

*This opinion is nonprecedential except as provided by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
A22-0896**

State of Minnesota,
Respondent,

vs.

Matthew Jay Keniston,
Appellant.

**Filed March 27, 2023
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-18-23114

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

Kristyn Anderson, Minneapolis City Attorney, Siara Melius, Assistant City Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his conviction for driving while impaired (DWI), arguing that
the district erred by denying his motion to suppress the evidence against him. We affirm.

FACTS

In September 2018, respondent State of Minnesota charged appellant Matthew Jay Keniston with two counts of second-degree DWI. According to the complaint, an officer stopped Keniston's vehicle after he made a wide turn. Keniston displayed indicia of intoxication, admitted to alcohol consumption, and submitted to a breath test, which showed an alcohol concentration of 0.14.

Keniston moved the district court to suppress the evidence against him. He argued that the officer unlawfully stopped his vehicle.¹ The district court held an evidentiary hearing on the suppression motion. The officer testified, and the parties stipulated to the admission of the officer's squad-car video and police report.

The officer testified that on the day of the traffic stop, there was a Minnesota Vikings game, and he focused his patrol efforts on DWI offenses. He was driving a squad car marked "DWI enforcement" and patrolling parking lots. He observed people at tailgate locations openly consuming alcohol.² He saw a gray Dodge Durango exit a parking lot and recognized it as a vehicle that had been in a parking lot where tailgating was occurring. The officer pulled in behind the vehicle. The vehicle turned, reentered the parking lot, and

¹ Keniston also argued that Minnesota's statute governing left turns from a one-way street onto another one-way street, Minn. Stat. § 169.19, subd. 1(e) (2018), is unconstitutionally vague. The district court rejected that argument, and its determination is not challenged on appeal.

² A tailgate is "an occasion at which sports fans cook food and have drinks out of the back of their car in the parking lot before going in to watch a game." Cambridge Dictionary, *Tailgate*, <https://dictionary.cambridge.org/us/dictionary/english/tailgate> [<https://perma.cc/HYN8-4NDU>].

parked. The officer thought that driving conduct was unusual and that the driver was attempting to avoid him. Around 15 minutes later, the officer saw the same vehicle traveling southbound in the left lane of Portland Avenue, a one-way street. The officer saw the vehicle make a wide turn onto 8th Street, another one-way street, and move into the center lane. The officer believed that was a traffic violation and that the vehicle was required to turn into the closest available lane. The vehicle then pull over to the left, and the officer viewed that as another evasive maneuver. The officer stopped the vehicle.

The district court found the officer's testimony credible and concluded that the state established a lawful basis for the traffic stop. The district court therefore denied Keniston's motion to suppress. Keniston stipulated to the state's case under Minn. R. Crim. P. 26.01, subd. 4, to obtain review of the district court's pretrial ruling. The state dismissed one of the DWI counts, and the district court found Keniston guilty of the remaining count.

Keniston appeals, challenging the district court's determination that the traffic stop was lawful.

DECISION

The United States and Minnesota Constitutions protect against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. Generally, warrantless searches and seizures are per se unreasonable. *State v. Horst*, 880 N.W.2d 24, 33 (Minn. 2016). An exception to the warrant requirement permits an officer to "conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted).

Reasonable suspicion must be based on “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quotation omitted). It is not a high bar; an officer must merely point to something that objectively supports his or her suspicion of criminal activity. *Id.* “We consider the totality of the circumstances when determining whether reasonable suspicion exists, and seemingly innocent factors may weigh into the analysis.” *Id.*

“Generally, if 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). In addition, “if the driver’s conduct is such that the officer reasonably infers that the driver is deliberately trying to evade the officer and if, as a result, a reasonable police officer would suspect the driver of criminal activity, then the officer may stop the driver.” *State v. Johnson*, 444 N.W.2d 824, 827 (Minn. 1989).

When reviewing a district court’s pretrial order on a motion to suppress evidence, we review the district court’s factual findings for clear error and legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). When the facts are not in dispute, we may independently review those facts to determine, as a matter of law, whether the evidence needs to be suppressed. *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992).

The state established the following justifications for the traffic stop: the officer observed alcohol consumption at various tailgate locations, the officer observed Keniston’s vehicle leaving a tailgate location, Keniston’s evasive conduct after the officer pulled up

behind him, Keniston's subsequent wide left turn, and Keniston's additional evasive conduct.

The officer, who had over 20 years of experience, reasonably concluded that Keniston's act of returning to the parking lot after having just left it was unusual and an attempt to avoid the officer, who was driving a squad car marked "DWI enforcement." *See Johnson*, 444 N.W.2d at 826-27 (stating that trained police officers are permitted to draw inferences from surrounding circumstances). The officer testified that, based on his training and experience, wide turns can be a sign of impairment. The officer also reasonably believed that Keniston committed a traffic violation by turning into the center lane: "Where both streets or roadways are one way, both the approach for a left turn and a left turn shall be made as close as practicable to the left-hand curb or edge of the roadway." Minn. Stat. § 169.19, subd. 1(e). The officer's observations of Keniston's wide turn and the resulting traffic violation provided additional grounds for the stop. *See Anderson*, 683 N.W.2d at 823.

In sum, the officer's observations provided reasonable suspicion of criminal activity. Keniston's arguments to the contrary do not persuade us otherwise. For example, Keniston argues that section 169.19, subdivision 1(e) "does not require a driver to turn into any particular lane when making a left turn from a one-way street onto another one-way street." Although section 169.19, subdivision 1(e) does not reference specific lanes, it effectively requires a driver to turn into the left-most available lane by requiring the turn to be made "*as close as practicable* to the left-hand curb or edge of the roadway." (Emphasis added.) In fact, in *Birkland v. Comm'r of Pub. Safety*, this court noted that the

subdivision effectively “directs a driver leaving an intersection to turn into a specific lane.” 940 N.W.2d 822, 826 (Minn. App. 2020). Keniston further argues that the district court’s finding that he turned into the center lane is not supported by the record. We disagree. The officer testified that Keniston turned into the center lane, and the squad-car video supports that testimony.

Keniston also argues that the officer’s general observations of drinking at tailgate locations and his reentry into a parking lot after exiting such a location did not provide an objective basis to suspect criminal activity. Again, trained officers are permitted to draw inferences, and evasive conduct may provide an objective basis to suspect criminal activity. *Johnson*, 444 N.W.2d at 826-27. The officer testified that he thought Keniston’s behavior was suspicious. Given the totality of the circumstances, the officer’s belief was reasonable. Moreover, the district court found the officer’s testimony credible, and we defer to that credibility determination. *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *rev. denied* (Minn. July 15, 2003).

Finally, Keniston argues that he pulled over because an ambulance was driving up 8th Street. In the squad-car video, an ambulance with activated emergency lights can be seen passing by soon after the stop. Nonetheless, Keniston’s explanation for his conduct does not defeat the officer’s reasonable inference that Keniston was engaged in evasive conduct. Even facts that are consistent with innocent activity may support reasonable suspicion when considered in their totality. *State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998).

Based on the totality of the circumstances, the officer had reasonable, articulable suspicion of criminal activity justifying the stop of Keniston's vehicle. We therefore affirm the district court's denial of Keniston's pretrial motion to suppress.

Affirmed.