

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1040**

State of Minnesota,
Respondent,

vs.

Leslie Lee Brandes,
Appellant.

**Filed January 18, 2011
Affirmed
Crippen, Judge***

Brown County District Court
File No. 08-CR-09-845

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

Hugh T. Nierengarten, Thomas L. Borgen, Nierengarten & Hippert, New Ulm,
Minnesota (for respondent)

Anthony M. Grostyan, Grostyan & Associates, PLC, Minneapolis, Minnesota (for
appellant)

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

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

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant challenges both of his second-degree driving-while-impaired (DWI) convictions, arguing that the district court erred in denying his motion to suppress because the officer stopped his vehicle without having objective evidence that a traffic offense was occurring. Because the record shows the officer had reasonable, articulable suspicion that appellant violated at least two traffic laws, we affirm.

FACTS

A New Ulm police officer stopped appellant Leslie Lee Brandes after observing him drive around two orange-and-white-striped barricades with signs stating “Road Closed” and “Road Closed to Through Traffic” and proceed past the barricade at the other end of the construction zone. While appellant was in the construction zone, the officer watched him weave across the gravel surface and enter the oncoming lane of traffic.

After stopping appellant, the officer noticed a strong odor of alcohol and appellant’s flushed face and watery, bloodshot eyes. The officer asked appellant to step out of his car and asked him if he had been drinking. Appellant admitted that he had consumed “three or four beers.” The officer administered a field sobriety test and appellant’s performance indicated that he was impaired. The officer then asked appellant to take a preliminary breath test (PBT). Based on the results, the officer arrested appellant for DWI.

DECISION

When reviewing a district court's pretrial order on a motion to suppress evidence, "we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007). We may also independently review facts that are not in dispute and determine whether the evidence need be suppressed as a matter of law. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009).

A law enforcement officer may conduct a stop for limited investigatory purposes if the officer had a "particularized and objective basis for suspecting the particular person stopped of criminal activity." *State v. Anderson*, 683 N.W.2d 818, 822-23 (Minn. 2004) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S. Ct. 690, 695 (1981)). The officer must "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000) (quotation omitted). A stop cannot be the product of "mere whim, caprice, or idle curiosity." *Marben v. State, Dep't of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980) (quotation omitted). Ordinarily, an officer's observation of a traffic-law violation provides an objective basis for an investigatory stop. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

Minn. Stat. § 169.06, subd. 4(a) (2008), requires drivers to "obey the instructions of any official traffic control device." And Minn. Stat. § 169.06, subd. 3 (2008), requires local authorities to place traffic control devices on "highways" in their jurisdictions. An "official traffic control device" includes "all signs, signals, markings, and devices

. . . placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.” Minn. Stat. § 169.011, subd. 49 (2008). A highway “means the entire width between boundary lines of any way or place when any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular traffic.” *Id.*, subd. 81 (2008). The street that was blocked off was normally open to the public for vehicle traffic, and therefore falls under the statutory definition of a highway. The orange-and-white-striped barricades and road signs constituted “official traffic control devices.” *See id.*, subd. 49 (defining term); *see also* Minn. Stat. § 169.06, subd. 4(c)-(d) (2008) (stating presumption that traffic control devices conform to requirements absent evidence to the contrary). Appellant failed to obey the instructions on the traffic control devices when he drove through the portion of the road closed to through traffic. This violation independently justified the officer’s investigatory stop.

Appellant argues that our decision in *State v. Anderson*, 620 N.W.2d 56 (Minn. App. 2000), supports his assertion that he was illegally stopped. In *Anderson*, we concluded that evidence obtained as a result of a stop after Anderson drove past a barricade marked “road closed local traffic only” must be suppressed because the officer had no basis to believe that Anderson was acting unlawfully. 620 N.W.2d 57-58. But *Anderson* is distinguishable. Here, the police officer stopped appellant after observing him drive through the entire portion of the road marked “Closed to Through Traffic,” whereas Anderson was stopped at the initial barricade before the officer could determine whether Anderson was violating the local-traffic-only restriction. *Id.* at 58.

The officer also observed appellant “crossing over the centerline [and] going into the opposing lane of traffic.” Minnesota law requires drivers to drive on the right half of the roadway on all roadways of sufficient width unless an enumerated exception applies. Minn. Stat. § 169.18, subd. 1 (2008). None of the statutory exceptions applies here, and drivers must abide by this law whether or not the centerline is marked. *See Aasen v. Aasen*, 228 Minn. 1, 4, 6, 36 N.W.2d 27, 30, 31 (1949) (applying statutory requirement to gravel highway without marked centerline). The officer’s observation of appellant crossing the centerline provided a particularized and objective basis to believe that appellant was violating the traffic laws, justifying the investigatory stop. *See State v. Wagner*, 637 N.W.2d 330, 335-36 (Minn. App. 2001) (concluding that officer’s observation of appellant crossing centerline while driving supported investigatory stop). Appellant claimed he was weaving to avoid accumulated water in the road. But this claimed excuse does not eliminate the officer’s reasonable, articulable suspicion that appellant violated a traffic law when he crossed onto the left half of the road. *Cf. Shull v. Comm’r of Pub. Safety*, 398 N.W.2d 11, 14 (Minn. App. 1986) (holding stop to investigate DWI valid despite weather conditions that could also support inference of innocent conduct).

Because appellant’s violation of either Minn. Stat. § 169.18, subd. 1, or Minn. Stat. § 169.06, subd. 4(a), provides a lawful basis for the officer’s investigatory stop, we decline to examine the parties’ arguments on a New Ulm ordinance violation or the proper construction of Minn. Stat. § 160.2715(a)(14) (2008).

Appellant also argues in his brief that the officer lacked reasonable, articulable suspicion to expand the scope of the traffic stop when he asked appellant to step out of his car. The strong odor of alcohol coming from the car and appellant's appearance support the officer's inference that appellant might be driving in violation of the DWI laws, and therefore his request that appellant step out of the car. *See State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002) (stating that an officer may expand the scope of a valid stop to investigate other suspected illegal activity if the officer has reasonable, articulable suspicion of that activity). Similarly, appellant's appearance, admission that he had been drinking, and performance on the field sobriety test provided a more than adequate basis for the officer to administer the PBT. *See State v. Vievering*, 383 N.W.2d 729, 730 (Minn. App. 1986) (permitting request for PBT if based on "specific and articulable facts" that support suspicion of DWI), *review denied* (Minn. May 16, 1986).

The district court did not err when it determined that the officer's investigatory stop and subsequent requests were lawful and consequently denied appellant's suppression motion.

Affirmed.