

STATE OF MINNESOTA
COUNTY OF OLMDSTED

DISTRICT COURT - CRIMINAL DIVISION
THIRD JUDICIAL DISTRICT

State of Minnesota,

Plaintiff

**ORDER GRANTING
MOTION TO DISMISS**

vs.

Court File No. [REDACTED]

[REDACTED]
Defendant.

This matter came on for a Hearing before the Honorable Joseph F. Chase, Judge of District Court, in the Government Center, Rochester, Minnesota, on [REDACTED]

Present at said hearing were Peter Magnuson, Assistant City Attorney [REDACTED] Defendant; and Carl F. Anderson, Attorney for Defendant.

Based upon the hearing and due consideration of all the evidence, and all the files and records herein, the Court makes the following:


ORDER

1. Defendant's motion to dismiss the charges is **GRANTED**.

The attached Memorandum is hereby incorporated and made a part of this Order.

Dated this [REDACTED]

BY THE COURT.


Joseph F. Chase
Judge of District Court

cc: City

Carl Anderson } [REDACTED] cu

MEMORANDUM

FACTS

On March 17 [REDACTED] at approximately 1:30 a.m. [REDACTED] was driving a white Mazda 626 north on Highway 52 in the City of Rochester, Olmsted County. State Trooper Stephen Willert was working a "Night Cap" saturation patrol on Highway 52 also traveling north. Trooper Willert paced [REDACTED] vehicle traveling approximately 51-52 mph. In that area Highway 52 has a posted speed limit of 55 mph. Trooper Willert followed [REDACTED] vehicle from approximately 19th Street to the 55th Street exit, a distance of about two miles.

Trooper Willert videotaped [REDACTED] vehicle as he followed her. The videotape shows [REDACTED] vehicle "weaving" somewhat within her lane - meaning that the car was at times closer and at times further from the roadway's centerline and fog lines. Trooper Willert testified that the speed of [REDACTED] vehicle dropped down to 45 mph just before it exited Highway 52 at the 55th Street exit. [REDACTED] properly signaled when exiting Highway 52 to enter on to the 55th Street ramp. [REDACTED] then stopped in the left lane at the red traffic light at the 55th Street intersection, signaling a left turn. After the light turned green, [REDACTED] turned left into the right-hand westbound lane of 55th Street. Trooper Willert stopped [REDACTED] vehicle immediately after the completion of [REDACTED] turn onto 55th.

Trooper Willert informed [REDACTED] that he stopped her because while making her left turn onto 55th (which has two westbound lanes) she failed to enter the lane closest to the median (the left westbound lane). Trooper Willert then found evidence which led to [REDACTED] arrest on the current DWI charges. After submitting to an intoxilyzer test which yielded a .13 BAC, [REDACTED] was charged with "fail[ure] to enter nearest lane"; and 3rd degree DWI.

PENDING MOTION

Defendant [REDACTED] seeks dismissal, asserting that Trooper Willert lacked sufficient basis to stop her vehicle.

DISCUSSION

I. Traffic Violation

An officer's observation of a traffic violation, "however insignificant", is a sufficient basis to stop a vehicle. State vs. Battleson, 567 N.W.2d 69, 71 (Minn. App. 1997); State v. George, 557 NW 2nd 575, 578 (Minn. 1997). Trooper Willert told [REDACTED] that he stopped her for failing to "enter [the] nearest lane" when she made her left turn onto 55th Street from the Highway 52 exit ramp. And he ticketed her for that offense. Plainly the stop was legal if the officer observed an illegal turn.

The trooper's citation cites Minn. Stat. § 169.19, Subd. 4 as the statute applicable to the alleged improper turn. But the trooper acknowledged at hearing that the citation to the "change of course" subdivision was mistaken.

There is a statutory section that applies to the type of left turn involved here -- "from a one-way roadway [the northbound exit ramp from Highway 52] into a two-way roadway [55th Street]." That is Minn. Stat. § 169.19, Subd. 1(d). That statute requires that such a turn "be made from the left-hand lane and by passing to the right of the centerline of the roadway being entered upon leaving the intersection." The statute does not require that the turn be made into the lane to the right of and nearest the centerline of the roadway being entered. This writer has identified no other statutory section which addresses this situation, and counsel have brought none to the Court's attention. In fact, at hearing the State acknowledged that -- the admonitions

of generations of drivers training instructors notwithstanding – it appears there is nothing illegal about the type of left turn Defendant made here.

