STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0942

State of Minnesota,
Respondent,

vs.

Dennis E. Hanson,
Appellant.

Filed July 14, 2009
Affirmed
Halbrooks, Judge

Kandiyohi County District Court
File No. 34-CR-06-1866

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

Boyd Beccue, Kandiyohi County Attorney, Shane Baker, Assistant County Attorney, 415 Southwest 6th Street, P.O. Box 1126, Willmar, MN 56201 (for respondent)

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

Considered and decided by Shumaker, Presiding Judge; Toussaint, Chief Judge; and Halbrooks, Judge.

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

HALBROOKS, Judge

Appellant challenges his conviction of third-degree driving while impaired (DWI) in violation of Minn. Stat. § 169A.20, subd. 1(5) (2006), arguing that the arresting officer lacked an objectively reasonable basis for stopping his motor vehicle. We affirm.

FACTS

On Tuesday, August 29, 2006, Kandiyohi County Sheriff's Deputy Erik Lilleberg was stationed outside the Little Crow Country Club. A few days earlier, he had read an anonymous letter, advising that appellant Dennis Hanson frequently left the club intoxicated on Tuesday and Wednesday nights between 9:30 and 11:00, driving a white minivan. Deputy Lilleberg drove through the club's parking lot and observed a white minivan registered to appellant.

At 10:59 p.m., Deputy Lilleberg saw the minivan leave the club. He followed the vehicle, initially at a distance of about two or three car lengths. Deputy Lilleberg saw the vehicle turn left from a state highway onto a county road, and in the process the vehicle's right rear tire crossed the fog line and briefly entered the gravel shoulder. Approximately two-tenths of a mile later, from a distance of one car length, Deputy Lilleberg saw the driver throw a lit cigarette butt out the window. He initiated a traffic stop, approached the vehicle, and identified the driver as appellant. Deputy Lilleberg saw cigarette butts in the vehicle's ashtray and noted that appellant was holding a lighted cigarette that was smoked almost to the filter. The deputy informed appellant he had stopped him for throwing the cigarette out the window, but did not mention the crossed fog line.

While talking to appellant, Deputy Lilleberg detected a strong odor of alcohol coming from appellant, directed appellant to perform several field sobriety tests, administered a preliminary breath test, and arrested appellant. Appellant was later charged with two counts of third-degree DWI, Minn. Stat. § 169A.20, subd. 1(1), (5) (2006), and one count of littering, Minn. Stat. § 169.42, subd. 1 (2006).

Appellant testified at the suppression hearing that he did not throw a cigarette out the window, has never put cigarettes in his vehicle's ashtray, and keeps a soda can in the vehicle for his cigarette butts. He also testified that he had a lighted cigarette in his hand when the deputy approached, with more than half of it left to smoke.

The district court denied appellant's motion to dismiss for lack of probable cause, concluding that both the littering and the fog-line crossing created probable cause for the stop. The state dismissed the littering count, and after a stipulated-facts trial the district court found appellant guilty of the DWI counts. This appeal follows.

D E C I S I O N

When reviewing a pretrial order denying a motion to suppress evidence, we "may independently review the facts and determine, as a matter of law, whether the district court erred." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). But we review the district court's factual determinations for clear error. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

Both our federal and state constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. This protection extends to investigatory traffic stops. *State v. McKinley*, 305 Minn. 297, 300–04, 232 N.W.2d 906,

909–11 (1975). A traffic stop must be justified by an "objective manifestation" of current or imminent criminal activity grounded in a "particularized and objective basis" for suspicion. *George*, 557 N.W.2d at 578 (quotation omitted). Although a mere hunch is not enough, any "violation of a traffic law, however insignificant" provides an objective basis for a stop. *Id.*

The district court cited two traffic violations—littering and crossing the fog line—as providing objective bases for stopping appellant's motor vehicle. Appellant contends that neither basis supports the stop. He further contends that the anonymous letter cannot support the stop, despite the district court's statement that the letter is "not related" to the basis for the stop.

Littering is a violation of a traffic law. Minn. Stat. § 169.42, subd. 1. Appellant maintains that Deputy Lilleberg may have initially believed that he observed appellant toss a cigarette out the window but that the belief was mistaken. Although the district court did not make an express credibility determination, it appears to have accepted the deputy's story: the deputy stated that he observed appellant throw a lighted cigarette out the window.

Nothing in the record undermines the district court's ultimate factual finding: appellant littered by throwing a cigarette out his window. And the district court correctly concluded, based on that finding, that Deputy Lilleberg had an objective basis for stopping appellant's vehicle.

Because the littering violation alone is sufficient to support the district court's conclusion, we do not to address the fog-line crossing and the anonymous letter.

Affirmed.