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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1368**

State of Minnesota,
Appellant,

vs.

Lynae Nicole Davis,
Respondent.

**Filed April 9, 2018
Reversed and remanded
Schellhas, Judge**

Hennepin County District Court
File No. 27-CR-16-22611

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

Susan L. Segal, Minneapolis City Attorney, Sarah Becker, Assistant City Attorney,
Minneapolis, Minnesota (for appellant)

Mary F. Moriarty, Fourth District Public Defender, Paul J. Maravigli, Assistant Public
Defender, Minneapolis, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Schellhas, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's pretrial suppression order in favor of
respondent. We reverse and remand.

FACTS

While patrolling in Golden Valley with a traffic-safety detail at 11:40 p.m., in August 2016, Edina Police Officer Nicholas Pedersen observed a vehicle traveling south on Highway 100 north of the access lane that split into two lanes —leftward for East Interstate 394, and rightward for West Interstate 394. Officer Pedersen saw the vehicle make a left-hand signal, but then make a right-hand signal and exit Highway 100 onto an access lane leading to both East and West Interstate 394. Officer Pedersen followed the vehicle, which continued on the East-394 access lane travelling toward the cloverleaf turn. The access lane split once more: leftward for East-394 Minneapolis, rightward for the car-pool express lane.

After the vehicle traveled on the left side of this split, for East 394, the driver signaled left for about six seconds although no left-hand turn or lane change was possible. At the same time, the vehicle drifted to the right and its tires touched the fog line without crossing it. Continuing toward the cloverleaf turn, the vehicle signaled rightward and changed lanes to the right within a second. As the vehicle entered the cloverleaf turn, its tires again touched the right fog line. Officer Pedersen suspected traffic law violations, stopped the vehicle, and identified the driver as respondent Lynae Davis. Davis smelled of alcohol, performed poorly on field sobriety tests, and Officer Pedersen arrested her.

After testing revealed an alcohol concentration of 0.13 within two hours of driving, appellant State of Minnesota charged Davis with two counts of driving while impaired (DWI), driving after revocation, and failure to drive in a single lane. Davis moved to suppress all evidence obtained due to the vehicle stop. After a contested omnibus hearing,

the district court granted Davis's suppression motion, concluding that Officer Pedersen stopped Davis based on an erroneous interpretation of Minn. Stat. § 169.18, subd. 7(a) (2016), governing lane changes on a highway, and Minn. Stat. § 169.19, subd. 5 (2016), governing the use of turn signals before turning.

This pretrial appeal by the state follows.

D E C I S I O N

In an appeal of a pretrial ruling on a suppression motion, appellate courts will only reverse the district court when the state shows that the ruling will have a "critical impact" on its ability to prosecute the case, and that the district court's ruling was erroneous. *State v. Zais*, 805 N.W.2d 32, 36 (Minn. 2011). To show a critical impact, the state must show that excluding the evidence "significantly reduces the likelihood of a successful prosecution." *Id.* (quotation omitted). Here, the district court's ruling had a "critical impact" because it suppressed all evidence obtained after the stop, thereby precluding the state from prosecuting the DWI and driving-after-revocation charges. We therefore address whether the district court erred in its reasonable-suspicion determination.

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art I, § 10. Searches and seizures conducted without a warrant are presumptively unreasonable. *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016). One exception allows the police to conduct a "brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Id.*; *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968). "In reviewing a district court's determinations of the legality of a limited investigatory stop, we review questions of

reasonable suspicion de novo.” *State v. Morse*, 878 N.W.2d 499, 502 (Minn. 2016) (quotation omitted). An appellate court reviews a district court’s factual findings for “clear error.” *Lugo*, 887 N.W.2d at 487.

“Reasonable suspicion must be based on specific, articulable facts that allow the officer to be able to articulate that he or she had a particularized and objective basis for suspecting the seized person of criminal activity.” *Morse*, 878 N.W.2d at 502 (quotations omitted). “The reasonable-suspicion standard is not high.” *Id.* (quotation omitted). “A trained police officer is entitled to draw inferences on the basis of all of the circumstances . . . inferences and deductions that might well elude an untrained person.” *Id.* (quotation omitted). A district court must assess the totality of the circumstances of the stop. *Id.*

The state argues in its brief that the district court erred because (1) Davis’s “nearly simultaneous signal and change of course” was a per se violation of Minn. Stat. § 169.19, subd. 4 (2016), and (2) the totality of the circumstances demonstrates suspicious driving behavior that would lead a reasonable officer to believe that Davis was driving while impaired. After briefing in this case, this court held in *Kruse v. Comm’r of Pub. Safety*, that “the markings that establish lanes for traffic are not part of the lanes within the meaning of Minn. Stat. § 169.18, subd. 7(a), that driving onto such a marking is movement from a lane, and that such movement could constitute a violation of the statute.” 906 N.W.2d 554, 560 (Minn. App. 2018).

