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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-357**

Larry Thomas Dennigan, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed December 14, 2010
Affirmed
Crippen, Judge***

Crow Wing County District Court
File No. 18-CV-09-4844

Rory P. Durkin, Giancola Law Office, PLLC, Anoka, Minnesota (for appellant)

Lori Swanson, Attorney General, Mary R. McKinley, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Minge, Presiding Judge; Johnson, Judge; and Crippen, Judge.

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant Larry Dennigan challenges the district court's decision sustaining the revocation of his driver's license, arguing that an officer's stop was not supported by

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

reasonable suspicion. Because the totality of the circumstances supports the stop, we affirm.

FACTS

On June 19, 2009, at approximately 10:00 p.m., a Brainerd police officer first noticed appellant's motorcycle when he heard a loud "rev of an engine." The officer then saw the motorcycle traveling towards him and believed it was the source of the noise. As the motorcycle traveled towards the officer, appellant accelerated rapidly, swerving to the right before swerving back to the left. The officer turned around to pursue appellant and then pulled him over. After field sobriety tests and a preliminary breath test, the officer arrested appellant for driving while impaired. Appellant failed testing, was charged with fourth-degree DWI in violation of Minn. Stat. § 169A.20 (2008), and his driver's license was revoked pursuant to the implied consent law.

After receiving notice of the license revocation, appellant petitioned to have it judicially reviewed. After holding a hearing, the district court found that the arresting officer observed swerving and that the officer's experience taught him that the driving behavior could indicate intoxication or careless driving. Accordingly, the district court concluded that the officer had a reasonable, articulable suspicion of criminal activity before making the stop and sustained the revocation of appellant's driver's license.

DECISION

Appellant's license was revoked under the implied consent law, Minn. Stat. § 169A.52, subd. 4(a) (2008) (revocation for test failure). To invoke the implied consent

law, in relevant part, the person of whom the test is requested must have been lawfully arrested for DWI. Minn. Stat. § 169A.51, subd. 1(b)(1) (2008).

The Fourth Amendment to the United States Constitution and Article I of the Minnesota Constitution protect against unlawful searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. An investigatory stop of a vehicle is a permissible seizure if it is based on a reasonable, articulable suspicion of criminal activity. *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996).

To establish reasonable suspicion, the officer must have “had a particularized and objective basis for suspecting the particular person stopped of criminal activity.” *Id.* (quotation omitted). The courts evaluate the basis for a stop by reviewing the events surrounding the stop and the totality of the circumstances. *State v. Britton*, 604 N.W.2d 84, 89 (Minn. 2000).

Although an officer must have a reasonable basis for suspecting that a driver committed a crime to justify a stop, an actual violation of traffic laws is not required. *Schulberg v. Comm’r of Pub. Safety*, 387 N.W.2d 225, 226 (Minn. App. 1986). The factual basis needed to justify an investigatory stop is “minimal.” *Knapp v. Comm’r of Pub. Safety*, 610 N.W.2d 625, 628 (Minn. 2000); *see also State v. Claussen*, 353 N.W.2d 688, 690 (Minn. App. 1984) (commenting on “how very low the threshold is to stop a vehicle” for investigating possible legal violations).

The district court concluded that based on how appellant “was operating his vehicle,” the officer had reason to believe that appellant was engaging in careless driving in violation of Minn. Stat. § 169.13, subd. 2 (2008). It also found that the officer’s

experience had taught him that a swerving vehicle can indicate that a driver is intoxicated. The court relied on the officer's experience and found his testimony to be credible. When assessing cause for a stop, the courts give due regard to the officer's experience and training in law enforcement. *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983). We defer to the district court's assessment of witness credibility. *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *review denied* (Minn. July 15, 2003). For the following reasons, the court properly concluded that there was reasonable suspicion to stop appellant.¹

