

STATE OF MINNESOTA  
COUNTY OF NICOLLET

DISTRICT COURT  
FIFTH JUDICIAL DISTRICT  
File No: 52-CR-11-7

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State of Minnesota,  
Plaintiff,

vs.

**ORDER**

Benjamin Andrew Ikeda,  
Defendant.

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The above-entitled matter came before the Honorable Allison L. Krehbiel, Judge of the District Court, at the Nicollet County Government Center, St. Peter, Minnesota, on March 14, 2011. Appearing at the hearing were:

James Brandt, St. Peter City Attorney;  
Christopher Rosengren, Attorney for Defendant; and  
Benjamin Andrew Ikeda, Defendant.

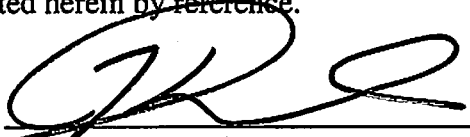
The matter before the Court was Defendant's motion to suppress evidence on the basis that the officer did not have reasonable articulable suspicion to stop Defendant's vehicle.

Based upon evidence presented at the hearing, and all the files, records, and proceedings herein, the Court makes the following:

**ORDER**

1. Defendant's motion to suppress evidence obtained as a result of the stop of Defendant's vehicle is GRANTED.
2. The charges herein are dismissed.
3. The attached Memorandum is incorporated herein by reference.

Dated: April 29<sup>th</sup>, 2011

  
Allison L. Krehbiel  
Judge of the District Court

Original: Nicollet County Court Administrator  
Copies: St. Peter City Attorney  
Christopher Rosengren

Filed: 4-29-11 No. CR-11-7  
Carol Melick, Court Administrator  
Nicollet County Minnesota  
By Rebecca Werner  
Dept. Of Adm.

## MEMORANDUM

On January 8, 2011, at approximately 1:15 a.m., St. Peter Police Officer Michael Penning was travelling southbound on Highway 169 within the City of St. Peter, Minnesota. Highway 169 is state highway with two traffic lanes in each direction.

As Penning drove from the intersection of Broadway and approached Park Row Street, Penning noticed a vehicle stopped facing East in the traffic lane of Park Row. At the intersection of Park Row, a barrier prevents a driver from crossing Highway 169, but vehicles coming from the west and approaching Highway 169 can turn right and proceed southbound. The vehicle appeared to be preparing to turn right onto Highway 169. But, Penning noticed that the driver remained at the intersection and did not proceed to turn right. As Penning passed Park Row, he noticed that the driver and a passenger in the front seat appeared to be kissing.

Penning decided to pull into a parking stall along Highway 169 about ½ block ahead and watch the vehicle. The vehicle turned right. The vehicle moved to the left lane of the two southbound lanes, instead of entering and remaining in the closest lane to the right curb. When the vehicle approached the next intersection, Nassau Street, the driver activated the left hand signal and moved into the turning lane. At Nassau, the driver made a U-turn to drive northward on Highway 169. The intersection of Nassau and Highway 169 is controlled by a semaphore, and the light was green for north and southbound traffic as the driver executed the U-turn. The driver executed the U-turn by moving into the outside northbound lane. The driver proceeded northward remaining in the outside lane.

Penning decided to follow the vehicle northward on Highway 169. Penning noticed the vehicle travelling approximately 30 miles per hour in the 35 mile per hour zone. Penning noticed that the vehicle was travelling about 45 mile per hour in the 55 mile per hour zone. When the vehicle reached Dodd Road, the driver again signaled a turn, executed a U-turn, and proceeded southward on Highway 169. In executing the U-turn, the vehicle moved to the outside right lane of southbound Highway 169. Penning followed the vehicle southbound. Penning stopped the vehicle at Drantel Avenue.

After stopping the vehicle, Penning identified the driver as Benjamin Ikeda. Penning noticed a strong odor of alcohol and that Ikeda had watery, glassy eyes. Penning suspected that Ikeda may have been consuming alcohol. Another officer, Jay Link, came to the scene and

conducted field sobriety tests and as a result Ikeda was arrested and charged with driving while impaired.

Defendant requests that the Court suppress all evidence obtained from the stop of Defendant's vehicle. Defendant argues that Penning did not have sufficient suspicion to stop Defendant's vehicle.

