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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0315**

State of Minnesota,
Appellant,

vs.

Imagine Tera Sade Majors,
Respondent.

**Filed September 11, 2023
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CR-22-13955

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

Kristyn M. Anderson, Minneapolis City Attorney, Amy J. Tripp-Steiner, Assistant City Attorney, Minneapolis, Minnesota (for appellant)

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Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Hooten, Judge.*

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

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant State of Minnesota challenges the district court's order suppressing evidence and dismissing charges of driving while impaired (DWI) against respondent, arguing that (1) the district court clearly erred by discrediting the law-enforcement officer's testimony about physical indicia of intoxication, and (2) even without such indicia, the circumstances of the traffic stop justified an inquiry about alcohol consumption. We affirm.

FACTS

Around 12:30 a.m. on Sunday, July 12, 2022, a trooper with the Minnesota State Patrol was patrolling in downtown Minneapolis. As he drove in the left lane of one-way Second Avenue, a vehicle turned onto Second Avenue heading the wrong way and started to drive toward him. He immediately initiated a traffic stop.

The trooper approached the driver's side of the vehicle, where he saw a female passenger and the driver, later identified as respondent Imagine Majors. He asked Majors, "What's going on?" She explained that she was on her way to work nearby and turned onto Second Avenue, despite knowing it is a one-way, because her usual path to her parking location was blocked. He requested her driver's license and insurance card, which she provided "without delay or difficulty" while reiterating that she was on her way to work. He then asked, one minute into their interaction, "What time was your last drink?" She said it was at midnight and, upon further questioning, acknowledged having two drinks. The trooper directed her to get out of the vehicle for field sobriety tests and a preliminary

breath test (PBT), which indicated an alcohol concentration of 0.15. He arrested Majors, and she was charged with two DWI offenses.

Majors moved to suppress evidence of her intoxication obtained after the trooper asked her about drinking, arguing that the inquiry impermissibly expanded the scope of the traffic stop because the trooper lacked reasonable suspicion of impaired driving. In support of the motion, Majors submitted the video recording from the trooper's body-worn camera. During the suppression hearing, the trooper testified that he asked Majors about alcohol consumption because she turned the wrong way on a one-way street, there was an "overwhelming" odor of alcohol coming from the car, and Majors had bloodshot, watery eyes and "heavily slurred" speech. He explained that slurring meant running words together, slow speech, garbled words, or "drawing words out louder." He also testified that the timing of the stop was "meaningful" because there tend to be more impaired drivers on the road at night and Saturday night is when "most people" go out drinking.

On cross-examination, the trooper acknowledged that the brief wrong-way driving was Majors's only concerning driving conduct; he did not observe swerving, speeding, or other traffic violations. When asked to identify where, in the recording, Majors's speech was heavily slurred, he pointed to several moments before and after he asked about alcohol consumption. He maintained that her speech was heavily slurred "[t]hroughout the entire time" he interacted with her but agreed that he had no difficulty understanding her. He also acknowledged that Majors's eyes did not look bloodshot in the recording. Regarding the accuracy of the recorded image, he testified that the body-worn camera captures "only a small snippet of what's actually happening" because it does not capture his full field of

vision. But he agreed that the recording captures what was directly in front of him, including Majors's eyes. He also clarified that the fact Majors was driving shortly after midnight was "[n]ot at all" an indication of impairment.

The district court found that the trooper's testimony that Majors had bloodshot eyes and slurred speech was not credible because the recording showed neither. And because he was not credible on those points, the district court declined to "rely on" his testimony about smelling an odor of alcohol. The district court also found that the time of day did not create reasonable suspicion of impaired driving, pointing to Majors's work-related reason for being out at that time and the trooper's testimony that, while Saturday is a common time for people to drink, he did not consider the timing suspicious or indicative of impairment in this case. After concluding that there is no credible evidence to support expansion of the traffic stop, the district court granted the motion to suppress and dismissed the charges.

The state appeals.

