STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0341

State of Minnesota,
Appellant,

vs.

William Joseph Ihrke,
Respondent.

Filed August 19, 2019
Affirmed
Bratvold, Judge

Hennepin County District Court
File No. 27-CR-18-9444

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Francis J. Rondoni, Nicole J. Appelbaum, Chestnut Cambronne PA, Minneapolis, Minnesota (for appellant City of Golden Valley)

John T. Daly, Daly & Maruish, Minneapolis, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Ross, Judge; and Bratvold, Judge.

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

BRATVOLD, Judge

In this pretrial appeal from the district court's grant of respondent's motion to suppress evidence, the state argues that the district court erred in concluding that police did not have a reasonable, articulable suspicion of criminal activity to stop respondent's

vehicle. We conclude that the officer's suspicion was objectively unreasonable and affirm the district court's order.

FACTS

On February 4, 2018, slightly before 3:30 a.m., respondent William Joseph Ihrke was driving eastward on Plymouth Avenue in Golden Valley. Ihrke was "traveling slowly because of the snow" and icy conditions on the road. As Ihrke slowly drove to the T-intersection where Plymouth Avenue meets Winnetka Avenue, "the light was red and he started to slow." Ihrke did not completely stop. As he arrived at the intersection, Ihrke "accelerated and turned" right onto Winnetka Avenue.

At the same time that Ihrke was driving eastbound on Plymouth Avenue, Officer Siljander was driving northbound in a marked squad car on Winnetka Avenue. As Siljander approached the intersection of Plymouth Avenue and Winnetka Avenue, the traffic light was green. As Siljander got closer to the intersection, the traffic light for Winnetka Avenue turned yellow and Siljander saw Ihrke slowly drive towards and reach the intersection. Siljander then saw his traffic light turn red. One second later, Ihrke turned right onto Winnetka Avenue without stopping.

After seeing Ihrke turn right onto Winnetka Avenue, Siljander reached the intersection, made a U-turn, followed Ihrke, and initiated a traffic stop. During the traffic stop, Siljander noticed signs of impairment and a preliminary breath test revealed an alcohol concentration of 0.349. Ihrke was arrested for driving while intoxicated (DWI) and consented to a breath test at the police station which revealed an alcohol concentration of 0.13.

Ihrke was subsequently charged with two counts of second-degree DWI based on two or more aggravating factors: driving a motor vehicle under the influence of alcohol, in violation of Minn. Stat. § 169A.25, subd. 1(a) (2016) (count one); and driving with an alcohol concentration of 0.08, in violation of Minn. Stat. § 169A.25, subd.1(a) (count two). Ihrke moved to suppress all evidence resulting from the traffic stop.

At the evidentiary hearing, the state offered Siljander's squad car video and testimony, while Ihrke offered his own testimony. Siljander initially testified that the traffic light for Winnetka Avenue was green when Ihrke turned right from Plymouth Avenue onto Winnetka Avenue without stopping. Upon further examination, Siljander testified that the light on Winnetka Avenue turned red at some point, but that he could not "specifically recall" when it turned red.

In a written order entered on February 22, 2019, the district court granted Ihrke's motion to suppress. The district court found, based on the testimony and the squad car video, that:

> At 3:28:55 the light [on Winnetka Avenue] turns yellow. At 3:28:57 the light for [Siljander] is still yellow and Mr. Ihrke's car can be seen approaching from the west. At 3:28:58 the light in the officer's direction turns red and Mr. Ihrke has pulled to the corner but is not turning yet into the roadway. At 3:28:59 Mr. Ihrke has entered Winnetka [Avenue] turning right.

The district court characterized Siljander's recollection about the color of the traffic lights as "incorrect" and specifically found that "the light was green as [Ihrke] turned." The district court also noted that the state offered no evidence to establish the color of the traffic light on Plymouth Avenue as Ihrke reached the intersection with Winnetka. The district

court concluded that "[a]lthough [Siljander] was not acting on [a] whim, the [district] [c]ourt finds that given the clear evidence that the light had changed, [Siljander's] suspicion that [Ihrke] turned while the light was green in [Siljander's] direction was not reasonable and there was not probable cause to stop [Ihrke]." The state appeals.

D E C I S I O N

As a preliminary matter, in an appeal by the state of a pretrial order, this court will only reverse if the state can "clearly and unequivocally show both that the trial court's order will have a critical impact on the state's ability to prosecute the defendant successfully and that the order constituted error." *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995); *see also* Minn. R. Crim. P. 28.04, subds. 1(1), 2(2)(b).

"[T]he standard for critical impact is that the lack of the suppressed evidence significantly reduces the likelihood of a successful prosecution." *State v. Aubid*, 591 N.W.2d 472, 477 (Minn. 1999); *see also State v. Obeta*, 796 N.W.2d 282, 295 (Minn. 2011) (discussing the critical-impact standard). The district court's pretrial order satisfies the critical-impact standard because the suppression of all evidence resulting from the traffic stop, as the state contends, made prosecution of the DWI offenses impossible. *See Aubid*, 591 N.W.2d at 477.

