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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1984

Charles Mark Utke, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed July 22, 2013
Reversed and remanded
Larkin, Judge

St. Louis County District Court
File No. 69VI-CV-12-295

Gordon C. Pineo, Deal & Pineo, P.A., Virginia, Minnesota (for appellant)

Lori Swanson, Attorney General, Joseph M. Simmer, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Hooten, Judge.

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

LARKIN, Judge

In this implied-consent case, appellant challenges the district court's order sustaining respondent's revocation of appellant's license to drive. Appellant argues that the revocation stems from an unlawful traffic stop and that his limited right to pre-test

counsel was not vindicated. We conclude that the traffic stop was unlawful and therefore reverse and remand without addressing appellant's right-to-counsel argument.

FACTS

Appellant Charles Mark Utke petitioned the district court for judicial review of respondent Minnesota Commissioner of Public Safety's revocation of his driver's license. Utke asserted that the underlying traffic stop was unlawful and that the arresting officer did not vindicate his limited right to pre-test counsel.

The district court held an evidentiary hearing on the petition. Breitung Police Officer Jesse Anderson testified that after midnight on March 11, 2012, he was driving northbound on County Road 104 when he observed a vehicle driven by Utke approaching in the opposite lane, from approximately 1,000 feet away. The high beams on Utke's vehicle were illuminated. Utke dimmed his headlights as the cars approached each other. Before the two cars passed one another and while they were in close proximity, Utke briefly reactivated his high beams. The light struck Officer Anderson directly in the eyes for "[j]ust a couple of seconds." Utke testified that he activated his high beams for just one second and only did so as a courtesy flash because he believed that the squad car's high beams were illuminated.

After Utke flashed his high beams, Officer Anderson initiated a traffic stop. Officer Anderson testified that Utke's failure to dim his headlights, as required under Minn. Stat. § 169.61(b) (2012), was the sole basis for the stop. Officer Anderson observed that Utke had bloodshot and watery eyes and that an odor of alcohol emanated

from inside Utke's vehicle. After Utke refused to submit to a preliminary breath test, Officer Anderson arrested him for driving while impaired.

The district court denied Utke's motion for rescission, concluding that the traffic stop was lawful.[1] This appeal follows.

D E C I S I O N

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A police officer may, however, initiate a limited investigative stop without a warrant if the officer has reasonable, articulable suspicion of criminal activity. *State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996). Whether police have 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).

A traffic stop "must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) (quotation omitted). Any "violation of a traffic law, however insignificant" provides the police with an objective basis for a stop. *Id.* An actual violation of the traffic laws need not be shown for such a stop to be valid. *See State v. Engholm*, 290 N.W.2d 780, 784 (Minn. 1980) (upholding a stop as lawful even when no

[1] The district court also concluded that Officer Anderson vindicated Utke's pre-test right to counsel.

traffic violation was observed). "We review a district court's determination regarding the legality of an investigatory traffic stop and questions of reasonable suspicion de novo." *Wilkes v. Comm'r of Pub. Safety*, 777 N.W.2d 239, 242-43 (Minn. App. 2010). We review the district court's factual findings for clear error. *Id.*

Officer Anderson stopped Utke solely on his suspicion that Utke had violated Minnesota Statutes section 169.61(b). The statute requires a driver within 1,000 feet of another vehicle to use his vehicle's headlights such "that the glaring rays are not projected into the eyes of the oncoming driver." Minn. Stat. § 169.61(b).

This court recently held that:

> A driver's conduct in twice flashing the high-beam headlights of his vehicle at oncoming traffic is not an objective basis for an investigatory traffic stop when the record contains no evidence that the headlights projected "glaring rays . . . into the eyes of the oncoming driver" in a manner that blinded, impaired, or distracted another driver.

Sarber v. Comm'r of Pub. Safety, 819 N.W.2d 465, 466 (Minn. App. 2012) (quoting Minn. Stat. § 169.61(b) (2010)).

In so holding, this court interpreted section 169.61(b) as prohibiting the "use of headlights in a manner that blinds or impairs other drivers," utilizing the ordinary meaning of glaring: shining "intensely and blindingly." *Id.* at 468-69. We concluded that because there was no evidence in the record that the brief flashing of Sarber's high beams at an oncoming squad car "blinded, distracted or impaired" any driver, the behavior did not violate section 169.61(b). *Id.* at 472.

Respondent argues that *Sarber* is distinguishable because Officer Anderson testified that Utke's high beams struck him directly in the eyes. The respondent relies on the district court's finding that "Officer Anderson testified that he was exposed to the full glare of the high beams for a 'couple of seconds' before the vehicles passed" and its reasoning that "[t]he high beams necessarily projected the glaring rays directly into the eyes of the officer." However, as in *Sarber*, the district court's reasoning "effectively removed the 'glaring' requirement from the statute." *Id.* at 471. The district court did not find that Utke's high beams blinded, distracted, or impaired Officer Anderson. Moreover, like the *Sarber* deputy, Officer Anderson did not testify that "the high beams blinded, distracted, or otherwise impaired him or other drivers." *Id.* at 472.

Because there is no evidence that Utke's high beams blinded or impaired Officer Anderson or another driver, Minn. Stat. § 169.61(b) was not violated. *See id.* 471-72. And because the sole basis for the traffic stop was Officer Anderson's mistaken belief that Utke had violated Minn. Stat. § 169.61(b), the stop was unlawful. *See id.* at 472 (citing *cf. George*, 557 N.W.2d at 578-79 (holding that an erroneous interpretation of the law does not provide an officer with an objective basis for a traffic stop)). We therefore reverse the district court's order sustaining the revocation of Utke's license to drive and remand for entry of an order consistent with this opinion, without addressing Utke's right-to-counsel argument. *See Ascher v. Comm'r of Pub. Safety*, 527 N.W.2d 122, 125 (Minn. App. 1995) (observing that "in implied consent proceedings the exclusionary rule

applies to evidence obtained from an unconstitutional [seizure]"), *review denied* (Minn. Mar. 21, 1995).

Reversed and remanded.