STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1506

State of Minnesota,
Respondent,

vs.

Zach Wallace Larson,
Appellant.

Filed August 6, 2018
Affirmed
Kirk, Judge

Clay County District Court
File No. 14-CR-16-3669

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Matthew C. Spielman, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Luke T. Heck, Severson, Wogsland & Liebl, PC, Fargo, North Dakota (for appellant)

Considered and decided by Kirk, Presiding Judge; Peterson, 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

KIRK, Judge

Appellant challenges his convictions of fourth-degree driving a motor vehicle while impaired, arguing that the district court erred in finding that the arresting officer had reasonable, articulable suspicion to stop his vehicle. We affirm.

FACTS

In October 2016, the arresting officer was driving northbound and observed appellant Zach Wallace Larson's vehicle travelling southbound toward him. As appellant's vehicle approached, the officer observed the driver turn on his bright lights twice, first for a brief moment, and then again for "a long steady period of time." The second time, the vehicle's bright lights remained active until it was approximately ten yards from the officer's vehicle.

After passing appellant's vehicle, the officer confirmed that he did not have his own bright lights turned on, and he then turned to follow the vehicle and initiate a traffic stop. As he drove to catch up to the vehicle, the officer noticed a Minnesota State Highway Patrol vehicle traveling northbound toward him with its emergency lights activated. The officer observed that appellant's vehicle did not pull over to the right as it passed the patrol vehicle. The officer then initiated the traffic stop. After noting the odor of alcohol coming from the vehicle, the officer conducted field sobriety tests and ultimately arrested appellant for driving while impaired (DWI).

The state charged appellant with two counts of DWI, and appellant filed a motion to dismiss the charges on the grounds that the arresting officer did not have a sufficient

basis to stop his vehicle. The district court found that appellant's use of his bright lights for a long period of time, as well as his failure to yield for the patrol vehicle, gave the arresting officer reasonable, articulable suspicion to justify the traffic stop. The parties agreed to a bench trial on stipulated evidence, and the district court found appellant guilty of two counts of DWI. This appeal follows.

D E C I S I O N

I. The district court did not err in concluding that the arresting officer had reasonable, articulable suspicion to stop appellant.

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A police officer may initiate a limited investigative stop without a warrant if the officer has reasonable, articulable suspicion of criminal activity. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008); *see also State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996) (noting that an investigative stop of a vehicle is lawful if the state can show that the officer had a "particularized and objective basis" for suspecting criminal activity) (quotation omitted).

A traffic 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). Although a mere hunch is not enough, any "violation of a traffic law, however insignificant" provides the police with an objective basis for a stop. *Id.* "We review a district court's determination regarding the legality of an investigatory traffic stop and questions of reasonable suspicion de novo." *Wilkes v.*

Comm'r of Pub. Safety, 777 N.W.2d 239, 242-43 (Minn. App. 2010). We review the district court's factual findings for clear error. *Id.* at 243.

Here, the district court found that appellant's failure to dim his bright lights and to stop for a patrol vehicle with its emergency lights activated provided sufficient grounds to justify the stop. Minnesota Statutes provide that "[w]hen the driver of a vehicle approaches a vehicle within 1,000 feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver." Minn. Stat. § 169.61(b) (2016). This court has held that "[a] driver must dim his lights when approaching a vehicle and failure to do so is a violation of Minn. Stat. § 169.61." *Holm v. Comm'r of Pub. Safety*, 416 N.W.2d 473, 475 (Minn. App. 1987). But the statute "does not prohibit drivers from momentarily flashing their high beams at oncoming traffic, so long as the flashing is brief and conducted in such a manner that it does not blind or impair other drivers." *Sarber v. Comm'r of Pub. Safety*, 819 N.W.2d 465, 471-72 (Minn. App. 2012). In *Sarber*, this court concluded that a driver did not violate Minn. Stat. § 169.61(b) where the driver twice flashed a sheriff's deputy, each flash lasted less than a second, both flashes came from several hundred feet away, and the deputy did not testify that his vision was impaired as a result of the flashes. *Id.* at 467.

Appellant argues that this case is similar to *Sarber*. However, in this case, appellant left his bright lights on for "a long steady period of time," and did not turn them off until the vehicles were only ten yards apart. The officer also testified that appellant's bright lights were "glaring in [his] eyes." In response to the question, "And you were obviously having vision problems with the lights coming into your car?" the officer answered,

"Correct. Yeah, just like when anybody else, you drive down the road, someone has their brights on, you have to look away, and your eyes have to adjust again after they pass."

Unlike the driver in *Sarber*, appellant's use of his bright lights was neither momentary nor done in such a manner that it did not impair another driver. Appellant's use of his bright lights under these circumstances constituted a violation of Minn. Stat. § 169.61(b), and the district court properly found that this provided the arresting officer with reasonable, articulable suspicion to stop his vehicle.[1]

Affirmed.

[1] Because appellant's violation of Minn. Stat. § 169.61(b) provided the arresting officer reasonable, articulable suspicion to stop appellant's vehicle, we need not decide whether appellant committed a separate traffic violation by not yielding to the patrol vehicle with its emergency lights activated.