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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0149**

Carl Arthur Foster, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed March 11, 2008
Affirmed
Minge, Judge**

Cook County District Court
File No. 16-CV-05-411

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Considered and decided by Minge, Presiding Judge; Halbrooks, Judge; and Wright, Judge.

UNPUBLISHED OPINION

MINGE, Judge

Appellant argues that the state trooper's investigatory stop of his vehicle was unlawful because it was not based on a reasonable, articulable suspicion of criminal activity. Appellant claims that because of other findings by the district court, its finding

that the trooper observed him make a traffic violation justifying the stop is not supported by substantial evidence. Because we conclude the essential finding that the trooper observed the traffic violation is not clearly erroneous, we affirm.

FACTS

In October of 2005, appellant Carl Foster was driving in the city of Grand Marais. Foster testified that as he passed the Java Moose Café parking lot at the corner of state Highway 61 and Wisconsin Street, he noticed a state highway patrol trooper parked there. The record indicates that Foster then drove east on Wisconsin Street. There was conflicting testimony regarding whether the trooper followed Foster and the route the trooper traveled. The trooper testified that he followed Foster east on Wisconsin Street and that after Foster failed to signal a left turn at the intersection of Wisconsin and Broadway, he continued to follow him. Foster testified that he did not see any cars behind him after passing the trooper's vehicle at the Java Moose, and therefore surmised that he had not been followed as he drove east on Wisconsin Street. It was agreed that several blocks after Foster's left turn, the trooper pulled him over. Because the trooper noted that Foster smelled of alcohol, the trooper administered a preliminary breath test (PBT), which Foster failed. The trooper then had Foster perform several field sobriety tests. After Foster failed a second PBT, the trooper arrested him for driving under the influence of alcohol.

Foster's driver's license was revoked by the Commissioner of Public Safety. Foster petitioned the district court for rescission of the revocation. The district court sustained the revocation, and this appeal follows.

DECISION

Appellant argues that the district court's findings do not support a conclusion that the trooper had a reasonable, articulable suspicion to stop him. "In reviewing a district court's determinations of the legality of a limited investigatory stop, we review questions of reasonable suspicion de novo." *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000); *see also Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985). Findings of fact are reviewed under a clearly erroneous standard. Minn. R. Civ. P. 52.01. A reviewing court gives "due weight to inferences drawn from those facts by [the district court]." *State v. Lee*, 585 N.W.2d 378, 383 (Minn. 1998) (quoting *Ornelas v. United States*, 517 U.S. 690, 699, 116 S. Ct. 1657, 1663 (1996)).

An officer must have a specific and articulable suspicion of a violation before stopping a vehicle. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968); *Marben v. State, Dep't of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980). Minnesota cases "do not require much of a showing in order to justify a traffic stop. Ordinarily, if an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle." *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). But a stop may not be based on mere "whim, caprice, or idle curiosity." *Marben*, 294 N.W.2d at 699 (quotation omitted).

Even though there is evidence to support a finding, the finding can be held to be clearly erroneous if the reviewing court, on the entire evidence, is left with a definite and firm conviction that a mistake has been committed. *In re Estate of Balafas*, 293 Minn. 94, 96, 198 N.W.2d 260, 261 (1972). It is not the province of a reviewing court to

determine issues of fact by crediting one party's oral testimony. *Poppler v. O'Connor*, 306 Minn. 539, 540-41, 235 N.W.2d 617, 618-19 (1975). An appellate court will not weigh the evidence as if trying the matter de novo and will not determine weight and credibility of conflicting testimony, as its function is limited to determining from the record whether the evidence as a whole sustains the district court's findings. *Bicanic v. J.C. Campbell Co.*, 220 Minn. 107, 114, 19 N.W.2d 7, 10-11 (1945).

Foster argues that incompatible, erroneous, and qualified findings by the district court erode the integrity of its conclusion that the trooper saw him turn without using his signal and that, because of these problems, the district court's conclusion must be reversed. These challenged district court findings include the following: (1) The trooper drove easterly on Highway 61. (Foster asserts that such a route is inconsistent with the trooper following him on Wisconsin Street.) (2) The trooper saw the unsignaled turn from three blocks away. (Foster asserts that such a distance places the officer in the Java Moose parking lot, and that from that location, buildings block the view of the Wisconsin Street/Broadway intersection, making it impossible to see whether Foster used a turn signal. Foster emphasizes that the district court observed that the trooper's claim that he could see whether Foster used a turn signal at the Wisconsin Street/Broadway intersection is "troubling to the [c]ourt" and that "there is some reason for concern.") (3) The stop occurred on Broadway and to the north of Highway 61. The record is clear that the stop occurred on First Avenue East—a block away from Broadway.

The critical decision of the district court was that the trooper saw Foster make a left turn at Wisconsin Street and Broadway without using his turn signal. The district

court's other findings do not compel us to reject that basic finding. In this case, the error regarding the location of the final stop is irrelevant. The street names for the route traveled by the trooper (Wisconsin Street or Highway 61) are difficult for this court to review. There is no street map for Grand Marais in the record. Also, there may be intersecting streets that allow for the alternative possibilities that would provide context to the district court's finding on the route. Perhaps, the trooper traveled due east on Wisconsin Street for just a portion of a block. If so, he could see the Wisconsin Street/Broadway intersection and Foster's turn. In this regard, we note that Foster did not testify with any certainty about the trooper's route or whether he was followed, and that the district court's finding about the route is arguably gratuitous.

On appeal we focus on the core finding by the district court that the trooper observed Foster turn without using his turn signal. Our standard of review is "clearly erroneous." The trooper's testimony is direct and unequivocal, constitutes substantial evidence, and is sufficient to justify the investigatory stop which Foster contests. Despite other possibly inconsistent or erroneous findings, we cannot on this record conclude that the other findings require rejection of the core finding that the trooper saw the un signaled turn. We note that as this is a civil case, the district court was only concluding that the commissioner established the legality of the stop by a preponderance of the evidence. *See State, City of Falcon Heights v. Pazderski*, 352 N.W.2d 85, 87 (Minn. App. 1984).

Based on our limited scope of review of the district court's factual determinations, we conclude that the district court's decision is not clearly erroneous.

Affirmed.