police were in the area. The officer began to follow the vehicles and turned on the squad-car video camera.

He testified that the two vehicles stayed close together, and he observed the white vehicle weave within its own lane and both of its passenger-side tires cross over the white fog-line marker on the right side of the road and then return to the lane. He testified that

as he continued to follow, he saw the passenger-side tires of the white vehicle again cross over the fog line and travel for some time with the line underneath the middle of the vehicle before returning to the lane. He testified that he then observed the vehicles turn again and that the white vehicle crossed over the fog line again, making a wide turn. After following for about 2.5 miles, the officer activated his emergency lights and conducted a traffic stop of the white vehicle. As a result of evidence obtained from the stop, he arrested respondent on suspicion of driving while impaired.

The state also introduced the squad-car video of the stop, which shows that the squad car was following closely behind the dark vehicle, which, in turn, closely followed the white vehicle. Based on the positioning of the video camera and the vehicles, the black vehicle largely blocks the view of the white vehicle, and it cannot be ascertained that the white vehicle is crossing the fog line. The officer testified, however, that before he conducted the stop, he was able to see the white vehicle clearly through the windshield and windows of the dark vehicle and that the video camera had no peripheral vision and therefore could not see through glass as well as the human eye. He testified that if the vehicle was straddling the fog line, it would “possibly” be shown on the video, but that “the human eye is better than a camera.”

The district court granted the motion to suppress, concluding that the squad-car video did not establish grounds for reasonable suspicion to justify the stop. The district court found that, in the video, the white vehicle was often not visible to the viewer, and when it was, the court could identify no suspicious driving conduct. The district court acknowledged that the officer testified that his view was better than the video camera’s,

but it concluded that the video established that a reasonably cautious person would not conclude that the action of initiating a stop was appropriate. The district court granted respondent's motion to dismiss the charges, and the state filed this appeal.

DECISION

On appeal from a pretrial order suppressing evidence, the state must clearly and unequivocally show both that the district court's order will have a critical impact on the state's ability to successfully prosecute the defendant and that the order amounted to error. *State v. Zais*, 805 N.W.2d 32, 35–36 (Minn. 2011). “Critical impact is met when the suppression of the evidence significantly reduces the likelihood of a successful prosecution.” *In re Welfare of L.E.P.*, 594 N.W.2d 163, 168 (Minn. 1999). The parties agree that, because the district court dismissed all charges against respondent after the evidence was suppressed, the critical-impact requirement is met.

When a suppression order is challenged on appeal, this court independently reviews the facts and the law to determine whether the district court erred by suppressing or refusing to suppress the evidence. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We review the district court's factual findings for clear error. *State v. Lee*, 585 N.W.2d 378, 383 (Minn. 1998). But “[w]e review questions of reasonable suspicion de novo.” *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000) (citation omitted).

Investigative stops and seizures are subject to the prohibitions against unreasonable searches and seizures in the Fourth Amendment to the United States Constitution and article I, section 10, of the Minnesota Constitution. *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 694–95 (1981); *State v. Askerooth*, 681

N.W.2d 353, 359 (Minn. 2004). To justify an investigatory stop, an officer “must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968). A decision to conduct a stop must be based on more than “mere whim, caprice, or idle curiosity.” *Marben v. State, Dep’t of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980) (quotation omitted). In assessing whether reasonable suspicion exists, this court considers the totality of the circumstances, which includes deference to the officer’s experience and training. *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983); *see Cortez*, 449 U.S. at 417, 101 S. Ct. at 695 (“[T]he totality of the circumstances . . . must be taken into account.”).

The test of reasonableness is an objective test. *State v. Beall*, 771 N.W.2d 41, 45 (Minn. App. 2009). An objective basis for making a traffic stop ordinarily arises “if an officer observes a violation of a traffic law, however insignificant.” *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). Here, the officer testified that he conducted the stop based on a reasonable suspicion that respondent was crossing the right-hand fog line in violation of Minnesota traffic regulations. *See* Minn. Stat. § 169.18, subd. 7(a) (2010) (stating that “[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”).

The district court, after reviewing the squad-car video of the incident, found that the video did not establish grounds for reasonable suspicion that a traffic violation had occurred. But as long as other evidence establishes reasonable suspicion for the stop, the

video need not establish a detectable traffic violation. *See State v. Barber*, 308 Minn. 204, 206, 241 N.W.2d 476, 477 (1976) (quotation omitted).

We conclude that, under the totality of the circumstances and in light of the officer's training and experience, the officer articulated a reasonable basis to stop respondent's vehicle. The officer initially heard a vehicle horn at a late hour and saw two vehicles traveling closely together. He testified that he then saw the white vehicle cross the fog line several times and that he had a better vantage point than the squad-car video camera to observe those movements. The district court made no findings discrediting this testimony. In light of the total circumstances, the officer's observation of respondent's erratic driving behavior provided the requisite articulable suspicion to conduct a stop. *See Kvam*, 336 N.W.2d at 528 (noting that an officer's observation of erratic driving behavior within a lane has been held to provide adequate justification for a traffic stop); *see also State v. Wagner*, 637 N.W.2d 330, 336 (Minn. App. 2001) (concluding that driver's acts of crossing center line, driving on right shoulder, and speeding up and turning sharply provided reasonable suspicion to conduct a stop). We therefore conclude that the district court erred by granting the motion to suppress.

Reversed and remanded.