DECISION

Both the United States and Minnesota Constitutions guarantee the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A law-enforcement officer may reasonably detain a motorist if the officer has a reasonable, articulable basis for suspecting the motorist of criminal activity. *State v. Taylor*, 965 N.W.2d 747, 752 (Minn. 2021). The stop must be reasonable in both scope and duration. *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004). Consequently, each "incremental intrusion" during the stop, including police questioning, must be "strictly tied to" the initial

basis for the stop or independent reasonable suspicion. *Id.* (quotation omitted). Any expansion of the stop must be justified by reasonable suspicion of “other *criminal activity*.” *State v. Sargent*, 968 N.W.2d 32, 39 (Minn. 2021) (quotation omitted).

Whether reasonable suspicion justifies a traffic stop, and any expansion of the stop, is a mixed question of fact and law. *State v. Lugo*, 887 N.W.2d 476, 487 (Minn. 2016). We accept a district court’s factual findings as to the circumstances of a stop unless they are clearly erroneous. *Id.* But whether those circumstances establish reasonable suspicion is a question of law that we review de novo. *Id.*

The state challenges both aspects of the district court’s decision.¹

I. The district court did not clearly err by finding the trooper’s testimony as to indicia of intoxication not credible.

As with a district court’s other factual findings, we defer to a district court’s credibility determinations. *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012). “We will disturb a district court’s credibility determinations only when, after a thorough review of the record, we are left with the definite and firm conviction that a mistake has been made.” *Andersen v. State*, 940 N.W.2d 172, 177 (Minn. 2020).

In assessing credibility, a district court may weigh conflicting testimony and determine which witness to believe. *State v. Kramer*, 668 N.W.2d 32, 38 (Minn. App. 2003), *rev. denied* (Minn. Nov. 18, 2003). It may accept part and reject part of a witness’s

¹ When the state appeals a pretrial order, it must show not only error but also “that the order will have a critical impact on its ability to prosecute the case.” *State v. McLeod*, 705 N.W.2d 776, 784 (Minn. 2005) (quotation omitted). Because suppression of the evidence resulted in dismissal of the charge against Majors, it is undisputed that it has a critical impact. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

testimony. *Id.* And it may determine the weight of any corroborating evidence. *See State v. Harris*, 405 N.W.2d 224, 229 (Minn. 1987). When there is video evidence of a traffic stop, the district court may make factual findings from its independent review of the video, including discrediting contrary testimony from the officer who conducted the stop. *State v. Shellito*, 594 N.W.2d 182, 186 (Minn. App. 1999).

The state challenges the district court’s express findings discrediting the trooper’s testimony that Majors had bloodshot eyes and slurred speech and its implicit finding discrediting his testimony that she emitted an odor of alcohol. We address each in turn.

Bloodshot Eyes

The district court found that the trooper was not credible in testifying that Majors’s eyes were bloodshot because the body-worn recording “did not support” the testimony. Review of the recording confirms that, during the one-minute interaction before the trooper asked about alcohol, Majors exhibited no redness in her eyes. Indeed, the trooper acknowledged in his testimony that her eyes do not appear red in the video. This evidence supports the district court’s credibility determination.

Despite this evidence, the state argues that the district court clearly erred by rejecting the trooper’s testimony because there is a moment later in the recording that shows a “red tint” in Majors’s eyes, which corroborates the trooper’s testimony. We are not persuaded. This single moment occurs several minutes after the trooper asked about alcohol consumption, at a time when the red lights of the squad car are flashing across Majors’s face. Even if we agreed that this moment corroborates the trooper’s testimony, the district

court retained discretion to give greater weight to the remainder of the recording during which Majors's eyes appear clear. *See Harris*, 405 N.W.2d at 229.

The state also faults the district court for not explaining its determination that the trooper was not credible, such as findings addressing his experience or his demeanor while testifying. But it identifies no authority requiring a district court to do so. To the contrary, a finding that testimony conflicts with video evidence is sufficient justification for discrediting the testimony. *Shellito*, 594 N.W.2d at 186.² Because the district court made such a finding here, and the body-worn recording supports it, the state has not demonstrated that the district court clearly erred by discrediting the trooper's testimony regarding bloodshot eyes.