Neither the Trooper nor the State point to any other observed traffic violation justifying this stop. Thus the question is whether other circumstances gave Trooper Willert an adequate basis to stop Defendant [REDACTED]

II. Investigatory Stop

An investigatory stop of a motor vehicle is lawful when police can “point to specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” Terry vs. Ohio, 392 U.S. 1, 21 (1968); State vs. Engholm, 290 N.W. 2d 780, 783 (Minn. 1980). The factual basis required for such a stop has been characterized as “minimal”; an actual violation of the law need not be detectable. State vs. McKinley, 232 N.W.2d 906, 911 (Minn. 1975). Marben v. State, Dept. of Pub. Safety, 294 N.W.2d 697, 699 (Minn. 1980). “Our cases . . . do not require much of a showing in order to justify a traffic stop.” State v. George, 557 N.W.2d 575, 578 (Minn. 1997). Further, a trained police officer is entitled to draw inferences on the basis of all the circumstances “that might well elude an untrained person.” State vs. Kvarn, 336 N.W.2d 525, 528 (Minn. 1983). However, more than an unarticulated “hunch” is necessary. U.S. vs. Sokolow, 490 U.S. 1, 7 (1989); State vs. Johnson, 257 N.W.2d 308, 309 (Minn. 1977). The stop “must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.” George, supra. “Idle curiosity” is insufficient. Terry, supra.¹

¹ “[O]bjective observations may provide a sufficient basis for an investigatory stop. . . . [but] the determinative issue is whether an officer’s . . . suspicion . . . that the violation occurred was reasonably inferable from what he did see.” State v. Delaney, 406 N.W.2d 584, 586 (Minn. Ct. App. 1987) (citing Berge v. Commissioner of Public Safety, 374 N.W.2d 730, 733 (Minn. 1985)). This includes the officer’s past experiences since the officer looks to all the circumstances when making an assessment. Delaney, id. (citing United States v.

At hearing the State pointed to two observations by Trooper Willert regarding Defendant's driving (her relatively slow speed, and the "weaving" in her lane) and the hour of the night (1:30 a.m.; bar-closing time) as facts justifying the stop.

The speed limit on this section of Highway 52 is 55 mph. Trooper Willert testified, however (and this writer is aware from many years of driving that roadway), that the typical flow of traffic at that location travels at least 60 mph. Thus, a motorist driving 52 mph – the first speed the Trooper described as he spoke onto the audio recording while pacing Defendant's car – seemed unusually slow to the Trooper. As the Trooper acknowledged on the stand, a car traveling between 55 and 60 mph would have seemed less suspicious than one traveling 52 mph, though the former would be in violation of the speed limit (and thus unquestionably subject to stop by law enforcement), and the latter would be driving lawfully. When asked on the stand what speed a motorist could drive and not be subject to being pulled over for driving either suspiciously slowly or unlawfully fast, the Trooper responded "55".

This answer, which obviously gives motorists a very narrow opportunity to avoid the possibility of a police stop, may have been at least partly facetious. But it highlights the problem with the State's reliance on defendant's speed. Not only was she traveling within the speed limit; she was traveling just three or four miles per hour less than the posted limit. She slowed further as she exited, but many drivers do that.

The Court is aware that a motorist's unusually slow, though lawful, speed can be a factor supporting a legitimate traffic stop. See, for example, Engholm, *supra* ("defendant's car . . . was traveling 15 to 20 miles per hour in a 30-miles-per-hour speed zone . . ."); Brown vs. Commissioner of Public Safety, 1995 WL 254369 (Minn. App. 1995) (defendant traveling 10 to

Cooper, 449 U.S. 411, 418, (1981)). The officer then draws inferences and makes deductions. *Id.* This "process deals with probabilities, not hard certainties." *Id.*

