

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1109, A21-1425**

Robert Alan Bjerke, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent,

State of Minnesota,
Respondent,

vs.

Robert Alan Bjerke,
Appellant.

**Filed May 9, 2022
Affirmed
Connolly, Judge**

Blue Earth County District Court
File Nos. 07-CV-21-1031, 07-CR-21-1009

Michelle K. Olsen, Jacob M. Birkholz, Birkholz & Associates, LLC, Mankato, Minnesota
(for appellant)

Keith Ellison, Attorney General, Cory J. Marsolek, Assistant Attorney General, St. Paul,
Minnesota; and

Derek Archambault, Prosecutor for the City of Mankato, Eckberg Lammers, Stillwater,
Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Smith,

Tracy M., Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

In this consolidated appeal from an order denying appellant's petition to rescind the order revoking his driver's license, and from a final judgment of conviction for driving while impaired (DWI), appellant argues that Minn. Stat. § 169.19, subd. 1(a) (2020) is unconstitutionally vague and that, therefore, a violation of that statute could not provide a lawful basis for a traffic stop. Because a violation of section 169.19, subdivision 1(a) was not necessary to establish reasonable articulable suspicion of criminal activity justifying the traffic stop in this case, we affirm without addressing the constitutionality of the statute.

FACTS

In April 2021, a four-door sedan driven by appellant Robert Bjerke was stopped for multiple traffic violations including (1) failing to properly stop at a stop sign in violation of Minn. Stat. § 169.30(b) (2020), and (2) making a wide turn in violation of Minn. Stat. § 169.19, subd. 1(a). Bjerke was subsequently arrested and charged with two counts of DWI.

Bjerke petitioned for judicial review of his license revocation and, at the same time, moved to dismiss the complaint and suppress evidence obtained during the stop of his vehicle. Bjerke argued that (1) the sheriff's deputy did not have a reasonable, articulable suspicion to stop his vehicle, and (2) Minn. Stat. § 169.19, subd. 1(a), is unconstitutionally vague.

A combined contested omnibus and implied-consent hearing was held at which the deputy testified that at approximately 10:45 p.m. on April 1, 2021, he observed a Chrysler

300 sedan being driven in the downtown area of Mankato where there are several bars. The deputy testified that he observed the sedan stopped at the intersection of Main Street and Second Street with the front tires of the vehicle stopped “over the crosswalk” such that the vehicle was obstructing the crosswalk. The deputy testified that the driver of the vehicle then made a wide right turn, followed by another wide right turn. According to the deputy, the vehicle crossed over the center lane divider when the driver made both right turns.

The deputy testified that he initiated a traffic stop because the driving conduct he observed indicated that the driver might be impaired. After approaching the vehicle and identifying the driver as Bjerke, the deputy observed that Bjerke had bloodshot and watery eyes, slurred speech, and smelled of an alcoholic beverage. Bjerke was then arrested for DWI.

Bjerke testified that he has a Class A commercial driver’s license, which allows him to drive combination tractor/trailers. According to Bjerke, he makes wide turns “[a]ll the time” in order “to avoid anything on the curb, or a door opening, going to the right.” And Bjerke acknowledged that he made wide right turns prior to being stopped by the deputy.

The district court determined that Bjerke’s “wide turn provided an independent reasonable articulable suspicion to justify an investigatory stop of the car.” The district court also determined that Minn. Stat. § 169.19, subd. 1(a) is not unconstitutionally vague because, although the statutory phrase “‘as close as practicable’ is imprecise,” it is “not incomprehensible.” The district court, therefore, denied Bjerke’s motion to suppress, and sustained the revocation of his driver’s license.

Bjerke appealed the decision sustaining the revocation of his driver's license and this court stayed the appeal pending the resolution of Bjerke's criminal matter. Bjerke subsequently agreed to waive his right to a jury trial and submit the criminal matter to the district court on stipulated evidence pursuant to Minn. R. Crim. P. 26.01, subd. 4. The district court found Bjerke guilty as charged. Bjerke then appealed the criminal matter, and this court dissolved the stay in the implied-consent appeal and consolidated that appeal with Bjerke's appeal in the criminal matter.