Slurred Speech

The district court also discredited the trooper's testimony that Majors had "heavily slurred" speech because the recording "did not support" the testimony. The court found that Majors spoke rapidly but "did not slur her speech." Again, review of the recording supports the district court's findings: During their one minute of contact before the trooper inquired about alcohol consumption, Majors spoke quickly but intelligibly and did not slur her words.

² The state urges us to conclude otherwise by citing *State v. Murphy*, in which we rejected a district court's finding discrediting an officer based on a recording. No. A17-1689, 2018 WL 1997190, at *4 (Minn. App. Apr. 30, 2018). That nonprecedential decision is not persuasive here. It addressed a different type of recording—a squad recording—that did not provide a sufficient basis for discrediting the officer's descriptions of bloodshot eyes and slurred words because it did not capture the defendant's eyes and was of poor audio and video quality. *Id.*

The state argues that the district court should have credited the trooper's testimony because he described Majors's speech as heavily slurred and discerned slurred speech at several points in the recording. But the district court was not bound to accept the trooper's description of the recording. *See id.* The state's contention that the court should have deferred to the trooper's training and experience is similarly unpersuasive. The trooper explained that his training and experience led him to look for a person running words together, using slow or garbled speech, or drawing words out louder. The recording reveals none of these indicators, just normal, if rapid, speech. And while courts defer to law-enforcement officers' training and experience because it enables them to make inferences and deductions that may "elude an untrained person," *Mesenburg v. Comm'r of Pub. Safety*, 969 N.W.2d 642, 648 (Minn. App. 2021) (quotation omitted), *rev. denied* (Minn. Mar. 15, 2022), officers are not uniquely expert in assessing whether a person's speech suggests impairment, *see State v. Ards*, 816 N.W.2d 679, 683 (Minn. App. 2012) (holding that an officer's opinion as to impairment is not "expert" testimony). On this record, we discern no clear error by the district court in finding the trooper's testimony that Majors had heavily slurred speech not credible.

Odor of Alcohol

The district court acknowledged that, unlike with the other physical indicia the trooper described, the recording does not provide an independent basis for assessing whether Majors smelled of alcohol. But the court reasoned that, "given the [trooper's] lack of credibility" in testifying that Majors had bloodshot eyes and "heavily slurred" speech, it would "not rely on any alleged odor of alcohol in making its ruling."

The state contends that this implicit credibility finding is clearly erroneous because the record contains evidence that corroborates his testimony about smelling alcohol—Majors’s admission that she drank alcohol recently, her poor performance on field sobriety tests, his comment at a later point in the recording that she smelled strongly of alcohol, and her 0.15 PBT result. This argument is unavailing. The district court was clearly aware of this evidence and its potential corroborative value, as its comments during the suppression hearing reflect. But the court was not required to accept the trooper’s testimony as to odor of alcohol, even with corroborating evidence, particularly in light of its supported finding that the trooper’s testimony regarding other physical indicia of impairment was not credible. *See Harris*, 405 N.W.2d at 229. Moreover, the district court disagreed that Majors’s performance on field sobriety tests provided corroboration, finding “little support” in the recording for a finding “that [she] was impaired.”

Given the district court’s supported credibility determinations regarding other indicia of impairment, and its express consideration of potential corroborating evidence, the state has not demonstrated that the district court clearly erred by implicitly finding that the trooper was also not credible in testifying that Majors emitted an odor of alcohol.

II. The circumstances of the stop itself, without any physical indicia of impairment, do not establish reasonable suspicion of impairment to justify asking about alcohol consumption.

The reasonable-suspicion standard is a “low hurdle,” but it requires more than a “mere hunch.” *Taylor*, 965 N.W.2d at 752, 757 (quotation omitted). Law enforcement must articulate “specific facts” that establish “a particularized and objective basis for suspecting the particular person stopped of criminal activity.” *Lugo*, 887 N.W.2d at 486

(quotation omitted). In assessing whether this standard is met, we evaluate the totality of the circumstances. *Sargent*, 968 N.W.2d at 38. This “whole picture” analysis encompasses facts known to law enforcement at the time of the intrusion, together with reasonable inferences from those facts. *Taylor*, 965 N.W.2d at 753. It accounts for law-enforcement training that enables officers to make inferences and deductions that may “elude an untrained person.” *Mesenburg*, 969 N.W.2d at 648 (quotation omitted). But it does not depend on the officer’s subjective motives or beliefs. *State v. Lemert*, 843 N.W.2d 227, 230-31 (Minn. 2014).

