

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1936**

State of Minnesota,
Appellant,

vs.

Joseph Cary Metcalf,
Respondent.

**Filed March 24, 2009
Affirmed
Stauber, Judge**

Hennepin County District Court
File No. 27CR0828013

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul,
MN 55101-2134; and

Susan L. Segal, Minneapolis City Attorney, Elizabeth A. Kelly, Assistant City Attorney,
Suite 300, 333 South Seventh Street, Minneapolis, MN 55402 (for appellant)

David J. Risk, Caplan Law Firm, P.A., 525 Lumber Exchange Building, 10 South Fifth
Street, Minneapolis, MN 55402 (for respondent)

Considered and decided by Minge, Presiding Judge; Larkin, Judge; and Stauber,
Judge.

UNPUBLISHED OPINION

STAUBER, Judge

In this pretrial appeal, the state contends that the district court clearly erred in
suppressing evidence and dismissing criminal charges against respondent Joseph Cary

Metcalf on the basis that the stop of Metcalf's vehicle was not supported by reasonable, articulable suspicion. Because the factual findings of the district court are reasonably supported by the record, and because those findings do not rise to a level of reasonable, articulable suspicion of criminal activity, we affirm.

FACTS

On June 6, 2008, at approximately 10:40 p.m., Minneapolis Police Officer Steven Manhood was patrolling the Uptown neighborhood in his squad car when he observed a disturbance involving a group of people on the sidewalk at the corner of Girard Avenue and Lake Street. The intersection was bustling at that time with heavy foot traffic. Officer Manhood parked his squad car near the intersection, rolled his windows down, and monitored the situation from a distance. Minutes later, he observed a black BMW sedan in his peripheral vision accelerate through the intersection while making a left hand turn. Although he was unable to estimate the speed of the vehicle, Officer Manhood claimed that the vehicle accelerated at a rate of speed that was significant enough to cause the tires to "chirp[] or squeak[] a little bit as it rounded the corner." Based on his belief that such driving conduct was a violation of a city ordinance prohibiting unnecessary exhibition of speed, Officer Manhood initiated an investigatory stop and spoke with the driver of the vehicle, appellant Joseph Cary Metcalf. Metcalf became argumentative and Officer Manhood noticed that Metcalf's eyes were "somewhat glassy" and his breath smelled of alcohol. Suspecting that Metcalf might be under the influence of alcohol, Officer Manhood had Metcalf submit to a preliminary breath test, which indicated the presence of alcohol on his breath and an alcohol concentration of .14.

Metcalf was arrested and charged with driving while impaired in violation of Minn. Stat. § 169A.20, subd. 1(1) (2006). Metcalf moved to dismiss the charges and suppress the evidence collected on the basis that the stop of his vehicle was not supported by reasonable, articulable suspicion. The state opposed the motion, claiming that the stop was justified by Metcalf’s violation of the city ordinance. After an evidentiary hearing, the district court concluded that Officer Manhood did not have reasonable, articulable suspicion of an ordinance violation and granted Metcalf’s motion to dismiss. The court discredited Officer Manhood’s testimony regarding the speed of the vehicle because he was primarily focused on the disturbance near the sidewalk and only observed the vehicle in his peripheral vision. The court also noted that Officer Manhood was unable to estimate the speed of the vehicle at the time of the turn, was unaware if there were any pedestrians in the cross walk when Metcalf made the turn, and heard only an insignificant chirping sound emitted by the tires. This appeal follows.

D E C I S I O N

The state challenges a pretrial order suppressing the evidence of the stop and dismissing the charges against Metcalf. When reviewing a pretrial order, the state must “clearly and unequivocally” show that the district court erred and that the error will have a “critical impact on the outcome of the trial.” *State v. Battleson*, 567 N.W.2d 69, 70 (Minn. App. 1997) (quotation omitted). The state can show a critical impact when “the suppression of the evidence destroys or significantly reduces the likelihood of a successful prosecution.” *Id.* (quotation omitted). Neither party disputes that the district court’s suppression of the evidence related to the stop critically impacts the outcome of

the case. The issue, then, is whether the district court clearly and unequivocally erred in suppressing the evidence.

“[W]hen reviewing a pre-trial order suppressing evidence where the facts are not in dispute and the trial court’s decision is a question of law, the reviewing court may independently review the facts and determine as a matter of law, whether the evidence need be suppressed.” *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992). But when the facts are in dispute, this court reviews the district court’s findings of fact for clear error and accords great deference to the district court’s credibility determinations. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000); *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992).

The United States Constitution and the Minnesota Constitution prohibit “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. But a police officer may stop and temporarily seize a person if the officer reasonably suspects that person of criminal activity. *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995). The officer must be able to show a reasonable suspicion of criminal activity based on “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quotation omitted). In deciding the propriety of an investigative stop, an appellate court examines the totality of the circumstances to ascertain whether there are articulable, objective facts to justify the stop. *Britton*, 604 N.W.2d at 87. The seizure cannot be the product of mere whim, caprice, or idle curiosity. *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004).

The state argues that Officer Manhood had reasonable, articulable suspicion that Metcalf violated a Minneapolis traffic ordinance prohibiting unnecessary exhibition of speed. The ordinance provides:

No person shall start or accelerate any motor vehicle with an unnecessary exhibition of speed on any public or private way within the city limits. Prima facie evidence of such unnecessary exhibition of speed shall be unreasonable squealing or screeching sounds emitted by the tires or the throwing of sand or gravel by the tires of said vehicle or both.

Minneapolis, Minn., Code of Ordinances § 474.30 (2008).

The state claims that reasonable, articulable suspicion existed for the stop because Officer Manhood heard an unreasonable sound emanate from the tires of Metcalf's vehicle and observed the vehicle turning at a high rate of speed. We disagree. This argument essentially challenges the district court's factual findings. The district court concluded that Officer Manhood heard a sound that was something less than the unreasonable squealing or screeching commonly associated with an unnecessary exhibition of speed. The court also discredited his testimony regarding his visual observations of the vehicle because he was primarily focused on the disturbance near the sidewalk and was unable to estimate the speed of the vehicle or remember significant details about the intersection.

The record supports these findings. Officer Manhood, who was the only witness for the state, testified that he heard only a "little" chirping sound, and Metcalf agreed it was possible that his vehicle may have made a small chirping noise caused by the width of his tires and the acuteness of the turn. Officer Manhood also acknowledged that he

was somewhat distracted by the disturbance and had limited recollection of the activity near the intersection. Because these findings are based on credibility, and because they are reasonably supported by the evidence as a whole, we decline to disturb them. *Britton*, 604 N.W.2d at 87 (indicating that credibility determinations are entitled to deference on appeal).

Applying the facts as found by the district court, we conclude that the auditory and visual observations of Officer Manhood did not rise to a level of reasonable, articulable suspicion. The stop was based on an insignificant chirping sound without any reliable visual confirmation of the vehicle's speed. Accordingly, the district court did not clearly and unequivocally err in suppressing the evidence and dismissing the charges against Metcalf.

Affirmed.