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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2354**

Peter Francis Wagner, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed November 4, 2008
Affirmed
Minge, Judge**

Mower County District Court
File No. 50-CV-07-7

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Considered and decided by Connolly, Presiding Judge; Lansing, Judge; and Minge, Judge.

UNPUBLISHED OPINION

MINGE, Judge

Appellant challenges the district court's determination that the Austin police had a reasonable, articulable suspicion of criminal activity to make an investigatory stop of his vehicle. We affirm.

FACTS

On November 30, 2006, at approximately 1:00 a.m., two Austin police officers were on a routine patrol in the area of an I-90 overpass. Officer Tischer testified that both he and Officer Clennon observed a vehicle operating without taillights. The officers turned around to follow the vehicle and found it parked at a gas station where the driver, appellant Peter Wagner, was refueling. Officer Tischer testified that he parked behind Wagner's vehicle without activating any overhead emergency lights. Officer Tischer told Wagner that his taillights were not visible and asked Wagner to turn on the vehicle's headlights. Wagner complied, and the headlights and taillights all came on.

During their exchange about the taillights, Officer Tischer observed that Wagner had bloodshot, watery eyes and smelled of alcohol. Wagner was asked to perform a field sobriety test. After observing Wagner, Officer Tischer asked Wagner to provide a breath sample for the portable breath testing unit (PBT). The PBT result was a .20 alcohol concentration. Officer Tischer then placed Wagner under arrest for driving while impaired. *See* Minn. Stat. § 169A.20. Because Wagner's car could not remain at the gas pumps, Officer Tischer moved it. He testified that, when he turned the key, the headlights automatically came on and a message on the dashboard read "Turn Headlights On." The officer concluded Wagner was likely driving with only his daytime running lights on. Ultimately, after being read the Minnesota Implied Consent Advisory, Wagner refused further testing, and was criminally charged and subject to revocation of his driver's license.

At a combined implied consent and *Rasmussen* hearing, Wagner presented testimony that because he was driving a car that had only three light settings and because with each of these settings the taillights would be automatically illuminated after dark, it was mechanically impossible that he was driving without the taillights turned on. Wagner's brother testified the taillights were working properly when he went to pick up the car from the gas station on the same day. Wagner also presented testimony of a mechanic. The mechanic testified that on November 30, 2006, he examined Wagner's vehicle and determined that the taillights and automatic light-switch function were working properly. The mechanic testified that the sensitivity of the light sensor on the vehicle's windshield was adjustable and that when the sensor was completely covered (darkened), the taillights automatically were illuminated.

The district court found that both officers *perceived* Wagner's car to be operating without illuminated taillights, found that this provided a reasonable, articulable basis for the stop, and sustained the revocation of Wagner's license under the implied consent law. This appeal followed.

DECISION

The issue on appeal is whether there was a sufficient basis for stopping appellant.¹ "In reviewing a district court's determinations of the legality of a limited investigatory stop, we review questions of reasonable suspicion de novo." *State v. Britton*, 604

¹ As the district court noted in its memorandum, there is some question as to whether there was a true "stop" of Wagner's vehicle, as it was already stopped. However, because respondent concedes that a seizure took place, this issue was not raised nor was it considered on appeal.

N.W.2d 84, 87 (Minn. 2000). Findings of fact are reviewed under a clear error standard. Minn. R. Civ. P. 52.01. Findings of fact are held as “clearly erroneous only when we are left with a definite and firm conviction that a mistake has been committed.” *Jasper v. Comm’r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002) (citations omitted). In reviewing findings of fact, “[d]ue regard is given to the district court’s opportunity to judge the credibility of the witnesses.” *Snyder v. Comm’r of Pub. Safety*, 744 N.W.2d 19, 22 (Minn. App. 2008). Because this is an appeal of a civil license revocation, the district court determines the legality of the stop by a preponderance of the evidence. *See State, City of Falcon Heights v. Pazderski*, 352 N.W.2d 85, 87 (Minn. App. 1984); *Eckstein v. Comm’r of Pub. Safety*, 471 N.W.2d 114, 116 (Minn. App. 1991), *review denied* (Minn. Aug. 1, 1991).

The Fourth Amendment governs the legality of investigatory traffic stops. Before stopping a vehicle, an officer must be able to “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Britton*, 604 N.W.2d at 87 (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)). The stop “must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.” *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) (quotation omitted). “Our cases, however, do not require much of a showing in order to justify a traffic stop. Ordinarily, if an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle.” *Id.*

Officer Tischer testified that he and his partner stopped Wagner based on their observation that Wagner was in violation of a traffic law because he was driving without lighted taillights after dark. *See* Minn. Stat. § 169.48, subd. 1(a)(1) (2006); Minn. Stat. § 169.47 (2006). The district court found the officers observed a direct violation of the law, which provided an articulable and objective basis for the stop. Wagner challenges this conclusion arguing that the officers could not have observed a violation of the traffic law because it was mechanically impossible for his taillights to be off after dark.

Wagner points to the record previously summarized and the decision of *State v. George*. The supreme court in *George* held that a stop based on a *mistake of law* is insufficient to establish an objective legal basis for a stop. 557 N.W.2d at 579. There an officer had stopped a motorcycle that had one headlight and two auxiliary lights under the mistaken belief that such a light configuration on a motorcycle was illegal, and the supreme court concluded that such a mistaken belief was not a sufficient basis for a stop. *Id.* In contrast, the supreme court has previously held that a good faith and reasonable *mistake of fact* would not invalidate an otherwise valid stop. *State v. Duesterhoeft*, 311 N.W.2d 866, 868 (Minn. 1981) (finding stop permissible even though based on a mistaken belief that a suspect's license was revoked); *City of St. Paul v. Vaughn*, 306 Minn. 337, 344, 237 N.W.2d 365, 370 (1975) (finding stop permissible even though based on a mistake in identity). “[H]onest, reasonable mistakes of fact are unobjectionable under the Fourth Amendment.” *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003) (evaluating the legality of a search).

We conclude that because the claimed mistake in this case is one of fact, not of law, the officers had a proper basis for stopping Wagner if they acted in good faith. Wagner argues that the evidence that the car's light system was working demonstrates the utter impossibility of the officers' observation and that this should lead this court to conclude that the officers' decision to stop his car was neither reasonable nor in good faith.

Here, there are several indications that the officers acted in good faith. The officers were consistent. Officer Tischer testified that both he and his partner observed Wagner driving without illuminated taillights. The lack of illuminated taillights was the cited reason for the stop in the police report, on the implied consent certificate, and to Wagner when they approached his vehicle. The district court heard the testimony and was able to directly evaluate the officer's testimony as well as Wagner's. Although Wagner provided testimony that the lights "should" come on when it is dark out, the mechanic only testified to the existence of an adjustment on the light sensor, that it appeared to be working properly, and the taillights should come on automatically if it was dark. Although it was after midnight and dark at the time of the stop, there was no testimony about the lumination level at I-90 in the city of Austin where the car was driving. Because the record indicates that Wagner had left a business next to the highway just prior to the officers observing him, it is possible the artificial light in the area offset the effect of the nighttime darkness on the sensor or would allow a reasonable person to believe Wagner's taillights were not on.

We conclude that the record is adequate to support the district court's finding that the officer acted in good faith.

Affirmed.

Dated: