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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1813**

Jared Michael Wilson, petitioner,  
Appellant,

vs.

Commissioner of Public Safety,  
Respondent.

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

Hennepin County District Court  
File No. 27-CV-11-13776

Steven J. Meshbesh, Adam T. Johnson, Meshbesh & Associates, P.A., Minneapolis,  
Minnesota (for appellant)

Lori Swanson, Attorney General, Stephen D. Melchionne, Assistant Attorney General,  
St. Paul, Minnesota (for respondent)

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

**UNPUBLISHED OPINION**

**HALBROOKS**, Judge

Appellant challenges the district court's decision sustaining the state's revocation  
of his driver's license and impounding his license plates, arguing that the initial stop of

his vehicle was unlawful and that he reasonably refused to submit to an Intoxilyzer breath test. We affirm.

### **FACTS**

At approximately 7:50 a.m. on June 25, 2011, Minnesota State Patrol Trooper Troy Utes was driving northbound on Highway 252 in Brooklyn Center, approaching the intersection of Highway 252 and 66th Avenue. At the intersection, there are two designated and marked left-turn lanes to permit motorists to turn left from Highway 252 to westbound 66th Avenue. There are also two or three continuing northbound lanes. On the morning of June 25, there were orange barricades blocking both of the left-turn lanes (making it impossible to drive in either lane), signs indicating that both left-turn lanes were closed to traffic, and a lighted message board stating that the left-turn lanes were closed. The traffic light controlling the two out-of-service left-turn lanes was still operating. Trooper Utes approached the intersection traveling in the northbound lane adjacent to the two left-turn lanes. The northbound traffic light was red, and Trooper Utes took his place in the line of cars waiting at the light. Appellant Jared Michael Wilson's white pickup truck was positioned a couple of vehicles ahead of Trooper Utes's squad in the same lane. Trooper Utes had a clear view of appellant's truck.

When the northbound traffic light turned green, and while the left-turn traffic light was red, Trooper Utes observed appellant make a U-turn around the two blocked-off left-turn lanes and begin traveling south on Highway 252. Trooper Utes activated his lights, also made a U-turn, and pulled appellant over as he was proceeding south on Highway

252. At the implied-consent hearing, Trooper Utes testified that he pulled appellant over because he had gone through the red arrow.

Trooper Utes approached appellant's vehicle, stood at the passenger-side window, and explained the reason for the stop. Appellant told Trooper Utes that he was working on a construction job in the area and had been "trying to find a job site" when he made the illegal turn. As Trooper Utes stood next to the vehicle, he observed that appellant's eyes were bloodshot and detected a moderate odor of alcohol. Trooper Utes asked appellant if he had been drinking the night before, and appellant responded that he had consumed "a couple of beers." Trooper Utes administered a series of field sobriety tests, which gave him concern that appellant was impaired, and a preliminary breath test, which returned a result of .157.

Trooper Utes transported appellant to the Hennepin County Jail and read him the implied-consent advisory at approximately 8:15 a.m. After confirming that he understood the advisory, appellant called his attorney and, while he was still on the phone, asked Trooper Utes what type of test he would be given. Trooper Utes responded that he would administer a breath test, and appellant finished his call. Following the telephone call, Trooper Utes repeatedly asked appellant if he would submit to a breath test, and appellant repeatedly told Trooper Utes that his attorney had advised him not to take the breath test but that he would submit to a blood or urine test. Trooper Utes informed appellant that his continued refusal to take the breath test, despite his stated willingness to take a blood or urine test, would be considered a refusal to take any test.

After appellant spoke with his attorney a second time, he told Trooper Utes that he was not refusing to take the breath test but that he would rather have the blood or urine test because he believed that the Intoxilyzer breath test was not sufficiently accurate. When appellant again declined to take the breath test, while nonetheless insisting that he was not refusing it, Trooper Utes deemed appellant to have refused the test.

