STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0663

State of Minnesota,
Respondent,

vs.

Clinton Daniel Mattingly,
Appellant.

Filed February 6, 2023
Affirmed
Ross, Judge

Carlton County District Court
File No. 09-CR-21-451

Keith Ellison, Attorney General, St. Paul, Minnesota; and

William T. Helwig, Carlton City Attorney, Sarah B. Helwig, Assistant City Attorney, Rudy, Gassert, Yetka, Pritchett, & Helwig, A Fryberger Law Firm Practice Group, Cloquet, Minnesota (for respondent)

Benjamin W. Koll, Robert H. Ambrose, Ambrose Law Firm, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Ross, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

A Carlton County Sheriff's Deputy watched a pickup truck that was towing a trailer pull onto and move slowly down a highway's shoulder before he stopped the truck and discovered that its driver, Clinton Mattingly, was drunk. Mattingly challenges his

consequent impaired-driving conviction, arguing that the district court should have suppressed all evidence resulting from the traffic stop, which he asserts was unconstitutional for lack of reasonable suspicion of any crime. He also argues that the district court acted with partiality by considering facts not submitted as evidence at the omnibus hearing. Because motorists violate the law by driving on the shoulder, except in circumstances not relevant here, we hold that the deputy had reasonable suspicion to stop Mattingly's truck. And because the record does not support Mattingly's assertion of judicial misconduct, we reject his argument that he was denied his right to a fair hearing administered by an impartial judge. We therefore affirm.

FACTS

Clinton Mattingly drove his pickup truck past the parking lot of the Carlton County Sheriff's Office on Highway 45 (also named 3rd Street) late on a March night in 2021. The truck towed a trailer hauling an all-terrain vehicle (ATV). Carlton County Deputy Sheriff David Radzak was sitting in his patrol car waiting to leave the lot to enter the highway when Mattingly's pickup truck passed by. Deputy Radzak pulled onto the highway and traveled behind the truck. Soon the deputy saw the truck signal a right turn, slow down, and cross the fog line separating the lane of travel and the right shoulder. He watched the truck continue slowly down the shoulder for about 20 seconds. Deputy Radzak activated his squad car's flashing red and blue overhead lights and pulled onto the shoulder behind the truck.

Mattingly stopped his truck and got out. He told Deputy Radzak that he thought the straps securing the ATV had come loose. He said that he was about to reenter the roadway but that the emergency lights prompted him to stop.

Deputy Radzak noticed that Mattingly was stumbling, slurring his speech, and smelled of an alcoholic beverage. The deputy administered field sobriety tests, which Mattingly failed. The state charged Mattingly, whose breath test revealed an alcohol concentration of more than three times the per se impaired-driving limit of 0.08, with two counts of second-degree impaired driving and one count of driving with a restricted license.

Mattingly moved the district court to suppress the evidence resulting from the traffic stop, arguing that the deputy lacked constitutional authority to stop him. The district court held a contested omnibus hearing during which the only exhibit admitted into evidence was dashcam video footage of the stop. Deputy Radzak testified that he turned on his emergency lights to alert other motorists to avoid running into the slowing truck on the shoulder, which he believed may have been stopping because of a mechanical issue. The district court issued an order concluding that Deputy Radzak was not attempting to stop Mattingly but was responding to circumstances that suggested Mattingly needed assistance. The district court reasoned alternatively that the deputy had an articulable reason to stop the truck. The district court's order stated that it based its decision on its "review of the squad video and all of the files, police reports, submitted briefs, the records herein, and the arguments of counsel."

Mattingly and the state proceeded with a stipulated-evidence trial under Minnesota Rule of Criminal Procedure 26.01, subdivision 4. The district court received additional

evidence not presented in the omnibus hearing, consisting of police reports and the chemical-test results, and it adjudicated Mattingly guilty of one count of second-degree impaired driving.

This appeal follows.

DECISION

Mattingly presents two arguments to contest the district court's decision denying his motion to suppress evidence resulting from the traffic stop. He first argues that the stop violated his constitutional rights because the deputy seized him when he activated his emergency lights without reasonable suspicion of a traffic offense. He next argues that the district judge who denied the motion violated his constitutional rights by deciding the motion out of partiality. Presented with a pretrial order denying a motion to suppress, we review the district court's factual findings for clear error and its legal conclusions de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). Both arguments fail under this standard of review.

I

We are unpersuaded by Mattingly's contention that Deputy Radzak lacked reasonable suspicion to stop him. 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. A traffic stop constitutes a seizure. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004); *cf. Terry v. Ohio*, 392 U.S. 1, 19 (1968). Police do not violate a person's right not to be unreasonably seized by stopping a person whom the officer reasonably suspects was or may be involved in criminal conduct. *State v. Diede*, 795

N.W.2d 836, 842 (Minn. 2011). An officer has reasonable suspicion to conduct a traffic stop if he sees a driver commit a traffic violation. *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004). For the following reasons, we are satisfied that Deputy Radzak had reasonable suspicion to stop Mattingly's truck, and we therefore do not address the district court's assistance-based justification for concluding that no traffic stop occurred.

