STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1752

State of Minnesota,
Respondent,

vs.

Lucas Christopher Hollerich,
Appellant.

Filed August 26, 2013
Affirmed
Schellhas, Judge

Nicollet County District Court
File No. 52-CR-11-309

Lori Swanson, Attorney General, Michael Thomas Everson, Assistant Attorney General, St. Paul, Minnesota; and

Michelle Marie Zehnder Fischer, Nicollet County Attorney, St. Peter, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle Rene Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Presiding Judge; Schellhas, Judge; and Chutich, Judge.

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

SCHELLHAS, Judge

Appellant challenges his conviction of felony test refusal, arguing that the police officer lacked reasonable, articulable suspicion to justify the traffic stop and that the district court therefore erred by denying his suppression motion. We affirm.

FACTS

In the early morning hours on August 5, 2011, St. Peter Police Officer Thomas Winsell was on routine patrol in the downtown St. Peter business district when he observed a vehicle traveling through an alley that runs parallel to Front Street and Minnesota Avenue. Officer Winsell saw the vehicle exit the alley and turn onto Broadway Avenue without stopping.

Officer Winsell initiated a traffic stop, approached the vehicle, and identified the driver as appellant Lucas Hollerich. While speaking with Hollerich, Officer Winsell smelled alcohol emanating from the vehicle and noticed that Hollerich's eyes were bloodshot and glassy. Hollerich failed several field sobriety tests, and a preliminary breath test showed that Hollerich's alcohol concentration was .10. Officer Winsell placed Hollerich under arrest, transported him to the Nicollet County Sheriff's Office, and read him the Minnesota Implied Consent Advisory. Hollerich thereafter refused to submit to testing.

Respondent State of Minnesota charged Hollerich with first-degree driving while impaired and felony test refusal under Minn. Stat. § 169A.20, subds. 1–2 (2010). Hollerich moved to suppress the evidence against him on the basis that Officer Winsell

lacked reasonable, articulable suspicion to justify the traffic stop. The district court denied the suppression motion, concluding that Officer Winsell had a legal basis to stop Hollerich because he observed Hollerich violate a Minnesota traffic law that requires a driver emerging from an alley in a business district to stop a vehicle before "driving onto a sidewalk or into the sidewalk area." Minn. Stat. § 169.31 (2010). Although the state did not elicit testimony from Officer Winsell that the alley in question crosses a sidewalk at its intersection with Broadway, the district court concluded that the existence of a sidewalk could be reasonably inferred from the officer's testimony.

To obtain review of the district court's pretrial suppression order, Hollerich stipulated to the prosecution's case, and the parties submitted the case to the court under Minn. R. Crim. P. 26.01, subd. 4. The court found Hollerich guilty of felony test refusal.

This appeal follows.

D E C I S I O N

Appellate courts "review de novo a district court's determination of reasonable suspicion of illegal activity." *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012). "When reviewing a pretrial order on a motion to suppress, [an appellate court] review[s] the district court's factual findings for clear error." *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012). In doing so, an appellate court gives "due weight to the inferences drawn from those facts by the district court." *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000) (quotation omitted). A finding of fact is clearly erroneous if, after reviewing the record, this court "reaches the firm conviction that a mistake was made." *State v. Kvam*, 336 N.W.2d 525, 529 (Minn. 1983). The credibility of witnesses is a question for the finder of

fact, to whose determinations this court shows great deference. *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff'd*, 508 U.S. 366, 113 S. Ct. 2130 (1993).

The United States and Minnesota Constitutions guarantee individuals the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Police officers are permitted 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). The Minnesota Supreme Court has recognized that this is not a high standard. *Id.* "In deciding the propriety of investigative stops, we review the events surrounding the stop and consider the totality of the circumstances in determining whether the police had a reasonable basis justifying the stop." *Britton*, 604 N.W.2d at 87. "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 an actual violation of the law "need not be detectable. The police must only show that the stop was not the product of mere whim, caprice or idle curiosity, but was based upon specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *State v. Pike*, 551 N.W.2d 919, 921–22 (Minn. 1996) (quotation omitted).

