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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1311**

Jeffrey Richard Heille, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed May 31, 2011
Reversed
Peterson, Judge**

Dakota County District Court
File No. 19WS-CV-09-1979

Faison T. Sessoms, Jr., Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Natasha Malea Karn, Assistant Attorney General, St.
Paul, Minnesota (for respondent)

Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and
Toussaint, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

Appellant Jeffrey Richard Heille challenges the district court's decision sustaining the revocation of his driver's license under the implied-consent law, arguing that the stop of his vehicle was illegal because it was based on the officer's incorrect belief that

appellant had violated Minn. Stat. § 160.2715(a)(14) (2008) by unlawfully driving around a barricade. We reverse.

FACTS

A police officer stopped appellant for driving on a part of Concord Boulevard that the officer believed was closed to all traffic. Concord Boulevard was closed to through traffic but open to businesses from Dawn Way to 70th Street. At the intersection of Concord Boulevard and Dawn Way, there were signs stating “road closed,” “road closed to thru traffic,” “detour,” and “open to businesses” and signs listing the businesses to which the road was open. A sign that stated “road closed ahead 500 feet” was located north of the intersection of Concord Boulevard and 65th Street. The sign was visible to southbound traffic. A sign located at Concord Boulevard and 65th Street stated that the road was open to businesses and listed the businesses to which the road was open. The listed businesses included Celts Pub, which was located on the 6500 block of Concord Boulevard. The southernmost business on Concord Boulevard north of 70th Street was located at the intersection of Concord Boulevard and 66th Street. At the intersection of Concord Boulevard and 70th Street, there was a barricade blocking every lane except the right-turn lane, but there was no “road closed” sign visible to southbound traffic.

Appellant traveled south on Concord Boulevard to Celts Pub. When appellant left the pub, he turned right and drove south on Concord Boulevard. A police officer was parked on Concord Boulevard near 70th Street. He followed appellant down Concord Boulevard and pulled him over after appellant made a right turn onto 70th Street.

Appellant's driver's license was revoked under the implied-consent statute, and appellant petitioned the district court for judicial review of the license revocation.

At the implied-consent hearing, the officer testified:

The entire northbound lane of Concord Boulevard was blocked off by signage. And the southbound lane of traffic was also blocked, except for I believe one width of a "road closed" signage, the bigger barricades that they use. I don't know the exact width.

The part of the lane that was not blocked was wide enough for "[m]ost any car" to travel on. The officer testified that "per the signage," vehicles were not allowed to travel south of the southernmost business and that he stopped appellant "[f]or driving around the barricade."

The district court found that the part of Concord Boulevard between the southernmost business and 70th Street was closed to all traffic, that there was a barricade at the intersection of Concord Boulevard and 70th Street indicating that Concord Boulevard was closed, and that the officer stopped appellant "for travelling on a closed road and for driving around a barricade in violation of Minnesota traffic laws." Based on these findings, the district court concluded that the officer had a particularized and objective basis for stopping appellant's vehicle and upheld the license revocation. The district court also determined that even if the officer was mistaken in believing that the part of Concord Boulevard south of the southernmost business was closed, the mistake was one of fact, and, therefore, the stop was valid. The district court denied appellant's motion for a new trial or amended findings. This appeal followed.

DECISION

Both the United States and Minnesota Constitutions prohibit unreasonable seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. “A limited investigatory stop of a motorist is constitutionally permissible if the state can show that the officer had a ‘particularized and objective basis for suspecting the particular person stopped of criminal activity.’” *Wilkes v. Comm’r of Pub. Safety*, 777 N.W.2d 239, 242-43 (Minn. App. 2010) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S. Ct. 690, 695 (1981)) (other 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.” *Id.* at 243 (quotation omitted). This court reviews “a district court’s determination regarding the legality of an investigatory traffic stop and questions of reasonable suspicion de novo.” *Id.* at 242-43.

Minn. Stat. § 160.16 (2008) authorizes road authorities and contractors to erect barricades and post signs to close a road that is under construction. Minn. Stat. § 160.2715(a)(14) prohibits driving “over, through, or around any barricade, fence, or obstruction erected for the purpose of preventing traffic from passing over a portion of a highway closed to public travel or to remove, deface, or damage any such barricade, fence, or obstruction.” Appellant does not dispute that Concord Boulevard was a highway under Minn. Stat. § 160.2715(a)(14).

But there is no statute, and respondent Commissioner of Public Safety cites no other authority, showing that, for drivers traveling to local businesses, the effect of the

barricades and signs placed along Concord Boulevard was to close the road past the southernmost business. We, therefore, conclude that the legal effect of the barricade signs, which stated that the road was “closed to thru traffic” but “open to businesses,” was to permit travel on Concord Boulevard for the purpose of going to a listed business.

Our conclusion is supported by the definitions of through,¹ which means “[a]llowing continuous passage,” and continuous, which means “[u]ninterrupted in time.” *The American Heritage Dictionary of the English Language* 1870, 408 (3d ed. 1992). Because the sign at Concord Boulevard and 65th Street stated that the road was open to businesses south of that point and because there was no sign or traffic-control device south of 65th Street indicating a point at which the road was closed to all traffic, the signs along Concord Boulevard did not have the legal effect of closing the road to a patron of a local business. The signs indicated only that the road was closed to drivers traveling through the closed section without stopping at a local business. Accordingly, appellant did not violate a traffic law by traveling south on Concord Boulevard after leaving the pub, and there was no objective legal basis for the officer to suspect that appellant had violated Minn. Stat. § 160.2715(a)(14). *See State v. George*, 557 N.W.2d 575, 578-79 (Minn. 1997) (concluding that stop was not supported by objective legal basis when officer was mistaken in belief that motorcycle’s headlight configuration violated equipment laws).

¹ Thru is an informal spelling of through. *The American Heritage Dictionary of the English Language* 1871 (3d ed. 1992).

The district court also determined that even if the officer was mistaken about the road being closed, it was a mistake of fact that did not invalidate the stop. Although a mistake of law cannot form the basis for a traffic stop, “honest, reasonable mistakes of fact are unobjectionable under the Fourth Amendment.” *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003). As appellant traveled south on Concord Boulevard, he encountered a “road closed 500 feet” sign north of the intersection of Concord Boulevard and 65th Street. Although the officer testified that this sign should have closed Concord Boulevard at about 65th Street, the road-closed sign was contradicted by a sign at the intersection of Concord Boulevard and 65th Street, stating that the road was open to businesses south of that point. As appellant continued south on Concord Boulevard on his way to the pub and after leaving there, he encountered no sign or traffic-control device indicating a point at which the road was closed. Because the signs did not convey the message that the road was closed to a person who had used it for the purpose of stopping at a listed business, the stop was not supported by a reasonable factual basis.

The district court also found that the barricade at the intersection of Concord Boulevard and 70th Street indicated that the road was closed and that appellant was stopped for driving around the barricade. But exhibit 4, which shows the barricade at 70th Street, clearly shows that the barricade was not marked by a “road closed” sign that was visible to traffic traveling south on Concord Boulevard. Also, contrary to the officer’s testimony, appellant did not drive around a barricade because the barricade at 70th Street did not extend into the right-turn lane.

Because Concord Boulevard was open to local businesses and appellant used Concord Boulevard to reach Celts Pub, the commissioner failed to show a particularized and objective basis for suspecting appellant had violated Minn. Stat. § 160.2715(a)(14), and the district court erred in sustaining the revocation of appellant's driver's license.

Reversed.