STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0080

State of Minnesota,
Respondent,

vs.

Steven Earl Peterson,
Appellant.

Filed December 3, 2012
Reversed
Cleary, Judge

McLeod County District Court
File No. 43-CR-11-327

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

Michael K. Junge, McLeod County Attorney, James A. Schaeffer, Assistant County Attorney, Glencoe, Minnesota (for respondent)

John D. Ellenbecker, St. Cloud, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Cleary, Judge; and Toussaint, Judge.*

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

U N P U B L I S H E D O P I N I O N

CLEARY, Judge

Appellant challenges the denial of his pretrial motion to suppress the evidence obtained during a traffic stop, arguing that the state trooper did not have reasonable, articulable suspicion to stop appellant's vehicle. We reverse.

FACTS

At approximately 9:00 p.m. on February 26, 2011, a Minnesota State Patrol trooper was driving northbound on Minnesota Trunk Highway 15, at the intersection with 30th Street, in McLeod County. As the trooper passed through the intersection, he observed a pickup truck in the ditch on 30th Street. The trooper also observed a second pickup truck attempting to pull the first truck out of the ditch. The trooper slowed his squad car down, made a U-turn almost a half-mile north of the intersection, and returned to check on the trucks. By the time the trooper returned to the intersection, the first truck was out of the ditch, on the roadway, and the second truck was already driving away. As the trooper turned onto 30th Street, he observed the first truck's brake lights illuminate, observed the truck reverse a few feet, observed the brake lights illuminate again, and then saw the truck drive forward. The trooper immediately activated his emergency lights and stopped the truck.

When the trooper approached the truck, he saw that the driver's eyes were bloodshot and watery, and he smelled the odor of alcohol. The trooper identified appellant Steven Peterson as the driver of the truck. After administering several field sobriety tests, the trooper suspected that appellant was intoxicated and asked appellant to

submit to a preliminary breath test. Appellant refused and he was arrested for driving while impaired (DWI). At the McLeod County jail, appellant again refused to submit to a breath test, and he was charged with second-degree DWI under Minn. Stat. § 169A.20, subd. 2 (2010).

Appellant moved to suppress all of the evidence obtained as a result of the stop, arguing that the trooper lacked reasonable, articulable suspicion to initiate the stop. At the motion hearing, the trooper testified that it is his job to "respond to people who are in the ditch," and noted that vehicles go into ditches frequently in the winter and almost on a daily basis when it is snowing. The trooper stated that he was "not exactly sure" what appellant was accomplishing when he reversed the truck and then drove forward, so he had "reasonable suspicion to stop him and find out exactly what—what is going on." Because the trooper activated his emergency lights immediately after appellant started driving forward, the stop occurred before he observed any other driving conduct, and the trooper did not testify that he observed any traffic violations.

The district court denied appellant's motion to suppress, holding that the trooper "possessed specific and articulable facts which, taken together with rational inferences from those facts, reasonably warranted the stop of the defendant's vehicle." The court noted:

> The observation alone that the vehicle had been in the ditch justified the stop. [The trooper] had a lawful basis to stop the vehicle and determine whether the driver needed medical assistance and whether the accident happened because of road conditions, mechanical problems with the motor vehicle or problems with the driver.

In order to obtain review of the pretrial suppression motion, appellant stipulated to the state's evidence pursuant to Minn. R. Crim. P. 26.01, subd. 4. Appellant was convicted under Minn. Stat. § 169A.20, subd. 2. This appeal followed.

D E C I S I O N

"We review the question of the legality of an investigatory stop de novo and underlying factual findings under a 'clearly erroneous' standard." *State v. Schrupp*, 625 N.W.2d 844, 846 (Minn. App. 2001) (citing *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000)), *review denied* (Minn. July 24, 2001).

Both the United States Constitution and the Minnesota Constitution protect the right of people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. 1, § 10.

"It is not unreasonable for an officer to make a 'brief seizure of a person for investigatory purposes' if the officer has an objective basis for suspecting that the person is involved in criminal activity or is in need of medical assistance." *Overvig v. Comm'r of Pub. Safety*, 730 N.W.2d 789, 793 (Minn. App. 2007) (quoting *State v. Harris*, 590 N.W.2d 90, 99 (Minn. 1999)), *review denied* (Minn. Aug. 7, 2007). "A limited investigative stop is permissible if the officer is able to articulate that he had a particularized and objective basis for suspecting criminal activity." *State v. Riley*, 667 N.W.2d 153, 156 (Minn. App. 2003), *review denied* (Minn. Oct. 21, 2003).