When reviewing the lawfulness of a traffic stop, we are not bound by the district court's determination of what facts were most probative of reasonable, articulable suspicion. We review the district court's decision *de novo*, based on the totality of the circumstances under an objective standard. *State v. Flowers*, 734 N.W.2d 239, 251 (Minn. 2007); *Lee*, 585 N.W.2d at 383; *Kvam*, 336 N.W.2d at 528. The officer testified that (1) he heard a loud rev or crack of an engine that he thought was from appellant's motorcycle, (2) the motorcycle accelerated rapidly, and (3) the motorcycle swerved to the right and then back to the left within the lane. Given the officer's experience in law enforcement and the district court's favorable credibility determination of his testimony, the loud engine noise, rapid acceleration, and swerve, taken together, create reasonable suspicion to stop appellant under the totality of the circumstances.

¹ The parties agree that the district court erroneously found that appellant failed to signal a turn in violation of Minn. Stat. § 169.19. The district court likely misunderstood the officer's testimony that appellant did not signal a turn upon swerving. Although it was error to suggest a failure to signal in the context of reasonable suspicion to stop, the district court articulated sufficient alternative bases supporting reasonable suspicion of criminal activity.

The weight of the recited considerations is increased by several city ordinances and Minnesota statutes. The city code regulates “unreasonable acceleration,” “excessive vehicle noise,” and “noise related issues.” Brainerd, Minn., City Code § 1305.01, 1345.05, 2014 (2009). Minnesota statutes regulate mufflers “to prevent excessive or unusual noise,” Minn. Stat. § 169.69 (2008), and prohibit careless driving, Minn. Stat. § 169.13 (2008). The officer testified that appellant’s driving prompted his suspicion of possible careless driving, unreasonable acceleration, noise ordinance violations, or intoxication. The specific, articulable facts, when applied to existing ordinances and statutes, were not “the product of mere whim, caprice, or idle curiosity.” *State v. DeRose*, 365 N.W.2d 284, 286 (Minn. App. 1985) (quoting *State v. Johnson*, 257 N.W.2d 308, 309 (Minn. 1977)).

Appellant argues that the officer did not know whether the noise came from appellant’s vehicle, whether his driving conduct constituted careless driving, and what specific statute or ordinance he might have violated. And he relies on testimony that appellant’s driving conduct was “possibly” a traffic violation to support that there was no legal basis for the stop. But we are not to be concerned with what the officer suspected was a traffic violation or whether he knew the details of local ordinances. And an officer’s failure to articulate observed violations of law as a basis for stopping a driver is irrelevant under the objective standard. *Id.* The question is whether an objective, reasonable, articulable suspicion of a violation of law was present before the officer stopped the vehicle. *Id.* This traffic stop was objectively reasonable even if the officer

was uncertain or mistaken as to whether the appellant did in fact violate a Minnesota law or Brainerd city ordinance.

Appellant also argues that his single swerve does not provide reasonable suspicion to support an investigatory stop. One swerve within a lane is not a sufficient basis to make a lawful traffic stop. *State v. Brechler*, 412 N.W.2d 367, 368 (Minn. App. 1987). But here, there was more than a single swerve within a lane. There were three potential traffic violations that the officer observed in succession over a very brief period of time. Because the totality of the circumstances is the standard for determining reasonable suspicion, the swerve within the lane is not the sole factor in our review. And under the totality of the circumstances there was reasonable suspicion to make a traffic stop.

Finally, appellant alludes that the officer's stop was pretextual, based on the fact that appellant is a "large biker, with tattoos on his face, and large bushy dreadlocks." But appellant's suspicion of pretext is not supported by the record. The officer did not articulate any discriminatory pretext in his interaction with appellant after the stop, nor is there any evidence that the officer had the opportunity to observe the details of appellant's appearance prior to the stop.

There is no evidence of discriminatory enforcement of the law, and the stop was supported by objective, articulable suspicion of criminal activity. We affirm the district court's order sustaining the revocation of appellant's driver's license.

Affirmed.