STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1796

State of Minnesota,
Respondent,

vs.

Samuel Mathew Amaro,
Appellant.

Filed August 20, 2018
Affirmed
Hooten, Judge

Scott County District Court
File No. 70-CR-15-24914

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

Ronald Hocevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for respondent)

John G. Westrick, Westrick & McDowall-Nix, P.L.L.P., St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Schellhas, Judge; and Jesson, Judge.

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

HOOTEN, Judge

Appellant challenges the district court's denial of his suppression motion, arguing that, in light of the officer's squad car video, the district court erred by finding the officer's

proffered basis for the stop of appellant's vehicle credible and by concluding that the officer had reasonable, articulable suspicion for the stop. We affirm.

FACTS

Around 1:20 a.m. on December 31, 2015, appellant Samuel Amaro was pulled over while driving his vehicle on highway 169 in Scott County. Officer Paul Affeldt, who pulled Amaro over, noticed the smell of marijuana coming from the vehicle. The officer also noticed that Amaro's eyes were bloodshot and "kind of watery or glassy," and he observed that Amaro's "pupils didn't react like normal people's do in the dark to light." When the officer inquired about the presence of marijuana, Amaro stated that the only marijuana that he had in the vehicle was a burnt marijuana cigarette, which he picked up from the floor of his vehicle. Officer Affeldt then placed Amaro and his passenger in the back of his squad car and searched Amaro's vehicle. After discovering almost five pounds of marijuana in the vehicle, Officer Affeldt arrested Amaro.

Scott County charged Amaro with one count of fifth-degree sale of marijuana under Minn. Stat. § 152.025, subd. 1(1) (2016), one count of fifth-degree possession of marijuana under Minn. Stat. § 152.025, subd. 2(1) (2016), and one count of fourth-degree DWI – controlled substance under Minn. Stat. §§ 169A.20, subd. 1(2) and .27, subd. 2 (2016). Amaro moved to suppress the evidence found in the vehicle and his incriminating statements, arguing that the stop was not supported by reasonable suspicion. He also moved to dismiss the complaint.

At the omnibus hearing on the motions, Officer Affeldt testified that he pulled Amaro over for a seatbelt violation. The officer explained that, while following Amaro on

the highway, he noticed that the passenger-side seatbelt was taut whereas the driver-side seatbelt was hanging loosely. From this observation, the officer inferred that the driver was not wearing his seatbelt. He conceded that after the stop, when he walked from his squad car up to Amaro's vehicle, Amaro was wearing his seatbelt. The state introduced a video recording into evidence from a front-facing camera in Officer Affeldt's squad car. Officer Affeldt testified that the camera was working when he stopped Amaro. He also explained that activating the emergency lights of his squad car causes the camera to begin recording so that "the video will not show the entire length of travel" from the point at which the officer first observed Amaro's car to the point where he initiated the emergency lights.

The district court denied Amaro's suppression motion. In doing so, it found that Officer Affeldt followed Amaro's vehicle for approximately two miles and observed, prior to initiating the emergency lights, that "the driver of the vehicle appeared not to be wearing a seatbelt." While the district court acknowledged that the squad car video did not clearly show whether or not Amaro was wearing a seatbelt, it noted that "squad videos are taken from a fixed vantage point and only record for a limited amount of time." The district court found the officer's testimony regarding his observations prior to initiating the stop to be credible.

The district court then held a stipulated facts trial pursuant to Minn. R. Crim. P. 26.01, subd. 4 and found Amaro guilty on all three counts.

This appeal follows.

D E C I S I O N

Amaro appeals the district court's denial of his motion to suppress evidence obtained from the stop, arguing that video evidence of the stop demonstrates that Officer Affeldt did not have reasonable, articulable suspicion to stop his vehicle.

I.

In Minnesota, we have a clearly defined standard of review for orders on motions to suppress evidence turning on the question of reasonable suspicion. "Whether there is reasonable suspicion is a mixed question of fact and constitutional law." *State v. Lugo*, 887 N.W.2d 476, 487 (Minn. 2016). That means we are tasked with reviewing the district court's legal determinations de novo and its factual findings for clear error. *Id.* On appeal, we "defer to the district court's credibility determinations." *Kruse v. Comm'r of Pub. Safety*, 906 N.W.2d 554, 557 (Minn. App. 2018).

Amaro argues, however, that where a video contradicts or does not support an officer's testimony regarding the basis for the stop, we do not have to defer to the district court's credibility determination and may substitute our own fact-finding based upon our review of the video. Amaro does not cite any Minnesota case law support for this proposition, but relies on *State v. Binette*, 33 S.W.3d 215 (Tenn. 2000) and *Scott v. Harris*, 550 U.S. 372, 127 S. Ct. 1769 (2007).

