STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1214

State of Minnesota,
Respondent,

vs.

Michael David King,
Appellant.

Filed April 13, 2010
Affirmed
Shumaker, Judge

Aitkin County District Court
File No. 01-CR-08-648

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James P. Ratz, Aitkin County Attorney, Lisa Roggenkamp Rakotz, Assistant County Attorney, Aitkin, Minnesota (for respondent)

Melissa V. Sheridan, Assistant State Public Defender, Eagan, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Klaphake, Judge; and Shumaker, Judge.

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

SHUMAKER, Judge

In this appeal from his judgment of conviction of driving while impaired, appellant contends that a law-enforcement officer stopped his car illegally for driving

without headlights because the officer mistakenly believed that headlights were required to be displayed at that time of day. Because the officer made a reasonable mistake of fact, as determined by the district court, we affirm.

FACTS

This appeal raises the issues of whether a police officer who stopped a car because it had no headlights on made a mistake of law, or a mistake of fact, as to the requirement that headlights be illuminated at that time, and, if a mistake of fact, whether the mistake was reasonable.

The facts, presented at a *Lothenbach* trial, are not in dispute. They show that, on March 29, 2008, Hill City Police Chief Jeffrey Madsen was on patrol when he noticed a car, driven by appellant Michael David King, being operated without its headlights on. Madsen stopped the car because he believed two things. First, he thought sunset had occurred and he knew that the law requires that motor vehicles have their headlights on after sunset. Second, he thought the law required headlights to be displayed a half hour before sunset. Madsen's stop occurred at approximately 7:35 p.m. On March 29, the sun set at 7:38 p.m. Madsen explained that "due to the conditions outside, [he] believed it was around sunset, and after sunset." He indicated that it was "kind of cloudy" and that "it appeared to be after sunset."

After the stop, Madsen concluded that King was under the influence of alcohol. Two tests, an Intoxilyzer and a urinalysis, confirmed that his alcohol concentration exceeded the .08 limit imposed by law.

The district court denied King's motion to suppress evidence, and, after the *Lothenbach* trial, found him guilty of third-degree driving while impaired.

D E C I S I O N

The constitutional protection against unreasonable searches and seizures extends to investigatory traffic stops. U.S. Const. amend. IV; Minn. Const. art. I, § 10; *State v. McKinley*, 305 Minn. 297, 302-04, 232 N.W.2d 906, 910-11 (1975). When it is alleged that the constitution has been violated because of an unreasonable traffic stop and that the district court erred in refusing to suppress evidence related to the stop, we conduct an independent review to determine whether the court erred. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004). In that review, we consider the totality of the circumstances to ascertain whether the police had the requisite basis for the stop. *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007). To be valid, a stop may be made only if the police can identify specific, articulable facts that warrant a reasonable suspicion that the driver of the vehicle is engaged in criminal activity. *State v. Britton*, 604 N.W.2d 84, 88-89 (Minn. 2000). An investigatory traffic stop may "not be 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) (citations omitted). But the factual basis to support a traffic stop can be minimal. *Id.* Although a mere hunch or speculative suspicion will not be sufficient for a lawful stop, an officer's observation of a "violation of a traffic law, however insignificant," may provide the requisite objective basis for the stop. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

King argues that Madsen lacked the requisite basis for a valid investigatory traffic stop because he in fact observed nothing to create a reasonable suspicion that King was violating the law. King points to Minn. Stat. § 169.48, subd. 1(a) (2006), which requires vehicles on highways to "display lighted headlamps" "from sunset to sunrise" and "at any other time when visibility is impaired by weather, smoke, fog or other conditions . . . ." It does not appear that the state contends that Madsen's stop was based on "other conditions" that would impair visibility. Thus, part of the focus of Madsen's stop was his belief that King was in violation of the law that requires the display of headlights "from sunset" until sunrise. Madsen also thought that headlights had to be turned on a half hour before sunset, but that requirement applies only to school buses.

The parties stipulated that sunset occurred on March 29, 2008, at 7:38 p.m. The district court found that Madsen stopped King at 7:35 p.m., three minutes before the law required King to turn his headlights on. Clearly, Madsen was mistaken as to the existence of a factual basis for the stop.

The district court also ruled that Madsen was mistaken about when sunset had occurred. But, characterizing Madsen's mistake as one of fact and not of law, the court held that, "[g]iven the minimal difference in time between the stop and when sunset occurred (three minutes), there is a sufficient showing that Madsen held the honest, albeit erroneous, belief that sunset had occurred."

