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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1457**

State of Minnesota,
Respondent,

vs.

Michael Jeffrey Hahn,
Appellant.

**Filed August 19, 2013
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CR-10-39576

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

Anna Krause Crabb, Assistant City Attorney, Minnetonka, Minnesota (for respondent)

Craig E. Cascarano, Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Chief Judge; Ross, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the validity of the traffic stop that led to his conviction of third-degree driving while impaired (DWI). We affirm.

FACTS

At approximately 12:30 a.m. on August 1, 2010, Officer Jack Buttke of the Minnetonka Police Department was traveling southbound on County Road 101 over the causeway bridge at Gray's Bay in Minnetonka. According to his report, Officer Buttke "[o]bserved a vehicle making the curve to the north on CR 101, approaching [his] location (at the top of the bridge over the causeway) with its high beams on." Then, the "[v]ehicle continued with its high beams on from around the bend on CR 101, past Gray[']s Bay Blvd. and toward the bridge." Officer Buttke "[n]oticed the vehicle[']s high beams turn off just as the suspect vehicle passed [him] where the bridge meets the main road on the south side of the bridge." Officer Buttke turned around and initiated a traffic stop. He identified the driver as appellant Michael Hahn.

Respondent State of Minnesota charged Hahn with two counts of third-degree DWI. Hahn moved to suppress all evidence obtained as a result of the stop, arguing that Officer Buttke had no reasonable basis to stop his vehicle.

At the suppression hearing, Officer Buttke testified consistent with his written report that he first observed Hahn's vehicle when he was halfway across the causeway bridge and that the two vehicles passed each other at the south end of the bridge. He also testified consistent with his report that the vehicle's headlights "were blinding" and forced him "to look away from the vehicle." But Officer Buttke admitted on cross-examination that the statement in his report that he observed Hahn's vehicle approach and pass Gray's Bay Boulevard with its high beams on was incorrect. He acknowledged it would have been impossible to observe Hahn's vehicle in that location from his

vantage point on the bridge because his view would have been obstructed by trees. Officer Buttke testified that the location noted in his report was an estimate, and he clarified that he first saw Hahn's vehicle after it passed Gray's Bay Boulevard.

Hahn called Donn Peterson, a forensic engineer, to testify on his behalf. Peterson testified that Officer Buttke would not have been able to observe whether Hahn's vehicle had its high beams on at the location identified in the police report. Peterson also testified that based on his headlight-dispersal calculations and the estimated distance and speed of the vehicles, it would have been impossible for the two vehicles to pass at the south end of the bridge or for Hahn's high beams to shine into Officer Buttke's vehicle. Peterson admitted, however, that his opinions may change if the actual locations of the two vehicles were different than those recorded in the police report.

Hahn acknowledged driving with his high beams on but testified that he immediately switched them off when he noticed a vehicle approaching him. He denied that his headlights shone into Officer Buttke's vehicle, stating that the vehicles passed each other further south around the curve when Hahn's headlights were directed at a parking lot to the east of the road.

The district court denied Hahn's suppression motion, expressly crediting Officer Buttke's testimony that Hahn's high beams shone into his squad car at a point after Hahn's vehicle passed Gray's Bay Boulevard. Hahn submitted the case for a court trial on stipulated facts pursuant to Minn. R. Crim. P. 26.01, subd. 3, and the district court found him guilty as charged. This appeal follows.

DECISION

When reviewing a pretrial suppression order, we review the district court's determination that an investigatory stop is supported by reasonable suspicion de novo and underlying findings of fact for clear error. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). "Findings of fact are clearly erroneous if, on the entire evidence, we are left with the definite and firm conviction that a mistake occurred." *State v. Diede*, 795 N.W.2d 836, 846-47 (Minn. 2011). The credibility of witnesses and the weight to be given their testimony are questions for the finder of fact, to whose determinations we show great deference. *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff'd*, 508 U.S. 366, 113 S. Ct. 2130 (1993).

The United States and Minnesota Constitutions protect a person's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A police officer may, however, make a limited investigative stop of a motor vehicle if the officer has reasonable, articulable suspicion that the person stopped is engaged in criminal activity. *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003) (applying *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880 (1968)). Violation of a traffic law provides an objective basis for an investigatory stop. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). Whether an officer has reasonable suspicion to conduct an investigatory stop depends on the totality of the circumstances, and a stop is not justified if it is "the product of mere whim, caprice, or idle curiosity." *In re Welfare of M.D.R.*, 693 N.W.2d 444, 448 (Minn. App. 2005) (quotation omitted), *review denied* (Minn. June 28, 2005).

Minn. Stat. § 169.61(b) (2010) prohibits a driver who is within 1,000 feet of another vehicle from using high beams “in a manner that blinds or impairs other drivers.” *See Sarber v. Comm’r of Pub. Safety*, 819 N.W.2d 465, 468-69 (Minn. App. 2012). Hahn does not dispute that a violation of this statute provides reasonable, articulable suspicion to conduct a traffic stop. Rather, he argues that the district court’s finding that he shone his high beams into Officer Buttke’s car is clearly erroneous.

Hahn admits that he had his high beams on when he first saw Officer Buttke’s vehicle; the only disputed fact is when he turned them off. Hahn relies on Peterson’s testimony that it was impossible for Hahn’s high beams to shine into Officer Buttke’s squad car based on the reported locations of the two vehicles. But Peterson admitted that his opinions were based solely on the information contained in Officer Buttke’s report and may change if the locations of the two vehicles were different than those identified in the report. And this information did change. Officer Buttke explained that the reference in his report was an estimate of where Hahn’s vehicle was located when he first observed it and that he did not actually see the vehicle until it had passed through the intersection with Gray’s Bay Boulevard.

But Hahn contends that the discrepancy between Officer Buttke’s report and trial account of the location of Hahn’s vehicle make his testimony on cross-examination highly suspect. Hahn also points to his own testimony that he lowered his high beams as soon as he noticed a vehicle approaching him. But the district court expressly credited Officer Buttke’s testimony that Hahn’s “high beams were not lowered until ‘just before’ the vehicles passed” and noted Hahn’s testimony that he had consumed alcohol earlier

that evening, implicitly finding a corresponding lack of credibility. We defer to the district court's credibility determinations. *Dickerson*, 481 N.W.2d at 843.

Based on our careful review of the record, we conclude the district court did not clearly err in finding that Hahn's high beams shone into Officer Buttke's squad car in violation of section 169.61(b). Accordingly, Officer Buttke had a valid basis to stop Hahn's vehicle, and the district court did not err in denying the suppression motion.

Affirmed.