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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1439**

State of Minnesota,
Respondent,

vs.

Ashley Amy Schwartz,
Appellant.

**Filed July 23, 2018
Affirmed
Larkin, Judge**

Stearns County District Court
File No. 73-CR-16-10238

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

Cynthia R. Kirchoff, St. Cloud City Attorney, Heidi A. Swisher, Assistant City Attorney,
St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Larkin, Judge; and Bjorkman,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges her conviction of fourth-degree driving while impaired (DWI), arguing that the underlying traffic stop was unconstitutional. We affirm.

FACTS

During the early morning hours of November 5, 2016, Officer Darin Vossen of the St. Cloud Police Department was on routine patrol in downtown St. Cloud. He observed a vehicle exit a parking ramp, followed the vehicle, and observed two suspected traffic violations. First, Officer Vossen observed the vehicle cross over the centerline during a right turn. Next, Officer Vossen observed the vehicle travel on the centerline. Officer Vossen stopped the vehicle and identified its driver as appellant Ashley Amy Schwartz. Based on his subsequent observations of Schwartz's appearance, Officer Vossen arrested her for DWI.

The state charged Schwartz with two counts of fourth-degree DWI. Schwartz moved to suppress all evidence obtained as a result of the underlying traffic stop, asserting that Officer Vossen unlawfully stopped her vehicle. The district court denied Schwartz's motion, reasoning that the stop was based on Officer Vossen's observation of Schwartz's traffic violations.

The case was tried to a jury, which found Schwartz guilty of DWI. The district court sentenced Schwartz to a 90-day jail term, stayed the sentence, and placed Schwartz on probation. This appeal follows.

DECISION

I.

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. “Generally, warrantless searches are per se unreasonable.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). However, a police officer may initiate a limited, investigative stop without a warrant if the officer has reasonable, articulable suspicion of criminal activity. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999) (citing *Terry v. Ohio*, 392 U.S. 1, 22, 88 S. Ct. 1868, 1880 (1968)).

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). It cannot be based on a “hunch” or be “the product of mere whim, caprice or idle curiosity.” *Id.*; *State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996) (citing *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880). “[I]f an officer observes a violation of a traffic law, no matter how insignificant the traffic law, that observation forms the requisite particularized and objective basis for conducting a traffic stop.” *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004). “[T]he factual basis required to support a stop for a ‘routine traffic check’ is minimal.” *State v. Engholm*, 290 N.W.2d 780, 783 (Minn. 1980) (quotation omitted).

Evidence seized in violation of the United States or Minnesota Constitutions must be suppressed. *Terry*, 392 U.S. at 12-13, 88 S. Ct. at 1875; *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). Appellate courts “review de novo a district court’s ruling on

constitutional questions involving searches and seizures.” *State v. Anderson*, 733 N.W.2d 128, 136 (Minn. 2007). “When reviewing pretrial orders on motions to suppress evidence, [appellate courts] may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence.” *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

“[B]oth the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.” Minn. Stat. § 169.19, subd. 1(a) (2016). “Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway,” subject to certain exceptions not applicable here. Minn. Stat. § 169.18, subd. 1 (2016); *see id.*, subd. 1(1)-(6) (listing exceptions involving passing another vehicle, a closed roadway, a three-lane roadway, one-way traffic, approaching an emergency vehicle, and approaching a road maintenance or construction vehicle). Schwartz violated Minn. Stat. § 169.19, subd. 1(a), and Minn. Stat. § 169.18, subd. 1, by crossing over the centerline during her wide right turn, and Officer Vossen’s observations of these violations provided a lawful basis for the traffic stop.

Schwartz acknowledges that she violated traffic laws, but she argues that the violations did not justify the stop of her vehicle because they were “brief and minimal.” She further argues that the violations “did not interrupt traffic or pose a risk to public safety.” These arguments are unavailing because “no matter how insignificant the traffic law,” a violation provides the requisite particularized and objective basis for a traffic stop. *Anderson*, 733 N.W.2d at 823; *see also State v. McKinley*, 305 Minn. 297, 304, 232 N.W.2d 906, 911 (1975) (“All that is required is that the stop not be the product of mere whim,

caprice, or idle curiosity.” (quotation omitted)). In fact, in *State v. Morse*, the Minnesota Supreme Court concluded that circumstances similar to those here justified a warrantless traffic stop. See 878 N.W.2d 499, 502-03 (Minn. 2016) (upholding a traffic stop based on an officer’s observation of a wide right turn and drifting in a traffic lane, around bar closing time, in a downtown area with bars).

Schwartz also argues that we should consider that the stop was likely pretextual. The district court noted that the stop occurred around bar-closing time and that the ramp that Schwartz exited was near many bars. The district court opined that the traffic violations in this case were “a pretext for the officer’s true purpose in making the stop,” reasoning that “Officer Vossen’s intention was to deter and detect impaired driving by seizing upon any legal means to initiate contact with motorists in the downtown area at bar-closing time.” (Footnote omitted.) However, the district court recognized that “the constitutional reasonableness of a traffic stop does not depend on the actual motivation of the officer involved.” The “actual or ulterior motives of an officer do not invalidate police action that is justifiable on the basis that a violation of law has occurred.” *State v. Battleson*, 567 N.W.2d 69, 71 (Minn. App. 1997) (citing *Whren v. United States*, 517 U.S. 806, 812-13, 116 S. Ct. 1769, 1773-74 (1996)).

In sum, caselaw establishes that the traffic stop in this case was constitutional and that the district court did not err by denying Schwartz’s motion to suppress.

II.

Schwartz submitted a pro se brief, which she appropriately referred to as a “letter” to this court. She describes the circumstances that led to her seizure, arrest, and conviction

in this case. Schwartz does not offer legal arguments or analysis in her brief. But she does assert that her “[r]ights were [violated], with a warrantless search and seizure.” That issue is fully addressed in the first section of this opinion, and we do not repeat our analysis here.

Affirmed.