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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2009**

Joshua John Leary, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed July 15, 2019
Affirmed
Florey, Judge**

Dakota County District Court
File No. 19AV-CV-18-1319

Steven K. Budke, Levenson Budke, P.A., Eagan, Minnesota (for appellant)

Keith Ellison, Attorney General, Natasha Townes Robinson, Assistant Attorney General,
St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Appellant Joshua John Leary appeals the district court's order sustaining the revocation of his driving privileges. He argues that, because the district court erred in finding that law enforcement had reasonable, articulable suspicion to initiate a traffic stop, this court must reverse the district court's order. We affirm.

FACTS

On May 25, 2018, at approximately 1:50 a.m., Officer Jacob Johnson of the Inver Grove Heights Police Department was on routine patrol traveling westward at the intersection of 66th and Concord Boulevard. The intersection is located in “a saturated area of alcohol-providing establishments.” As the vehicle directly in front of Officer Johnson approached the intersection and stopped at the stop sign, the officer observed that the vehicle’s rear brake light “was not functioning.” Officer Johnson pursued the vehicle as it turned right, traveling northbound.

While following the vehicle, Officer Johnson radioed dispatch, notifying his department of his intention to initiate a traffic stop. As part of standard procedure, Officer Johnson was required to radio dispatch prior to stopping a vehicle in order to verify whether the vehicle had been reported stolen, whether the vehicle’s registered owner had any outstanding warrants, and other matters to maintain officer safety.

At the 5900 block of Concord Boulevard, Officer Johnson activated his squad car’s emergency lights, initiating a traffic stop. The activation of the emergency lights caused the squad car’s dashboard camera to turn on. As the suspect vehicle came to a stop, Officer Johnson observed, again, that its rear brake light was nonoperable. Officer Johnson approached the vehicle, identified the driver as appellant, and observed indicia of intoxication. Appellant was arrested and, consequently, his driver’s license was revoked.

Appellant challenged Officer Johnson’s grounds for initiating the traffic stop and petitioned the district court for an implied-consent hearing. In September 2018, an implied-

consent hearing was held. The sole issue before the district court was whether the initial stop of appellant's vehicle was lawful. Officer Johnson was the only witness to testify.

Officer Johnson testified about his experience, training, and duties as an officer, including his training in the enforcement of traffic and driving-while-impaired laws. He testified that, by law, a motor vehicle must have two functioning brake lights. He testified that, at the time he initially observed appellant's nonfunctioning brake light at the intersection of 66th Street and Concord Boulevard, the camera on his squad car was not yet on, but that the camera captured "the brake light when [he] stopped [appellant's] vehicle at the intersection of 59th and Concord." He explained that, on the night in question, the weather included "some precipitation, but not an amount that would prohibit [him] from being able to clearly see."

At the hearing, appellant's counsel played a portion of the dashboard camera's video recording of the stop. The parties stipulated to the showing of the video "for visual purposes" only (as the portion of the video did not contain any sound), and appellant's counsel explained to the district court that the video would not be offered into the record. Rather, the parties agreed that the video was to be used at the hearing as "a demonstrative exhibit" only.

Officer Johnson conceded that the video did not show, prior to the moment he activated his squad car's emergency lights, that appellant was driving a motor vehicle with a nonfunctioning brake light. He conceded that the video showed that appellant's vehicle was "a good distance away" from his squad car, and that approximately 30 seconds elapsed

from the time the video started to the time the officer activated his emergency lights.¹ He conceded that he did not observe any other traffic violations while pursuing appellant's vehicle. Officer Johnson also conceded that he did not include in his police report his initial observation of the nonfunctioning brake light.

The parties stipulated "that [appellant's] brake light was not functioning" at the time he pulled over in response to the officer's emergency lights. Appellant's counsel stated, "[W]e can stipulate that[,] at that moment after [Officer Johnson] had already initiated the traffic stop, we can stipulate that the evidence show[ed] that the brake light was out." Appellant's counsel explained, however, "When it went out, I can't stipulate to that. And whether or not there was an observation that the light was out prior to the video, we cannot stipulate to that."