Reasonable suspicion of impaired driving commonly arises when an officer observes a traffic violation “coupled with indicia of intoxication,” such as an odor of alcohol or bloodshot eyes. *See Mesenburg*, 969 N.W.2d at 648. It may even arise without any physical indicia of impairment if enough “other factors” suggest a driver is impaired. *Taylor*, 965 N.W.2d at 758. But the absence of such indicia is part of the totality of the circumstances for a court to consider in determining whether it is objectively reasonable to suspect impaired driving. *Id.*

The state argues that Majors’s act of driving the wrong way on a one-way street provides an objectively reasonable basis to suspect her of impaired driving. We disagree. A traffic violation or other suspicious driving conduct often *contributes* to reasonable suspicion of impaired driving. *See Mesenburg*, 969 N.W.2d at 648 (discussing violation “coupled with” physical indicia of impairment).³ And erratic or unsafe driving alone may

³ The state cites numerous cases that, like *Mesenburg*, involve this combination. *See State v. Morse*, 878 N.W.2d 499, 502 (Minn. 2016) (wide turn and drifting within lane plus

provide reasonable suspicion if it is of the type that is commonly associated with impairment. *See State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001) (citizen reported vehicle as driving “all over the road” and responding officer saw it cross fog lines multiple times); *State v. Engholm*, 290 N.W.2d 780, 784 (Minn. 1980) (officer saw vehicle driving “exceptionally” slowly and weaving within lane as officer followed); *Wilkes v. Comm’r of Pub. Safety*, 777 N.W.2d 239, 243-44 (Minn. App. 2010) (officer saw vehicle stopped in a lane of traffic, impeding traffic, and then drive out of lane). But the state identifies no authority for the proposition that a single brief traffic violation—like Majors driving a “few yards” the wrong way—is sufficient to raise suspicion of impaired driving, particularly when unaccompanied by any evidence that this type of violation suggests impairment. *Cf. State v. George*, 557 N.W.2d 575, 579 (Minn. 1997) (noting that “very few drivers can traverse any appreciable distance without violating some traffic regulation” (quotation omitted)).

The state asserts that the timing of Majors’s traffic violation bridges this gap because the trooper testified that Saturday night is a common time for people to go out drinking and drive impaired. We agree that the stop’s timing is part of the totality of circumstances we consider under the objective reasonable-suspicion standard, even though the trooper did

indicia); *State v. Prax*, 686 N.W.2d 45, 47 (Minn. App. 2004) (multiple traffic violations plus indicia), *rev. denied* (Minn. Dec. 14, 2004); *State v. Driscoll*, 427 N.W.2d 263, 264 (Minn. App. 1988) (weaving and lights off plus indicia); *Giddings v. Comm’r of Pub. Safety*, 354 N.W.2d 579, 581 (Minn. App. 1984) (speeding plus indicia); *State v. Zabinski*, No. A14-1082, 2015 WL 3539682, at *4 (Minn. App. June 8, 2015) (semi-truck driving wrong way down a “major highway” plus indicia). Because these cases do not involve a determination of reasonable suspicion of impaired driving based on driving conduct alone, they do not support the state’s argument.

not subjectively rely on it in deciding to investigate possible impairment. *Lemert*, 843 N.W.2d at 230. But we are not persuaded to reverse. Majors committed a single brief traffic violation at a time when there tend to be more impaired drivers, but no evidence suggests she was one of them. Unlike in most impaired-driving cases, there is no credible evidence that she exhibited physical indicia of impairment. *See Taylor*, 965 N.W.2d at 758 (describing the absence of such evidence as “unusual”). And unlike in *Taylor*, there is no evidence that she had alcohol in her vehicle, a driving history consistent with prior impaired driving, or any other factors pointing to impairment. *Cf. id.* In short, the circumstances add up to little more than a hunch that Majors was impaired. We therefore conclude that the trooper lacked reasonable suspicion to expand the traffic stop to investigate possible impaired driving.

Affirmed.