STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0552
A17-0564

Philip George Kruse, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent (A17-0552),

and

State of Minnesota,
Respondent (A17-0564),

vs.

Philip George Kruse,
Appellant.

Filed January 8, 2018
Affirmed
Larkin, Judge

Renville County District Court
File Nos. 65-CV-16-161, 65-CR-16-323

Robert D. Schaps, Schaps Law Office, Litchfield, Minnesota (for appellant)

Lori Swanson, Attorney General, Saraswati D. Singh, Assistant Attorney General, St. Paul, Minnesota; and

David Jon Torgelson, Renville County Attorney, Olivia, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Larkin, Judge.

S Y L L A B U S

Driving a vehicle on a marking that delineates a lane for traffic constitutes movement from the lane within the meaning of Minn. Stat. § 169.18, subd. 7(a) (2016).

O P I N I O N

LARKIN, Judge

In this consolidated appeal, appellant challenges his conviction of driving while impaired and the revocation of his license to drive. He argues that the underlying traffic stop was unconstitutional and that the district court therefore erred by denying his motion to suppress evidence obtained as a result of the stop and by sustaining the attendant license revocation. Because the traffic stop was supported by reasonable, articulable suspicion, we affirm.

FACTS

Respondent State of Minnesota charged appellant Philip George Kruse with two counts of fourth-degree driving while impaired (DWI), and respondent Commissioner of Public Safety revoked Kruse's license to drive, following Kruse's arrest for DWI. Kruse moved to suppress the evidence supporting the charges, arguing that he was unlawfully seized without reasonable, articulable suspicion of criminal activity. Kruse also petitioned for rescission of the license revocation on the same ground. The district court held a combined hearing on Kruse's suppression motion and implied-consent petition. Officer Lucas Jacques of the Renville County Sheriff's Office testified at the hearing, and a squad video of the underlying traffic stop was received as evidence. The district court found that

the video evidence did not contradict the officer's testimony and that the relevant facts based on that testimony were as follows.

On September 22, 2016 at approximately 11:50 p.m., Officer Jacques was on routine patrol traveling north on County Road 24 when he observed a vehicle approximately one mile in front of him traveling in the same direction. Officer Jacques was patrolling that location because there had been parties there in the past.[1] Officer Jacques caught up to the vehicle, and when he was approximately three car lengths behind the vehicle, he observed it move right and onto the fog line,[2] but not over the fog line. Officer Jacques then observed the vehicle move left and onto the center line, but not over the center line. Officer Jacques initiated a traffic stop and identified Kruse as the driver of the vehicle. Kruse performed poorly on field sobriety tests, and Officer Jacques arrested him for DWI.

The district court denied Kruse's motion to suppress and sustained the revocation of his license to drive. Kruse stipulated to the prosecution's case under Minn. R. Crim. P. 26.01, subd. 4, to obtain review of the suppression ruling, and the district court found him guilty of fourth-degree DWI. Kruse separately appealed the judgment of conviction (A17-0564) and the order sustaining the revocation of his license to drive (A17-0552). This court consolidated the appeals.[3]

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[1] The district court presumed the parties involved illegal, underage drinking.

[2] The parties refer to the white line on the far right side of the roadway as the "fog line." We use the phrase consistent with the parties' usage.

[3] The state did not file a brief in Kruse's appeal of his criminal conviction or participate at oral argument.

ISSUE

Does driving a vehicle on a marking that delineates a lane for traffic constitute movement from the lane within the meaning of Minn. Stat. § 169.18, subd. 7(a)?

ANALYSIS

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. However, a police officer may initiate a limited, investigative stop without a warrant if the officer has 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, 88 S. Ct. 1868 (1968)). In determining whether reasonable suspicion exists, 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).

A traffic stop "'must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.'" *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) (quoting *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 695 (1981)). It cannot be based on a "hunch" or be "the product of mere whim, caprice or idle curiosity." *Id.*; *State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996) (citing *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880). However, "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). "[T]he factual basis required to support a stop for a

'routine traffic check' is minimal." *State v. Engholm*, 290 N.W.2d 780, 783 (Minn. 1980) (quotation omitted).