Minnesota motorists may drive only on the roadway and may not cross the fog line marking the lane of travel. *Soucie v. Comm'r of Pub. Safety*, 957 N.W.2d 461, 464–65 (Minn. App. 2021), *rev. denied* (Minn. June 29, 2021). They may not drive on the shoulder except in circumstances not relevant here: "Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway . . . ." Minn. Stat. § 169.18, subd. 1 (2020). A "roadway" includes only "that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the sidewalk or shoulder." Minn. Stat. § 169.011, subd. 68 (2020). The legislature has carved out exceptions to the prohibition against driving on the shoulder, such as to perform a U-turn or to operate certain buses. Minn. Stat. §§ 169.19, subd. 2, .306 (2020). By leaving the roadway and operating on the shoulder in a manner that meets no statutory exception, Mattingly engaged in driving conduct for which a police officer could temporarily seize him by stopping his truck.

We are not persuaded otherwise by Mattingly's assertion at oral argument that an emergency exception applies. He relies on Minnesota Statutes section 169.18, subdivision 7(1) (2020), but his reliance is misplaced. That subdivision applies to roadways that have "been divided into two or more clearly marked lanes for traffic" and prohibits a driver from leaving his lane until he "first ascertained that the movement can be made with safety."

Minn. Stat. § 169.18, subd. 7. This lane-change statute does not expressly or implicitly authorize a motorist to operate his vehicle on the shoulder for safety reasons. Although we need not address the district court's motorist-assistance rationale to justify the deputy's encounter with Mattingly, we observe that, if an emergency exception does exist and apply here because Mattingly was experiencing a safety issue, the deputy had a reason to activate his emergency lights wholly apart from reasonable suspicion of a traffic offense.

We are also not persuaded otherwise by Mattingly's assertion that the district court clearly erred by finding that Mattingly was driving erratically. The deputy did not stop the truck based on erratic driving, and the finding does not impact our reason for concluding that the stop was justified. Mattingly's assertion therefore at most reveals a harmless error.

II

We are particularly unpersuaded by Mattingly's other contention, which is that the district court judge decided the suppression motion with partiality. Having an impartial judge is a basic protection of due process in the criminal justice system, and we review de novo whether a defendant was denied that protection. *State v. Dorsey*, 701 N.W.2d 238, 249, 253 (Minn. 2005); *see also* Minn. Code Jud. Conduct Canon 2 ("A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently."). Mattingly's argument on this issue is not compelling.

We begin our consideration of Mattingly's serious allegation of judicial partiality by presuming that the district court judge "will set aside collateral knowledge and approach cases with a neutral and objective disposition." *Dorsey*, 701 N.W.2d at 248–49 (quotation omitted). This presumption exists because judges who administer bench trials, or make

judgments in hearings outside of trial, will often examine and then reject evidence on various grounds or will accept evidence for some purposes but reject it for others. The presumption requires Mattingly to point to evidence of the judge's bias. *See State v. Burrell*, 743 N.W.2d 596, 603 (Minn. 2008). Mattingly builds his accusation of judicial partiality on the district court's allegedly basing its order denying his suppression motion on its "review of the squad video and all of the files, police reports, submitted briefs, the records herein, and the arguments of counsel" when the police reports should not have been considered in the decision. This conflict between the order's "review of" statement and the evidence submitted during the hearing, argues Mattingly, reveals that the district judge relied on improper evidence and had already made up his mind before considering the hearing evidence.

The first problem with the argument is that the record undermines it. It is true that the district court must base its suppression-motion decision on evidence submitted during the suppression proceeding. *State ex rel. Rasmussen v. Tahash*, 141 N.W.2d 3, 13 (Minn. 1965). But the record reveals that the state did not introduce the police reports as evidence until March 2022, four months after the district court issued its November 2021 order denying the suppression motion. This suggests that the district court's two-page order disposing of the motion appears to errantly include the police reports as material reviewed. The second problem with the argument is that, even if the language reflects more than a clerical error, a district judge's basing his suppression decision on a police report in addition to the proper evidence submitted in the suppression hearing is far more likely to indicate simple legal error than unconstitutional judicial bias against the defendant.

Mattingly does not argue that we should consider reversing the suppression order because the district court based its decision on the wrong evidence (an argument that would fail based on our de novo conclusion that the deputy's stop was constitutionally valid). He argues only that the district court's stated bases reveal that it acted on the judge's alleged bias. We reject the argument.

Mattingly adds that the district court must have based its finding that his driving conduct consisted of "erratic stopping and then starting" on the police reports because the suppression-hearing evidence did not establish that Mattingly erratically stopped or started his truck. But his argument fails because the police reports also do not mention erratic stopping or starting.

The record does not show that the district court in fact relied on police reports to reach its decision, and even if it did, Mattingly has failed to persuade us that errantly relying on police reports would establish the district judge's partiality against him.

Affirmed.