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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0313**

State of Minnesota,
Respondent,

vs.

Benjamin Keith Berry,
Appellant.

**Filed January 14, 2013
Affirmed
Crippen, Judge***

McLeod County District Court
File No. 43-CR-11-370

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

Michael K. Junge, McLeod County Attorney, Christopher D. Bates, Assistant County Attorney, Glencoe, Minnesota (for respondent)

Matthew D. Resch, Special Assistant Public Defender, Minneapolis, Minnesota; and

David W. Merchant, Chief Appellate Public Defender, Bridget Kearns Sabo, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Chutich, Judge; and Crippen,
Judge.

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

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant Benjamin Berry challenges his conviction of fifth-degree possession of amphetamines and third-degree DWI, arguing that the legal basis for a vehicle stop was contradicted by a police squad video. On the record as a whole, and because the squad video does not conclusively show there was no legal basis for the stop, we affirm.

FACTS

Just past midnight on March 5, 2011, Sergeant Adam Ament observed a green SUV driven by appellant and traveling westbound on Highway 7 with what appeared to be a headlight out. Sergeant Ament initiated a traffic stop and observed that appellant was likely “under the influence of a stimulant” because appellant’s “hands were trembling” and his “eyes [were] dilated.” Ament asked appellant to exit the vehicle, and in the course of a pat-down search a glass pipe fell out of appellant’s pant leg. Appellant stomped on the pipe, smashing it. Appellant was placed under arrest on suspicion of possessing a controlled substance. He subsequently refused to submit to a blood or urine test.

Two days later, appellant was charged with one count of fifth-degree possession of amphetamines and one count of third-degree DWI for refusing to submit to a chemical test. On June 7, 2011, a hearing was held on appellant’s motion to suppress evidence and dismiss the complaint on the grounds that Sergeant Ament lacked a reasonable basis to stop the vehicle. At the hearing, numerous exhibits were presented, including a DVD of the squad video footage showing the stop of appellant’s vehicle. The video momentarily

shows what appear to be two working headlights on appellant's vehicle just prior to the vehicle stop.

At the hearing, Sergeant Ament testified that on the night in question he was able to view appellant's vehicle head-on and that he clearly observed that appellant's driver's-side headlight was out. Ament explained that the video did not show a head-on view and showed the illumination of appellant's parking light and not his headlight, explaining why the video appears to show both headlights illuminated. Sergeant Ament also testified that when he told appellant he had a headlight out, appellant confirmed that it had recently gone out. Two witnesses for appellant, appellant's brother and father, testified that they observed that both headlights on appellant's vehicle were working on the night of the incident and shortly thereafter.

The district court considered the testimony and the squad video and concluded that Sergeant Ament's testimony was credible and that, to the extent the video conflicted with Sergeant Ament's testimony, the video was "inconclusive." The court also found that appellant acknowledged that the headlight was out. Based on these findings, the district court denied appellant's motion to dismiss the complaint and ordered a trial. Following a jury trial, appellant was convicted of both counts. This appeal followed.

D E C I S I O N

"When reviewing a district court's pretrial order on a motion to suppress evidence, 'we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo.'" *State v. Gauster*, 752 N.W.2d 496, 502

(Minn. 2008) (quoting *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007)). Therefore, we evaluate the district court's finding that appellant's headlight was out for clear error.

Both the United States Constitution and the Minnesota Constitution protect the right of people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. Officers are allowed to “conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.” *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). “It should be emphasized that the factual basis required to support a stop for a ‘routine traffic check’ is minimal.” *Marben v. State, Dep’t of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980) (quotation omitted). “All that is required is that the stop be not the product of mere whim, caprice, or idle curiosity.” *Marben*, 294 N.W.2d at 699 (quotation omitted). When determining whether reasonable, articulable suspicion exists, we consider the totality of the circumstances surrounding the stop. *Knapp v. Comm’r of Pub. Safety*, 610 N.W.2d 625, 628 (Minn. 2000).