This court reviews a district court's determination of reasonable suspicion de novo, but accepts the district court's factual findings unless they are clearly erroneous. *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012). In reviewing the district court's factual findings, we defer to the district court's credibility determinations. *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *review denied* (Minn. July 15, 2003). The district court here reasoned that Officer Jacques had a reasonable basis to conduct a traffic stop because he observed a suspected violation of Minn. Stat. § 169.18, subd. 7. That statute provides,

> When any roadway has been divided into two or more clearly marked lanes for traffic . . .:
>
> (a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

Minn. Stat. § 169.18, subd. 7 (2016).

Kruse contends that the evidence does not support the district court's reasoning. He argues that "the [district court's] findings that [he] . . . drifted to the left side of the traffic lane such that his left side tires could be seen atop the centerline of the highway is contradicted by the video evidence, which is the best evidence of [his] driving conduct." Kruse further argues that "[t]he video evidence establishes beyond any doubt that [Officer Jacques's] testimony in this regard was false" and that the district court's "finding that the video does not contradict the deputy's testimony is clearly erroneous." (Emphasis

omitted.) Kruse concludes that the district court "clearly erred by adopting the testimony of Officer Jacques."

Although Kruse challenges Officer Jacques's testimony that he drove on the center line, he does not dispute that he drove on the fog line or that the squad video clearly shows his vehicle on the fog line before Officer Jacques stopped him. The video is less supportive of Officer Jacques's testimony that Kruse drove on the center line. But we need not decide whether the district court clearly erred by finding that Kruse drove on the center line if driving on the fog line provided a lawful basis for a stop, which is one of the commissioner's arguments on appeal.

As to this issue, Kruse argues that a "momentary touch of the fog line of a highway, [without] crossing it, does not constitute a violation of [Minn. Stat. § 169.18, subd. 7(a)]," which, again, provides that "[a] vehicle shall be driven as nearly as practicable entirely within a single lane and should not be moved from such lane until the driver has first ascertained that such movement can be made with safety." Kruse's argument presumes that driving on the fog line is not movement from a lane because a marking that delineates a lane for traffic is part of the lane.

Kruse's argument presents a question of statutory interpretation, which we review de novo. *Larson v. Nw. Mut. Life Ins. Co.*, 855 N.W.2d 293, 301 (Minn. 2014). The goal of statutory interpretation is to ascertain and effectuate the legislature's intent. *Id.*; *see also* Minn. Stat. § 645.16 (2016). If the language of the statute is unambiguous, we apply its plain meaning. *Larson*, 855 N.W.2d at 301. We construe nontechnical words and phrases

according to their plain and ordinary meanings and look to dictionary definitions to determine the plain meanings of words. *Id.*

To determine whether driving on a fog line is movement from a lane and, therefore, a potential violation of Minn. Stat. § 169.18, subd. 7(a), we must define the term "lane" within the meaning of the statute. Neither Minn. Stat. § 169.18, subd. 7(a), nor the definitional section of chapter 169 defines the term. *See* Minn. Stat. § 169.011 (2016). Because the term is not technical, we look to dictionary definitions to determine its plain meaning. *See Larson*, 855 N.W.2d at 301; *cf.* Minn. Stat. § 645.08 (2016) (stating that in construing statutes, "technical words and phrases and such others as have acquired a special meaning, or are defined in this chapter, are construed according to such special meaning or their definition").

