

*This opinion is nonprecedential except as provided by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
A22-1110**

Kami Lynn Ohm,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed March 6, 2023
Affirmed
Florey, Judge***

Wabasha County District Court
File No. 79-CV-22-66

Jay S. Adkins, Godwin Dold, Rochester, Minnesota (for appellant)

Keith Ellison, Attorney General, Rebecca K. Webster, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Bratvold, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

Appellant challenges the district court's order sustaining the revocation of her driving privileges. Appellant argues the district court erred by crediting the officer's

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

testimony—that appellant committed a lane violation and executed a wide turn—and therefore that the district court erred in finding that the officer had a reasonable, articulable suspicion to initiate a traffic stop. Appellant also argues the district court erred in finding the Peace Officer’s Certificate sufficient to sustain the revocation of her driving privileges. Because the district court did not clearly err in determining the officer’s testimony was credible, and because the Peace Officer’s Certificate contains sufficient information, we affirm.

FACTS

On November 28, 2021, at roughly 1:50 a.m., a police officer was driving in a fully marked squad car approximately two car lengths behind appellant Kami Lynn Ohm’s vehicle as it entered the city of Plainview eastbound on Highway 42. Based on appellant’s driving, the officer initiated a traffic stop during which he observed indicia of appellant’s intoxication. The officer arrested appellant for driving under the influence, in violation of Minn. Stat. § 169A.20, subd. 1(5) (2020), and her driver’s license was revoked.

Appellant petitioned for judicial review of her driver’s license revocation pursuant to Minn. Stat. § 169A.53, subd. 2 (2020). At the implied-consent hearing, appellant challenged the validity of the stop. Appellant argued she did not commit a lane violation and did not execute a wide turn, and thus the traffic stop was not legally justified. The officer, appellant’s husband, a relative of appellant, and appellant testified.

The officer testified he saw both of the vehicle’s passenger-side tires cross the white fog line for about 20 yards. The vehicle then turned left. The turn was very wide and rounded and the officer thought the car would go into the ditch. The officer testified that

it took a moment to process what he saw so he did not immediately turn left and follow the vehicle. He testified that after processing the incident, he intended to stop the vehicle based on the wide turn and lane line violation. The driving conduct prompted the officer to believe that the driver might be impaired.

The officer testified he took the next left to locate the vehicle. He saw the vehicle traveling east. The officer thought it was unusual for the vehicle to be traveling east again, toward Highway 42, when it was previously on that road. As such, the officer believed the driver may have been trying to evade him. The officer stopped the vehicle after it crossed Highway 42. After initiating the stop, the officer spoke with appellant. The officer testified that he told appellant that the reason for the stop was the lane violation and wide turn.

Appellant's husband was in the front passenger's seat, and immediately questioned the officer's rationale for stopping the vehicle. Appellant's relatives lived nearby and arrived on scene. The officer told appellant's relatives that the stop was because of evasive and suspicious driving but did not mention a lane violation or wide turn. The officer testified that he gave this explanation because he wanted to keep the interaction with them short.

Appellant's husband testified that appellant did not cross the fog line or take a wide turn. He also testified that the officer never told them the reason he stopped the vehicle beyond evasive and suspicious driving conduct. Appellant's husband admitted that he had been drinking at a birthday party that night and felt the effects of the alcohol, but that he could still remember the interaction. Appellant testified the officer never told her the

reason for the stop. Appellant agreed she had been drinking that night and her blood alcohol concentration, when tested, was at least 0.14.

After making the stop, the officer prepared a Peace Officer's Certificate. On the Peace Officer's Certificate, the officer wrote that the basis for the stop was "evasive/suspicious driving." He testified that a Peace Officer's Certificate has limited space to write the reason for the stop, and he did not include the lane line violation or wide turn because he felt it was unnecessary. The officer testified that he later prepared a police report, and a citation was mailed to appellant.

At the close of the hearing, the district court took the matter under advisement. Ultimately, the district court denied appellant's motion to rescind her license revocation and license plate impoundment. The district court determined that the officer had reasonable, articulable suspicion to perform a stop of her vehicle based on the officer's observation of a lane line violation and a wide turn. This appeal follows.

DECISION

Appellant argues that the district court erred in finding that the officer had a reasonable, articulable suspicion to initiate a traffic stop. Both 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). A law enforcement officer may, however, initiate a warrantless limited investigatory stop if the officer has a 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 (1968)); *see also State*

v. Diede, 795 N.W.2d 836, 842 (Minn. 2011). Generally, an observation of a violation of a traffic law, no matter how insignificant, “forms the requisite particularized and objective basis for conducting a traffic stop.” *Wilkes v. Comm’r of Pub. Safety*, 777 N.W.2d 239, 243 (Minn. App. 2010) (quotation omitted).

We review de novo the district court’s legal determination that an officer had reasonable suspicion of illegal activity and review the district court’s factual findings for clear error. *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012). We defer to the district court’s credibility determinations. *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012); *see also Wilkes*, 777 N.W.2d at 246 (“[C]redibility determinations are the province of the district court.”). The district court found the officer’s testimony credible and determined that appellant’s driving conduct violated Minnesota Statutes section 169.18, subdivision 7(1) (2020) (“a vehicle shall be driven as nearly as practicable entirely within a single lane”); *see also Kruse v. Comm’r of Pub. Safety*, 906 N.W.2d 554-55 (Minn. App. 2018) (holding that driving on the fog line provides reasonable grounds to suspect a violation of Minn. Stat. § 169.18, subd. 7, and forms a constitutional basis for a traffic stop).

