STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0937

Kevin Nelson Birkland, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed February 18, 2020
Reversed and remanded
Slieter, Judge

Hennepin County District Court
File No. 27-CV-18-16618

Paul B. Ahern, Wayzata, Minnesota (for appellant)

Keith Ellison, Attorney General, Brian F. Murn, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and Slieter, Judge.

S Y L L A B U S

Minnesota Statutes section 169.19, subdivision 1(b) (2018) does not mandate that a driver turning left from a single left-turn lane must turn into the innermost lane of the roadway being entered.

O P I N I O N

SLIETER, Judge

Appellant Kevin Nelson Birkland appeals the district court's order sustaining the revocation of his driving privileges pursuant to Minnesota's implied-consent laws, Minn.

Stat. §§ 169A.50-.53 (2018), arguing that the police officer did not have reasonable suspicion of a traffic violation to stop the vehicle he was driving after turning left into the outermost lane of a four-lane roadway. Because Birkland did not violate a traffic statute, we reverse and remand for the district court to rescind the driver's license revocation.

FACTS

On September 30, 2018, at approximately 10:04 p.m., an officer with the South Minnetonka Police Department stopped her squad car behind Birkland's vehicle in the southbound left-turn-only lane on the corner of Christmas Lake Road and Highway 7 in Shorewood. As the light changed, the officer observed Birkland's vehicle turn left into the outermost lane of eastbound Highway 7, a four-lane roadway with two eastbound lanes of travel. The officer initiated a traffic stop, approached Birkland's vehicle, and told Birkland that she stopped his vehicle because he turned into the far right lane of Highway 7. After Birkland was arrested and submitted to a breath test, the state revoked his driver's license.

Birkland petitioned for license reinstatement. During the implied-consent hearing, the officer testified that, "It had appeared that [Birkland's vehicle] turned directly into the far right lane and it touched the center line partially being in the left lane, but the majority of the vehicle, the entirety of the time, was in the right lane." Although the officer uses the term centerline, it is clear from her testimony and the record that she is referring to the lane line between the two eastbound lanes of Highway 7, not a centerline between the east and westbound lanes. The officer continued to testify that she stopped Birkland because she believed that both his turn into the outermost lane and crossing of the lane line were traffic violations.

The district court affirmed the revocation of Birkland's driving privileges, concluding that the officer possessed reasonable, articulable suspicion of a traffic violation to stop Birkland's vehicle. The district court concluded that Minn. Stat. § 169.19, subd. 1(b), required Birkland to turn into the innermost lane. Further, the district court found that "[The officer] also testified that [Birkland's] vehicle *may* have hit the center of the intersection as it turned directly into the outermost right-hand lane (eastbound of Highway 7)." (Emphasis added.) Based on this finding, the district court also concluded that the officer articulated a second traffic violation pursuant to Minn. Stat. § 169.18, subd. 7(a) (2018). This appeal follows.

ISSUE

Did the district court err in ruling that the officer had reasonable, articulable suspicion of a traffic violation to have stopped Birkland's vehicle?

ANALYSIS

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. However, an officer may conduct a brief investigatory stop if they have reasonable, articulable suspicion that "criminal activity may be afoot." *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968); *See also State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). The reasonable-suspicion standard is not high but requires "at least a minimal level of objective justification for making the stop." *Diede*, 795 N.W.2d at 843 (quoting *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008)). "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." *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004). The burden is on the state to "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, 243 (Minn. App. 2010) (quotation omitted).

Appellate courts review a district court's determination of reasonable suspicion *de novo*. *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999). Findings of fact will be upheld unless they are clearly erroneous. *Wilkes*, 777 N.W.2d at 243.

The district court found that the officer articulated reasonable suspicion to stop Birkland's vehicle based on two traffic violations: turning into the outermost lane on a left-hand turn, in violation of Minn. Stat. § 169.19, subd. 1(b), and crossing the lane line, in violation of Minn. § 169.18, subd. 7(a). We analyze each traffic statute in turn.

A. Turning left into the outermost lane does not violate Minn. Stat. § 169.19, subd. 1(b).

The statute reads as follows:

> Approach for a left turn on other than one-way roadways shall be made in that portion of the right half of the roadway nearest the centerline thereof, and after entering the intersection the left turn shall be made so as *to leave the intersection to the right of the centerline of the roadway being entered*. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

Minn. Stat. § 169.19, subd. 1(b) (emphasis added). Birkland argues that the statute is unambiguous, and that a plain reading shows that the statute is silent on which lane the driver must enter after turning. We agree.

We review statutory interpretation *de novo*. *Kruse v. Comm'r of Pub. Safety*, 906 N.W.2d 554, 558 (Minn. App. 2018). Appellate courts apply the plain meaning of the statute if it is unambiguous. *See State v. Struzyk*, 869 N.W.2d 280, 284-85 (Minn. 2015). "The objective of statutory interpretation is to ascertain and effectuate the Legislature's intent." *Id.* at 284; *see* Minn. Stat. § 645.16 (2018).

The focus of the subparagraphs in section 169.19 is the location *from where* "[t]he driver of a vehicle intending to turn at an intersection" shall depart, and *to where* the driver shall arrive after the turn. Minn. Stat. § 169.19, subd. 1 (2018). The relevant portion of subparagraph (b), when identifying *to where* the driver must arrive, directs the driver "*to leave the intersection to the right of the centerline of the roadway being entered*." *Id.*, subd. 1(b) (emphasis added). This unambiguous provision is silent as to which lane to the right of the roadway a driver must enter. Appellate courts do not add terms or meaning to unambiguous statutes. *State v. Expose*, 872 N.W.2d 252, 259 (Minn. 2015).