The district court sustained the revocation of appellant's driver's license. The district court found that, despite Officer Johnson's failure to include in his police report his initial observation of appellant's nonfunctioning brake light, the officer's testimony was credible. The court found that "[t]he squad video showed that when [appellant's vehicle] was stopping in response to Officer Johnson's emergency lights near 59[th] Street, the right rear brake light was not working." The district court concluded: "Officer Johnson had a

¹ We note an inconsistency between Officer Johnson's testimony and the district court's finding. While the district court found that Officer Johnson's activation of the emergency lights caused the squad dashboard camera to turn on, Officer Johnson testified that "when the video starts, there's a good 30 to 35 seconds of driving observation before [he] activate[d] [the] squad lights." Neither party challenges this inconsistency. While not germane to our decision, we presume that the officer's squad car was equipped with a camera that recorded the 30 seconds prior to its activation.

particularized and objective basis to suspect [appellant] of criminal activity when he saw [appellant] operating a motor vehicle on a public highway which did not have two functioning brake lights.” This appeal followed.

DECISION

Appellant argues that the district court erred in finding that Officer Johnson had a reasonable, articulable suspicion to initiate a traffic stop. We review de novo a district court’s legal determination that an officer had reasonable suspicion of illegal activity. *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012). “But in that review, we accept the district court’s factual findings unless they are clearly erroneous.” *Id.* Appellate courts give “due weight to the inferences drawn from those facts by the district court,” *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000) (quotation omitted), and defer to the district court’s credibility determinations. *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012); *see also Wilkes v. Comm’r of Pub. Safety*, 777 N.W.2d 239, 246 (Minn. App. 2010) (“[C]redibility determinations are the province of the district court.”).

Both the United States and Minnesota Constitutions protect individuals from “unreasonable searches and seizures” by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10.² “The touchstone of the Fourth Amendment is reasonableness.” *State v. Johnson*, 813 N.W.2d 1, 5 (Minn. 2012) (quotation omitted). “Generally, warrantless searches are per se unreasonable.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

² Although a civil proceeding, Fourth Amendment protection applies to a judicial challenge to the administrative revocation of a driver’s license. *See, e.g., Olson v. Comm’r of Pub. Safety*, 371 N.W.2d 552, 553-56 (Minn. 1985) (applying Fourth Amendment protection to license-revocation proceeding).

However, a law-enforcement officer may, without a warrant, initiate a limited investigatory stop if the officer has a 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)); *see also State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011).

“Reasonable suspicion must be based on specific, articulable facts that allow the officer to be able to articulate that he or she had a particularized and objective basis for suspecting the seized person of criminal activity.” *State v. Morse*, 878 N.W.2d 499, 502 (Minn. 2016) (quotations omitted). The officer’s suspicion must be more than the product of “mere whim, caprice, or idle curiosity.” *State v. Harris*, 572 N.W.2d 333, 337 (Minn. App. 1997) (quotation omitted), *aff’d on other grounds*, 590 N.W.2d 90 (Minn. 1999).

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); *see also Klamar*, 823 N.W.2d at 691 (“The court may consider the officer’s experience, general knowledge, and observations; background information, including the nature of the offense suspected and the time and location of the seizure; and anything else that is relevant.”).

“It should be emphasized that the factual basis required to support a stop for a ‘routine traffic check’ is minimal.” *Marben v. Dep’t of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980) (quotation omitted). “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 a traffic stop.” *State v. Beall*, 771 N.W.2d 41, 44 (Minn. App. 2009) (quotation omitted). And, “searches based on honest, reasonable mistakes of fact are unobjectionable under the Fourth Amendment.” *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003).

Operating a motor vehicle with a nonfunctioning brake light is a traffic violation warranting an officer to conduct a traffic stop. Minnesota Statute section 169.57, subdivision 1(a) (2016), provides that a motor vehicle “shall be equipped with at least two stop lamps on the rear.” Subdivision 3(a) provides: “When a vehicle is equipped with stop lamps or signal lamps, such lamps shall at all times be maintained in good working condition.” Minn. Stat. § 169.57, subd. 3(a) (2016).

As this court has stated previously, subdivision 3(a) “unambiguously applies to all lamps with which a vehicle is equipped.” *Beall*, 771 N.W.2d at 45. In *Beall*, the defendant was operating a motor vehicle with an inoperable center brake light. *Id.* at 43. On the state’s appeal of the district court’s order finding that the traffic stop was not based on reasonable, articulable suspicion of a violation of the law, this court reversed and stated, because subdivision 3(a) “imposes the duty at all times to maintain in good working condition such stop lamps (brake lights) with which a vehicle is equipped, an inoperable center brake light constitutes a specific, articulable, and objective basis justifying a traffic stop.” *Id.* at 42 (quotation omitted). In the present matter, the parties do not dispute that operating a motor vehicle with a nonfunctioning brake light is a traffic violation.