Appellant argues the officer’s testimony that he observed appellant cross the fog line was not credible and, consequently, that the stop of her vehicle was not supported by reasonable, articulable suspicion. To support her argument, appellant urges this court to find that the district court’s credibility determination is clearly erroneous because: (1) the officer did not immediately pursue her vehicle for a traffic stop after the alleged lane violation and wide turn; (2) appellant, appellant’s husband, and appellant’s relative all

testified that the only reason given at the scene of the stop was evasive/suspicious driving and that the officer never said that there had been a lane violation or wide turn; and (3) the officer's Peace Officer Certificate listed "evasive/suspicious driving" as the only reason for the stop. Appellant's argument is not persuasive.

The fact-finder must determine the credibility of the witnesses and the weight to be given to their testimony. *DeMars v. State*, 352 N.W.2d 13, 16 (Minn. 1984); *see also* Minn. R. Civ. P. 52.01 ("[D]ue regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."). This court will not disturb a district court's credibility determinations on appeal "absent a showing of clear error." *State v. Eakins*, 720 N.W.2d 597, 604 (Minn. App. 2006). Here, the district court wrote in its order:

The [c]ourt finds that it is reasonable that the officer had to take a moment to process the driving violations before he determined that it was necessary to stop the vehicle. . . . the [c]ourt finds it credible that the officer told [appellant] and [appellant's husband] that part of the reason for the stop was a wide turn and lane violation. Because both [appellant] and [appellant's husband] were under the influence of alcohol, and because [appellant's husband] was argumentative, it is possible that they are misremembering or were not entirely listening to the officer's explanation for the stop. . . . it is reasonable that the officer did not go into detail about the lane violation and wide turn with [appellant's] relatives. . . . while the Peace Officer's Certificate only offers "evasive/suspicious driving" as a reason for the stop, the testimony and evidence suggests that this was merely an omission. . . . The [c]ourt finds that on this record the weight of the evidence suggests that the officer did observe a lane violation and wide turn.

Indeed, Appellant testified she did not commit any traffic violations before the officer initiated a stop. But the district court found that the officer testified credibly on the issue. The district court found that the officer observed appellant drive over the fog line

and execute a wide turn before he initiated the stop. The district court expressly stated that it found the officer's account of the incident to be credible, "even though the Peace Officer's [Certificate] made no reference to a wide turn and lane violation." The district court considered the officer's testimony; the testimony of appellant, appellant's husband, and appellant's relative; and the Peace Officer's Certificate. The district court ultimately concluded that the officer had a reasonable, articulable suspicion of a traffic violation to warrant a traffic stop. The district court was in the best position to evaluate the officer's credibility, and the district court's finding that the officer observed appellant's vehicle crossing over the fog line and making a wide turn was not clearly erroneous. *See Klamar*, 823 N.W.2d at 691.

Appellant also argues the district court erred in sustaining the revocation of her driving privileges because the Peace Officer's Certificate which commenced the revocation process is based on false testimony. Specifically, Ohm argues that the officer's testimony, that he stopped Ohm for a lane violation and wide turn, proves the Peace Officer's Certificate contained false information as the reason for the stop listed on the certificate is "evasive/suspicious driving." While we question whether the issue was properly raised in district court, appellant's argument nevertheless fails on the merits.

Minnesota Statutes section 169A.52, subdivision 4, governs license revocation. (2020). This court has stated that Minnesota Statutes section 169A.52, subdivision 4 "does not establish the 'Peace Officer's Certificate' form, mandate that form be submitted, or require that such certificate be completed in a certain manner." *Johnson v. Comm'r of Pub. Safety*, 756 N.W.2d 140, 143 (Minn. App. 2008), *rev. denied* (Minn. Dec. 16, 2008). And

“[w]hile we encourage officers to complete paperwork—including the Peace Officer’s Certificate—as carefully and accurately as possible, it cannot be said that errors on the Peace Officer’s Certificate automatically result in reversal of a revocation.” *Id.* at 144.

In *Johnson*, the officer failed to mark the box on the Peace Officer’s Certificate to indicate that a sample was taken showing the defendant had an alcohol concentration of .08. *Id.* at 143. This court determined that when the narrative report made by the police officer contained the information absent from the Peace Officer’s Certificate—that an administered breath test indicated the defendant had an alcohol concentration of 0.25—certification was still proper. *Id.*

In this case the narrative report made by the officer contained his description of the lane violation and wide turn which led to the traffic stop. While the Peace Officer Certificate lists the reason for the stop as “evasive/suspicious driving,” the officer testified that the Peace Officer’s Certificate had limited space to write the reason for the stop. He testified he did not include the lane line violation or wide turn as the reason for the stop on the certificate because he felt it was unnecessary. While appellant argues this proves the Peace Officer’s Certificate is based on false information, the district court determined, “[i]t is also possible that the officer believed that the wide left turn itself, which was immediately preceded by a lane violation, was [part and parcel] with the evasive driving conduct.” On these facts, we cannot conclude the Peace Officer’s Certificate was based on false information or that it was so deficient as to require reversal. Following this court’s decision in *Johnson*, we conclude that the officer’s omission of the lane violation and wide turn as the basis of the traffic stop on the Peace Officer’s Certificate does not warrant reversal of

the revocation of appellant's driving privileges because the information was included in the narrative report to accompany the certificate. *Id.*

Affirmed.