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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1101**

Ian Hamman Tulien, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed April 7, 2014
Affirmed
Chutich, Judge**

Dakota County District Court
File No. 19WS-CV-13-276

Mark A. Olson, Olson Law Office, Burnsville, Minnesota (for appellant)

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Considered and decided by Chutich, Presiding Judge; Connolly, Judge; and Smith, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Appellant Ian Tulien challenges the district court's decision to sustain the revocation of his driver's license, arguing that the district court erred by (1) ruling that the stop of his car was valid, (2) finding the police officer's testimony to be credible, and

(3) improperly placing the burden of proof on him instead of the state. Because the district court's factual findings were not clearly erroneous and support the legal conclusion that the commissioner of public safety met its burden of showing that the stop of Tulien's car was lawful, we affirm.

FACTS

On January 19, 2013, Eagan Police Officer Brian Boekhoff was on a routine patrol near the intersection of Denmark Avenue and Yankee Doodle Road. Boekhoff observed Tulien driving his car on Town Center Drive toward Denmark Avenue. Boekhoff saw that, while Tulien had a red light, Tulien entered the intersection of Town Center Drive and Denmark Avenue and turned right on Denmark Avenue without first stopping. Boekhoff immediately pulled Tulien over. During the traffic stop, Tulien registered a blood-alcohol content over the legal limit; his license was later revoked under the implied-consent statute.

Tulien petitioned for judicial review of the order revoking his driver's license. During the ensuing hearing, Boekhoff and Tulien testified. Tulien denied running a red light, testifying that "[he] slowed down, a very slow pace, and then as the light turned green, [he] finished [his] turn." The district court also viewed a video that was taken from Boekhoff's police car that evening that captured part of Tulien's driving conduct. The district court ruled that the traffic stop was valid and sustained revocation of Tulien's driver's license. This appeal followed.

DECISION

In evaluating whether a traffic stop was lawful, an appellate court “review[s] de novo a district court’s determination of reasonable suspicion of illegal activity” and “accept[s] the . . . court’s factual findings unless they are clearly erroneous.” *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012). “Deference must be given to the district court’s credibility determinations.” *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012). We will not disturb a district court’s factual findings “unless our review of the entire record leaves us ‘with a definite and firm conviction that a mistake has been made.’” *In re Welfare of D.T.J.*, 554 N.W.2d 104, 107 (Minn. App. 1996) (citing *In re Estate of Beecham*, 378 N.W.2d 800, 802 (Minn. 1985)). “Conclusions of law will be overturned only upon a determination that the trial court has erroneously construed and applied the law to the facts of the case.” *Dehn v. Comm’r of Pub. Safety*, 394 N.W.2d 272, 273 (Minn. App. 1986).

Both the United States and Minnesota Constitutions “protect ‘[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.’” *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) (quoting U.S. Const. amend. IV and citing Minn. Const. art. I, § 10). A police officer may nevertheless “stop and temporarily seize a person to investigate that person for criminal wrongdoing if the officer reasonably suspects that person of criminal activity.” *Id.* (quotation omitted); see *Berge v. Comm’r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985) (applying reasonable-suspicion standard to license-revocation proceeding).

“The reasonable-suspicion standard is not high,” *Diede*, 795 N.W.2d at 843 (quotation omitted), and is “less demanding than probable cause or a preponderance of the evidence.” *Smith*, 814 N.W.2d at 352 (quotation omitted). “All that is required is that the stop be not the product of mere whim, caprice, or idle curiosity.” *Marben v. State, Dep’t of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980) (quotation omitted). When a police officer “observes a violation of a traffic law, no matter how insignificant the traffic law, that observation forms the requisite particularized and objective basis for conducting a traffic stop.” *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004). If a seizure is unsupported by reasonable suspicion, however, evidence recovered as a result of an illegal seizure “must be suppressed.” *State v. Askerooth*, 681 N.W.2d 353, 370 (Minn. 2004); *see Ascher v. Comm’r of Pub. Safety*, 527 N.W.2d 122, 125 (Minn. App. 1995), *review denied* (Minn. Mar. 21, 1995).

Reasonable Suspicion and Credibility Determinations

The district court ruled that “Officer Boek[h]off had a lawful basis to stop [Tulien’s] vehicle.” The district court credited Boekhoff’s testimony that he saw Tulien “make a right turn . . . without stopping at the red light,” and it noted that Tulien “admitted that he did not stop before making the turn, rather [he] rolled to the intersection as he approached.” The district court also concluded that the video “is not an entirely accurate portrayal of the events leading up to and including the traffic stop because [Officer Boekhoff] can, by turning his head, see more of the surroundings than can the recording machine, which is in a fixed position.” The district court’s findings of fact are supported by the record.

In attacking the district court's factual findings, Tulien challenges the district court's finding that "Officer Boek[h]off's testimony was credible in all respects." He seeks to undermine the district court's credibility finding by giving examples of inconsistencies in Boekhoff's testimony. But "[i]nconsistencies in testimony do not require reversal; they are merely factors to consider when making credibility determinations, which is the role of the fact-finder." *Lewis v. Comm'r of Pub. Safety*, 737 N.W.2d 591, 594 (Minn. App. 2007). In addition, the inconsistencies that Tulien points out are not material. Because the record does not show that a "mistake has been made," the district court did not err in finding Boekhoff's testimony credible. *See In re Estate of Beecham*, 378 N.W.2d at 802.

Boekhoff's testimony and the squad-car video support the district court's ruling that the officer had a lawful basis to stop Tulien's car. Under Minnesota law, "[v]ehicular traffic facing a circular red signal alone must stop at a clearly marked stop line but, if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown." Minn. Stat. § 169.06, subd. 5(a)(3)(i) (2012).

Boekhoff testified that he could see that the light facing Tulien was still red when Tulien entered the intersection to make his turn, and the commissioner contends that the video and a still photo made from the video confirm his observation. The squad-car video, while not completely conclusive, supports Boekhoff's testimony and further confirms that Tulien did not stop at the semaphore, as Tulien himself conceded.

Tulien contends, however, that the video shows that the light had changed from red to green “milliseconds” before he entered the intersection and asserts that the traffic stop was therefore illegal. Even taking Tulien’s assertion as true, however, Boekhoff legally stopped Tulien’s car. To lawfully stop Tulien’s car, Boekhoff need not be 100% certain that Tulien actually violated the law; Boekhoff must only “reasonably suspect[]” that Tulien committed a criminal act. *See Diede*, 795 N.W.2d at 842. If “milliseconds” made the difference as to whether Tulien actually broke the law, Boekhoff reasonably suspected a traffic violation.

In sum, given the totality of the circumstances and applying an objective standard, we conclude that Boekhoff had a reasonable articulable suspicion that Tulien failed to stop for a red light. Because Boekhoff observed what he thought was a traffic violation, “no matter how insignificant the traffic law, that observation forms the requisite particularized and objective basis for conducting a traffic stop.” *Anderson*, 683 N.W.2d at 823.

Burden of Proof

The burden of proof in an implied-consent proceeding is on the commissioner “to demonstrate, by a preponderance of the evidence, that revocation was appropriate.” *Ellingson v. Comm’r of Pub. Safety*, 800 N.W.2d 805, 806 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011). Tulien is correct that the district court misstated the law concerning the burden of proof, but this error did not affect the key factual findings made by the district court supporting the legal conclusion that “Officer Boek[h]off had a lawful

basis to stop [Tulien's] vehicle.” The findings demonstrate that the state showed, by a preponderance of the evidence, that revocation of Tulien's driver's license was proper.

Affirmed.