**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A18-0780**

Kurt William Sawyer, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed December 17, 2018**
**Affirmed**
**Florey, Judge**

Cass County District Court
File No. 11-CV-17-2232

Rich Kenly, Kenly Law Office, Backus, Minnesota (for appellant)

Lori Swanson, Attorney General, Daniel S. Schueppert, Assistant Attorney General, St. Paul, Minnesota (for respondent)

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

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

**FLOREY**, Judge

Appellant files this appeal from the district court's order sustaining the revocation of his driving privileges. He specifically challenges the district court's conclusion that he was validly stopped for speeding and the findings supporting that determination. Because

the state trooper that seized appellant had a reasonable, articulable suspicion that appellant was speeding, we affirm.

## FACTS

A state trooper arrested appellant Kurt William Sawyer for driving while impaired. Appellant later failed a breath test for alcohol, and his driver's license was revoked. He challenged the license revocation, asserting that there was no basis for "the initial stop or intrusion," and therefore he was impermissibly seized. An implied-consent hearing was held. The trooper testified, and a squad-car video and copy of the trooper's report were introduced into evidence.[1]

The trooper testified that she was stopped at the intersection of two highways, 87 and 371, and noticed a pickup leave an establishment that sells alcohol. The pickup turned west on 87. The trooper made a U-turn and followed the pickup. The speed limit on that road goes from 40 to 30 miles per hour heading into the City of Backus. The trooper testified that the pickup was initially driving within the speed limit, but it did not slow down when it hit the 30 mile-per-hour zone; rather, according to the trooper's radar the pickup increased its speed to 43 miles per hour. The trooper pursued the pickup. The pickup quickly turned south onto a side street, and the trooper followed. The trooper believed that the pickup was speeding up and attempting to evade. When the trooper hit gravel on the side street, she activated her lights. She followed the vehicle up a driveway and saw it pull into a garage. Appellant got out of the pickup, the trooper and appellant

[1] The trooper's report is consistent with the trooper's testimony and indicates that appellant was observed speeding, traveling over 40 miles per hour in a 30 mile-per-hour zone.

made eye contact, and the garage door closed. The trooper opened a service door to the garage, flipped a light switch, and yelled for appellant to come out. She then walked away from the garage and called for backup. Appellant walked out of the garage and ignored the trooper as if she was not there. The trooper ordered appellant to come to the squad car, and appellant then complied. The trooper testified that she seized appellant for speeding and evasiveness. After seizing appellant, the trooper noticed indicia of intoxication.

The district court filed an order sustaining the revocation of appellant's driving privileges. The court concluded that there was a valid basis for the stop because the trooper observed appellant going 43 in a 30 mile-per-hour zone and seized appellant for that reason. The court noted that there were some inconsistencies between the trooper's testimony and the squad-car video, but nothing significant. The court found that the video corroborated the trooper's testimony that appellant was speeding, and the court found that appellant "admitted he was speeding" in his conversation with the trooper. The court found that the trooper's entry into appellant's garage violated appellant's "reasonable expectation of privacy," but concluded that this violation was harmless because the trooper discovered no evidence during the incursion.[2] This appeal followed.

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[2] While appellant does not challenge the trooper's intrusion into the garage, we note that the indicia of intoxication were observed after appellant exited his garage and stood in his driveway. Evidence is not "fruit of a poisonous tree" if its discovery is unconnected to the unlawful police conduct. *Segura v. United States*, 468 U.S. 796, 804-05, 104 S. Ct. 3380, 3385 (1984). And in *Tracht v. Comm'r of Pub. Safety*, this court acknowledged that constitutional protections do not extend to areas around the home that are "impliedly open." 592 N.W.2d 863, 865 (Minn. App. 1999) (quotation omitted), *review denied* (Minn. July 28, 1999). Impliedly open areas include ordinary routes of access to the entrance of a residence, such as driveways. *State v. Crea*, 233 N.W.2d 736, 739 (Minn. 1975).

