STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0013

Melissa Rae Clark, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed September 9, 2013
Affirmed
Larkin, Judge

Red Lake County District Court
File No. 63-CV-12-74

Daniel S. Adkins, The Adkins Law Group, Chartered, Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Jacob Fischmann, Joan M. Eichhorst, Assistant Attorneys General, St. Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Cleary, Judge.

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

LARKIN, Judge

Appellant challenges the district court's order sustaining the revocation of her license to drive under the implied-consent law, Minn. Stat. § 169A.53 (2010), claiming

that the revocation stems from an illegal traffic stop and that the district court erred by failing to order respondent to produce a squad-car video of the stop. We affirm.

FACTS

On April 29, 2012, police arrested appellant Melissa Rae Clark for driving while impaired, and respondent Minnesota Commissioner of Public Safety revoked Clark's driving privileges under the implied-consent law. Clark petitioned the district court for review of the revocation, arguing that the traffic stop that preceded her arrest was unlawful. Next, Clark moved the district court for summary judgment, based on the destruction of a squad-car video that purportedly recorded the traffic stop. Clark argued that she was substantially prejudiced by "[t]he destruction of this *major* piece of evidence." The district court denied Clark's motion, reasoning, in part, that "[t]he [c]ommissioner's position that he is not required to 'produce documents from non-parties' is well established."

Later, the district court held an evidentiary hearing on Clark's petition for review of the revocation. The following evidence was presented. At approximately 12:58 a.m. on April 29, Red Lake County Sheriff Deputies Kelly Brekke and Dustin Arlt were on patrol in their squad car and noticed a vehicle continually weaving within its own lane. The deputies testified that they followed the vehicle for several miles and saw the vehicle's passenger side tires cross entirely over the white fog line on the right side of the road. They further testified that after crossing the white fog line, the vehicle corrected, and the driver's side tires went over the center yellow line, but did not cross it entirely. The deputies decided to stop the vehicle and activated the emergency lights in their squad

car. The vehicle's driver's side tires then swerved completely over the yellow line. After initiating a traffic stop, Deputy Brekke identified Clark as the driver and arrested her for driving while impaired. Clark testified that her vehicle did not cross the center line or the fog line.

The district court found "the testimony of the two deputies more credible than the testimony from [Clark]. The two deputies testified consistently with each other in spite of a sequestration order which required neither to be in the courtroom while the other was testifying." The district court therefore concluded that the deputies' "credible testimony . . . that [Clark's vehicle] crossed the center line and the fog line" provided a "legal basis for the stop of [Clark's] motor vehicle" and sustained revocation of her driving privileges. This appeal follows.

D E C I S I O N

I.

Clark argues that the district court erred by concluding that the traffic stop was lawful. 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 if the officer has reasonable, articulable suspicion of criminal activity. *State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996). Whether 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't 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). Although a mere hunch is not enough, any "violation of a traffic law, however insignificant" provides the police with an objective basis for a stop. *Id.* But an actual violation of the traffic laws need not be shown for such a stop to be valid. *See State v. Engholm*, 290 N.W.2d 780, 784 (Minn. 1980) (upholding stop as lawful even where no traffic violation was observed).

"We review a district court's determination regarding the legality of an investigatory traffic stop and questions of reasonable suspicion de novo." *Wilkes v. Comm't of Pub. Safety*, 777 N.W.2d 239, 242-43 (Minn. App. 2010). We review the district court's factual findings for clear error. *Id.* Lastly, this court defers to the district court's credibility determinations on the weight and believability of witness testimony. *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *review denied* (Minn. July 15, 2003).

The deputies testified that Clark's vehicle weaved continually within its own lane. That driving conduct established reasonable, articulable suspicion sufficient to support a traffic stop. *See 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."); *State v. Ellanson*, 293 Minn. 490, 490-91, 198 N.W.2d 136, 137 (1972) (holding that an officer had a right to stop a vehicle that weaved within its lane to investigate the cause of the unusual driving); *State v. Dalos*, 635 N.W.2d 94, 96 (Minn. App. 2001) (holding that "continuous weaving within one's own lane is sufficient by itself to create a reasonable articulable suspicion of criminal activity to support a traffic stop").

