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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0201**

Yia Her, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed September 3, 2019
Affirmed
Reilly, Judge**

Ramsey County District Court
File No. 62-CV-18-4365

Thomas P. Leavitt, Thomas P. Leavitt Criminal Defense, P.L.L.C., Minneapolis, Minnesota (for appellant)

Keith Ellison, Attorney General, Leah M. P. Hedman, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant Yia Her appeals the district court's order sustaining the revocation of his driving privileges under Minnesota's implied-consent law, arguing that the district court erred by (1) crediting the police officer's testimony that appellant crossed the center line

and weaved in his lane; and (2) determining that there was a sufficient basis to stop his vehicle based upon his five to ten second delay at a green light. We affirm.

FACTS

On a Friday night in June 2018, Maplewood police officers Emily Burt-McGregor and Pheng Her were driving a fully marked squad car in Maplewood.¹ The officers stopped at a red light facing east on Parkway Drive at Highway 61, immediately behind a white truck driven by appellant. After the light turned green, appellant's truck sat at the light for "five to ten seconds" before it drove forward. The officers followed appellant's truck. Officer Burt-McGregor saw appellant's front tire cross over the center line and Officer Her saw the truck slowly drifting within its lane toward the fog line. The officers initiated a traffic stop during which the officers observed indicia of appellant's intoxication. The officers arrested appellant for driving under the influence, in violation of Minn. Stat. § 169A.20, subd. 1(1) (2016), and his driver's license was revoked.

Appellant filed a petition for judicial review of his driver's license revocation pursuant to Minn. Stat. § 169A.53, subd. 2 (2018). At the implied-consent hearing, appellant challenged the validity of the stop. Officer Burt-McGregor, Officer Her, and appellant testified. Following the hearing, the district court issued its order finding that the stop of appellant's vehicle was lawful and sustaining the revocation of appellant's driver's license.

This appeal follows.

¹ The squad car was not equipped with dashboard camera video to record appellant's driving conduct before the stop.

DECISION

I.

Both the U.S. and Minnesota Constitutions prohibit unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. “Generally, warrantless searches are per se unreasonable.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). A law-enforcement officer may, however, initiate a warrantless limited investigatory stop if the officer has a reasonable, articulable suspicion of criminal activity. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999) (citing *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968)); *see also State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). Generally, an observation of a violation of a traffic law, no matter how insignificant, 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).

We review de novo the district court’s legal determination that an officer had reasonable suspicion of illegal activity and review the district court’s factual findings for clear error. *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012). And we defer to the district court’s credibility determinations. *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012); *see also Wilkes*, 777 N.W.2d at 246 (“[C]redibility determinations are the province of the district court.”).

II.

The district court found that both officers testified credibly that appellant’s driving conduct violated Minn. Stat. § 169.18, subd. 7 (2016), which prescribes that “a vehicle shall be driven as nearly as practicable entirely within a single lane.” Appellant argues that

Officer Burt-McGregor’s testimony that she observed appellant cross the center line was not credible, and, consequently, that the stop of his vehicle was not supported by reasonable, articulable suspicion. To support his argument, appellant urges this court to find that the district court’s credibility determination is clearly erroneous because neither the citation filled out at the scene nor the certificate filled out at the station during the Breath Test Advisory mentions the alleged driving conduct. Moreover, in the conversation between Officer Burt-McGregor and another officer—captured on body camera footage—Officer Burt-McGregor does not mention that appellant weaved or crossed the center line.² Appellant’s argument is not persuasive.

The factfinder must determine the credibility of the witnesses and the weight to be given to their testimony. *DeMars v. State*, 352 N.W.2d 13, 16 (Minn. 1984); *see also* Minn. R. Civ. P. 52.01 (“[D]ue regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.”). This court will not disturb a district court’s credibility determinations on appeal “absent a showing of clear error.” *State v. Eakins*, 720 N.W.2d 597, 604 (Minn. App. 2006). Here, the district court wrote in its order:

Both officers testified credibly . . . that [appellant] was in violation of Minnesota Statutes § 169.18. Officer Her testified that he observed [appellant]’s truck weaving within its lane and touching the fog line. Officer Burt-McGregor testified that [appellant]’s truck crossed the center line. Further, in the primary narrative of the police report after the incident, Officer Burt-McGregor noted that she observed [appellant] cross the center line. As noted, this Court also received and reviewed

² After appellant’s arrest, Officer Burt-McGregor’s body camera captured a conversation with another officer. When the officer asked Officer Burt-McGregor whether appellant was “swerving or anything,” Officer Burt-McGregor replied, “We were coming across 61 here, and he just sat at the green light for quite a while.”