DECISION

Bjerke challenges the district court's decision that the deputy had reasonable, articulable suspicion to stop his vehicle. The United States and Minnesota Constitutions protect an individual's right against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "To conduct a limited stop for investigatory purposes, . . . the police must have reasonable articulable suspicion of criminal activity." *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999). In determining whether reasonable suspicion exists to justify a stop, Minnesota courts "consider the totality of the circumstances and acknowledge that trained law enforcement officers are permitted to make inferences and deductions that would be beyond the competence of an untrained person." *State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001). If a seizure is not supported by reasonable suspicion, all evidence obtained because of the seizure must be suppressed. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). This court reviews questions of reasonable suspicion de novo. *Mesenburg v. Comm'r of Pub. Safety*, 969 N.W.2d 642, 648 (Minn. App. 2021), *rev. denied* (Minn. Mar. 15, 2022).

An officer who observes a traffic violation, no matter how insignificant, has the necessary reasonable articulable suspicion to sustain a traffic stop. *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004). An officer need only have a particularized and objective basis for suspecting a traffic violation to conduct a stop. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). Such suspicion, however, must be more than a mere hunch; the officer must have objective support for the belief that the person is involved in criminal activity. *Id.*

Minnesota law provides that

Except as otherwise provided in this paragraph, both the approach for a right turn and a left turn shall be made *as close as practicable to the right-hand curb or edge of the roadway*. When necessary to accommodate vehicle configuration, a driver is permitted to make a right turn into the farthest lane of a roadway with two or more lanes in the same direction in order to make a U-turn at a reduced conflict intersection, if it is safe to do so.

Minn. Stat. § 169.19, subd. 1(a) (emphasis added).

Bjerke argues that the phrase “as close as practicable” contained in Minn. Stat. § 169.19, subd. 1(a) is unconstitutionally vague and, therefore, his violation of that statute cannot be used as a basis to support the stop. But even if we assume that there was no violation of section 169.19, subdivision 1(a), we conclude that, for the following reasons, the totality of the circumstances provided the deputy with a reasonable basis to stop Bjerke’s vehicle.

In *State v. Ellanson*, the supreme court held that a law enforcement officer may lawfully conduct a traffic stop to investigate unusual driving even if the driving conduct

would not constitute a traffic violation. 198 N.W.2d 136, 137 (Minn. 1972) (holding 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”). And in *State v. Morse*, the supreme court considered a challenge to a traffic stop that was made after a driver made a wide turn and subsequently drifted within a traffic lane. 878 N.W.2d 499, 502 (Minn. 2016). Although there was a question as to whether the driver in *Morse* violated a traffic law, the supreme court upheld the legality of the stop based on the totality of the circumstances, which included (1) the squad-car video supporting the officer’s assertion that the driver’s right turn was not as close as practicable to the right-hand curb or edge of the roadway; (2) the squad-car video showing the driver’s vehicle drifting in its lane; (3) the fact that the events occurred close to 2:00 a.m. bar closing time; (4) the fact that the driver was leaving downtown, an area with bars; and (5) the officer’s training and experience.¹ *Id.* at 502-03.

Here, the district court found that Bjerke was stopped at approximately 10:45 p.m. “in an area of Mankato where there are many bars and heavy foot traffic.” The district court also found that the deputy “credibly testified” that he observed Bjerke’s vehicle stopped over the crosswalk such that the vehicle “was obstructing the crosswalk.” And the

¹ In reaching its conclusion, the supreme court determined that this court “erred in addressing the constitutionality of the right-turn statute.” *Id.* at 501-02. Although this court concluded that the right-turn statute was unconstitutionally vague as applied to *Morse*, the supreme court held that because “[n]either party raised this constitutional issue in district court,” it was error to address it. *Id.*

district court found that the deputy observed Bjerke's vehicle make two wide right turns such that the "driver's side tires went over the lane divider and into the oncoming lane of traffic." Finally, the district court found that "there was no evidence the 'vehicle configuration' was such to make a wide right turn permissible." The record supports the district court's findings, including Bjerke's admission that he made two wide right turns prior to being stopped, as well as the squad-car video that shows Bjerke make two wide right-hand turns. In fact, the squad-car video shows that when Bjerke made the second wide right-hand turn, his vehicle drifted considerably into the oncoming lane of traffic. The circumstances presented here are similar to the circumstances presented in *Morse*, in which the supreme court upheld the legality of the stop. *See* 878 N.W.2d at 502. Therefore, even if Bjerke's wide right turns did not constitute a traffic violation, we conclude that, under *Morse*, the totality of the circumstances provided the deputy with the requisite reasonable, articulable suspicion to justify the stop of Bjerke's vehicle. And because the totality of the circumstances surrounding Bjerke's driving conduct provided a reasonable basis to stop Bjerke's vehicle, we need not address Bjerke's contention that Minn. Stat. § 169.19, subd. 1(a) is unconstitutionally vague.

Affirmed.