Violations of even minor traffic laws may form the legal basis for a traffic stop. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). An officer's mistake as to the interpretation of law renders the stop illegal. *Id.*; see also *State v. Anderson*, 683 N.W.2d 818, 824 (Minn. 2004); *State v. Kilmer*, 741 N.W.2d 607, 609-10 (Minn. App. 2007). However, “searches based on honest, reasonable mistakes of fact are unobjectionable under the Fourth Amendment.” *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003).

Respondent argues that the stop was valid because appellant was observed driving a vehicle without a working headlight in violation of Minn. Stat. § 169.63(a) (2010), which provides that “at least two lighted headlamps shall be displayed, one on each side at the front of every motor vehicle.” Appellant contends that the district court’s finding that the malfunctioning headlight supplied a reasonable basis for the stop was clearly erroneous because the squad video shows two working headlights on appellant’s vehicle. Appellant argues that the stop was pretextual because Sergeant Ament had observed appellant’s vehicle parked at a known drug house earlier in the evening, and Sergeant Ament believed appellant was a drug user. Appellant cautions that upholding the validity of this stop in light of the squad video evidence would “allow the State to merely put forward any witness willing to testify that a light was out to justify an investigative stop.”

As appellant asserts, had Sergeant Ament stopped him on a hunch because he believed appellant was the type of person to carry drugs, Sergeant Ament would not have had a legal basis for the stop. *See Marben*, 294 N.W.2d at 699. Moreover, “[m]ere proximity to, or association with, a person who may have previously engaged in criminal activity is not enough to support reasonable suspicion of possession of a controlled substance.” *State v. Diede*, 795 N.W.2d 836, 844 (Minn. 2011).

But the district court weighed the evidence and concluded that Sergeant Ament’s knowledge about appellant’s criminal history was not the basis for the stop; rather, that Sergeant Ament credibly testified that he observed appellant’s vehicle had a headlight out. On appeal, this court must give due regard to the district court’s determination of the credibility of witnesses. *State v. Shellito*, 594 N.W.2d 182, 186 (Minn. App. 1999).

Moreover, “the 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.” *Id.* Although the court acknowledged that “from my viewpoint, it does show two white lights that appear to be headlights,” the court credited Sergeant Ament’s explanation that the video actually shows light reflecting off the headlight from the vehicle’s parking lights or from ambient light and that from Sergeant Ament’s better vantage point he could see that appellant’s headlight was out. Because the video shows the headlights on appellant’s vehicle for only a brief moment, and the video is taken from a side-angle and not head-on as Sergeant Ament saw it, and it was dark and there were many street lights reflecting off of various surfaces, it was not clear error to conclude that the video did not accurately reflect that appellant’s driver’s-side headlight was out.

In addition, the squad video shows that appellant audibly admitted to Sergeant Ament that his headlight was out, further corroborating Sergeant Ament’s testimony. In response to Sergeant Ament’s statement to appellant that he was stopped for having a headlight out, appellant can be heard on the video as saying, “headlight, yeah. It went out tonight.” Therefore, the video amply supports Sergeant Ament’s version of the facts.

Even assuming Sergeant Ament made a mistake of fact as to whether appellant’s headlight was out, the stop would still be valid so long as his mistake was reasonable. *See Licari*, 659 N.W.2d at 254; *see also Illinois v. Rodriguez*, 497 U.S. 177, 185-86, 110 S. Ct. 2793, 2800 (1990) (concluding 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). A good faith and reasonable mistake of fact will not

invalidate an otherwise valid traffic stop. *See, e.g., State v. Sanders*, 339 N.W.2d 557, 560 (Minn. 1983) (concluding that a stop based on a reasonable mistake of identity was lawful); *State v. Duesterhoeft*, 311 N.W.2d 866, 868 (Minn. 1981) (concluding that a stop was permissible even though it was 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) (concluding that a stop based on a reasonable mistake of identity was valid).

On this record, taking into account our deference to the district court's credibility judgments, the court did not commit reversible error in its determination that Sergeant Ament had a valid legal basis to stop appellant.

Affirmed.