15 miles per hour below the posted limit); and Hruby vs. Commissioner of Public Safety, 1989 WL 20493 (Minn. App. 1989) (defendant driving with at least one-half width of his car on shoulder, and so slowly that traffic was backed up for a distance behind him). But basing suspicion of criminal activity on the fact that the motorist is doing "only" 94.5 percent of the posted speed limit (52 mph in a 55 mph zone) seems to this writer unreasonable. And it seems particularly incongruous to say that suspicion of criminal activity may focus on an individual precisely because she, in contrast to other motorists on the same roadway, was complying with the speed limit. In this respect, an observation of Judge Randall in Disrud vs. Commissioner of Public Safety, 1988 WL 88550 (Minn. App. 1988) seems apropos:

"Citizens take to the streets in cars knowing improper driving conduct, even conduct which falls short of a chargeable offense under our driving laws, can subject them to being pulled over and investigated by law enforcement. But citizens have to be left the "refuge" of proper driving conduct. When that is taken away from them, random stops by the authorities, based on caprice and curiosity, become the law." (Emphasis added.)

Trooper Willert also testified that Defendant was weaving within her lane, and that her wheels "would touch" the center/fog lines, but "wouldn't cross totally over." Weaving within one's own lane may warrant a stop when there are "specific and articulable facts which, taken together with rational inferences from those facts" warrant the stop. Engholm, *supra* at 784. "Weaving, by itself does not warrant an investigatory stop; rather the officer must observe weaving that is unusual or continuous before conducting the stop." State v. Huggar, 2002 WL 1751069 (Minn. App. 2002). An officer is justified in stopping "a motor vehicle weaving within its own lane in an erratic manner." State v. Richardson, 622 N.W.2d 823, 826 (Minn. 2001); Kvam, *supra* at 528.

In the present case, the Court had the benefit of being able to watch the videotape shot from the trooper's squad car as he followed Defendant north on Highway 52. The tape does not

show Defendant's car's wheels touch either the fog line or the northbound centerline – and after the tape had been played at hearing, the Trooper acknowledged as much. The tape does show lateral movement by Defendant's car relative to the center and fog lines – meaning that the distance between her wheels and each of the lines gradually increases and decreases by what this writer would estimate to be about two feet as the Defendant drives north. Perhaps this could be considered "weaving"; but it is not something that the Court would describe as "erratic". The side-to-side movement of Defendant's car was not, in this writer's judgment, sudden, pronounced, or continuous. Certainly defendant was not "all over the road." Richardson, Id. at 825. In short, the movement of Defendant's vehicle did not seem to the Court to be noticeably different from the gradual in-lane lateral drift that one would observe while following most cars down a four-lane highway.

It is conceivable to this Court that a trooper who has observed the driving behavior of hundreds of people who, when stopped, turn out to be drunk, might assert that he is able to discern subtle nuances in the way an intoxicated person handles a vehicle that are tell-tale hallmarks of intoxication. In other words, an experienced officer might assert that he is able to detect and describe the "signature" aspects of a drunk driver's in-lane "weaving" that distinguish it from the side-to-side movement within the lane that even sober drivers inevitably make; and thus that he is able to detect drunk driving that would elude a lay person observing the same conduct. An imperfect analogy might be drawn to lateral nystagmus, a relative abstruse physical phenomenon unfamiliar to the public at large but which trained and experienced professionals in the field rely on as an accepted indicator of intoxication. An officer offering testimony about nystagmus identifies what he is looking for in the behavior of the suspect's eyes; the critical

angle of onset; and he is able to describe its significance by distinguishing it from what is seen in the case of a sober individual.

That is not how the Trooper's observations of weaving were presented here. There is no indication on this record that in-lane weaving characteristic of intoxicated drivers is a subject matter of specialized expertise; nor did the officer describe any criteria by which such intoxicated weaving may be measured and distinguished from the driving of sober individuals. This writer is not suggesting that weaving must or should be evaluated in such a scientific manner in order for it to be relevant evidence in a DUI case. The point is that weaving was presented here the way this writer has always seen it presented: A subject matter as accessible to the average adult lay observer as it is to the officer who made the observation. Thus the Court is in as good a position as the officer to draw conclusions about the driving shown on the video, and its significance. The Court's conclusion is that neither Defendant's speed nor the in-lane "weaving" were unusual driving conduct, and even at 1:30 a.m. were not sufficient to warrant the intrusion of an investigatory stop.

The Court grants the Defendant's motion to dismiss the charged offenses.

J.F.C.

