STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1834

State of Minnesota,
Respondent,

vs.

Philip Wruck,
Appellant.

Filed January 6, 2009
Affirmed
Peterson, Judge

Douglas County District Court
File No. K8-07-4

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

Christopher D. Karpan, Douglas County Attorney, Douglas County Courthouse, 305 Eighth Avenue West, Alexandria, MN 56308 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Richard A. Schmitz, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Peterson, Presiding Judge; Stauber, 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

PETERSON, Judge

In this appeal from a conviction of first-degree controlled-substance crime, appellant argues that evidence discovered during a search of his vehicle must be suppressed because the officer failed to state a valid basis for stopping the vehicle. We affirm.

FACTS

In the afternoon, while parked in a crossover monitoring traffic on Interstate Highway 94, Minnesota State Patrol Corporal Richard Homan saw a car with dark tinted windows traveling westbound on the highway. Homan believed that the tint was darker than allowed under Minnesota law. Homan stopped the car and, while doing so, stated that he was stopping the car because of the window tint and because of a suspended object hanging off the windshield. The statement was recorded by an automatically activated body microphone.

The driver was identified as appellant Philip Brian Wruck. Because appellant's driver's license was suspended, he was arrested, and his car was impounded. Methamphetamine was discovered during an inventory search of appellant's car. Appellant was charged with one count each of first-degree controlled-substance crime in violation of Minn. Stat. § 152.021, subd. 2(1) (2006), and no Minnesota driver's license in violation of Minn. Stat. § 171.02, subd. 1 (2006). Appellant moved to suppress the methamphetamine discovered during the search of his car.

At the omnibus hearing, after a video recording of the stop was played, Homan testified, "I don't recall if I saw the suspended object when he initially went by me or when I pulled in behind him on the stop." Homan also testified as follows:

> Q: . . . Corporal Homan, you clearly heard your videotape. You dictated into the body mike prior to going up to the car that the reason for the stop was two fold; is that correct?
> A: Correct.
> Q: And what were the two reasons?
> A: Window tint and suspended object.
> Q: So, no matter what, we know that it was prior to you dictating that, that you observed the suspended object?
> A: Yes.

Homan testified that the windows on appellant's car were very dark and that from behind the car, he "could probably see vaguely faint things, but nothing distinct." Homan also testified that he had a good view of appellant's car's windshield as the car went by him on the highway.

The district court denied appellant's motion to suppress, and appellant pleaded guilty to first-degree controlled-substance crime. Pursuant to the parties' agreement, the district court allowed appellant to withdraw his plea, and the case was submitted to the court for decision on stipulated facts. Minn. R. Crim. P. 26.01, subd. 4. The district court found appellant guilty of first-degree controlled-substance crime and sentenced him to an executed term of 158 months in prison. This appeal followed.

D E C I S I O N

I.

"When reviewing pretrial orders on motions to suppress evidence, we 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). We accept the district court's underlying factual determinations bearing on a motion to suppress on Fourth Amendment grounds unless they are clearly erroneous. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

A police officer may make an investigative stop of a motor vehicle if the officer has a specific and articulable basis to suspect that the driver has violated a traffic law. *Id.* Even a minor traffic violation may serve as a basis for a stop. *State v. Wagner*, 637 N.W.2d 330, 335-36 (Minn. App. 2001). The district court's determination of reasonable suspicion as it relates to limited investigatory stops is reviewed de novo. *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003).

"A person shall not drive or operate any motor vehicle with . . . any objects suspended between the driver and the windshield, other than sun visors and rearview mirrors and electronic toll collection devices. . . ." Minn. Stat. § 169.71, subd. 1(a)(2) (2006); *see also Gerding v. Comm'r of Pub. Safety*, 628 N.W.2d 197, 200-01 (Minn. App. 2001) (concluding that Minn. Stat. § 169.71, subd. 1(a)(2), "prohibits all suspended objects not covered by the specific exceptions" and holding that a police officer's observation of an object suspended from a rear view mirror justified a stop of the vehicle), *review denied* (Minn. Aug. 15, 2001).

Homan saw a suspended object hanging from the windshield, which turned out to be a radar detector attached to the windshield with suction cups. Appellant does not dispute that the suspended object violated Minn. Stat. § 169.71, subd. 1(a)(2). Rather, appellant challenges the district court's finding that as appellant's vehicle passed

Homan's patrol car on the highway, "Homan noticed that [appellant]'s vehicle had . . . an object suspended from his windshield."

In determining whether a finding is clearly erroneous, this court reviews the record in the light most favorable to the district court's findings. *Lossing v. Lossing*, 403 N.W.2d 688, 690 (Minn. App. 1987); *see also State v. Gomez*, 721 N.W.2d 871, 883 (Minn. 2006) (stating it is not reviewing court's role to reconcile conflicting evidence). 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. If there is reasonable evidence to support the [district] court's findings of fact, a reviewing court should not disturb those findings." *Gomez*, 721 N.W.2d at 883 (quotation omitted).

Appellant argues that Homan could not have seen the suspended object before stopping the car. The argument is not convincing because the evidence shows that when Homan stopped the car, he could not see anything distinct through the rear window. Therefore, he must have seen the suspended object when the car first went past him on the highway. Otherwise, there was no basis for Homan to state into his automatically activated microphone, before going up to appellant's car, that he stopped the car for tinted windows and a suspended object. The district court's finding that Homan saw the suspended object before stopping appellant's car is supported by reasonable evidence and is not clearly erroneous.

Because the suspended object was a sufficient basis for the stop, we need not address appellant's argument that the window tint was not a sufficient basis for the stop because the tint was legal in the state where the car was registered.

II.

Appellant raises additional issues in a pro se supplemental brief.

Appellant's challenge to the credibility of Homan's testimony is without merit. It is the exclusive function of the fact-finder to weigh credibility. *State v. Heinzer*, 347 N.W.2d 535, 538 (Minn. App. 1984), *review denied* (Minn. July 26, 1984).

Appellant argues that there was insufficient evidence regarding the chain-of-custody of the recording of the stop. Because Homan testified as to the accuracy of the recording, this argument is also without merit.

Appellant claims that the prosecutor improperly vouched for Homan's credibility at the suppression hearing. The prosecutor was reviewing the evidence, which is permissible, not injecting personal opinion. *See State v. Lopez-Rios*, 669 N.W.2d 603, 614 (Minn. 2003) (distinguishing between improper vouching and proper argument based on analysis of evidence).

The facts cited by appellant do not support his claim of ineffective assistance of counsel.

Affirmed.