Hollerich argues that the district court erroneously concluded that Officer Winsell had reasonable, articulable suspicion to justify the traffic stop. Specifically, Hollerich asserts that because the law only requires that a driver stop when emerging from an alley before crossing a sidewalk, and because the state did not present any evidence that a

sidewalk exists at the intersection of the alley in question and Broadway, the state failed to establish a legal basis for the stop. This argument is unavailing.

Minnesota law provides that a "driver of a vehicle within a business or residence district emerging from an alley, driveway, or building shall stop such vehicle immediately prior to driving *onto a sidewalk or into the sidewalk area* and shall yield the right-of-way to any pedestrian and all other traffic on the sidewalk." Minn. Stat. § 169.31 (emphasis added). "Sidewalk" is defined as "that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians." Minn. Stat. § 169.011, subd. 75 (2010).

The district court rejected Hollerich's argument that the state failed to establish a legal basis for the stop by not eliciting testimony from Officer Winsell about the existence of a sidewalk:

> Although Winsell was not asked whether there was a sidewalk at this location, the existence of a sidewalk can reasonably be inferred from Winsell's testimony. Winsell testified that he stopped [Hollerich's] vehicle for failing to stop at the intersection of the alley and Broadway avenue, referencing Minn. Stat. § 169.31. Minn. Stat. § 169.31 is entitled *"Stop at Sidewalk."* Winsell testified that this occurred in the downtown area of St. Peter, an area where sidewalks would normally be expected. . . . Viewed as a whole, the existence of a sidewalk can reasonably be inferred from this evidence.

The court recognized that Officer "Winsell did not specifically refer to [Minn. Stat. § 169.31] during his testimony but instead noted there was a statute requiring such a stop."

The district court's inference that a sidewalk exists at the intersection of the alley in question and Broadway was not clearly erroneous. A reviewing court gives "due weight to the inferences drawn from [factual findings made] by [the district court]," *State v. Lee*, 585 N.W.2d 378, 383 (Minn. 1998) (quotation omitted), and a district court may make reasonable inferences from the facts. *Groe v. Comm'r of Pub. Safety*, 615 N.W.2d 837, 842 n.2 (Minn. App. 2000), *review denied* (Minn. Sept. 13, 2000). The court found that when Officer Winsell stopped Hollerich's vehicle, Hollerich was driving "in the downtown business district" of St. Peter and that Officer Winsell observed that when the vehicle emerged from the alley, it "did not come to a stop prior to turning onto Broadway." The court stated that "Officer Winsell testified that the reason for the stop of [Hollerich's] vehicle was that [Hollerich] came out of the alley without coming to a stop." Hollerich does not challenge any of these findings; moreover, they are supported by the record. And Officer Winsell specifically testified that when he saw Hollerich turn from the alley onto Broadway without stopping, although no stop sign is there, he observed a violation of Minnesota law because under those circumstances, Hollerich was required by statute to stop. Because the court reasonably inferred that a sidewalk existed at the intersection of the subject alley and Broadway, we are not left with a firm conviction that the district court made a mistake. *See State v. Gomez*, 721 N.W.2d 871, 883 (Minn. 2006) (advising that findings of fact are clearly erroneous only if reviewing court is left with definite and firm conviction that a mistake has been made).

Hollerich also asserts that Officer Winsell "mistakenly believed the law prohibited a driver from exiting an alleyway without stopping." *See State v. Anderson*, 683 N.W.2d

818, 824 (Minn. 2004) (holding that "an officer's mistaken interpretation of a statute may not form the particularized and objective basis for suspecting criminal activity necessary to justify a traffic stop"). But Hollerich points to no evidence in the record that supports his assertion, and our review of the record reveals no such evidence.

Because the district court reasonably inferred that a sidewalk existed at the intersection of the alley and Broadway, the district court did not err by concluding that Officer Winsell had a legal basis to justify the stop of Hollerich's vehicle. The court therefore properly denied Hollerich's suppression motion.

Affirmed.