STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2029

Robert Jon Myhran, II, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed September 11, 2017
Affirmed
Reyes, Judge

Anoka County District Court
File No. 02-CV-16-1544

Robert M. Christensen, Robert M. Christensen, P.L.C., Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Dominic J. Haik, Jamie Rein Schmidt, Assistant Attorneys General, St. Paul, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Schellhas, Judge; and Stauber, Judge.[*]

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

U N P U B L I S H E D O P I N I O N

REYES, Judge

Appellant argues in this implied-consent appeal that he was seized without reasonable, articulable suspicion. We affirm.

FACTS

Respondent Commissioner of Public Safety revoked appellant Robert Jon Myhran's driving privileges after a traffic stop in March 2016 resulted in his arrest for driving while impaired. Appellant filed a petition for judicial review, claiming that the stop was unlawful because the Lino Lakes police officer who initiated the stop lacked reasonable, articulable suspicion. The district court held an implied-consent hearing on appellant's claim.

The officer testified that on March 4, 2016, he was observing traffic using a stationary radar device while parked in a lot adjacent to the roadway. At 1:41 a.m., the officer observed appellant's vehicle traveling eastbound in an area where the speed limit changes from 50 miles per hour (mph) to 40 mph. The officer testified that, upon initial observation, he believed that appellant's vehicle was traveling faster than the 40-mph speed limit based on the officer's training and 17 years of experience as a police officer. The officer's radar device reported that the vehicle was traveling at 51 mph in the 40-mph zone. The officer then drove out of the parking lot and stopped appellant. The officer arrested appellant as a result of the stop.

Appellant testified to the following: On the night of March 4, he drank four beers at a bar, but his recollection of the events was not affected by the alcohol he consumed. He had previously driven this particular stretch of roadway "100 times." Appellant was aware

of his speed on March 4 because he knew of the high police presence on that roadway. When he entered the 40-mph zone he slowed down from 50 mph and began driving between 40 and 42 mph.

The district court denied appellant's petition, crediting the officer's testimony, and sustained the revocation of appellant's driving privileges. This appeal follows.

D E C I S I O N

Appellant argues that he was unlawfully stopped because the officer had no basis to suspect that appellant was driving over the speed limit where there was no reasonable way for the officer to have known whether appellant had entered the 40-mph speed zone. We disagree.

This court reviews de novo questions of law relating to reasonable suspicion to initiate a traffic stop. *Wilkes v. Comm'r of Pub. Safety*, 777 N.W.2d 239, 242-43 (Minn. App. 2010). We review the district court's findings of fact supporting an order sustaining a license revocation for clear error. *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002). Findings of fact are clearly erroneous when they are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Schulz v. Comm'r of Pub. Safety*, 760 N.W.2d 331, 333 (Minn. App. 2009) (quotation omitted). We will defer to the district court's credibility determinations and ability to weigh the evidence. *Constans v. Comm'r of Pub. Safety*, 835 N.W.2d 518, 523 (Minn. App. 2013).

The Fourth Amendment to the United States Constitution and Article I of the Minnesota Constitution protect citizens from unreasonable searches and seizures. U.S.

Const. amend. IV; Minn. Const. art. I, § 10. Prior to conducting an investigatory stop, a police officer "must have a reasonable, articulable suspicion of criminal activity." *State v. Hunter*, 857 N.W.2d 537, 543 (Minn. App. 2014). The standard for reasonable, articulable suspicion is not high. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011) (quotation omitted). Reasonable, articulable suspicion exists if the police officer can "articulate a particularized and objective basis for suspecting the particular person stopped of criminal activity." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (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." *Wilkes*, 777 N.W.2d at 243 (quotation omitted). Driving at a speed greater than the posted speed limit is unlawful and a basis for a police officer to initiate a stop. Minn. Stat. § 169.14, subd. 2 (2016); *see also Sazenski v. Comm'r of Pub. Safety*, 368 N.W.2d 408, 409 (Minn. App. 1985).

Here, the district court implicitly found the officer's testimony that appellant was traveling faster than the posted speed in the 40-mph zone more credible than appellant's claim that he had not yet entered the 40-mph zone. The district court also determined that the officer had reasonable, articulable suspicion that appellant was speeding in the 40-mph zone based on the officer's visual observations and radar-device reading. The officer stated that he had tested the radar device at the beginning of his shift, and it was working properly. Appellant does not challenge the condition of the radar device or its results.

At oral argument, appellant's attorney asserted that *Schulberg v. Comm'r of Pub. Safety*, 387 N.W.2d 225 (Minn. App. 1986), is controlling. In *Schulberg*, this court

affirmed the trial court's determination that there was an insufficient basis for a traffic stop where the officer was driving at night and visually observed an approaching vehicle which the officer believed to be speeding. 387 N.W.2d at 227. *Shulberg* is distinguishable because, here, the officer was parked and, in addition to his visual observation, used his radar device to determine appellant's speed. Further, in *Schulberg*, we limited the holding to the facts on the record as we had previously concluded that a visual observation by a stationary officer who "had received formal training in the estimation of traffic speed" was sufficient to form the basis of the officer's reasonable, articulable suspicion. *Sazenski*, 368 N.W.2d at 409.

Deferring to the district court's credibility determinations, the record reflects that the officer had reasonable, articulable suspicion to initiate the traffic stop based on his visual observation and on the radar device reporting that appellant was speeding in the 40-mph zone. Therefore, the district court did not err in determining that the officer had reasonable, articulable suspicion to stop appellant.

Affirmed.