### ANALYSIS

The Fourth Amendment of the United States Constitution and Article 1, Section 10 of the Minnesota Constitution protect against unreasonable searches and seizures. To justify a stop for limited investigatory purposes, police must only show that the stop was not the product of mere whim, caprice or idle curiosity, but was based upon specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion. *State v. Bergerson*, 659 N.W.2d 791, 795 (Minn. App. 2003) citing *State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996) quoting *Terry v. Ohio*, 392 U.S. 1, 22 (1968). An officer may conduct a limited investigatory stop of a motorist if the State can show that the officer had a particularized and objective basis for suspecting the particular person stopped of criminal activity. *State v. Anderson*, 683 N.W.2d 818, 822-823 (Minn. 2004) (citations omitted). Minnesota courts look at the totality of the circumstances to determine whether the officer who conducted the stop is able to articulate a particularized and objective basis for suspecting the stopped person of criminal activity. *State v. Kvam*, 336 N.W.2d 525, 528 (Minn.1983). The factual basis required to support a stop for routine traffic check is minimal, and an actual violation of law need not be detectable. *State v. Barber*, 241 N.W.2d 476, 477 (Minn. 1976). Generally, 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 such a stop. *Anderson*, 683 at 823.

#### **Vehicle in traffic lane on Park Row**

Defendant's vehicle appeared to be waiting at Park Row to make a right hand turn onto Highway 169. Defendant had activated the right hand signal. Although Penning thought the vehicle waited unnecessarily long, the amount of time was not so great as to suspect criminal activity. The fact that the occupants were kissing is also of minor legal consequence, other than it drew some attention from the officer. There is no evidence to suggest that the slight delay or

the kissing prevented the movement of other traffic on Park Row or that it somehow obstructed or hindered other traffic.

### U-turn

Officer Penning observed Defendant make two U-turns. The first turn was at Nassau. The second reversed the course of travel at Dodd Avenue.

Minn. Stat. § 169.19, subd. 2 states:

*No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle within 1,000 feet, nor shall the driver of a vehicle turn the vehicle so as to proceed in the opposite direction unless the movement can be made safely and without interfering with other traffic.*

None of the prohibitions of the state statute appear to apply to the facts in this case. There is no reason to believe that Defendant's movement of his vehicle was not safe or interfered with other traffic. The state statute does not prohibit U-turns at intersections whether controlled by semaphores or other traffic signs.

The City of St. Peter also has an ordinance on U-turns. Ordinance 50-26 states:

*It is unlawful for any person to operate a vehicle by turning so as to proceed in the opposite direction upon any street except at a street intersection, and then only if the street intersection is not sign-posted prohibiting a U-turn or marked as a stop or yield intersection from any direction.*

The ordinance by its language does not prohibit U-turns at an intersection if (1) there is no sign prohibiting it, or (2) the intersection is marked as a stop or yield intersection from any direction.<sup>1</sup> The two intersections where Defendant executed U-turns do not have signs posted which prohibit U-turns. The intersection of Nassau and Highway 169 is controlled by a semaphore and must therefore be considered a "stop" intersection from any direction. Hence, the Court does not find making a U-turn at Nassau is prohibited by the city ordinance. The Dodd Road and Highway 169 intersection has a stop sign on Dodd Road. The Court does not find that a U-turn at Dodd Road is prohibited under the ordinance. The State's memorandum does not argue that

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<sup>1</sup> Officer Penning's police report states: *U-Turn at controlled intersections in the City of Saint Peter is against city ordinance.* The State's memorandum of law did not explain the officer's statement of the ordinance or otherwise argue in support of the officer's position. There could be other interpretations of the ordinance's language, i.e. that "not" refers to both "sign-posted" and "marked" in the ordinance. However, even if the Court were to adopt the officer's conclusion that U-turns are prohibited at controlled intersections in St. Peter, the state statute does not prohibit such movement, and the Court finds that the ordinance interpreted in that manner conflicts with the state statute.

the U-turn law was violated. However, Officer Penning appeared to believe there was a prohibition to making a U-turn. If that was a basis for his stopping Defendant, it is a mistake of law, and it cannot be an objective basis for the stop. If Officer Penning is interpreting the ordinance as not allowing U-turns at semaphores, he is enforcing the U-turn ordinance in conflict with the state traffic law. Minn. Stat. § 169.022 provides that:

*The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may adopt traffic regulations which are not in conflict with the provisions of this chapter; provided, that when any local ordinance regulating traffic covers the same subject for which a penalty is provided for in this chapter, then the penalty provided for violation of said local ordinance shall be identical with the penalty provided for in this chapter for the same offense.*

The purpose of that statute is to enable a driver of a motor vehicle to proceed in all parts of the state without the risk of violating an ordinance with which he is not familiar. *State v. Kuhlman* 729 N.W.2d 577, 581 (Minn. 2007). In the context of preemption by the state concerning traffic violations, no conflict exists when an ordinance is merely additional and complementary to a state law and covers specifically what the statute covers generally; but, a municipality may not prohibit by ordinance conduct that is not prohibited by statute. *Id.* To the extent Officer Penning believed the St. Peter City ordinance prohibits U-turns at controlled intersections, his enforcement of the ordinance conflicts with the state law, and cannot be a basis to conduct a stop of Defendant.<sup>2</sup>