> An actual violation of the vehicle and traffic laws need not be detectable. The police must only show that the stop was not the product of mere whim, caprice or idle curiosity, but was based upon "specific and articulable facts which, taken

> together with rational inferences from those facts, reasonably warrant that intrusion."

State v. Pike, 551 N.W.2d 919, 921–22 (Minn. 1996) (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)). "In deciding the propriety of investigative stops, we review the events surrounding the stop and consider the totality of the circumstances in determining whether the police had a reasonable basis justifying the stop." *Britton*, 604 N.W.2d at 87.

The state first argues that the trooper had a duty to stop and offer assistance to appellant because he observed appellant's truck in a ditch. Indeed, officers have a right to approach a parked car to investigate whether criminal activity is afoot or to see if the occupants need assistance. *See Overvig*, 730 N.W.2d at 793 (holding that an officer was justified in opening the door of a parked vehicle "to investigate and assess the physical well-being of the driver"); *Kozak v. Comm'r of Pub. Safety*, 359 N.W.2d 625, 628 (Minn. App. 1984) ("In the proper performance of his duties, an officer has not only the right but a duty to make a reasonable investigation of vehicles parked along roadways to offer such assistance as might be needed and to inquire into the physical condition of persons in vehicles.").

The situation here would be comparable to these examples if the trooper had approached appellant's car while it was stopped in the ditch. It is generally not considered a seizure when an officer approaches a parked vehicle to determine whether the occupants need assistance. *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980).

Appellant's truck had been pulled out of the ditch, and appellant was in motion when the trooper stopped him. Because the trooper initiated the stop while appellant was driving, an officer's right or duty to investigate whether appellant needed assistance does not support the stop here.

The state next argues that appellant must have crossed the center line and the fog lines in order to go into the ditch. If an officer observes a traffic violation, the officer has an objective basis for stopping a vehicle. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). The trooper did not actually observe appellant's truck crossing the center line or the fog lines. The state does not present any authority that supports the conclusion that, if appellant was observed in the ditch, then he necessarily crossed the fog lines and an officer has an objective basis to stop his truck.

Finally, the state argues that the totality of the circumstances indicates that the trooper had reasonable, articulable suspicion to initiate the traffic stop, citing appellant's unusual driving behavior and the fact that the trooper had previously observed appellant's truck in the ditch.

The state relies on *Wilkes v. Comm'r of Pub. Safety*, 777 N.W.2d 239, 243 (Minn. App. 2010), in which this court found that an officer had reasonable suspicion to stop a vehicle when the officer had to "reduce the speed of his squad car below the posted limit as he came up behind [the defendant], who was stopped in the same traffic lane, before [the defendant] began driving again." The court noted that the defendant's conduct violated a statute that prevented drivers from blocking or impeding the normal and reasonable movement of traffic except when it is necessary for safety, for compliance

with the law, or because of the condition of the highway. *Id.* The incident in *Wilkes* occurred around midnight, and the officer testified that it was "unusual for a vehicle to be stopped in a traffic lane in the middle of the night and that such behavior was likely due to mechanical problems or impairment." *Id.* The court held that, because the officer observed a traffic violation, he had an objective basis for performing the traffic stop. *Id.* at 244.

In contrast, the trooper did not testify that he observed appellant violate any traffic laws. The trooper noted that 30th Street was covered with ice and snow, and he stated that cars go into the ditch "quite often on a—maybe even a daily basis in the wintertime, especially during the snow." The trooper did not testify that he suspected that appellant was impaired; he testified that he was not sure what appellant was accomplishing by reversing and he wanted to stop him to "find out exactly what—what is going on." The trooper stopped appellant based on mere whim or curiosity about what appellant was doing.

This court has held that an officer does not have an adequate basis for an investigative stop when the officer does not suspect any specific wrongdoing, but wants to investigate a situation further. *See State v. Sanger*, 420 N.W.2d 241, 242–44 (Minn. App. 1988) (holding that the officer had no articulable suspicion and that the stop was based on mere whim or caprice when he wanted to "see what was going on" and did not suspect any criminal activity or that the occupants of the vehicle needed help). Although *Sanger* involved a situation where the officer approached a vehicle that was parked, the

court determined that the officer's actions constituted a stop or a seizure because the officer positioned his squad car so that it blocked the defendant from leaving. *Id.*

The trooper only testified that he wanted to know what was going on and even conceded that a vehicle going into a ditch was almost a daily occurrence in the winter. Although appellant's driving may have been unusual, simply reversing a few feet and then proceeding forward does not raise suspicion of criminal activity. The trooper did not have reasonable, articulable suspicion to justify the investigatory stop, and the district court erred by not suppressing the evidence resulting from the stop.

Reversed.