## D E C I S I O N

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. An officer may conduct a limited investigatory stop if the officer has reasonable, articulable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968); *State v. Diede*, 795 N.W.2d 836, 842-43 (Minn. 2011). The reasonable, articulable suspicion standard is met when the officer "observes unusual conduct that leads the officer to reasonably conclude in light of his or her experience that criminal activity may be afoot." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). The standard for reasonable suspicion is not high. *Diede*, 795 N.W.2d at 843.

A person may challenge a license revocation by arguing that he or she was not lawfully arrested for driving while impaired, a challenge which permits review of any investigatory stop leading to the arrest. Minn. Stat. § 169A.53, subd. 3(b)(2) (2018); *see Hoekstra v. Comm'r of Pub. Safety*, 839 N.W.2d 536, 537 (Minn. App. 2013). We review de novo a district court's ruling on whether an officer had reasonable, articulable suspicion for an investigatory stop. *Hoekstra*, 839 N.W.2d at 539. We review the district court's findings of fact for clear error. *Id.* "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 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).

Here, the district court found that the trooper observed appellant speeding and temporarily seized appellant for that reason. The record supports these findings. The trooper had a reasonable, articulable basis to temporarily seize appellant. "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 v. Comm'r of Pub. Safety*, 777 N.W.2d 239, 243 (Minn. App. 2010) (quotation omitted). We agree with appellant that the record does not support the district court's finding that appellant admitted to speeding, but appellant's admission is not crucial for our conclusion that the seizure was valid.

Appellant points to inconsistencies between the trooper's testimony and the squad video and asserts that these inconsistencies remove all credibility from the trooper's testimony. In effect, appellant suggests that there is no basis for the district court's finding that he was speeding because the trooper's testimony must be rejected. Although there are slight inconsistencies between the trooper's testimony and the squad video, we agree with the district court that these inconsistencies "are not significant."

For example, the trooper testified that she activated her lights when she hit gravel on the side street, but the video shows that she did not activate her lights until she reached appellant's garage. The trooper testified that she did not fully enter the garage, but the video shows that the trooper briefly stepped in. Appellant's counsel asked the trooper about the time it took to commence pursuit. The trooper responded "[f]ifteen seconds," but the video, though inconclusive, suggests it may have been longer.

Appellant's counsel also asked the trooper about appellant's distance when the trooper commenced pursuit. The trooper responded "two blocks at the most." Appellant argues that this is inconsistent with the district court's finding that the trooper "perceived the pickup was speeding because it was further ahead of her than it should have been had it been travelling at the speed limit." But, appellant is confusing two parts of the chase. The trooper's "two blocks" concerns the distance between her squad car and the pickup at the time she began following appellant, but the court's "further ahead" finding relates to the pickup's turn and acceleration on the side street. At any rate, although there are inconsistencies, they have no bearing on the basis for the stop, which is speeding. The record clearly shows that the trooper had an opportunity to observe and calculate appellant's speed in the 30 mile-per-hour zone.

Appellant argues that the video shows that he slowed down at the 30 mile-per-hour zone because brake lights can be seen. We disagree with appellant's assessment of the video. The district court's finding that appellant was speeding when he entered Backus is not clearly erroneous because it is reasonably supported by the record as a whole. *See Schulz*, 760 N.W.2d at 333.

Appellant argues that the district court cannot accept some of the trooper's testimony and reject other testimony, but this is simply not the case. A trier of fact is free to accept part and reject part of a witness's testimony, and we defer to the district court's determinations as to what is credible. *State v. Johnson*, 568 N.W.2d 426, 436 (Minn. 1997); *Constans*, 835 N.W.2d at 523. The record supports the district court's findings that

the trooper observed appellant speeding and temporarily seized appellant for that reason. The trooper had a reasonable, articulable suspicion to warrant the seizure.

**Affirmed.**