The Commissioner of Public Safety revoked appellant's license and impounded his license plates, and appellant petitioned for judicial review. At the implied-consent hearing, appellant testified that he has been employed as an iron worker for J&L Steel Erectors since approximately 2000 and that at the time of the hearing he was a foreman who worked primarily on bridges. He testified that on June 25, 2011, he and a crew began work at 6:00 a.m. on two bridges located close to the location of his arrest. Appellant further testified that when he made the U-turn, he was transporting equipment to a crew working on a bridge and that he and other J&L employees had been making U-turns at that intersection "all week" in order to access the construction site.

The district court sustained the revocation and impoundment, reasoning that Trooper Utes had probable cause for the traffic stop and that appellant had no proper basis for refusing to take the breath test. This appeal follows.

## **D E C I S I O N**

### **I.**

In a civil action to rescind the revocation of driving privileges under the implied-consent law, the commissioner has the burden to demonstrate, by a preponderance of the evidence, that revocation is appropriate. *Kramer v. Comm'r of Pub. Safety*, 706 N.W.2d

231, 235 (Minn. App. 2005). In reviewing a district court's order sustaining an implied-consent revocation, we will not set aside findings of fact unless they are clearly erroneous. *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002). We will overturn conclusions of law only if the district court "erroneously construed and applied the law to the facts of the case." *Dehn v. Comm'r of Pub. Safety*, 394 N.W.2d 272, 273 (Minn. App. 1986).

Both the United States and Minnesota Constitutions prohibit unreasonable seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. An investigative traffic stop is a seizure to which these constitutional provisions apply, *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004), and police may make a traffic stop if they have a reasonable and articulable suspicion that a person is engaged in criminal activity. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). "[T]he reasonable suspicion showing is not high." *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006) (quotation omitted). "Generally, if an officer observes a violation of a traffic law, no matter how insignificant the traffic law, that observation forms the requisite particularized and objective basis for conducting a traffic stop." *Wilkes v. Comm'r of Pub. Safety*, 777 N.W.2d 239, 243 (Minn. App. 2010). Whether the police have reasonable suspicion to conduct an investigative stop is determined based on the totality of the circumstances. *Britton*, 604 N.W.2d at 87. "We review a district court's determination regarding the legality of an investigatory traffic stop and questions of reasonable suspicion de novo." *Wilkes*, 777 N.W.2d at 242-43.

It is undisputed here that appellant violated a traffic law when he made a U-turn onto southbound Highway 252 against a steady red left-turn arrow. *See* Minn. Stat. § 169.06, subd. 5(a)(3)(iii) (2010) (providing that “[v]ehicular traffic facing a steady red arrow signal, with the intention of making a movement indicated by the arrow, must stop”). But appellant argues that at the time Trooper Utes stopped him, he was exempt from the traffic regulations in chapter 169 by operation of Minn. Stat. § 169.035, subd. 1(a) (2010), which provides that “[t]he provisions of [chapter 169] shall not apply to persons, motor vehicles, and other equipment while actually engaged in work upon the highway, except as provided in paragraphs (b) and (c).” Paragraph (b) provides that chapter 169’s traffic regulations apply to people and vehicles traveling to and from work except as the regulations concern the maximum width, height, length, and weight of the vehicles. Paragraph (c) provides that an individual who is “actually engaged in work upon the highway” is not exempt from DWI laws or laws concerning safety precautions near school buses and schoolchildren.

Appellant’s argument that he is protected from prosecution under chapter 169’s exemption protecting “persons, motor vehicles, and other equipment . . . actually engaged in work upon the highway” is contrary to the plain language of the relevant statute and as such is unavailing. Statutory construction is a question of law, which we review *de novo*. *State v. Stewart*, 624 N.W.2d 585, 588 (Minn. 2001). The goal of statutory interpretation and construction “is to ascertain and effectuate the intention of the legislature,” and each statute “shall be construed, if possible, to give effect to all its provisions.” Minn. Stat. § 645.16 (2010). We construe the words of a statute according to their common and

approved usage. Minn. Stat. § 645.08(1) (2010). When the legislature’s intent is clearly discernible from a statute’s plain and unambiguous language, there is no need to resort to other principles of statutory construction. *State v. Kelbel*, 648 N.W.2d 690, 701 (Minn. 2002).

