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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0727**

State of Minnesota,
Respondent,

vs.

Eddy Robert Oman,
Appellant.

**Filed February 11, 2019
Affirmed
Jesson, Judge**

St. Louis County District Court
File No. 69DU-CR-16-3262

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

Shawn B. Reed, Maki & Overom, Ltd., Duluth, Minnesota (for respondent)

Robert E. Mathias, Duluth, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Halbrooks, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

JESSON, Judge

After the Hoghead Festival in Proctor, a Hermantown police officer stopped a driver, appellant Eddy Robert Oman, when he accelerated away from a stop sign. During the stop, the officer noticed signs of intoxication and requested that Oman perform field

sobriety tests. The officer arrested Oman based on a failed preliminary breath test. Oman moved to suppress the evidence of impairment on the ground it was obtained as a result of an illegal stop. The district court denied his motion because it found that the stop was reasonable because the officer suspected Oman of violating a Proctor city ordinance prohibiting unreasonable acceleration. We affirm.

FACTS

On August 21, 2016, around 2:30 a.m., a Hermantown police officer was working a Toward Zero Death DWI enforcement shift after the Hoghead Festival in Proctor. While on patrol, the officer observed a pickup truck rapidly accelerate from a stop sign. The officer stopped the pickup, which was driven by appellant Eddy Robert Oman, and informed Oman that his driving conduct was unsafe because of the large crowds after the Hoghead Festival. While Oman was speaking, the officer noticed a strong smell of alcohol and observed that Oman's eyes were glossy and bloodshot. Oman admitted to drinking three beers before driving. The officer then requested that Oman perform field sobriety tests, which Oman agreed to do. But Oman failed the field sobriety tests and his preliminary breath test.

Oman was transported to the Hermantown Police Department. After being read the implied-consent advisory, Oman stated he understood and did not wish to speak to an attorney. Around 3:45 a.m., Oman agreed to a breath test, which registered an alcohol concentration of 0.16.

As a result, Oman was charged with two counts of second-degree driving while impaired (DWI), one count of third-degree DWI, and possession of a small amount of

marijuana.¹ Oman moved to suppress the evidence of impairment on the ground that it was seized during an illegal stop of his vehicle. The district court denied Oman's motion on the ground that the officer was acting upon his professional determination that Oman accelerated too fast in violation of a Proctor city ordinance.

Oman stipulated to the state's evidence under Minnesota Rule of Criminal Procedure 26.01, subdivision 4, to preserve the pretrial suppression ruling for appellate review. The district court adjudicated Oman guilty of second-degree DWI and sentenced him to one year in jail, and stayed the sentence for two years. Oman appeals from the final judgment raising only the issue involving the denial of his suppression motion.

D E C I S I O N

On appeal, Oman contends that the officer did not have reasonable articulable suspicion to justify the stop because the facts do not amount to a violation of a Proctor city ordinance. Oman asserts that his case is similar to *State v. Bender*, in which this court affirmed a district court's finding of no reasonable suspicion when the record did not establish that the officer observed any criminal conduct justifying a stop. 381 N.W.2d 896, 898 (Minn. App. 1986). When reviewing the legality of an investigatory stop, we review findings of fact for clear error, but review questions of reasonable suspicion de novo. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. But a police officer is

¹ In violation of Minnesota Statutes sections 169A.25, subd. 1(a) (second-degree DWI), .26, subd. 1(a) (third-degree DWI), 152.027, subd. 4(a) (possession of marijuana) (2016).

permitted to conduct a limited investigatory stop of a vehicle “if the officer has an objectively reasonable and articulable basis for suspecting the motorist of criminal activity.” *State v. Kilmer*, 741 N.W.2d 607, 609 (Minn. App. 2007). In determining whether a stop is justified, we review the events surrounding the stop and considers the totality of the circumstances. *Britton*, 604 N.W.2d at 87. Traffic violations, even insignificant ones, can provide an objective basis for stopping a vehicle. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

The traffic violation at issue here is unreasonably accelerating away from a stop sign. The applicable Proctor city code provision states:

No person shall turn, *accelerate*, decelerate, or otherwise operate a motor vehicle on any public or private roadway within the City *in a manner which causes unnecessary engine noise* or backfire, squealing tires, skidding, sliding, swaying, throwing of sand or gravel, or in a manner simulating a race, impeding traffic, or *with an unnecessary exhibition of speed*.

Proctor, Minn. City Code § 801.02(a) (2003) (emphasis added.) The district court found that the officer’s testimony established the legality of the stop because the officer reasonably suspected Oman of violating Proctor City Code section 801.02(a).

Multiple facts in the record support the district court’s finding. The officer testified that he observed Oman’s vehicle stop at a stop sign, then “accelerate very fast” down the street. When Oman’s vehicle left the stop sign, the officer heard the loud acceleration of the motor, which he testified seemed excessive. By the time the officer turned the corner to follow, Oman’s vehicle was near the end of the block. The video from the dashboard camera mounted in the patrol car confirms the officer’s testimony. It shows Oman’s

vehicle far ahead of the squad car by the time the officer made a turn. And while the patrol car caught up to Oman's vehicle, the dashboard-camera video recorded that the patrol car had to move at a speed of 41 miles per hour to do so.

Nevertheless, Oman argues that the officer did not establish any facts that demonstrated that he violated the Proctor city code. He asserts that "made up facts" and "gross exaggeration" on the officer's part are readily apparent when comparing the police report and the dashboard-camera video. We are not persuaded. The dashboard-camera video explicitly shows Oman accelerating away from the stop sign at a fast speed.

Finally, Oman's analogy to *Bender* is misplaced. In *Bender*, this court determined that the officer did not have a reasonable articulable suspicion for instigating the investigatory stop because the officer did not suspect the driver of being under the influence or committing any other traffic offenses. *Bender*, 381 N.W.2d at 897. Instead, the officer testified that the basis for the stop was that the driver's car was making excessive noise. *Id.* at 898. And the officer never testified that the noise level would have constituted a traffic violation. *Id.* Unlike *Bender*, the testimony here shows that the officer reasonably suspected Oman of violating the Proctor city code provision prohibiting unreasonable acceleration.

Because facts in the record support the district court's finding that the officer reasonably suspected that Oman violated the city code provision prohibiting unreasonable acceleration, we affirm the district court's denial of Oman's motion to suppress.

Affirmed.