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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1892**

State of Minnesota,
Respondent,

vs.

Wendy Ann Birk,
Appellant.

**Filed August 5, 2013
Affirmed
Peterson, Judge**

Isanti County District Court
File No. 30-CR-11-359

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

Jeffrey R. Edblad, Isanti County Attorney, Timothy Charles Nelson, Assistant County Attorney, Cambridge, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, David Elstan Forte Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Stoneburner, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from convictions for driving-while-impaired and an open-bottle violation, appellant argues that the stop of her vehicle was not supported by a reasonable,

articulable suspicion of criminal activity because the deputy who made the stop gave a different reason for the stop in his testimony at the omnibus hearing than he gave in his investigative report. We affirm.

FACTS

Appellant Wendy Ann Birk was convicted of two counts of gross-misdemeanor driving while impaired, in violation of Minn. Stat. § 169A.20, subd. 1(1), (5) (2010), and one count of misdemeanor open bottle in a vehicle, in violation of Minn. Stat. § 169A.35, subd. 3 (2010), following a stipulated-evidence trial held under Minn. R. Crim. P. 26.01, subd. 4. She agreed to the stipulated-evidence trial after the district court denied her pretrial motion to suppress all evidence obtained during a traffic stop.

At 1:30 a.m., Isanti County Deputy Sheriff Douglas Barron was on routine patrol at a four-way stop when he saw appellant's vehicle approach the intersection. In an investigative report, Barron wrote that appellant's vehicle "came to a late abrupt stop at the intersection, continuing through the intersection." The report also states that Barron followed appellant's vehicle, which "made late stops into the corner making abrupt braking motions" and slowed down abruptly at a sign posting a speed-limit reduction from 50 miles per hour to 30 miles per hour.

Appellant challenged the factual basis for the stop of her vehicle. At the omnibus hearing, Barron testified that he initially observed appellant driving too fast while approaching the intersection, and he thought the vehicle "was going to continue through the intersection." He then "noticed a very abrupt and late stop to the stop sign. I saw the front end of the car dip pretty significantly as it rolled past the stop sign and into the

intersection before it proceeded through the intersection.” He also testified that the vehicle “came to a stop after the stop sign in the intersection” and that as he followed appellant’s vehicle, it made “some pretty abrupt braking motions” at some curves and “made another abrupt braking motion” to slow down before it reached the sign posting the 30-mile-per-hour speed limit.

Appellant’s attorney cross-examined Barron, suggesting that there were factual discrepancies between his investigative report and his omnibus-hearing testimony. When asked about the different descriptions of appellant’s driving conduct at the intersection, Barron explained that when he wrote “late” in the investigatory report, he meant that appellant did not stop until she was into the intersection.

The district court denied appellant’s motion to suppress the evidence obtained after the stop, stating, “Deputy Barron clarified . . . in his testimony that it was the stop into the intersection, not at the intersection. That along with the totality of his observations gave him justifiable reason for stopping the vehicle.”

D E C I S I O N

The United States and Minnesota Constitutions prohibit warrantless searches and seizures, subject to limited exceptions. U.S. Const. amend. IV; Minn. Const. art I, § 10. “In general, the state and federal constitutions allow an officer to conduct a limited investigatory stop of a motorist if the state can show that 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) (quotation omitted). “The factual basis required to support a stop is minimal, and an actual violation is not

necessary.” *State v. Haataja*, 611 N.W.2d 353, 354 (Minn. App. 2000) (quotation omitted), *review denied* (Minn. July 25, 2000). We review de novo the legality of an investigatory stop, examining the events surrounding the stop and considering the totality of the circumstances. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). When reviewing the outcome of a bench trial, “[w]e . . . defer to the district court’s credibility determination in resolving conflicting testimony.” *State v. Kramer*, 668 N.W.2d 32, 38 (Minn. App. 2003), *review denied* (Minn. Nov. 18, 2003). We also defer to implicit credibility determinations. See *Umphlett v. Comm’r of Pub. Safety*, 533 N.W.2d 636, 639 (Minn. App. 1995) (ruling that district court “implicitly found” officer’s testimony credible), *review denied* (Minn. Aug. 30, 1995); see also *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005) (stating factual findings are accepted unless clearly erroneous).

We reject appellant’s claim that, because Barron’s investigative report differed from his omnibus-hearing testimony, the record does not provide a factual basis for the stop. Barron’s omnibus-hearing testimony did not contradict his investigative report. His testimony merely provided a more complete account of appellant’s driving conduct, including an explanation of what Barron meant when he wrote in his report that the vehicle “came to a late abrupt stop.” Thus, we conclude that the evidence and findings support the district court’s decision to uphold the legality of the stop. See *Anderson*, 683 N.W.2d at 822-23 (officer may stop motorist based on particularized and objective suspicion of criminal activity); *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) (stating that a “violation of a traffic law, however insignificant” supports an objective basis for a traffic stop); *State v. Engholm*, 290 N.W.2d 780, 784 (Minn. 1980) (upholding

lawfulness of traffic stop even when no specific traffic violation observed, but driver was traveling below the posted speed limit and was weaving within a road lane); *State v. Schrupp*, 625 N.W.2d 844, 847-48 (Minn. App. 2001) (stating that “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” are sufficient to support an investigatory stop), *review denied* (Minn. July 24, 2001).

Affirmed.