The American Heritage College Dictionary defines "lane" as "[a] narrow way or passage between walls, hedges, or fences" and as "[a] strip delineated on a street or highway for a single line of vehicles." *The American Heritage College Dictionary* 779 (4th ed. 2007). The same dictionary defines "delineate" as "[t]o draw or trace the outline of; sketch out," and it defines "between" as "[i]n or through the position or interval separating." *Id.* at 136, 375. Combined, these definitions indicate that the markings referred to in Minn. Stat. § 169.18, subd. 7(a), delineate lanes for traffic and that the areas between the markings, but not the markings themselves, constitute the lanes.[4] Thus,

[4] We note that these dictionary definitions are consistent with a related statutory definition in chapter 169. Minn. Stat. § 169.011, subd. 81, defines "[s]treet or highway" as "the entire width *between boundary lines* of any way or place when any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular traffic." (Emphasis added.)

driving on the markings constitutes movement from a lane and a potential violation of the statute.

Kruse does not address the relevant statutory language or provide an argument persuading us that the markings that delineate lanes for traffic are part of the lanes within the meaning of Minn. Stat. § 169.18, subd. 7(a). The commissioner, on the other hand, provides a compelling argument why such markings are not part of the lanes. Under Kruse's implicit reading of Minn. Stat. § 169.18, subd. 7(a), if two vehicles are driven onto a marking that delineates abutting lanes of traffic, neither driver has moved from his lane and there is no potential violation of Minn. Stat. § 169.18, subd. 7(a), even though simultaneously driving on the same marking significantly increases the risk of a motor-vehicle collision. That scenario is inconsistent with the legislative mandate that a vehicle shall not be moved from a lane "until the driver has first ascertained that such movement can be made *with safety*." Minn. Stat. § 169.18, subd. 7(a) (emphasis added). In sum, a conclusion that the markings that delineate lanes for traffic are not part of the lanes within the meaning of Minn. Stat. § 169.18, subd. 7(a), is consistent with the statute's plainly stated legislative intent: safety.

Such a conclusion is also consistent with this court's reasoning in an unpublished case, *State v. Smith*. No. A13-1296, 2014 WL 3396266, at *3 (Minn. App. July 14, 2014). "Unpublished opinions of the Court of Appeals are not precedential," but they may be persuasive. Minn. Stat. § 480A.08, subd. 3(c) (2016); *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800-01 (Minn. App. 1993). In *Smith*, we concluded that there was a lawful basis to stop a vehicle because the vehicle's tires "pass[ed] onto the centerline once, and

possibly twice." 2014 WL 3396266, at *2-3. We reasoned that "encroach[ing] onto the centerline of [a] two-way highway at least once" was a potential violation of Minn. Stat. § 169.18, subd. 7(a). *Id.* at *3. We noted that such violations are investigated to prevent head-on collisions. *Id.*

Although *Smith* is not precedential, this court's implicit reasoning is persuasive: the markings that delineate lanes for traffic are not part of the lanes, and driving onto the markings could compromise safety in contravention of Minn. Stat. § 169.18, subd. 7(a). We find *Smith* persuasive even though Kruse drove on the fog line, and not the center line. As to this point, our reasoning from another unpublished opinion is persuasive: "Crossing the fog line is analytically no different from crossing the center line, as both are deviations from the statutory requirement that a driver remain 'within a single lane'" under Minn. Stat. § 169.18, subd. 7(a). *State v. Paulson*, No. A14-0164, 2015 WL 506395, at *2 (Minn. App. Feb. 9, 2015), *review denied* (Minn. Apr. 28, 2015). Driving on the fog line is analytically no different from driving on the center line because both are deviations from the statutory requirement that a driver remain within a single lane. Moreover, driving on the fog line could compromise the safety of any stopped motorist, pedestrian, or cyclist on the right side of the fog line.

Instead of addressing the relevant statutory language, Kruse relies on *State v. Brechler*. 412 N.W.2d 367 (Minn. App. 1987). In *Brechler*, this court held that the stop of a vehicle was unlawful because "the arresting officers only observed the driver swerve once within his lane of travel, and articulated no other driving behavior or criminal activity." *Id.* at 367-68. This court noted that the vehicle in *Brechler* "neither left the road

nor crossed the center line" and that the vehicle "stayed in its lane"; there is no indication that the vehicle was driven onto the center or fog lines. *Id.* at 368. Thus, we did not consider whether such conduct could provide a lawful basis for a traffic stop under Minn. Stat. § 169.18, subd. 7(a). In sum, *Brechler* does not address the relevant issue in this case: whether a driver can violate Minn. Stat. § 169.18, subd. 7(a), by driving onto the fog line without crossing over it.

