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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0674**

State of Minnesota,
Respondent,

vs.

Michael Patrick Keefe,
Appellant.

**Filed June 9, 2014
Affirmed
Halbrooks, Judge**

Anoka County District Court
File No. 02-CR-11-5517

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

Anthony C. Palumbo, Anoka County Attorney, Donald LeBaron, Assistant County
Attorney, Anoka, Minnesota (for respondent)

Joel O'Malley, Special Assistant State Public Defender, Dorsey & Whitney, LLP,
Minneapolis, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and
Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's denial of his motion to suppress evidence found during an inventory search of his vehicle after an officer stopped him for suspicious and evasive driving behavior. Because the officer had a particular and objective basis for suspecting appellant of criminal activity, we affirm.

FACTS

Deputy Bryan Pierson was on patrol around midnight in May 2010 when he noticed a Mercedes stopped at the end of a residential driveway, waiting to turn onto Crosstown Boulevard in Andover. The vehicle did not turn, despite having "way more than ample time to proceed," before the deputy approached. This made Deputy Pierson suspicious, so he positioned himself on a nearby street and waited for the vehicle. When the vehicle passed, Deputy Pierson pulled out behind it and ran its license-plate number. The number came back as "not on file." The deputy subsequently testified that license-plate numbers rarely return as "not on file," which means the state either does not have information yet or has not processed the information.

Deputy Pierson followed the vehicle for a few blocks until it pulled into a residential driveway. The vehicle's lights shut off, but no one exited. Deputy Pierson passed the driveway, turned around, and passed again. The vehicle had not moved. Deputy Pierson turned his spotlight on the vehicle. The driver got out, had a "short meeting" with a resident, and got back in the vehicle. Deputy Pierson then called the resident, using a phone number from a police database, and the resident said he did not

know the driver. About a minute or two later, the vehicle left, and Deputy Pierson stopped it. The driver was identified as Michael Keefe. Because Keefe did not have a valid license or proof of insurance, Deputy Pierson had the vehicle impounded. An inventory search revealed controlled substances inside the vehicle.

Keefe was charged with first- and fifth-degree possession of controlled substances in violation of Minn. Stat. §§ 152.021, subd. 2(1), .025, subd. 2(b)(1) (2010), driving after revocation in violation of Minn. Stat. § 171.24, subd. 2 (2010), and failure to produce proof of insurance in violation of Minn. Stat. § 169.791, subd. 2 (2010). Keefe moved the district court to suppress the evidence found during the inventory search, and the district court denied the motion. A jury found Keefe guilty of all four offenses. This appeal follows.

D E C I S I O N

Keefe challenges the district court's denial of his suppression motion, arguing that Deputy Pierson unlawfully stopped him. When reviewing pretrial orders on motions to suppress evidence, we examine the facts to determine whether the district court erred as a matter of law by failing to grant the motion. *State v. Flowers*, 734 N.W.2d 239, 247 (Minn. 2007). Because the parties do not dispute the facts, our review is de novo. *See id.*

Both the United States and Minnesota Constitutions guarantee the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Brief investigative stops are reasonable if the officer has a “particular and objective basis for suspecting the particular person stopped of criminal activity.” *State v. Johnson*, 444 N.W.2d 824, 827 (Minn. 1989) (quotation omitted). To stop a vehicle without a

warrant or probable cause, there must be “[a]rticulable, objective facts that, by their nature, quality, repetition, or pattern become so unusual and suspicious that they support at least one inference of the possibility of criminal activity.” *State v. Schrupp*, 625 N.W.2d 844, 846, 847-48 (Minn. App. 2001), *review denied* (Minn. July 24, 2001). Keefe contends that Deputy Pierson stopped him based on “conjecture and caprice,” not reasonable suspicion. We disagree.

The Minnesota Supreme Court has held that evasive driving behavior can give rise to reasonable suspicion. *See State v. Petrick*, 527 N.W.2d 87, 87-88, 89 (Minn. 1995); *Johnson*, 444 N.W.2d at 827. In *Johnson*, a trooper made eye contact with a driver on a highway, and the driver immediately turned off the highway. 444 N.W.2d at 825. Less than a minute later, the trooper saw the driver turn back onto the highway. *Id.* at 825, 827. Believing that the driver had left the highway to avoid him, the trooper motioned for the driver to stop. *Id.* at 825. The supreme court concluded that the stop was justified because the record indicated that “the trooper reasonably inferred that [the driver] was deliberately trying to evade him and that, as a result, the trooper reasonably suspected the petitioner of wrongdoing.” *Id.* at 827. Likewise, in *Petrick*, an officer made a U-turn behind a vehicle. 527 N.W.2d at 87. Seconds later, the driver turned into the closest driveway, shut off the vehicle’s headlights, and continued into the driveway. *Id.* Because the officer believed the driver was trying to ditch him, he followed the vehicle into the driveway. *Id.* at 88. Relying on *Johnson*, the supreme court held that, assuming that a seizure occurred, it was justified because the officer “had a reasonable basis to infer

[the driver] was deliberately attempting to evade him and to suspect [the driver] of wrongdoing.” *Id.* at 89.

Deputy Pierson testified to the following facts regarding Keefe’s behavior before the stop: Keefe waited to turn onto Crosstown Boulevard despite having ample time to do so before Deputy Pierson passed; Keefe’s license-plate number came back as “not on file”; Keefe pulled into a residential driveway after Deputy Pierson began following him; Keefe did not move after stopping in the driveway and shutting off his vehicle’s lights; Keefe got out of his vehicle after Deputy Pierson put his spotlight on it; Keefe had a “short meeting” with a resident; and the resident told Deputy Pierson he did not know Keefe. Based on the totality of the circumstances and focusing on the nature and quality of these facts, Deputy Pierson could reasonably infer that Keefe was trying to evade him and reasonably suspect Keefe of criminal activity. We therefore conclude that Deputy Pierson’s stop of Keefe was lawful.

Affirmed.