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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0410**

State of Minnesota,
Respondent,

vs.

Christopher Lee Antoine Brown,
Appellant.

**Filed January 28, 2019
Affirmed
Connolly, Judge**

Ramsey County District Court
File No. 62-CR-17-1766

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

Lyndsey M. Olson, St. Paul City Attorney, Michael A. Seasley, Assistant City Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Veronica May Surges, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the constitutionality of his traffic stop, arguing that the police officer did not have a reasonable, articulable basis to believe he was speeding. Because we see no error in the district court's finding of reasonable, articulable basis, we affirm.

FACTS

In March 2017, appellant Christopher Lee Antoine Brown was pulled over for suspected speeding in a 30-mile-per-hour speed zone. The traffic stop took place in St. Paul on Western Avenue, between University Avenue and Fuller Avenue, as appellant was traveling south. Appellant was subsequently charged with one count of second degree driving while intoxicated (DWI) test refusal, a gross misdemeanor in violation of Minn. Stat. § 169A.20 subd. 2 (2016), and one count of second degree DWI, under the influence of alcohol, a gross misdemeanor in violation of Minn. Stat. § 169A.20 subd. 1(1) (2016). Appellant subsequently filed a motion to suppress, arguing that the officer did not have a reasonable, articulable basis to initiate the traffic stop.

At the contested omnibus hearing, the arresting officer testified that he pulled appellant over for speeding for two reasons. First, the officer testified that he observed a vehicle traveling southbound on Western Avenue at a speed he believed to be in excess of the speed limit. Second, when he turned onto Western Avenue, he observed a vehicle

traveling southbound, past the intersection of University Avenue, and attempted to “pace” the vehicle, traveling up to 42 miles-per-hour without gaining on it.¹

The district court determined that the officer’s first observation did not give him a reasonable, articulable suspicion to initiate a traffic stop because it was possible that the vehicle the officer spotted turned onto a different street. But the district court also found that the officer did not initiate the stop at that time, but continued to drive down Western Avenue and paced a vehicle. The squad car surveillance camera showed him traveling at least 42 miles-per-hour in an attempt to catch up to a vehicle, which appellant was driving. The posted speed limit was 30 miles-per-hour. Despite the officer’s speed, the video showed that he was unable to catch up to appellant until appellant braked and turned left. The district court found that the officer then had a reasonable, articulable basis to initiate the traffic stop.

Appellant argues that the district court erred in denying his suppression motion because his traffic stop was not supported by reasonable, articulable suspicion.

D E C I S I O N

In evaluating whether a traffic stop was lawful, this court reviews de novo a district court’s determination that the stop was supported by reasonable suspicion of illegal activity. *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012). We will not disturb the district court’s factual findings unless they are clearly erroneous. *Id.* A factual finding is not

¹ Pacing is a method police officers use to determine a vehicle’s speed. Part of pacing is traveling at a particular speed, while following a vehicle, and gauging whether the squad car is able to catch up to the vehicle or if it falls behind.

clearly erroneous “unless our review of the entire record leaves us with a definite and firm conviction that a mistake has been made.” *In re Welfare of D.T.J.*, 554 N.W.2d 104, 107 (Minn. App. 1996) (quotation omitted).

Both the United States and Minnesota Constitutions “protect ‘[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.’” *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) (quoting U.S. Const. amend. IV and citing Minn. Const. art. I, § 10). But a police officer may “stop and temporarily seize a person to investigate that person for criminal wrongdoing if the officer reasonably suspects that person of criminal activity.” *Id.* (quotation omitted). Generally, an officer’s observation of a violation of a traffic law, no matter how insignificant, provides a particularized and objective basis that satisfies the constitutional requirement for the limited detention. *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004).

The stated basis for appellant’s traffic stop was that he was allegedly speeding. Thus, because an officer has reasonable, articulable suspicion to temporarily stop a driver if he observes a traffic violation, the question becomes whether the district court clearly erred by crediting the officer’s testimony and finding that appellant was traveling in excess of the speed limit. *See State v. Doren*, 654 N.W.2d 137, 141 (Minn. App. 2002) (the district court’s factual findings will not be reversed unless clearly erroneous and we defer to the fact-finder on credibility assessments).

Appellant argues that the district court erred by crediting the officer’s testimony, stating that the officer’s “word was the sole evidence against” him. But this statement mischaracterizes the evidence. The district court was also presented with the squad car

video footage, which shows the officer traveling at least 42 miles-per-hour, in a 30 mile-per-hour zone, but not gaining on appellant. This video evidence supports the district court crediting the police officer's testimony that he was engaged in pacing appellant's vehicle, and supports the stop.

Appellant contends that the inconsistencies in the officer's testimony show that his testimony was not credible. But inconsistencies in testimony do not require reversal; they are merely considerations for the fact-finder in making credibility determinations. *State v. Johnson*, 679 N.W.2d 378, 387 (Minn. App. 2004), *review denied* (Minn. Aug. 17, 2004).

Appellant argues that the officer's testimony was not credible because his report alleged only that appellant was speeding while driving southbound on Western Avenue and did not allege that the officer "paced" appellant's vehicle. But neither caselaw nor any rule restricts an officer's testimony to the information in the police report. *See In re Welfare of T.Y.N.*, 632 N.W.2d 765, 769 (Minn. App. 2001) (concluding that the juvenile court was not precluded from finding officers' testimony credible although it included details not in the report).

Appellant further argues that the police officer's testimony is not credible because he intended to make pretextual stops on the night of appellant's arrest. The officer testified that, when on duty, he and his partner "look for traffic offenses so that we can stop vehicles and see what might be amiss." However, an officer's subjective motive does not invalidate objectively justifiable behavior under the Fourth Amendment. *State v. Lemert*, 843 N.W.2d 227, 231 (Minn. 2014) (citing *Whren v. United States*, 517 U.S. 806, 812, 116 S. Ct. 1769, 1774 (1996)).

Appellant also argues that the basic laws of kinematics do not support the district court's finding that he was traveling at least 42 miles-per-hour. But appellant's argument was not presented to the district court and is not properly before us. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (an appellate court "generally will not decide issues which were not raised before the district court."). Moreover, appellant advances a mathematical formula that requires a specific distance and a specific time, neither of which is exact. He claims that the distance between University Avenue and Fuller Avenue is "approximately 612" feet, which is based on a Google Maps measuring feature. He also claims that it took "approximately 14 seconds" to travel that distance. Based on his calculation, appellant claims that he had an average speed of 29.80 mile-per-hour, and this demonstrates that the court erred in concluding that he was traveling at least 42 miles-per-hour. But appellant's formula does not factor in any potential acceleration, or deceleration, and thus assumes that at no time did he travel above or below 29.80 miles-per-hour.

Appellant's argument that the laws of physics and kinematics prove he was traveling at the speed limit is not persuasive. Moreover, making a factual finding is a function of the fact-finder, not an appellate court. *First Trust Co. of St. Paul v. McLean*, 254 Minn. 75, 79, 93 N.W.2d 517, 520 (Minn. 1958). Only in an exceptional case and when the question is free from doubt will an appellate court declare that a witness's testimony is so inherently improbable that it is unworthy of belief. *Id.*

Appellant's arguments are not persuasive. The district court's factual findings and credibility determinations were not clearly erroneous. When an officer observes a violation of a traffic law, no matter how insignificant the violation, that observation provides a

particularized and objective basis that satisfies the constitutional requirement for a limited detention. *Anderson*, 683 N.W.2d at 823. Appellant has failed to show that the district court erred in determining that the officer had a reasonable, articulable basis to initiate the traffic stop.

Affirmed.