The phrase “actually engaged in work upon the highway” is neither ambiguous nor applicable to appellant at the time of his U-turn at the intersection of Highway 252 and 66th Avenue. Appellant never asserted, and there is no evidence, that he was involved in any work taking place at the location and time that he was arrested. Therefore, by the statute’s plain meaning, appellant was properly subjected, at the time of his arrest, to a traffic stop and prosecution for making the U-turn against the steady red arrow.

When Trooper Utes stopped appellant, appellant stated that he was trying to find a “job site.” Appellant testified, and the district court found, that at the time of appellant’s arrest, he was transporting a drill from one bridge job site to the other. But the exemption from prosecution under the traffic regulations applies to individuals “traveling to and from [construction] work” only insofar as the infraction concerns violations of statutory width, height, length, and weight restrictions. Minn. Stat. § 169.035, subd. 1(b). No such violations were alleged here.

Appellant’s substantial reliance on *Johnson v. Bergquist*, 184 Minn. 576, 239 N.W. 772 (Minn. 1931), is misplaced. In *Johnson*, a tractor was left standing with its engine running at a highway worksite while workmen adjusted its steel blade grader. 184 Minn. at 577, 239 N.W. at 773. The tractor was not equipped with a muffler, which was typically required of motor vehicles by law. *Id.* at 578, 239 N.W. at 773. An exception

to the muffler law applied to motor vehicles “actually engaged in work upon the surface of a highway.” *Id.* at 577-78, 239 N.W. at 773. When a horse-drawn wagon passed by, the horse was frightened by the noise of the tractor and ran away, injuring the wagon’s driver. *Id.* at 577, 239 N.W. at 773. The supreme court held that the tractor was actually engaged in work upon the surface of a highway because its engine was running and it was located at the place where the work was to be done. *Id.* at 579, 239 N.W. at 774. Because appellant here was not actually engaged in work upon the highway and because the statutory exemption does not apply to vehicles traveling to and from work sites, appellant was not exempted from traffic laws.

## II.

Appellant next argues that his refusal to submit to the Intoxilyzer test was reasonable because (1) he was confused about the legality of his options concerning the test and their consequences and (2) he reasonably distrusted the accuracy of the Intoxilyzer machine. We disagree with both arguments.

A driver’s license will be revoked if the driver refuses to take a test pursuant to the implied-consent law. Minn. Stat. § 169A.52, subd. 3 (2010). A driver in an implied-consent proceeding may assert as an affirmative defense that “at the time of the refusal, the petitioner’s refusal . . . was based upon reasonable grounds.” Minn. Stat. § 169A.53, subd. 3(c) (2010). Whether a refusal is reasonable is a question of fact for the district court, and this finding will be reversed only if clearly erroneous. *State, Dep’t of Highways v. Beckey*, 291 Minn. 483, 486-87, 192 N.W.2d 441, 444-45 (1971). A driver’s claim that a refusal was reasonable because he was merely following the advice

of counsel will succeed only if the police misled a driver to believe the refusal was reasonable or if police made no attempt to explain to a confused driver that regardless of what his lawyer said, he must permit testing or lose his license. *State, Dep't of Pub. Safety v. Lauzon*, 302 Minn. 276, 277, 224 N.W.2d 156, 157 (1974). Incorrect legal advice does not excuse a refusal to submit to testing. *Haug v. Comm'r of Pub. Safety*, 473 N.W.2d 900, 902 (Minn. App. 1991).

A driver's confusion is a reasonable basis for refusal. *See Beckey*, 291 Minn. at 487, 192 N.W.2d at 445 (finding a driver's refusal reasonable based on the driver's confusion regarding whether *Miranda* rights apply in an implied-consent proceeding); *Frost v. Comm'r of Pub. Safety*, 401 N.W.2d 454, 456 (Minn. App. 1987) (finding a driver's refusal reasonable based on the driver's confusion regarding whether he had a right to have a personal doctor present for the breath test). And "[a] refusal may be reasonable if the police have misled a driver into believing a refusal was reasonable or if the police have made no attempt to explain to a confused driver his obligations." *Frost*, 401 N.W.2d at 456. To establish confusion, the driver has the burden of showing that he was confused with respect to his rights or the consequences of his refusal to submit to testing. *Maietta v. Comm'r of Pub. Safety*, 663 N.W.2d 595, 599 (Minn. App. 2003), *review denied* (Minn. Aug. 19, 2003).