I. The district court did not err when it concluded that police lacked reasonable, articulable suspicion to justify a traffic stop of Ihrke's vehicle.

The state argues that the district court erred in granting Ihrke's motion to suppress because police had reasonable, articulable suspicion to stop his vehicle. The state contends that, even though Siljander was mistaken about whether Ihrke turned right on a red light

without stopping, this reasonable mistake of fact does not invalidate the traffic stop. Ihrke argues that the district court correctly concluded that police did not have reasonable, articulable suspicion to justify a traffic stop.

Under the United States and Minnesota Constitutions, unreasonable searches and seizures are prohibited and a warrant based on probable cause is required, with some exceptions. *See* U.S. Const. amend. IV; Minn. Const. art. I, § 10. Law enforcement may conduct a limited, investigative stop without a warrant if the officer has 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, 21-22, 88 S. Ct. 1868, 1880 (1968)). "The reasonable-suspicion standard is not high," but requires "a minimal level of *objective* justification" of criminal activity. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011) (emphasis added) (quotations omitted).

Courts "consider the totality of the circumstances in determining whether the police had a reasonable basis justifying the stop." *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). On review of a district court's decision on a motion to suppress evidence, we do not defer to a district court's pretrial legal conclusions and review these conclusions de novo. *State v. Lugo*, 887 N.W.2d 476, 484-85 (Minn. 2016). In contrast, we review the factual findings of the district court under a clearly erroneous standard. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). The state bears the burden of proof at a pretrial suppression hearing. *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983).

A violation of a traffic law provides an objective basis for a traffic stop. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). In this case, the state relies on Minnesota

state law providing that "[v]ehicular traffic facing a circular red signal alone must stop at a clearly marked stop line" but may turn right at a red signal after stopping first. Minn. Stat. § 169.06, subd. 5(a)(3)(i) (2018). Failure to stop for a red light is a lawful basis for police to stop a vehicle. *Krier v. Comm'r of Pub. Safety*, 391 N.W.2d 96, 98 (Minn. App. 1986).

Here, Siljander testified that Ihrke failed to stop for a red light before turning right. The district court found that Siljander's suspicion was based on an unreasonable mistake of fact regarding the color of the traffic light. A mistake of fact by any officer "must be judged" not by an officer's subjective assessment, but "by the objective standard of . . . the facts available at the moment." *Illinois v. Rodriguez*, 497 U.S. 177, 177-78, 110 S. Ct. 2793, 2796 (1990).

The district court found that Siljander did not recall when his light turned red because he "admitted that he had taken his eyes off the light." Siljander testified that Ihrke's light was red when he turned because Siljander's light was green at the time. Siljander later testified that he did not "specifically recall" when his light turned red, because he "maintained a visual" on Ihrke's car. The district court found that Siljander's recollection was "incorrect" based on the squad car video. The district court found that "[t]he video shows that [Ihrke] turned one second after the light turned red in [Siljander's] direction." The district court concluded that "given the clear evidence that the light had changed, [Siljander's] suspicion that [Ihrke] turned while the light was green in [Siljander's] direction was not reasonable and there was not probable cause to stop [Ihrke]."

Based on this record, the district court did not err. We note, as did the district court, that the state offered no evidence of the color of the light in Ihrke's direction during that

one-second period after the light in Siljander's direction turned red. Because Ihrke's light was green when he turned right onto Winnetka, Siljander's mistaken recollection regarding the color of the traffic light was unreasonable. *See State v. Frazier*, 318 N.W.2d 42, 43-44 (Minn. 1982) (affirming a suppression order on other grounds where police officers unreasonably mistook respondent for another woman and illegally arrested her). Thus, the district court correctly concluded that Siljander did not have reasonable, articulable suspicion of a traffic violation.

II. A decision on attorney fees is premature.

"When a prosecuting attorney appeals to the court of appeals, in any criminal case, from any pretrial order of the district court, reasonable attorney fees and costs incurred shall be allowed to the defendant on the appeal which shall be paid by the governmental unit responsible for the prosecution." Minn. Stat. § 611.27, subd. 16(a) (2018). The Minnesota Rules of Civil Appellate Procedure provide the procedure by which a party may seek attorney fees. Under rule 139.06, subdivision 1, "[a] party seeking attorneys' fees on appeal shall submit such a request by motion under Rule 127," and this court may "grant on its own motion an award of reasonable attorneys' fees to any party." Minn. R. Civ. App. P. 139.06, subd. 1. A motion for attorney fees "must be submitted no later than within the time for taxation of costs, or other such period of time as the court directs." *Id.* The motion must also "include sufficient documentation to enable the appellate court to determine the appropriate amount of fees." *Id*.

In his brief to this court, Ihrke contends that he is entitled to reasonable attorney fees. Ihrke did not file a motion seeking attorney fees and the state did not file a reply brief.

In the absence of a motion, any decision by this court on whether to grant this motion would be premature. *See generally Kremer v. Kremer*, 912 N.W.2d 617, 629 n.9 (Minn. 2018) (denying without prejudice wife's motion for attorney fees and permitting her to renew the motion properly within the timeframe of rule 139.06).

Affirmed.