Moreover, the deputies testified that Clark's vehicle crossed over the center line, as well as the fog line. That driving conduct gave rise to a traffic violation, which provided reasonable, articulable suspicion for the stop. *See* Minn. Stat. § 169.18, subd. 7(a) (2010) (stating that "[a] vehicle shall be driven as nearly as practicable entirely within a single lane"); *State v. Wagner*, 637 N.W.2d 330, 336 (Minn. App. 2001) ("Crossing the center line is a violation of the traffic laws and will usually provide the officer with an objective, reasonable suspicion to conduct an investigatory stop.").

Clark nonetheless asks this court to disregard the deputies' testimony and accept as true her assertion that her vehicle did not cross the center line or fog line. But the district court found the deputies' testimony more credible than Clark's, and we defer to that credibility determination. *See Miller*, 659 N.W.2d at 279. In sum, the traffic stop was supported by reasonable, articulable suspicion, and it therefore was lawful.

II.

Clark next argues that the district court erred by failing "to issue an [o]rder directing the [c]ommissioner to produce the squad video." Judicial review of implied-consent revocations

> must be conducted according to the Rules of Civil Procedure, except that prehearing discovery is mandatory and is limited to: (1) the notice of revocation; (2) the test record or, in the case of blood or urine tests, the certificate of analysis; (3) the peace officer's certificate and any accompanying documentation submitted by the arresting officer to the commissioner; and (4) disclosure of potential witnesses, including experts, and the basis of their testimony. Other types of discovery are available only upon order of the court.

Minn. Stat. § 169A.53, subd. 2(d).

"Discovery of documents and tangible items is only available if the party from whom it is sought has possession, custody, or control of the items." *Abbott v. Comm'r of Pub. Safety*, 760 N.W.2d 920, 924 (Minn. App. 2009) (quotation omitted). We review the district court's discovery rulings for an abuse of discretion. *See id.* at 926 ("[T]he district court has the same discretion to grant or deny a discovery request in implied-consent hearings as it does in civil cases generally, and the parties are bound by the same burden to demonstrate that an item is discoverable.").

Clark fails to show that the commissioner ever had possession of the squad-car video. In fact, an affidavit submitted by Clark's attorney in support of summary judgment indicates that the video was originally in the possession of the sheriff's

department and that the "footage had been destroyed."[1] Because the video had been destroyed and the commissioner did not have possession of it, the district court did not abuse its discretion by refusing to order production of the video.

Moreover, Clark's contention that "[t]he failure of the officers to properly preserve potentially exculpatory evidence, and thereafter the failure on the part of the [c]ommissioner to ameliorate this absence of evidence 'is a violation of an appellant's due process rights'" is unavailing. Because the issue was not raised in the district court, it is not properly before this court on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts must generally consider only those issues that were presented to and considered by the district court in deciding the matter before it). We nonetheless observe that Clark relies on criminal precedent regarding the "government's constitutional duty to preserve evidence on behalf of criminal defendants." *State v. Schmid*, 487 N.W.2d 539, 541 (Minn. App. 1992), *review denied* (Minn. Sept. 15, 1992). But it is well established that "an implied consent hearing is not a de facto criminal proceeding and due process rights associated with criminal trials do not apply." *Brooks v. Comm'r of Pub. Safety*, 584 N.W.2d 15, 20 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. Nov. 24, 1998); *see also Hartung v. Comm'r of Pub. Safety*, 634 N.W.2d 735, 739 (Minn. App. 2001) ("The due-process right to potentially exculpatory evidence does not extend to civil implied-consent proceedings."), *review denied* (Minn. Dec. 11, 2001).

[1] Deputy Brekke testified at the implied-consent hearing that the video was inadvertently erased when he attempted to transfer a copy onto a CD.

Clark also argues that the district court erred by "failing to apply a consequential adverse inference based on the [c]ommissioner's failure to produce the onboard squad video, which depicted the facts in dispute." Because Clark did not raise that issue in the district court, we do not consider it. *See Thiele*, 425 N.W.2d at 582. In sum, there is no reversible error resulting from the commissioner's failure to produce the squad-car video.

Affirmed.