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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-967**

State of Minnesota,
Respondent,

vs.

Johanna Leigh Bergland,
Appellant

**Filed May 7, 2012
Affirmed
Peterson, Judge**

Blue Earth County District Court
File No. 07-CR-10-932

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

Eileen Wells, Mankato City Attorney, Christopher Damian Cain, Assistant City Attorney,
Mankato, Minnesota (for respondent)

Mark Edward Betters, Betters Weinandt, Mankato, Minnesota (for appellant)

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

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a conviction of driving while impaired (DWI), appellant argues that the district court erred in finding that the stop of her vehicle was supported by an objectively reasonable articulable suspicion of criminal activity when the officer stopped

appellant's vehicle after seeing her walk with an unusual gait, which he described as very unsteady and deliberate, at 1:30 a.m. in a downtown bar-district area. We affirm.

FACTS

At 1:30 a.m., Mankato Police Officers Jason Bennett and Brett Roddy were on foot patrol in a downtown bar-district area. Bennett, who has more than ten years of experience as a police officer, saw a woman, who appeared to be "heavily intoxicated walking across [a] cross-walk." Bennett described the woman as having "a very unusual gait – very unsteady. . . . I'm having a hard time describing it. I would call it almost floppy footed. It just seemed very deliberate but her feet almost were like they were flopping. . . . [I]n watching her, she seemed like she was really drunk."

As the woman walked toward the area of a parking ramp, the officers briefly stopped to talk with an individual they had dealt with earlier. As Bennett continued walking, he heard a car door slam in the lower level of the parking ramp. Given the short amount of time that had passed, the small number of people in the area, the fact that no one else had been seen entering a vehicle, and the direction the woman had been heading, Bennett was concerned that the woman they had just noticed was about to drive.

As the two officers walked to the parking ramp to investigate, they saw a car pulling out of a parking stall. The driver was a female and her shirt appeared to be the same color as the shirt worn by the woman that they saw walking toward the parking ramp. The officers stopped the vehicle, and the driver, appellant Johanna Leigh Bergland, was arrested and charged with multiple counts of DWI.

Appellant moved to dismiss the charges against her or to suppress the evidence discovered as a result of the stop, arguing that the stop was not supported by a reasonable suspicion of criminal activity. The district court denied the motion. The case was submitted to the district court on stipulated facts. The district court found appellant guilty as charged and sentenced her to 15 days in jail and imposed a fine and probation conditions. This appeal followed.

DECISION

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. But a police officer may initiate a limited investigative stop without a warrant if the officer has a reasonable, articulable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968); *see also State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996) (noting that an investigative stop of a vehicle is lawful if the state can show that the officer had a “particularized and objective basis” for suspecting criminal activity (quotation omitted)). We review a district court’s determination of reasonable suspicion as it relates to limited investigatory stops de novo. *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003). But we apply the clear-error standard of review to the district court’s underlying factual findings. *State v. Chavarria-Cruz*, 784 N.W.2d 355, 363-64 (Minn. 2010).

The court may consider the officer’s experience, general knowledge, and observations; background information, including the time and location of the stop; and any other relevant facts. *Appelgate v. Comm’r of Pub. Safety*, 402 N.W.2d 106, 108

(Minn. 1987). A traffic stop “must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.” *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) (quoting *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 695 (1981)). An officer’s observation of a traffic-law violation can form the required particularized and objective basis for making a traffic stop. *Wilkes v. Comm’r of Pub. Safety*, 777 N.W.2d 239, 243 (Minn. App. 2010). DWI is prohibited by Minn. Stat. § 169A.20, subd. 1 (Supp. 2009).

Appellant concedes that predriving conduct can support a vehicle stop and does not dispute that, before stopping appellant’s vehicle, the officers had a sufficient basis for believing that the driver was the woman they had seen walking toward the parking ramp. She argues only that the officers’ observations of her manner of walking were insufficient to support a reasonable, articulable suspicion that she was intoxicated.

Appellant argues that “observing Appellant’s ‘unique gait’ while she is walking straight, where such ‘behavior’ is admittedly hard for the stopping officer to describe does not justify the intrusion of stopping Appellant’s vehicle.” Although Bennett had difficulty describing appellant’s gait, he has more than ten years of experience as a police officer, and appellant’s manner of walking led him to believe that she was very intoxicated. The district court noted that in Bennett’s “report, as well as in his testimony, he described the woman’s walk as consistent with someone who is heavily intoxicated.”

Appellant also argues that surveillance-camera video recordings that were admitted into evidence at the omnibus hearing and show appellant walking did not

conform to the officers' observations at the time of the stop. The district court explained that it did not rely on the videos and found them inconclusive, stating:

The footage on the cameras is not very helpful to the Court's analysis in this case as two of the clips of [appellant] walking were at points when [Bennett] could not see her. The third, a brief moment when she went from the curb near the bus stop into the ramp, did not show much in the form of an intoxicated "stagger."

The district court relied on Bennett's report and testimony about his observations. This court defers to the district court's credibility determinations. *State v. Doren*, 654 N.W.2d 137, 141 (Minn. App. 2002), *review denied* (Minn. Feb. 26, 2003).

Bennett's observation of appellant's manner of walking in a bar-district area at 1:30 a.m. was sufficient to support a reasonable suspicion that appellant was intoxicated and to justify the vehicle stop. The district court did not err in denying appellant's motion to dismiss the charges against her or to suppress the evidence discovered as a result of the stop.

Affirmed.