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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1152**

State of Minnesota,
Respondent,

vs.

Kenneth Matt Hughes,
Appellant.

**Filed July 16, 2012
Affirmed
Larkin, Judge**

Clay County District Court
File No. 14-CR-10-3082

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

Brian Melton, Clay County Attorney, Gregg Jensen, Jeanine R. Brand, Assistant County Attorneys, Moorhead, Minnesota (for respondent)

Bradford Colbert, Staci L. McCormick, Legal Assistance to Minnesota Prisoners, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Collins,
Judge.*

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

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his conviction of first-degree driving while impaired, arguing that the district court erred in concluding that there was a lawful basis to stop his vehicle. Because the traffic stop was lawful, we affirm.

FACTS

On August 24, 2010, Clay County Sheriff's Deputy Ryan Carey responded to a complaint of reckless driving on Interstate 94. Dispatch described the vehicle to Deputy Carey as dark-colored with a refrigeration unit on the back. Deputy Carey located appellant Kenneth Matt Hughes driving a vehicle that matched this description on Interstate 94. Deputy Carey followed the vehicle and observed Hughes swerve toward the fog line and jerk back into the lane. Hughes continued to weave back and forth within his lane, touching both the center line and the fog line. Deputy Carey initiated a traffic stop and arrested Hughes for driving while impaired (DWI).

Hughes was subsequently charged by complaint with first-degree DWI, first-degree test refusal, and driving after cancellation. Hughes moved to dismiss the charges, alleging that his seizure was not supported by an adequate reason for an investigatory stop. The district court denied the motion after a contested omnibus hearing. Hughes was convicted of first-degree DWI following a trial to the district court under Minn. R. Crim. P. 26.01, subd. 4. This appeal follows.

DECISION

Hughes argues that the reckless-driving complaint was not sufficiently detailed to suggest criminal activity and that it therefore did not provide a lawful basis to stop his vehicle. *See Olson v. Comm'r of Pub. Safety*, 371 N.W.2d 552, 556 (Minn. 1985) (“If the police chose to stop on the basis of the tip alone, the anonymous caller must provide at least some specific and articulable facts to support the bare allegation of criminal activity.”). Hughes also argues that Deputy Carey’s observations did not provide sufficient corroboration to justify the stop. *See id.* (“[T]he observance of erratic driving by the officer would have adequately corroborated the anonymous tip and justified an investigative stop. Indeed, erratic driving alone would have justified a stop.”). We conclude that Deputy Carey’s observations provided an independent and sufficient basis for a lawful traffic stop and therefore affirm without addressing Hughes’s argument regarding the adequacy of the reckless-driving complaint.

Both the United States and Minnesota Constitutions prohibit unreasonable search and seizure by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A police officer may, however, initiate a limited investigative stop without a warrant if the officer has reasonable, articulable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 20-21, 88 S. Ct. 1868, 1879-80 (1968); *see also State v. Pike*, 551 N.W.2d 919, 921-22 (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)).

Whether the police have reasonable suspicion to conduct an investigatory stop depends on the totality of the circumstances, and a stop is not justified if it is “the product of mere whim, caprice, or idle curiosity.” *In re Welfare of M.D.R.*, 693 N.W.2d 444, 448 (Minn. App. 2005) (quotation omitted), *review denied* (Minn. June 28, 2005). The court may consider the officer’s experience, general knowledge, and observations; background information, including the time and location of the stop; and anything else that is relevant. *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) (quotation omitted).

The supreme court long ago concluded that where an officer observes a vehicle weaving within its lane, the officer has a right to stop the driver to investigate the cause of the unusual driving. *State v. Ellanson*, 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) (stating that “[e]ven observing a motor vehicle weaving within its own lane in an erratic manner can justify an officer stopping a driver”); *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983) (“[W]e have held that if an officer observes a driver weaving within his lane in an erratic manner . . . then the officer is justified in stopping the driver to investigate the cause of the problem.”) (citing *Ellanson*, 293 Minn. at 490-91, 198 N.W.2d at 137)).

“When reviewing the legality of a seizure or search, an appellate court will not reverse the [district] court’s findings unless [they are] clearly erroneous or contrary to law.” *In re Welfare of G.M.*, 560 N.W.2d 687, 690 (Minn. 1997). But an appellate court

reviews de novo a district court's determination of reasonable suspicion as it relates to investigative stops. *Id.*

In this case, Deputy Carey testified that he observed Hughes jerk his vehicle from the fog line and continue to weave back and forth within his lane. Hughes urges this court to assess the credibility of Deputy Carey's testimony. It is clear from the record that the district court found Deputy Carey's testimony credible. The district court made findings on the record that Deputy Carey "observed driving behavior that corroborated the report that he had received," and that "the independent corroboration based on the driving behavior, including the jerking and weaving, was sufficient to justify the stop." This court defers to the district court to make credibility determinations, *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *review denied* (Minn. July 15, 2003), and reviews findings of fact only for clear error. *G.M.*, 560 N.W.2d at 690. We find no such error here. Moreover, Deputy Carey's observations of Hughes jerking and weaving within his lane of traffic were sufficient to justify a traffic stop under *Ellanson*.

Affirmed.