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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1436**

State of Minnesota,  
Respondent,

vs.

Jason Wayne Oien,  
Appellant.

**Filed May 29, 2012  
Affirmed  
Cleary, Judge**

Clay County District Court  
File No. 14-CR-10-4254

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

Brian J. Melton, Clay County Attorney, Jeanine R. Brand, Cheryl Rae Duysen, Assistant  
County Attorneys, Moorhead, Minnesota (for respondent)

Johnathan R. Judd, The Law Offices of Johnathan R. Judd, PLLC, Moorhead, Minnesota  
(for appellant)

Considered and decided by Stauber, Presiding Judge; Cleary, Judge; and  
Rodenberg, Judge.

**UNPUBLISHED OPINION**

**CLEARY**, Judge

Appellant challenges the denial of his pretrial motion to suppress evidence  
obtained during a traffic stop, arguing that the police officer did not have reasonable

suspicion to stop appellant's vehicle. The district court denied appellant's motion to suppress, stating that the officer "had an objectively reasonable articulable basis to believe that [appellant] had disobeyed the traffic signal, a traffic violation. Observation of any traffic violation is a reasonable articulable basis upon which to initiate a traffic stop." In order to obtain review of the pretrial suppression motion, appellant stipulated to the state's evidence pursuant to Minn. R. Crim. P. 26.01. Appellant was convicted under Minn. Stat. § 169A.20, subd. 1(5) (2010). Because we hold that the officer had a reasonable, articulable suspicion to stop appellant's vehicle, we affirm.

### **FACTS**

On November 9, 2010, appellant Jason Oien was driving westbound as he approached the intersection of 14th Street and Main Avenue in Moorhead. At the same time, a Moorhead police officer was driving eastbound approaching the same intersection. As the officer approached the intersection, he saw the traffic signal turn to yellow and then to red. The officer estimated that when the signal turned yellow, appellant's car was at least as far away from the intersection as the officer's car. The officer slowed and stopped for the red signal, but appellant did not stop. The officer testified that the signal turned red before appellant's vehicle entered the intersection.

After watching appellant proceed through the intersection, the officer turned around, followed behind appellant's car, and conducted a traffic stop. During the traffic stop, the officer smelled a strong odor of alcohol coming from the appellant, observed that his eyes were watery and bloodshot, and observed that his speech was mumbled and slurred. The officer suspected that appellant was intoxicated and asked him to perform

several field sobriety tests and submit to a preliminary breath test (PBT). Based on appellant's performance on the field sobriety tests and the PBT, which measured an alcohol concentration of .165, the officer arrested him for driving while impaired (DWI).

## D E C I S I O N

“We review the district court's determination of the legality of a traffic stop de novo.” *State v. Kilmer*, 741 N.W.2d 607, 609 (Minn. App. 2007) (citing *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000)). “In an appeal following a Minn. R. Crim. P. 26.01, subd. 4, procedure . . . this court's review is limited to the pretrial order that denied the motion to suppress.” *State v. Sterling*, 782 N.W.2d 579, 581 (Minn. App. 2010). This court reviews the undisputed facts and determines whether the evidence needs to be suppressed as a matter of law. *Id.*

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, Dept. of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980) (quotations omitted). “All that is required is that the stop be not the product of mere whim, caprice, or idle curiosity. It is enough if the stop is based upon ‘specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the]

intrusion.” *Marben*, 294 N.W.2d at 699 (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)). 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).

“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). An officer’s mistake as to the interpretation of a law cannot form the basis for an investigatory traffic stop. *Id.*; see also *State v. Anderson*, 683 N.W.2d 818, 824 (Minn. 2004); *Kilmer*, 741 N.W.2d at 609. However, “honest, reasonable mistakes of fact are unobjectionable under the Fourth Amendment.” *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003).

The officer stopped appellant’s car here because he believed that appellant disobeyed the traffic signal by entering the intersection after the signal had turned red. Appellant argues that his vehicle had entered the intersection while the signal was still yellow and that he was allowed to proceed through the intersection even though the signal turned red while he was in the intersection. As noted in the record, it was a very close call as to when exactly appellant’s car entered the intersection. Because the officer, from his vantage point across the intersection, believed that appellant’s car entered the intersection after the signal turned red, the officer had a reasonable, articulable suspicion that appellant committed a traffic violation.

Appellant relies on a case in which the defendant entered the intersection when the signal was yellow. *Kilmer*, 741 N.W.2d at 608. In *Kilmer*, the officer who stopped the

defendant mistakenly believed that the defendant committed a traffic violation by entering the intersection while the signal was yellow. *Id.* at 609. In fact, the law did not prevent a driver from entering the intersection on a steady yellow signal. *Id.* at 611. Because the conduct was not prohibited, and it was the only basis the officer had for stopping the defendant, the court ruled that a “mistaken interpretation of [the] law cannot provide the requisite objective basis for suspecting the motorist of criminal activity.” *Id.* at 609. The court also stated, “This holding applies even if the officer believes, in good faith, that the driving conduct that prompted the stop was illegal.” *Id.*

In contrast to *Kilmer*, the officer here does not believe that appellant committed a traffic violation by entering the intersection when the signal was yellow. The officer testified that he believed appellant entered the intersection when the signal was red, and that was the basis of the traffic stop. The officer was not mistaken about the law, and reliance on *Kilmer* is misplaced.

Appellant also argues that “there is a legitimate question as to whether [the officer] actually (and objectively) saw a traffic violation committed in his presence.” However, an officer is not required to observe an actual traffic violation to conduct a stop; he can conduct a stop if he has an articulable, objective basis for suspecting that criminal activity is afoot. *Marben*, 294 N.W.2d at 699. Even if the officer here *was* mistaken, and appellant actually entered the intersection while the signal was still yellow, we conclude that his mistake was one of fact and that, under these circumstances, the mistake was not pretextual. The Minnesota Supreme Court has held that honest, reasonable mistakes of fact do not invalidate an otherwise valid stop. *See State v.*

*Duesterhoeft*, 311 N.W.2d 866 (Minn. 1981); *City of St. Paul v. Vaughn*, 306 Minn. 337, 237 N.W.2d 365 (1975). Although in these cases it was an officer's mistake about an individual's identity that did not invalidate an otherwise valid stop, honest, reasonable mistakes of fact relating to traffic violations should not invalidate an otherwise valid stop either.

Appellant here did not present any evidence that the signal was still yellow when he entered the intersection. The district court here did not find that the signal was red when appellant entered the intersection, but stated:

[T]he point in time at which the front end of [appellant's] vehicle pierced the threshold of the intersection occurred so close in time to the moment that the governing traffic signal changed from yellow to red, [that] to make an definitive determination which occurred first would require a perpendicular vantage point of the kind used to record photo-finishes in horse races.

The court held that, because the timing was such a close call, "it was objectively reasonable for [the officer] to believe, from the vantage point from which he had observed [appellant's] course of travel, that he had witnessed the light turn red before [appellant's] vehicle pierced the threshold of the intersection." If the officer was incorrect about the timing of the signal turning red, that would be a reasonable mistake of fact, not one of law, and "honest, reasonable mistakes of fact are unobjectionable under the Fourth Amendment." *Licari*, 659 N.W.2d at 254.

**Affirmed.**