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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1072**

State of Minnesota,
Respondent,

vs.

John Lee Haroldson,
Appellant.

**Filed June 11, 2012
Affirmed
Ross, Judge**

Nicollet County District Court
File No. 52-CR-10-259

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

Christopher M. Kennedy, Assistant City Attorney, Mankato, Minnesota (for respondent)

Thomas G. Dunnwald, Minneapolis, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Halbrooks, Judge; and
Ross, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Police stopped John Lee Haroldson's car because its tail lights appeared to be off. The officer then noticed that Haroldson was intoxicated, so he administered field sobriety tests and arrested him for drunk driving. The state charged Haroldson with four alcohol

related driving offenses. The district court found Haroldson guilty of two counts of fourth-degree driving while impaired after a bench trial on stipulated facts. Haroldson appeals, arguing that the officer lacked reasonable suspicion to stop him, that the district court violated his constitutional rights by viewing the tail lights during the suppression hearing, and that the state's procedure for the payment of his attorney's costs on appeal violates his rights. Because the officer had reasonable suspicion to stop Haroldson's car, because Haroldson's constitutional rights were not violated by the district court judge's viewing the tail lights, and because Haroldson has been assured that his attorney will be compensated for the appeal, we affirm.

FACTS

After dark on August 20, 2010, North Mankato police officer Christopher Hendrickson saw a car on the Veterans Memorial Bridge operating without running lights, or so it seemed. Officer Hendrickson stopped the car. As he approached on foot, however, he could see that the tail lights were actually functioning, but they were unusually dim because of diffusing material placed over the covers. Officer Hendrickson noticed a strong odor of alcoholic beverages from the driver, John Lee Haroldson. He directed Haroldson to perform field sobriety tests, which Haroldson failed. He arrested Haroldson for driving drunk.

The state charged Haroldson with two counts of third-degree driving while impaired and two counts of fourth-degree driving while impaired. *See* Minn. Stat. §§ 169A.20, subds. 1(1), (5), 169A.26, 169A.27 (2010). Haroldson moved the district court to suppress all evidence, arguing that the officer had insufficient grounds to initiate

the traffic stop. Officer Hendrickson testified that he stopped the car because Haroldson's tail lights were not visible in traffic even from two car lengths behind. Presumably for stylistic flair, Haroldson's tail lights had been covered by material that gave them a dark gray or black appearance, matching the car's body color but substantially obscuring the light.

During the hearing, the district court judge viewed Haroldson's vehicle, which was then parked outside the courthouse, observing the diffused tail lights in operation. From a distance of about 35 to 40 feet, the car's tail lights were visible. But the district court observed that the lights were substantially dimmer than the brake lights. It found that "[a]lthough a viewing from 500 feet was not attempted, given their appearance from 35–40 feet, it seems doubtful that the tail lights could be seen from a distance of 500 feet." The district court therefore denied Haroldson's motion to suppress the evidence.

The case proceeded to a stipulated-facts bench trial and the district court found Haroldson guilty of two counts of fourth-degree driving while impaired.

Haroldson appeals.

DECISION

I

Haroldson challenges the district court's holding that Officer Hendrickson had a sufficient basis for the traffic stop. In an appeal challenging a pretrial order denying a motion to suppress evidence, we review a district court's legal determinations de novo and its factual findings for clear error. *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007). The relevant facts here are undisputed.

We hold that the seizure was constitutional. The United States and Minnesota Constitutions prohibit only unreasonable seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. This prohibition restricts brief investigatory stops of motor vehicles. *U.S. v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 694–95 (1981). Investigatory stops must be supported by a reasonable suspicion that criminal activity may be occurring. *U.S. v. Arvizu*, 534 U.S. 266, 273, 122 S. Ct. 744, 750 (2002). If an officer observes a violation of even a minor traffic law, that observation forms the necessary objective basis for stopping the violator. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

The district court appropriately held that Officer Hendrickson had a sufficient basis to stop Haroldson’s vehicle. Every vehicle must have lighted tail lamps displayed while operating between sunset and sunrise, visible from 500 feet to the rear. Minn. Stat. §§ 169.48, subd. 1, 169.50, subd. 1 (2010). Haroldson’s diffused tail lights were not visible from 500 feet to the rear, a circumstance that justified Officer Hendrickson’s stop.

II

Haroldson next contends that the district court judge abused his discretion by personally observing the tail lights during the omnibus hearing. More specifically, Haroldson maintains that the district court judge inappropriately “testified” about the tail lights and that Haroldson had no way to directly challenge this “testimony.” The argument is unsupported by law. Minnesota Rule of Evidence 605 prohibits the presiding trial judge from testifying as a witness. But the district court judge did not give any testimony. While serving as the fact-finder, he viewed evidence and then orally declared the court’s findings. *See Claesgens v. Animal Rescue League of Hennepin Cnty., Minn.*,

173 Minn. 61, 63, 216 N.W. 535, 536 (1927) (holding that district court judge's visiting a location to understand the witness testimony during a bench trial was not error). The district court judge evaluated Haroldson's tail lights as it would any other piece of physical evidence, and we assume that walking to the parking lot had several practical advantages over maneuvering the car into the courtroom.

III

Haroldson argues that his convictions should be reversed because of the state's allegedly improper procedure for the payment of his attorney's costs on appeal. An indigent misdemeanor has the right to court-appointed counsel. *State v. Randolph*, 800 N.W.2d 150, 154 (Minn. 2011). In *Randolph*, the supreme court instructed that the right may be vindicated by the state's making arrangements for the payment of fees on appeal:

The State is [required] to make arrangements within 90 days of the filing of this opinion to pay the reasonable attorney fees incurred by [the defendant's] appointed counsel If the State does not do so, the court of appeals shall dismiss the appeal and remand to the district court to vacate the conviction and dismiss all misdemeanor charges against [the defendant].

Id. at 162. Similarly here, the district court issued an order appointing appellate counsel and requiring the state to pay for the representation. It issued a second order clarifying the procedure so that Haroldson's attorney would be paid for his services after the appeal. These orders meet the standard demonstrated in *Randolph*.

Affirmed.