A law-enforcement officer's mistake as to what the law is, or in interpreting a statute, is a mistake of law and cannot form a valid basis for an investigatory traffic stop. *State v. Anderson*, 683 N.W.2d 818, 824 (Minn. 2004); *see also State v. Kilmer*, 741

N.W.2d 607, 609 (Minn. 2007) (stating that "[w]hen a stop is premised on an ostensible violation of a traffic law, a mistaken interpretation of that law cannot provide the requisite objective basis for suspecting the motorist of criminal activity"). But "honest, reasonable mistakes of fact are unobjectionable under the Fourth Amendment." *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003). *See Illinois v. Rodriguez*, 497 U.S. 177, 185-86, 110 S. Ct. 2793, 2800 (1990) (holding that, to comply with the Fourth Amendment, the factual determinations made by agents of the government need not always be correct but they must always be reasonable).

The Minnesota Supreme Court has held on numerous occasions that a good faith and reasonable mistake of fact will not invalidate an otherwise valid stop. *State v. Sanders*, 339 N.W.2d 557, 560 (Minn. 1983) (holding that a stop based on a reasonable mistake of identity was lawful); *State v. Duesterhoeft*, 311 N.W.2d 866, 868 (Minn. 1981) (holding that stop was permissible even though based on a mistaken belief that a suspect's license was revoked); *City of St. Paul v. Vaughn*, 306 Minn. 337, 344, 237 N.W.2d 365, 369-70 (1975) (holding that a stop based on a reasonable mistake of identity was valid).

King argues that Madsen's belief that the law required the illumination of headlights a half hour before sunset was a mistake of law, which cannot provide a valid basis for a traffic stop. We agree. But, as Madsen stated, the reason for the stop was his belief that sunset had already occurred. His error as to the requirement of the statute that headlights be displayed a half hour before sunset is not controlling here.

Sunset is a climatic condition and not a matter of law. A belief as to when sunset on any particular day has occurred depends on observable facts, including the time of day, what can be seen of the sun and its geographical location and position in the sky, and the weather conditions in general. The undisputed evidence is that it was cloudy and overcast at the time of the stop. This condition would likely make it more difficult than on a clear day to locate the position of the sun. But the time of day, only three minutes before the actual time of sunset, coupled with the weather conditions could reasonably cause a law-enforcement officer to make a good-faith mistake as to the fact of the actual occurrence of the sunset. The evidence here supports the reasonableness of just such a mistake, and the district court did not err in so holding.

Finally, King relies on *State v. Gresser*, 657 N.W.2d 875 (Minn. App. 2003), in arguing that Madsen could readily have ascertained the precise time of sunset before making the stop. *Gresser* involved a boating-hours violation. Regarding one's ability to determine when sunset occurs, the court said:

> Sunrise and sunset times are easily accessible. There is a sunrise and sunset time schedule provided in the Minnesota Boating Guide, a copy of which is issued to personal watercraft operators when their personal watercraft are licensed. Additionally, meteorologists often state the time of sunrise and sunset in their weather forecast, and most newspapers provide the time of sunrise and sunset. With minimal effort, an ordinary person can determine the time of sunset . . . .

Id. at 879-80.

Gresser was a boating case in which the appellant claimed that the statute restricting the operation of personal watercraft one hour *before* sunset was

unconstitutionally vague. His question apparently was, "How could anyone know when sunset *was* to occur?" In *Gresser*, sunset occurred at 9:04 p.m., and the appellant was arrested at 8:10 p.m. *Id.* at 878. Thus, the appellant was required to look ahead to the actual sunset time and then compute backwards to the hour at which he had to be off the water. In other words, he, like other boaters, was required by law to plan ahead, and because his own boating manual stated the time of sunset, he only needed to look at it and at his watch to comply with the law.

This is not a boating case; the evidence does not show the existence of a driver manual to consult to ascertain the time of sunset; and, more significantly, sunset had apparently already occurred. Madsen relied on what he saw and what he knew of the time of day to reach his conclusion. He used precisely the same process that every reasonable driver of a motor vehicle would use to decide when the headlights must be turned on. It borders on the absurd to suggest that any motor vehicle driver would consult a newspaper or some meteorological source before going onto the highway so that he would know precisely when to turn the headlights on. Rather, the driver, like the law-enforcement officer, would rely on the time of day coupled with observable climatic facts. That is a reasonable thing to do. Furthermore, when the conditions and the time of day are such as to allow for a slight miscalculation of the time of sunset, that error is reasonable.

Affirmed.