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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1306**

State of Minnesota,
Respondent,

vs.

Jarvis Michael Cunningham,
Appellant.

**Filed July 1, 2019
Affirmed
Stauber, Judge***

Hennepin County District Court
File No. 27-CR-17-27324

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

Susan L. Segal, Minneapolis City Attorney, Amy Tripp-Steiner, Assistant City Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Richard Schmitz, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Stauber,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

STAUBER, Judge

Appellant Jarvis Michael Cunningham challenges the district court's denial of his motion to suppress evidence of his intoxication/impairment. Because the district court did not err in its determination that the officer had reasonable, articulable suspicion of criminal activity, we affirm.

FACTS

On a clear fall night, around midnight, Minneapolis Police Officer Andrew Braun and his partner were on patrol driving eastbound on Plymouth Avenue North (Plymouth). The officers had a green light as they approached the intersection of Plymouth and Washington Avenue North (Washington). When the officers were approximately 75 to 100 yards away from the intersection, they saw five or six vehicles speed through the intersection travelling southbound on Washington. Because the light was green for traffic going east on Plymouth, Officer Braun knew that traffic going north and south on Washington had a red light.

The officers turned southbound on Washington to catch up to the speeding vehicles. Officer Braun testified that once they had turned southbound on Washington, he could clearly see the vehicles go through the next intersection as the light turned from red to green. Because the light had just turned green, Officer Braun knew that the vehicles had not stopped or slowed down for the red light.

The officers conducted a traffic stop on a white truck, driven by appellant, which was a part of the convoy of vehicles that had gone through the red light on Washington.

Based upon events after the stop of Cunningham's truck, the respondent State of Minnesota charged Cunningham with one count of operating a motor vehicle while under the influence of alcohol in violation of Minn. Stat. § 169A.20, subd. 1(1) (2016).

Cunningham moved to suppress the evidence obtained from the stop, arguing that the officers lacked a reasonable, articulable suspicion of criminal activity. Officer Braun and Cunningham testified at the hearing and the squad video recording was admitted as evidence. At the hearing, Cunningham admitted to driving the white truck through the intersection of Plymouth and Washington. Cunningham denied driving through a red light and, instead, testified that he accelerated to go through the intersection on a yellow light. The district court denied Cunningham's motion and ultimately, following a stipulated facts court trial, found Cunningham guilty.

Cunningham now appeals.

D E C I S I O N

Cunningham argues that there was no reasonable, articulable suspicion to support Officer Braun's stop of his truck, and that the district court erred by denying his motion to suppress the evidence obtained from the stop. This court reviews the factual findings from a district court's pretrial order on a motion to suppress evidence under a clearly erroneous standard and the legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures. See U.S. Const. amend. IV; Minn. Const. art. I, § 10. The United States Supreme Court has determined that the "[t]emporary detention of individuals during the

stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of ‘persons’ within the meaning of this provision.” *Whren v. United States*, 517 U.S. 806, 809-10, 116 S. Ct. 1769, 1772 (1996). 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)). The reasonable-suspicion standard is not a high one, *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011), but the investigatory stop may not be the result of “mere whim, caprice or idle curiosity,” *State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996). If an officer observes a violation of a traffic law, even one that is insignificant, there is an objective basis for an investigatory stop. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

Whether reasonable suspicion exists to support a traffic stop is a mixed question of fact and law. *State v. Lugo*, 887 N.W.2d 476, 487 (Minn. 2016). This court reviews the district court’s findings of fact for clear error, and reviews whether those findings support reasonable suspicion de novo. *Id.* In determining whether reasonable suspicion exists to justify a stop, 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).

Minnesota law provides that, “Vehicular traffic facing a circular red signal alone must stop at a clearly marked stop line, but, if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall

remain standing until a green indication is shown.” Minn. Stat. § 169.06, subd. 5(a)(3)(i) (2018). Failure to stop for a red light provides a lawful basis to stop a vehicle. *Krier v. Comm’r of Pub. Safety*, 391 N.W.2d 96, 98 (Minn. App. 1986).

In its order the district court found:

The officers here had a particularized and objective basis for suspecting Cunningham of criminal activity. Officer Braun testified that the light for traffic on Plymouth Avenue was green when the line of cars that included Cunningham’s went through the intersection of Washington and Plymouth. This allowed him to reasonably infer that the cars on Washington Avenue, including Cunningham’s, had run a red light. This is supported by the video from the squad camera which the court has reviewed. It begins just as a car exits the intersection while the Plymouth Avenue light is green.

More importantly, Officer Braun observed Cunningham run a second red light on southbound Washington Avenue. Officer Braun testified that he saw the light turn green after Cunningham’s truck was already through the intersection. The squad camera video supports this as well. After the officers turned onto Washington Avenue, the video shows the white truck go through the intersection while the light is red. Therefore, the officers had a particularized and objective basis for suspecting Cunningham of criminal activity.

Cunningham argues that the district court’s credibility determinations are “questionable” because Officer Braun “seemed to have a cloudy memory regarding such basic facts as who was driving the patrol car between him and his partner.” Cunningham’s argument is not persuasive. This court gives deference to the fact-finder—especially where resolution of the case depends on conflicting testimony—because weighing the credibility of

witnesses is its exclusive function.¹ *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980).

Though Officer Braun did initially testify that he believed that he was the driver that evening, he corrected himself on the record and apologized to the court. The district court addressed this in its order:

Cunningham also argued that Officer Braun’s testimony should not be relied upon because Officer Braun incorrectly testified that he was driving the squad car. The Court, however, finds his testimony reliable to explain why the truck was pulled over, and the video from the squad camera shows [his testimony] to be factually accurate as well.

Moreover, as sole judge of credibility, a fact-finder is free to accept part and reject part of a witness’s testimony. *State v. Poganski*, 257 N.W.2d 578, 581 (Minn. 1977).

Cunningham also argues that there was no reasonable basis for the traffic stop because the squad video cannot definitively place the white truck in relation to the intersection at the time the light turned green. Cunningham cites to two cases where the court determined that there was no reasonable basis to support a traffic stop. *See State v. Anderson*, 683 N.W.2d 818 (Minn. 2004); *George*, 557 N.W.2d at 578. However, in both cases the officers had conducted a traffic stop based upon a mistake of the law. *Anderson*, 683 N.W.2d at 824 (holding that there was no objective basis for a stop when the stop was based upon the officer’s mistaken belief regarding the “buffer lane” law); *George*, 557 N.W.2d at 578 (holding that there is no objective basis for a traffic stop where the stated basis for the stop was the officer’s mistaken belief that the headlight configuration on the

¹ Cunningham also argues that, because there is an objective piece of evidence, this court should not apply “typical appellate court deference to the district court’s credibility determinations.” This argument is not supported by legal authority and is not persuasive.

defendant's motorcycle was illegal). There is no mistaken application of the law here, as both parties agree it is a violation of law to drive through a red light.

Here the district court relied upon both the squad video and Officer Braun's testimony to reach its ultimate determination. Because the district court's factual findings are not clearly erroneous and those findings adequately support its determination that there was a reasonable suspicion of criminal activity, we affirm.

Affirmed.