STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2121

State of Minnesota,
Respondent,

vs.

George Wayne Hartinger,
Appellant.

Filed January 15, 2008
Affirmed
Kalitowski, Judge

Hennepin County District Court
File No. 05-06-7068

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

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David L. Valentini, 247 Third Avenue South, Minneapolis, MN 55415; and

Jeffrey S. Sheridan, 320 Eagandale Office Center, 1380 Corporate Center Curve, Eagan, MN 55121 (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Toussaint, Chief Judge; and Huspeni, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

KALITOWSKI, Judge

Appellant George Wayne Hartinger challenges the district court's denial of his motion to suppress evidence obtained as the result of a *Terry* stop, arguing that the officer lacked the requisite reasonable and articulable suspicion. We affirm.

D E C I S I O N

I.

Appellant argues that the district court erred in denying his motion to suppress evidence because the state did not prove that the officer who stopped him had a reasonable and articulable suspicion that appellant was the same motorcyclist that another officer previously observed violating traffic laws. We disagree.

The United States and Minnesota Constitutions protect against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. An investigative stop of a vehicle must be justified by a reasonable and articulable suspicion that the driver is engaged in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 19-21, 88 S. Ct. 1868, 1879-80 (1968). Suspicion is reasonable if the stop was "not the product of mere whim, caprice, or idle curiosity." *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996).

This court reviews "the events surrounding the stop and consider[s] the totality of the circumstances" to determine whether an investigative stop was based on a reasonable, articulable suspicion. *State v. Britton*, 604 N.W. 2d 84, 87 (Minn. 2000). Where there is a mixed question of law and fact, we review the factual findings for clear error, but independently review the district court's legal determinations. *See State v. Wiernasz*, 584

N.W.2d 1, 3 n.1 (Minn. 1998). "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). Moreover, this court "may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing – or not suppressing – the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999) (citation omitted). But we will defer to the district court's credibility determinations. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (citing *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)).

Generally, "if an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle." *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). And the officer making the stop does not have to personally observe the violation. *Adams v. Williams*, 407 U.S. 143, 147, 92 S. Ct. 1921, 1924 (1972). Rather, information possessed by several officers may be aggregated to determine whether the stop was justified. *Rancour v. Comm'r of Pub. Safety*, 355 N.W.2d 462, 464 (Minn. App. 1984).

Although the officer "must have a particularized and objective basis for suspecting the particular person stopped of criminal activity," law enforcement officials are permitted to make deductions that "might well elude an untrained person." *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S. Ct. 690, 695 (1981). Even without specific facts linking a driver to a vehicle, a *Terry* stop may be justified near a reported crime based on

the officer's evaluation of the circumstances. *Appelgate v. Comm'r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987). Relevant factors include:

> (1) [T]he particularity of the description of the offender *or* the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in the area; [and] (4) the known or probable direction of the offender's flight . . . .

Id. at 108 (emphasis added).

Here, we conclude that the district court properly determined that the stop was based on more than a whim. The record indicates that the first officer observed a black motorcycle carrying an additional passenger violating several traffic laws by speeding and crossing fog lines. Minn. Stat. §§ 169.14, subd. 2 (2006), .18, subd. 7 (2006). Although the officer who personally observed these violations was not the officer who stopped appellant, the second officer who responded to the first officer's dispatch request properly relied on these observations under the collective-knowledge doctrine. The second officer came upon a black motorcycle with two passengers soon after the first officer's dispatch. The motorcycle was traveling in the direction the first officer had indicated. Although appellant testified that there were numerous motorcycles with passengers on the same road that morning, the officers testified they each saw only one motorcycle. And the district court found the officers' testimony to be more credible. Moreover, the second officer observed the motorcycle continuously weaving along the roadway.

Appellant claims the nature of the road required weaving. But even if the second officer's observations alone were insufficient to justify appellant's stop, they supported the officer's conclusion that this was the same motorcyclist the first officer had observed driving erratically.

Appellant also argues that the timing of the officers' encounters with the motorcycle and the expanse of roadways involved made the second officer's belief that she was stopping the motorcycle observed by the first officer unreasonable. We disagree. The district court heard these arguments, and its deference to the officers' explanations of the logistics involved was not clearly erroneous and was based in part on its credibility determinations.

To justify appellant's stop, Minnesota law does not require that the state establish that the motorcycle stopped by the second officer was the motorcycle observed speeding by the first officer. *See Appelgate*, 402 N.W.2d at 108. Rather, the law allows a person to be stopped if it is objectively reasonable to believe that he was engaged in criminal activity. *Id.* Because the district court found that the officer reasonably believed that appellant's black motorcycle was the motorcycle that the other officer observed violating the law, we conclude that the stop was justified.

Affirmed.