STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1818

State of Minnesota,
Appellant,

vs.

Antonio Markey Adams,
Respondent.

Filed March 8, 2011
Affirmed
Klaphake, Judge

Hennepin County District Court
File No. 27-CR-10-21576

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

Judd E. Gushwa, Office of the City Attorney, Minneapolis, Minnesota (for appellant)

Robert A. Hankoff, Hankoff & Yarney, LLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Larkin, Judge; and Collins, Judge.*

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

KLAPHAKE, Judge

Appellant State of Minnesota challenges the district court's order suppressing evidence discovered after a state trooper stopped a car driven by respondent Antonio

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

Markey Adams. The state asserts that the district court erred by concluding that the trooper did not have a reasonable, articulable suspicion of criminal activity that would support an investigative stop.

Because the district court determined that the trooper's testimony describing the stop lacked credibility and we defer to such determinations, we affirm.

D E C I S I O N

As this is a pretrial appeal by the state, we must first determine whether the state has shown that the district court's order will have a critical impact on the presentation of its case. *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998). A prosecutor may appeal as of right from any pretrial order based on a question of law. Minn. R. Crim. P. 28.04, subd. 1(1). The district court's pretrial order will not be overturned unless the state "demonstrates clearly and unequivocally" that the district court erred and that the error will have a critical impact on the outcome of the trial. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted). A district court order has a critical impact on a case when suppression of evidence would lead to dismissal of the charges against the defendant. *Id.* Because suppression of the evidence here will lead to dismissal of the charges, the state has demonstrated that prong of the critical impact test. In order to succeed on its appeal, the state must now show that the district court erred in suppressing the evidence based on the illegality of the stop.

Because of the constitutional right under both the United States and Minnesota Constitutions to be free from unreasonable searches and seizures, U.S. const., amend. IV; Minn. Const., art. I, § 10, a warrantless search is per se unreasonable, subject to certain

exceptions. A police officer may make a limited investigatory traffic stop if he or she has a reasonable, articulable suspicion that an occupant of the car is engaged in criminal activity. *State v. Burbach*, 706 N.W.2d 484, 488 (Minn. 2005).

Reasonable suspicion of criminal activity must be based on specific and articulable facts, not on "an unarticulated hunch." *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quotation omitted). The standard is not high, *id.*, and is less than that required for probable cause. *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996). A minor traffic law violation will support a stop, *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997); observance of an actual violation is not necessary if the police officer can articulate specific facts supporting a reasonable suspicion of criminal activity. *Pike*, 551 N.W.2d at 921. The police officer must have objective support for the belief that a person is engaging in criminal activity. *George*, 557 N.W.2d at 578.

At the omnibus hearing, the trooper gave three reasons to support the stop: (1) he believed the bumper on respondent's car exceeded the legal height; (2) the registered owner of the car had a revoked license; and (3) he believed that respondent was watching television in violation of Minn. Stat. § 169.471 (2008).

Any one of these observations could provide a reasonable, articulable suspicion of a violation of law: even a minor traffic or equipment violation can provide a basis for an investigatory stop, *George*, 557 N.W.2d at 578, and the supreme court has concluded that if the registered owner's license is revoked, it is "rational" for a police officer to conclude that the owner of the vehicle is the driver. *Pike*, 551 N.W.2d at 922.

But here the district court comprehensively rejected the trooper's testimony as not credible. Defense counsel twice played for the district court the squad's videotape that purported to record the entire incident. "[T]he district court has the discretion to draw its own conclusions and make factual findings from its independent review of a video recording of a traffic stop." *State v. Shellito*, 594 N.W.2d 182, 186 (Minn. App. 1999). Just as the district court in *Shellito* discounted the testimony of the police officer who made the stop, based on its observation of the videotape, the district court here found the trooper's testimony to be not credible based on its viewing of the videotape.

The district court enumerated its reasons for discounting the trooper's testimony: (1) although the trooper relied heavily at the omnibus hearing on his belief that respondent was watching television while driving, the district court noted that the flickering light described by the trooper was not apparent in the videotape and that the trooper did not mention this as a reason for the stop when he first spoke with respondent; (2) the trooper stated that he was able to view the driver well enough while driving to determine that he matched the registered owner's description, but in fact the registered owner was six inches taller and 200 pounds heavier than respondent; the registered owner testified at the omnibus hearing and the district court was able to compare the physical appearance between the owner and respondent; (3) although the trooper measured the car's bumper height after stopping respondent and knew that it did not exceed the statutory maximum, he is recorded on the videotape telling respondent that the bumper was too high; (4) at the omnibus hearing, the trooper failed to make out his own words on the videotape when making the disputed statements, despite the fact that the district court

could understand the speech. All these facts led the district court to conclude that the trooper was not credible.

"Because the weight and believability of witness testimony is an issue for the district court, we defer to that court's credibility determinations." *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *review denied* (Minn. July 15, 2003). The district court here made extensive credibility findings, essentially rejecting much of the trooper's testimony as inherently suspect. We will reverse the district court's order suppressing evidence only when the state can clearly and unequivocally demonstrate that the district court's findings of fact are clearly erroneous and that the court "clearly and unequivocally" erred in its legal conclusions. *Gauster*, 752 N.W.2d at 502. The state has not met this standard.

Affirmed.