Binette involved a stop for drunk driving that was recorded on video. 33 S.W.3d at 216. In overturning the trial court's denial of a suppression motion, the Supreme Court of Tennessee held that it should review the record de novo "when a trial court's findings of fact on a motion to suppress are based solely on evidence that does not involve issues of

credibility." *Id.* at 217. As an explanation for its ruling, the court observed that "appellate courts are just as capable to review the evidence and draw their own conclusions." *Id.*

In *Harris*, a § 1983 excessive-use-of-force case involving an incident that was also videotaped, the district court denied the defendant's motion for summary judgment, and the Eleventh Circuit affirmed. 550 U.S. at 375–76, 378, 127 S. Ct. at 1773–75. The Supreme Court reversed, explaining that "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." 550 U.S. at 380, 127 S. Ct. at 1776. The Supreme Court concluded that the Eleventh Circuit "should have viewed the facts in the light depicted by the videotape." 550 U.S. at 380–81, 127 S. Ct. at 1776.

Amaro argues that we should apply the same logic to his case. We disagree. To begin with, no Minnesota case has ever held that the standard of review for factual findings changes when there is video evidence in the record. In *Binette*, the Supreme Court of Tennessee expressly conditioned its holding on the fact that the trial court had not made any credibility determinations. 33 S.W.3d at 217. But the district court here *did* make a credibility determination—specifically finding Officer Affeldt's testimony credible.

And *Harris* was a civil—not criminal—case reviewing a motion for summary judgment where no judge or jury had yet made findings of fact and the moving party's evidence clearly refuted the nonmoving party's version of events. 550 U.S. at 378–80, 127 S. Ct. at 1774–76. Here the district court *did* make findings of fact, and it was not making determinations about what a reasonable juror could conclude based on the available

evidence. Moreover, we note generally that if video evidence were to directly contradict a district court's factual finding, we could determine that the district court clearly erred; de novo review is not necessary. *See State v. Chavarria-Cruz*, 784 N.W.2d 355, 363 (Minn. 2010) (applying clear error standard of review to underlying facts when reviewing whether appellant had invoked his right to counsel where there was both an audio recording of and testimony about the interrogation). Accordingly, we will not alter our standard of review just because there is video evidence in the record, and we proceed with our well-established clear error standard of review.

II.

Amaro argues that his Fourth Amendment rights were violated. Both the United States Constitution and the Minnesota Constitution guarantee "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. 1, § 10. While warrantless seizures are typically unconstitutional, an exception exists if a police officer has a reasonable, articulable suspicion of criminal activity. *See Terry v. Ohio*, 392 U.S. 1, 20–22, 88 S. Ct. 1868, 1879–80 (1968); *see also State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004) (applying the *Terry* principles and framework to "traffic stops even when a minor law has been violated"). In the context of traffic stops, "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. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004).

Amaro specifically contends that the video footage proves that Officer Affeldt could not see into his car and determine whether he was wearing a seatbelt, meaning the officer did not have the necessary reasonable, articulable suspicion to justify the stop. This requires us to review the district court's factual finding that "Officer Affeldt observed that the driver of the vehicle appeared not to be wearing a seatbelt." As explained above, we apply the clearly erroneous standard. *See Lugo*, 887 N.W.2d at 487. This kind of review requires us to "examine the record to see if there is reasonable evidence in the record to support the court's findings." *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (quotation omitted). And, in order to conclude that there was clear error, "we must be left with the definite and firm conviction that a mistake has been made." *Id.* (quotation omitted).

We agree with the district court's assessment that the "video does not clearly show [Amaro] was not wearing a seat belt," but we disagree with Amaro's claim that the video is determinative of the issue of whether he was wearing a seatbelt. We further conclude that there is nothing in the record that suggests that the video quality is representative of what Officer Affeldt could see from his position in the squad car as he was following Amaro's car. In other words, it is possible that Officer Affeldt saw things that the camera did not pick up. Additionally, the recording does not cover the entire period where Officer Affeldt was following Amaro. The district court found, and Amaro does not dispute, that Officer Affeldt followed Amaro for approximately two miles before pulling him over. But the video footage only shows Officer Affeldt following Amaro for about 28 seconds before they come to a complete stop. When asked if his vehicle was at its closest to Amaro's

when he activated his emergency lights, thus activating the camera, Officer Affeldt responded, "Unlikely. No." The officer testified that it is quite possible that, at one point, he was driving parallel to Amaro's car. In short, the video does not, on its own, show that Officer Affeldt could not see whether Amaro was wearing a seatbelt.

The district court found that Officer Affeldt's testimony that he stopped Amaro's car on the basis that he observed Amaro's seatbelt hanging loosely was credible. It is well established that witness credibility determinations are left up to the trier of fact. *See Peterson v. Johnson*, 755 N.W.2d 758, 763 (Minn. App. 2008). Accordingly, because the video does not clearly contradict Officer Affeldt's testimony, we defer to the district court on this determination and conclude that the district court's finding that Officer Affeldt saw Amaro's seatbelt hanging loosely was not clear error.

We review de novo whether the findings of fact support the legal conclusion that there was reasonable suspicion. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011). Accepting as true that Officer Affeldt saw Amaro's seatbelt hanging loosely, then the officer observed Amaro committing a traffic violation. *See* Minn. Stat. § 169.686 (2016) (requiring the use of a seatbelt). "[I]f 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." *Anderson*, 683 N.W.2d at 823. We conclude that based upon these findings by the district court, Officer Affeldt had reasonable, articulable suspicion to stop Amaro's vehicle.

Affirmed.