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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0849**

State of Minnesota,
Respondent,

vs.

Victor Lamont Morris,
Appellant.

**Filed April 21, 2009
Affirmed; motion granted
Worke, Judge**

Anoka County District Court
File No. 02-CR-07-5957

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

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Considered and decided by Worke, Presiding Judge; Hudson, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his conviction of fifth-degree controlled substance crime, arguing that the district court clearly erred in finding that the arresting officer had reasonable suspicion of a traffic violation to conduct an investigatory stop. We affirm.

DECISION

Investigatory Stop

The district court found that Minnesota State Trooper Michael Flanagan had reasonable suspicion to conduct an investigatory stop after observing appellant Victor Lamont Morris weaving within his traffic lane and changing traffic lanes without properly signaling his movement. This court reviews de novo a district court's determination of whether there was reasonable suspicion of unlawful activity to justify a limited investigatory stop. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). In doing so, this court reviews the district court's findings of fact for clear error and gives due weight to inferences drawn from those facts by the district court. *State v. Lee*, 585 N.W.2d 378, 383 (Minn. 1998). This court defers 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).

A stop is lawful under the Fourth Amendment if an officer can articulate a "particularized and objective basis for suspecting the particular persons stopped of criminal activity." *Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985)

(quotation and emphasis omitted). A brief investigatory stop requires only reasonable suspicion of criminal activity, rather than probable cause. *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996). The reasonable-suspicion standard is not high. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). But reasonable suspicion is more than merely a whim, caprice, or idle curiosity. *Pike*, 551 N.W.2d at 921. Articulable, objective facts that would justify an investigatory stop are “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, 847-48 (Minn. App. 2001), *review denied* (Minn. July 24, 2001). The officer’s suspicion may be based on the totality of the circumstances, including “the officer’s general knowledge and experience, the officer’s personal observations, information the officer has received from other sources, the nature of the offense suspected, the time, the location, and anything else that is relevant.” *Applegate v. Comm’r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987). “Ordinarily, if an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle.” *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

Appellant first argues that weaving within one’s lane is not a legitimate basis for a traffic stop unless the weaving constitutes a hazard to public safety or there are other significant observations that would justify a stop. Under Minn. Stat. § 169.18, subd. 7(a) (2006), “[a] vehicle shall be driven as nearly as practicable entirely within a single lane.” Appellant relies on *State v. Brechler*, in which this court held that a stop was the product of whim and caprice because the officer observed only one swerve. 412 N.W.2d 367,

369 (Minn. App. 1987). But in *State v. Ellanson*, the supreme court held that an officer had a right to stop a vehicle that weaved within its lane to investigate the cause of the unusual driving. 293 Minn. 490, 490-91, 198 N.W.2d 136, 137 (1972); *see also State v. Richardson*, 622 N.W.2d 823, 826 (Minn. 2001) (“Even observing a motor vehicle weaving within its own lane in an erratic manner can justify an officer stopping a driver.”). And in *State v. Dalos*, this court concluded that “weaving within one’s own lane continuously is enough, by itself, to provide a reasonable articulable suspicion.” 635 N.W.2d 94, 96 (Minn. App. 2001).

Flanagan testified that he observed appellant weaving within his traffic lane. The officer testified that although the vehicle’s wheels were not going over the stripes or coming out of its lane, it was moving back and forth in its lane. *See id.* (continuous weaving within one’s lane enough to support stop). The officer did not testify that he observed merely one swerve. *See Brechler*, 412 N.W.2d at 369 (one swerve not enough to support stop). The district court believed Flanagan’s testimony and found that appellant was weaving within his lane. *See Miller*, 659 N.W.2d at 279 (stating that we defer to the district court’s assessment of witness credibility). Because weaving within one’s lane of traffic is sufficient to provide a reasonable articulable suspicion, this violation alone justifies the stop.

Appellant next argues that the district court clearly erred in finding that appellant made a lane change without properly signaling such movement. Appellant contends that the video recording from the trooper’s vehicle showed that appellant did not change lanes

until after his turn signal had been activated. Under Minn. Stat. § 169.19, subd. 4 (2006), “[n]o person shall . . . move [a vehicle] right or left upon a highway unless and until the movement can be made with reasonable safety after giving an appropriate signal in the manner hereinafter provided.” “A signal of intention to turn right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.” Minn. Stat. § 169.19, subd. 5 (2006). In *State v. Jones*, officers observed a driver change lanes without signaling while driving on a city street and initiated a traffic stop. 649 N.W.2d 481, 483 (Minn. App. 2002). This court held that the statute prohibits changing lanes without signaling on city streets and that the stop was lawful. *Id.* at 484.

After Flanagan observed appellant’s vehicle weaving within the traffic lane, the officer followed appellant’s vehicle and activated the camera in his squad. Flanagan testified that he observed the vehicle make a lane change and that appellant did not signal the lane change until the vehicle was approximately a little over halfway into the new lane. The video-taped recording was admitted into evidence. Appellant challenges the district court’s interpretation of the video, arguing that it is clear from viewing the tape that he signaled appropriately. However, this is not the case. In viewing the same material that the district court viewed, it appears that at the very least, appellant signaled and changed lanes simultaneously. While it is difficult to determine from the video what happens and when because the lane-divider lines are not visible, one can see the vehicle moving and the signal-indicator lights “blinking” at the same time. This video, combined with the officer’s testimony, supports the district court’s finding that appellant did not properly signal during the last 100 feet traveled. *See* Minn. Stat. § 169.19, subd. 5.

Motion to Strike

Appellant provides frame-by-frame pictures of the video in his appendix along with a frame-by-frame DVD. Respondent moved to strike this material from appellant's appendix. "The record on appeal shall consist of the papers filed in the [district] court, the offered exhibits, and the transcript of the proceedings." Minn. R. Crim. P. 28.02, subd. 8. Although these frame-by-frame photos are taken from the recording from the trooper's vehicle, the district court did not review these photos or the DVD. Because the district court did not view the frame-by-frame images, respondent's motion to strike is granted.

Affirmed; motion granted.