Based on the relevant dictionary definitions and the legislature's expressly stated safety concern, we hold that the markings that establish lanes for traffic are not part of the lanes within the meaning of Minn. Stat. § 169.18, subd. 7(a), that driving onto such a marking is movement from a lane, and that such movement could constitute a violation of the statute. Kruse's act of driving on the fog line therefore provided reasonable suspicion of a traffic violation under Minn. Stat. § 169.18, subd. 7(a).

Kruse argues that even if his driving conduct was "a violation of law, such violation was engendered by the specific conduct of Deputy Jacques" and that "neither the State nor the Commissioner ought to benefit as a result of the very questionable conduct of Deputy Jacques that [caused Kruse's] fog line violation." Kruse notes the district court's finding that the officer's fast approach behind Kruse with bright lights provided a "reasonable explanation for weaving in his lane of travel." Kruse concludes that he "ought not be penalized for allowing his vehicle to momentarily drift to the fog line given the circumstance of the blinding light of Deputy Jacques's headlights reflected to his eyes."

Kruse again relies on *Brechler*. The officers in *Brechler* observed Brechler swerve once within his lane when they drove past his vehicle. 412 N.W.2d at 368. The officers

turned around and followed the vehicle, "staying about one car length behind." *Id.* The vehicle pulled into a closed gas station and stopped. *Id.* The officers turned on their flashing red and takedown lights. *Id.* The district court granted Brechler's motion to suppress contraband discovered as a result of the traffic stop. *Id.* at 368-69. This court affirmed, reasoning that "[a]fter seeing only a swerve, the officers engendered a stop that was the product of whim and caprice." *Id.* at 369. We noted, "The police did not order the driver to stop, because they did not need to; their extremely close presence could have precipitated the stop." *Id.*

Kruse asserts that this court "refused to consider as legitimate grounds to stop Brechler the questionable driving conduct that was engendered by the officer tailgating him." But the only conduct proffered to justify the stop in *Brechler* was the single swerve that the officers observed when they drove past Brechler's vehicle. The stop was not based on driving conduct that the officers observed after they turned around and followed Brechler's vehicle. Thus, the stop was not based on driving conduct caused by the officers, and this court did not hold that a stop is unlawful if it is based on a traffic violation caused by law enforcement. We held that "[t]he stop of the vehicle and seizure of the passenger were not proper where the arresting officers only observed the driver swerve once within his lane of travel, and articulated no other driving behavior or criminal activity." *Id.* at 367.

In sum, *Brechler* does not support Kruse's argument that the stop in this case was invalid. Ultimately, the touchstone of Fourth Amendment analysis is reasonableness. *State v. Bartylla*, 755 N.W.2d 8, 15 (Minn. 2008) (citing *Pennsylvania v. Mimms*, 434 U.S. 106,

108-09, 98 S. Ct. 330, 332 (1977)). We are satisfied that Officer Jacques's fast approach in a squad car with bright headlights activated did not render the ensuing traffic stop of Kruse's vehicle unreasonable.

D E C I S I O N

Because the markings that delineate lanes for traffic are not part of the lanes within the meaning of Minn. Stat. § 169.18, subd. 7(a), Kruse moved from his lane of traffic when he drove on the fog line. That conduct provided reasonable grounds to suspect a violation of Minn. Stat. § 169.18, subd. 7(a), and a constitutional basis for the ensuing traffic stop. Because Kruse does not persuade us that Officer Jacques's conduct otherwise rendered the stop unlawful, we affirm his conviction of DWI, as well as the order sustaining the revocation of his license to drive.

Affirmed.