Officer Burt-McGregor's body cam footage. When another officer asked Officer Burt-McGregor if [appellant] had been swerving prior to arrest, it is notable that Officer Burt-McGregor did not say "yes." Instead Officer Burt-McGregor did not respond to the question in the affirmative *or* negative, but rather referenced the fact that [appellant] did not proceed through the intersection appropriately. This did not directly refute Officer Burt-McGregor's sworn testimony, but may merely suggest that communications were incomplete and short in the time following [appellant]'s arrest.

Officer Burt-McGregor's testimony is supported by the record and we see no clear error in the district court's determination that Officer Burt-McGregor testified credibly. Because the district court is in the best position to evaluate the officers' credibility, we affirm the district court's determination.

Appellant also argues that the district court clearly erred when it found that appellant's truck touched the fog line. We agree. Officer Her specifically testified that the truck "didn't cross over the white line on the passenger side, but it was drifting." Based upon our review of the record, there is nothing to support the finding that appellant touched the fog line—only that he drifted toward the fog line. The district court clearly erred in its finding that appellant touched the fog line. However, this error is harmless because the court's determination that appellant crossed the center line is supported by the record. *See Hanka v. Pogatchnik*, 276 N.W.2d 633, 636 (Minn. 1979) (holding a court's inclusion of other unsupported findings is harmless error where the findings necessary for a legal conclusion are adequately supported); *see also Rosendahl v. Nelson*, 408 N.W.2d 609, 612 (Minn. App. 1987) ("[E]rror in any one of the findings not affecting the result is harmless error and immaterial to the decision on appeal."), *review denied* (Minn. Sept. 18, 1987).

III.

The district court found that appellant violated Minn. Stat. § 169.15 (2016) by not proceeding at a green light for five to ten seconds. Under Minnesota law, “[n]o person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic.” *Id.*, subd. 1. Because we determine that the district court did not err in its credibility determination concerning the center line, we need not reach the merits of appellant’s argument concerning whether appellant’s five-to-ten-second delay is a violation of Minn. Stat. § 169.15. *See State v. Richardson*, 622 N.W.2d 823, 826 (Minn. 2001) (“Even observing a motor vehicle weaving within its own lane in an erratic manner can justify an officer stopping a driver.”).

Without deciding whether a five-to-ten-second delay at a green light is unlawful, we note that appellant’s conduct contributed to the totality of the circumstances supporting the officers’ reasonable, articulable suspicion of criminal activity in this case. *See Terry*, 392 U.S. at 20-22, 88 S. Ct. at 1879-80 (providing that because probable cause is not required for an investigatory stop, an officer need not detect an actual violation of law). To determine whether the suspicion was reasonable, this court applies “an objective, totality-of-the-circumstances test to the articulated and particularized facts available to the officer at the moment of the seizure.” *State v. Eichers*, 840 N.W.2d 210, 221 (Minn. App. 2013) (citing *State v. Smith*, 814 N.W.2d 346, 351 (Minn. 2012)), *aff’d on other grounds*, 853 N.W.2d 114 (Minn. 2014). “We do not examine each factor individually to determine its appropriate weight; instead, we look at the totality of the circumstances of the case.” *Id.*

As the district court noted, appellant's delay in proceeding through the intersection was "unusual," given that there was no other traffic present. Appellant's driving conduct occurred on a Friday evening. *See Paulson v. Comm'r of Pub. Safety*, 384 N.W.2d 244, 246 (Minn. App. 1986) (considering time of day in analysis). Both officers credibly testified that appellant's driving conduct suggested that appellant was either impaired or distracted. In addition, the officers observed appellant's truck cross the center line and drift toward the fog line.

Because the record supports the district court's determination that the officers had the requisite reasonable, articulable suspicion of criminal activity, we affirm.

Affirmed.