The district court specifically discredited appellant's testimony that he was confused with respect to the consequences of his decision not to submit to testing. We give due regard to the district court's opportunity to judge the credibility of witnesses and will not set aside findings of fact unless clearly erroneous. Minn. R. Civ. P. 52.01;

*Davidson v. Webb*, 535 N.W.2d 822, 824 (Minn. App. 1995). Appellant read and signed the implied-consent advisory and repeatedly informed Trooper Utes that he understood it. And appellant's repeated refusal to simply say that he was refusing to take the breath test indicates that he was well aware of the consequences of refusal but was attempting to avoid those consequences by a semantic evasion that was intended to constitute, as it were, a non-refusal refusal. The district court's finding that appellant was not credibly confused is not clearly erroneous, and as such, appellant's alleged confusion is not a reasonable basis for refusing to take the test.

Appellant relies on *Lauzon*, 302 Minn. at 277, 224 N.W.2d at 157, for the proposition that police officers have an affirmative duty to intervene to correct a driver's confusion about the consequences of refusal, despite the driver's repeated consultations with an attorney. This reliance is misplaced, in large part because *Lauzon* was decided before drivers arrested for DWI were allowed to consult with counsel before deciding whether to take an impairment test. Appellant argues that he was entitled to a "simple clarifying statement" from the arresting officer to help him understand whether to take the test. But Trooper Utes repeatedly informed appellant that his continued refusal to answer yes or no when asked whether he would take the test would be construed as a refusal to submit to testing. It is hard to imagine a clearer statement of the consequences of continuing to avoid the breath test. The trooper reasonably understood that appellant's evasive answers evinced not confusion, but a strategic ploy by which appellant could both refuse the test and deny that he was refusing it. Appellant's alleged confusion was not a reasonable basis to refuse to take the breath test.

Appellant also argues that his refusal to take the test was reasonable because of his distrust of the accuracy and reliability of the Intoxilyzer test. Although he acknowledges that mere “suspicions” about the reliability of the testing device are not sufficient to refuse a test, *Swedzinski v. Comm’r of Pub. Safety*, 367 N.W.2d 119, 120 (Minn. App. 1985), appellant contends that there may still be occasions when a suspect’s distrust of a testing device may be adequately grounded to reasonably justify refusing a test. In support, he relies on *Exsted v. Comm’r of Pub. Safety*, 375 N.W.2d 594, 596 (Minn. App. 1985), in which we held that a suspect who had already submitted to two Intoxilyzer tests, each of which produced deficient results because radio-frequency interference caused the machine to malfunction, could reasonably refuse a third test. Appellant also discusses, at some length, statewide consolidated litigation concerning alleged problems with the source code of the Intoxilyzer machines used to measure alcohol concentration. He contends that the statewide consolidated challenge, involving thousands of litigants, makes his refusal to submit to the test reasonable by definition.

Appellant’s reliance on *Exsted*, which involved a malfunctioning device, is misplaced. And he offers no evidence, other than invoking the name of the source-code litigation, to demonstrate that his distrust of the Intoxilyzer is more substantial or reasonable than the appellant’s distrust in *Swedzinski*. If appellant doubted the reliability of the test, he was free to have an additional chemical test performed at his own expense under Minn. Stat. § 169A.51, subd. 7(b) (2010). But he may not, on these facts, simply refuse to submit to the Intoxilyzer because of a vague suspicion about the test’s reliability, unsubstantiated by anything other than his awareness of litigation involving

the device's source code. Appellant's refusal to take the breath test based on his distrust of the testing apparatus was unreasonable.

**Affirmed.**