The parties also do not dispute that, after Officer Johnson activated his emergency lights to initiate a traffic stop, the video footage shows that appellant was operating a motor

vehicle with a nonfunctioning brake light. At the implied-consent hearing, appellant's counsel stated, "[A]t that moment after [the officer] had already initiated the traffic stop, we can stipulate that the evidence shows that the brake light was out." Rather, the parties dispute whether the officer had reasonable, articulable suspicion that appellant was operating a motor vehicle with a nonfunctioning brake light *before* the traffic stop was initiated.

Appellant argues that Officer Johnson's testimony that he first observed a nonfunctioning brake light on appellant's vehicle at the intersection of 66th Street and Concord Boulevard was not credible, and, consequently, that the stop of his vehicle was not supported by reasonable, articulable suspicion. Undermining Officer Johnson's credibility, appellant argues that the officer's concession at the implied-consent hearing—that "his report only mentions the observation of a nonfunctioning brake light on the 5900 block"—contradicts the officer's testimony that "all the conduct [he] observed [was] written in the narrative." Appellant characterizes this apparent contradiction as "Johnson's implicit concession—that no violation was observed at the 6600 block."

Further, appellant contends that Officer Johnson's "observation of a supposed equipment violation on the 5900 block of Concord Boulevard was only disclosed at the implied consent hearing." He argues, "To find this sort of moving target credible would be to render the entire implied consent judicial review process meaningless." While we can sympathize with appellant's frustration regarding the timing of Officer Johnson's disclosure of his observations, we conclude that the district court did not err in determining that the officer had reasonable, articulable suspicion to initiate a traffic stop.

The district court is afforded discretion to weigh testimony with seemingly conflicting evidence, and we defer to its credibility determinations and findings of fact. *See State v. Shellito*, 594 N.W.2d 182, 186 (Minn. App. 1999) (holding “the district court has the discretion to draw its own conclusions and make factual findings from its independent review of a video recording of a traffic stop,” and, in cases of conflicting evidence, “the district court must make findings of fact”); *see also* Minn. R. Civ. P. 52.01 (“[D]ue regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.”).

Indeed, Officer Johnson’s recording of the incident does not show any traffic violations before he had already initiated a stop.³ However, the district court found that Officer Johnson testified credibly on the issue. The district court found that (1) Officer Johnson observed appellant operating a motor vehicle with a nonfunctioning brake light before he initiated the stop and (2) the video showed that, when appellant’s vehicle “was stopping in response to Officer Johnson’s emergency lights near 59th Street, the right rear brake light was not working.” The court expressly stated that it found the officer’s account of the incident to be credible, “even though his report did not mention this first observation

³ We note that, as shown in the transcript of the hearing, the parties agreed to employ the video as “a demonstrative exhibit,” with the understanding that, while it would be shown to the factfinder “for purposes of impeaching the officer,” the video would not be received by the district court. Consequently, because the video recording is not part of the record, it is not possible to review the officer’s camera footage of the incident. Officer Johnson conceded, however, that the video did not show any traffic violations prior to the initiation of the traffic stop, and the parties do not dispute this testimony.

of the non-functioning brake light.”⁴ The district court considered Officer Johnson’s testimony, the officer’s report and the footage available on the dashboard camera, and it ultimately concluded that the officer had a reasonable, articulable suspicion of a traffic violation to warrant a traffic stop. The district court was in the best position to evaluate Officer Johnson’s credibility, and the court’s finding that the officer observed appellant driving a vehicle with a nonfunctioning brake light was not clearly erroneous. *See Klamar*, 823 N.W.2d at 691.

Furthermore, even if Officer Johnson made a mistake of fact as to whether appellant’s brake light was, indeed, nonfunctioning at the intersection of the 6600 block of Concord Boulevard, there is no indication that his mistake was unreasonable—after all, appellant’s brake light was found to be nonfunctioning just a few blocks later. As such, the officer’s traffic stop is “unobjectionable under the Fourth Amendment.” *Licari*, 659 N.W.2d at 254.

Affirmed.

⁴ Like the video recording, the officer’s report is also not part of the record. However, Officer Johnson conceded that the report did not include his first observation, and the parties do not dispute this testimony.