## Turns

The State argues that Defendant made three errors of driving while turning at the three intersections, and those violations justified the stop. However, two of the turns, at

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<sup>2</sup> Minn. Stat. § 169.19, subd. 1(f) states: *Local authorities in their respective jurisdictions may cause markers, buttons, or signs to be placed with or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed no driver shall turn a vehicle at an intersection other than as directed and required by such markers.* Officer Penning testified that no signs prohibited U-turns at the intersections involved here. In addition, because Highway 169 is a state highway, for the city to erect such signs the commissioner would arguably need to consent. Minn. Stat. § 169.04. Highway 169 was recently reconstructed through St. Peter. The only intersection the Court is aware of on Highway 169 that has a sign preventing U-turns is at the intersection of Highway 22 on the southern edge of St. Peter. The fact that no signs were erected which prevent U-turns at the intersections involved here, suggests that no additional or complementary restrictions on U-turns are covered by the ordinance. See, *City of St. Paul v. Lofthouse*, 146 N.W.2d 858, 860-861 (Minn. 1966).

Nassau and Dodd Road, were U-turns. The State argues that Defendant improperly executed the U-turn by moving to the outside right lane of travel, when he was obligated to make the U-turns by proceeding into the inside lane. However, there is no such obligation in the U-turn statute, Minn. Stat. § 169.19, subd. 2. The only limitation is that the U-turn be made safely and without interfering with other traffic. At Nassau Street, in addition to the two lanes of travel southbound, there is a left hand turning lane with only a few feet dividing the lane with the northbound lanes. It would be nearly impossible physically for a vehicle to move from the turning lane directly into the inside northbound lane.<sup>3</sup> The Court finds no violation of law by Defendant in making his turn into the outside northbound lane at Nassau or the southbound outside lane at Dodd Road.

The State also argues that Defendant violated the turning law when moving from Park Row Street to Highway 169. Minn. Stat. § 169.19, subd.1 (a) provides that:

*The driver of a vehicle intending to turn at an intersection shall do as follows:*

*(a) Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.*

The State interprets that statute as requiring Defendant to have entered the right lane of the two southbound lanes when making the turn from Park Row onto Highway 169. That is a reasonable interpretation, but only if no other driving statute comes into play.

Under the facts of this case, Defendant left Park Row, entered Highway 169, drove south on Highway 169 up to the intersection of Nassau to a left hand turning lane, and executed the U-turn. The Court is familiar with that area. A barrier prevents a driver from crossing Highway 169 at Park Row. The only option for Defendant was to go south to the next street. The distance between Park Row and Nassau is short. The left hand turning lane begins approximately midway in the block. Therefore, to reach the left hand turning lane where it commences would require a driver in the right lane to move to the left lane and into the turning lane within a few car lengths of the intersection of Park Row.

A driver changing lanes on a roadway that has been divided into two or more clearly marked lanes for traffic follows this rule in Minn. Stat. § 169.18, subd. 7 (a):

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<sup>3</sup> The Court is familiar with the intersection of Nassau and Highway 169. There appears to be only a narrow piece of concrete separating the left turning lane from the northbound lanes. A vehicle could not turn easily into the left northbound lane from the turning lane.

*(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.*

In addition, Minn. Stat. § 169.19, subd. 4 states:

*No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in this section, or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a highway unless and until the movement can be made with reasonable safety after giving an appropriate signal in the manner hereinafter provided.*

To “practicably” obtain the proper position to execute the U-turn or a left turn at Nassau, Defendant had to cross the right lane and left lane in a very short distance to reach the turning lane. There is no indication that the movement Defendant made across the right lane into the left lane and then into the turning lane was not made with reasonable safety. From the evidence presented, the Court is of the belief that no other traffic was nearby. Therefore, the Court does not find that Defendant’s movement of his vehicle from Park Row to Nassau constituted an error of the driving law merely because he did not first enter the closest lane of the southbound lanes.

#### **Speed limit**

The only other driving conduct that aroused the officer’s suspicion was that Defendant was driving 5-10 miles under the speed limit as it travelled north. The officer’s police report states that vehicle was driving 30 mph in a 35 and later was traveling 45 in a 55 mile per hour zone. While it may be somewhat unusual to observe traffic noticeably under the speed limit, it does not support stopping Defendant under these circumstances. A driver does not violate the law by travelling under the speed limit where no other traffic is being hindered. In addition, there is no evidence that Defendant’s vehicle weaved or that the vehicle movement was otherwise erratic while travelling north. Therefore, Defendant’s driving did not justify any reasonable suspicion of wrongdoing.

#### **Conclusion**

Based upon the foregoing analysis, the Court cannot conclude that Defendant’s driving conduct justified the stop of his vehicle. Therefore, Defendant’s motion to suppress the evidence is granted. With that evidence suppressed, the State lacks probable cause for the charges herein.

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