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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2**

John Thomas Kurhajetz, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed November 17, 2009
Affirmed
Halbrooks, Judge**

Pine County District Court
File No. 58-CV-08-587

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant John Thomas Kurhajetz challenges the district court's order sustaining his driver's license revocation, arguing that the trooper did not have reasonable

articulable suspicion to justify the stop of his vehicle. Because we conclude that appellant's stop was justified by reasonable suspicion of criminal activity, we affirm.

FACTS

On July 26, 2008, appellant was driving his pickup truck eastbound on County Road 43 (CR 43) in Pine County. Appellant crossed Interstate 35 (I-35) on an overpass, remaining on CR 43. While appellant was crossing the interstate, Trooper Mark Hopkins was exiting I-35 and could see appellant's truck on the county road. The road reaches a "T" intersection on the east side of I-35, and CR 43 then continues southbound. Drivers can either make a right-hand turn at the stop sign or avoid stopping by utilizing a curved road that cuts the corner of the intersection. Trooper Hopkins saw appellant turn off of CR 43 onto a dirt path. This dirt path runs roughly parallel to the curved road between the two sections of CR 43. According to Trooper Hopkins, the path is accessible only after a driver goes down a steep grade to reach the ditch. There are no signs either permitting or prohibiting drivers from utilizing the dirt path as an alternative shortcut to CR 43. Because Trooper Hopkins believed appellant's conduct to be in violation of traffic laws, he initiated a traffic stop once appellant drove back onto the county road. Based on Trooper Hopkins's observation of signs that appellant was intoxicated, he administered an Intoxilyzer breath test to appellant. Appellant was subsequently arrested for driving while impaired (DWI), and respondent Commissioner of Public Safety revoked appellant's driving privileges pursuant to Minn. Stat. § 169A.52, subd. 4(a) (2006).

Appellant challenged the legality of his traffic stop at an implied-consent hearing. According to appellant's testimony, the dirt path contains gravel and other improvements. Appellant also testified that he has used what he characterizes as a "road" approximately 10 to 15 times in the past and has been with other drivers when they used the dirt path. Trooper Hopkins testified that the path is located in the I-35 right-of-way. The district court found that Trooper Hopkins had a lawful basis to stop appellant and upheld the revocation of appellant's driver's license. This appeal follows.

D E C I S I O N

The sole issue on appeal is whether the stop of appellant's vehicle was supported by reasonable articulable suspicion. Appellant contends that because driving on the dirt path did not violate traffic laws, Trooper Hopkins did not have an objective basis to stop his vehicle. 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, 302-04, 232 N.W.2d 906, 910-11 (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. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). Although a mere hunch is not enough, any "violation of a traffic law, however insignificant" provides the police with an objective basis for making a stop. *Id.* However, an officer's good faith but erroneous view of the law will not provide a legal basis for a traffic stop. *State v. Kilmer*, 741 N.W.2d 607, 609 (Minn. App. 2007) (stating that a "mistaken interpretation of [a

traffic] law cannot provide the requisite objective basis for suspecting the motorist of criminal activity”).

Appellant argues that his actions were lawful because he was driving on a roadway as defined by Minn. Stat. § 169.01, subd. 31 (2006). Respondent contends that appellant drove in the right-of-way of I-35, in violation of Minn. Stat. § 84.804, subd. 1(a) (2006). Regardless of whether the dirt path constitutes a “roadway” as defined by statute, we are persuaded that the proper analysis is whether appellant violated Minn. Stat. § 84.804 by driving on the dirt path. According to Minn. Stat. § 84.804, subd. 1(a), a person may not operate a vehicle off-road within a public road right-of-way except on a trail designated by the Commissioner of the Department of Natural Resources (DNR). A “[p]ublic road right-of-way” encompasses the “entire right-of-way of a roadway that is not privately owned, including the traveled portions, banks, ditches, shoulders, and medians.” Minn. Stat. § 84.797, subd. 11 (2006). Failure to comply with this statute is a misdemeanor offense. Minn. Stat. § 84.805 (2006).

Trooper Hopkins testified at the implied-consent hearing that the path used by appellant was located within the interstate right-of-way. Appellant did not dispute this testimony. No evidence was introduced regarding the status of the path as a designated trail. Therefore, appellant’s act of driving on the path located in the right-of-way violated section 84.804, subdivision 1, and provided reasonable articulable suspicion of criminal activity.

Appellant argues that the trooper’s testimony regarding the right-of-way is not credible and that respondent did not meet its burden of demonstrating reasonable

articulable suspicion. The district court did not make any specific findings regarding the credibility of witnesses at the implied-consent hearing. But this court can infer credibility findings based on the district court's resolution of an issue. See *Umphlett v. Comm'r of Pub. Safety*, 533 N.W.2d 636, 639 (Minn. App. 1995), *review denied* (Minn. Aug. 30, 1995) ("Given the trial court's resolution of the second test issue, however, it implicitly found that the officer's testimony was more credible regarding the request for a second test."). Because the district court determined that the trooper had a lawful basis for stopping appellant, it implicitly credited the trooper's testimony regarding the location of the interstate right-of-way. Because there is no basis in this record to argue that this finding is clearly erroneous, we will not disturb the district court's finding on this issue. See *Thorud v. Comm'r of Pub. Safety*, 349 N.W.2d 343, 344 (Minn. App. 1984) (stating that in an implied-consent hearing, the district court's findings of fact will not be reversed unless clearly erroneous). Furthermore, the trooper's testimony is sufficient to meet the limited showing required to demonstrate reasonable articulable suspicion. See *Knapp v. Comm'r of Pub. Safety*, 610 N.W.2d 625, 628 (Minn. 2000) ("The factual basis required to support a stop is minimal."). We therefore conclude that Trooper Hopkins had a reasonable and objective basis to stop appellant's vehicle when he drove off-road into the interstate right-of-way.

Finally, even if Trooper Hopkins was mistaken about the location of the right-of-way, we conclude that his mistake was one of fact. While a mistake of law cannot form the basis for a traffic stop, "honest, reasonable mistakes of fact are unobjectionable under the Fourth Amendment." *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003). Here, if

the trooper was mistaken, it was about an issue of fact, not one of search and seizure law. *See id.* (holding that a mistake as to apparent authority was one of law). Trooper Hopkins stopped appellant's vehicle because he thought that appellant was operating in the right-of-way, not because he was mistaken about the legal requirements for an investigatory stop. *See State v. Duesterhoeft*, 311 N.W.2d 866, 868 (Minn. 1981) (holding that an investigatory stop was permissible even though it was based on a mistaken belief that the suspect's driver's license was revoked). Furthermore, any mistake of fact in the location of the right-of-way was reasonable. Appellant drove his truck onto a dirt path located by an exit ramp of I-35. It is reasonable to assume that this area is included in the interstate's right-of-way.

Affirmed.