As further support for this as the plain meaning of the statute, the legislature did include other subparagraphs in the same subdivision in which it directs a driver leaving an intersection to turn into a specific lane. *See, e.g.*, Minn. Stat. § 169.19, subd. 1(a) (stating "a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway"); *id.*, subd. 1(e) (stating that when turning left from a one-way street onto another one-way street the turn "shall be made as close as practicable to the left-hand curb or edge of the roadway").

The district court relied on the second sentence of subparagraph (b) in concluding Birkland violated this statute, which states, "Whenever practicable the left turn shall be

made in that portion of the intersection to the left of the center of the intersection." *Id.*, subd. 1(b). The plain meaning of this sentence, however, does not address the question *to where* a driver must enter the roadway after turning, which is fully resolved by the first sentence. Instead, this sentence refers to the intersection *from where* a driver is turning. A left turn to either the innermost or outermost lane of the roadway to be traveled will be made "to the left of the center of the intersection." *Id*.

Finally, although neither party argues that an officer's reasonable mistake of law can form the basis for reasonable suspicion, we have a responsibility to apply controlling precedent even if it is not cited by the parties. *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990). In *Heien v. North Carolina*, the United States Supreme Court held that officers may base their reasonable suspicion on their objectively reasonable mistake of law.[1] 574 U.S. 54, 60, 135 S. Ct. 530, 536 (2014). However, an officer's belief is not objectively reasonable if a plain reading of the statute does not criminalize the conduct or if the statute has been previously interpreted to resolve ambiguity. *Id.* at 67-68, 135 S. Ct. at 540.

In this proceeding, the district court found in a footnote that, "Even assuming arguendo, that [the officer] misinterpreted the law at issue, it would be a reasonable mistake of law" and, therefore, the traffic stop should not be found improper. We disagree. We

[1] In cases decided before *Heien*, our supreme court has stated that a reasonable mistake of law cannot give rise to reasonable suspicion. *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004); *State v. George*, 557 N.W.2d 575, 578-79 (Minn. 1997). In neither of these cases does the supreme court base its reasoning explicitly on the Minnesota constitution and, therefore, we must apply the *Heien* decision to our vehicle-stop analysis.

conclude that an unambiguously plain reading of Minn. Stat. § 169.19, subd. 1(b), does not dictate into which lane a left turning driver must enter. Therefore, it is not an objectively reasonable mistake of law for the officer to stop Birkland's vehicle for turning into the outermost lane.[2]

The district court erred in ruling that turning into the outermost lane violates Minn. Stat. § 169.19, subd. 1(b).

B. The district court erred in concluding that the officer articulated reasonable suspicion based on a violation of Minn. Stat. § 169.18, subd. 7(a).

The district court found that the officer also articulated reasonable suspicion of a traffic violation based upon Minn. Stat. § 169.18, subd. 7(a). The district court stated:

> Additionally, the Court finds [the officer's] testimony that [Birkland] *may have* crossed over the centerline as he made the turn *directly* into the outermost right-hand lane credible. [Birkland] necessarily had to cross the centerline of eastbound Highway 7 in order to turn in the outermost, right-hand lane of eastbound Highway 7. This is a separate and independent violation.

(Emphasis added.) Subdivision 7 of Minnesota Statutes section 169.18 (2018) states that "a vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that such movement can be

[2] This court addressed the same issue in the unpublished case *State v. Kelley*, No. A18-1274, 2019 WL 1431921 (Minn. App. Apr. 1, 2019) and, as with our analysis, arrived at the same conclusion: "In sum, the plain language of Minn. Stat. § 169.19, subd. 1(b) does not require that a left turn be completed in the lane closest to the centerline of the roadway being entered." Although unpublished and, therefore, not precedential, we find this case persuasive. *See State v. Roy*, 761 N.W.2d 883, 888 (Minn. App. 2009), *review denied* (Minn. Dec. 14, 2009).

made with safety." A review of the record indicates that the facts as articulated by the officer and the district court's findings of fact do not support this statutory basis to stop Birkland's vehicle.

First, we note that the district court found that Birkland drove "*directly* into the outermost right-hand lane." (Emphasis added.) This means that Birkland was never traveling within the innermost lane, which would be necessary to invoke a potential violation of Minn. Stat. § 169.18, subd. 7(a). The factual finding that Birkland drove directly into the outermost lane is also consistent with the officer's statement to Birkland at the time of the stop, explaining that the officer stopped the vehicle for turning into the outermost lane. Second, the district court found that, based on the officer's testimony, Birkland "may" have crossed the lane line. Reasonable suspicion can be based on an officer's reasonable belief but not "a mere hunch." *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). Whether something *may* have happened does not provide an officer with reasonable suspicion of a law violation. Third, the statute allows a driver to change lanes once the driver can do so safely. The district court's findings, which are supported by the record, indicate no other vehicles were present at this intersection. If such a lane change occurred, there is no indication Birkland did so unsafely.

D E C I S I O N

The district court incorrectly held that the officer had reasonable, articulable suspicion to stop Birkland because Minn. Stat. § 169.19, subd. 1(b), does not require drivers to enter the innermost lane of the roadway following a left turn and the record does not support a conclusion that Birkland violated Minn. Stat. § 169.18, subd 7(a). For these

reasons, we reverse and remand to the district court to rescind Birkland's license revocation.

Reversed and remanded.