Minnesota statutes section 169.18, subdivision 7(a), provides:

When any roadway has been divided into two or more
clearly marked lanes for traffic . . . :

(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

In *Kruse*, the officer observed the driver’s vehicle “move right and onto the fog line, but not over [it],” and then “move left and onto the center line, but not over [it].” 906 N.W.2d at 556. The time of day was 11:50 p.m. and the vehicle was on a county road with a center line. *Id.* Under those facts, we held that the officer had a reasonable suspicion of a traffic violation under Minn. Stat. § 169.18, subd. 7(a). *Id.* at 560–61.

At oral argument, the state argued that *Kruse* controls the result of this case.¹ We agree. The facts here are nearly indistinguishable from the facts in *Kruse*. Officer Pedersen’s observation that Davis’s vehicle twice moved onto the fog line provided a reasonable suspicion of a traffic violation under Minn. Stat. § 169.18, subd. 7(a). Because Officer Pedersen had an objective basis to suspect a violation of section 169.18, the stop of Davis’s vehicle was lawful, and the district court erred in granting her suppression motion.

Davis argues that *Kruse* and section 169.18, subdivision 7(a), require an officer to articulate that a vehicle’s tires hit the fog line *and* that such driving behavior was unsafe in order for an officer to have reasonable suspicion that the statute was violated. And Davis contends that Officer Pedersen had no reason to believe that Davis’s driving on the fog line was unsafe because, unlike *Kruse*, Davis was in a single isolated lane with no oncoming

¹ The state gave notice that it intended to cite *Kruse* pursuant to Minn. R. Civ. App. P. 128.05.

traffic. Although the officer opined that it was not “proper” for Davis to drive on the fog line, Davis is correct that the officer did not state that her driving was therefore unsafe. But we are not persuaded by Davis’s argument.

When examining reasonable suspicion, courts do not focus on the “subjective belief of the officer” but rather whether an objective basis to suspect criminal activity exists. *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004). Additionally, in *State v. Ellanson*, the Minnesota Supreme Court held that a traffic stop was justified when an officer observed a vehicle weaving within its lane but did not believe the weaving constituted a traffic violation because the officer “had a right to stop defendant in order to investigate the cause of the unusual driving.” 293 Minn. 490, 491, 198 N.W.2d 136, 137 (1972); *see Morse*, 878 N.W.2d at 502 (citing *Ellanson* and concluding that police had reasonable suspicion to stop a vehicle when squad-car video showed defendant’s vehicle drifting in its lane, and when that reason was supported by other justifications). Likewise, here, after observing Davis drive on the fog line twice, the officer had a right to investigate the cause of Davis’s driving, irrespective of the officer’s subjective belief that such driving violated a traffic law.

Additionally, an objective basis to suspect a violation of Minn. Stat. § 169.18, subd. 7(a), exists in this case. Davis’s vehicle drove onto the right fog line twice at night. While the vehicle faced no oncoming traffic, the officer had an objective basis to suspect that Davis’s driving was unsafe because, “driving on the fog line could compromise the safety of any stopped motorist . . . on the right side of the fog line.” *Kruse*, 906 N.W.2d at 559.

We agree with the state that, under the totality of the circumstances, an objective basis existed for an officer to suspect Davis of driving while impaired. The facts show that:

(1) Davis was driving at night around 11:40 p.m., (2) the vehicle signaled left in an area where vehicles cannot go left, (3) the vehicle moved rightward and touched the right fog line as it signaled left, and (4) the vehicle again hit the right fog line while turning down the cloverleaf turn. On these facts, an officer would not be acting on “whim” or “caprice” in stopping a driver for suspicion of impaired driving.

Because an objective basis existed for Officer Pedersen to suspect a violation of Minn. Stat. § 169.18, subd. 7(a), and impaired driving, we conclude that the district court erred in granting Davis’s motion to suppress, and we reverse and remand for further proceedings. Because reasonable suspicion exists on other grounds, we do not address the state’s argument that Davis’s driving violated Minn. Stat. § 169.19, subd. 4.

Reversed and remanded.