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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0379**

Michael Douglas Holm, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed September 4, 2018
Affirmed
Smith, John, Judge***

Crow Wing County District Court
File No. 18-CV-17-4029

Rich Kenly, Kenly Law Offices, Backus, Minnesota (for appellant)

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

Considered and decided by Kirk, Presiding Judge; Reilly, Judge; and Smith, John,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We affirm the district court's order sustaining the revocation of appellant Michael Douglas Holm's driver's license after he was arrested for driving while impaired (DWI) because (1) the traffic stop was lawful and (2) his blood draw was voluntary.

FACTS

On August 7, 2017, Baxter Police Officer Lance Herbst saw a car stop inside a marked crosswalk around 1:30 a.m. At the next cross street, he observed the car approach another stop sign and stop past the sign, inside the intersection. Officer Herbst activated his lights and stopped the car.

During the traffic stop, Officer Herbst observed that the driver, later identified as Holm, appeared very "agitated," had "rigid movement," and was "sweating profusely" although the temperature outside was 60 degrees. Based on his training and experience, Officer Herbst believed Holm was under the influence of a controlled substance. Holm failed or performed poorly on several field sobriety tests, and he was subsequently arrested on suspicion of DWI by controlled substance.

Holm was taken to the hospital for a blood draw. When he arrived at the hospital, Holm told Officer Herbst he was "not going to submit to that." Officer Herbst told Holm he would get a warrant for the blood draw and applied for a warrant while Holm waited in the squad car. After Officer Herbst obtained a warrant and informed Holm that it was "a crime to refuse to submit to the blood draw," Holm walked with the officer into the hospital,

complied with all testing procedures, and allowed a blood sample to be drawn. The sample tested positive for methamphetamine.

Based on the results of that test, Holm's driver's license was revoked pursuant to Minn. Stat. § 171.177, subd. 5 (2016) (blood test failure). Holm petitioned the district court to rescind the revocation. An implied-consent hearing was held. In sustaining the revocation of Holm's license, the court concluded that he was lawfully stopped by law enforcement and did not refuse the blood test.

D E C I S I O N

Holm challenges the lawfulness of his traffic stop and the subsequent blood draw. We review the district court's findings of fact supporting an order sustaining a license revocation for clear error. *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002). "Findings of fact are clearly erroneous when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Schulz v. Comm'r of Pub. Safety*, 760 N.W.2d 331, 333 (Minn. App. 2009) (quotation omitted). This court defers to the district court's credibility determinations and ability to weigh the evidence. *Constans v. Comm'r of Pub. Safety*, 835 N.W.2d 518, 523 (Minn. App. 2013). And we review questions of law relating to reasonable suspicion de novo. *Wilkes v. Comm'r of Pub. Safety*, 777 N.W.2d 239, 242-43 (Minn. App. 2010).

I. Holm's car was lawfully stopped.

Prior to conducting an investigatory stop, a police officer "must have a reasonable, articulable suspicion of criminal activity." *State v. Hunter*, 857 N.W.2d 537, 543 (Minn. App. 2014). The standard for reasonable suspicion is not high. *State v. Diede*, 795 N.W.2d

836, 843 (Minn. 2011). Reasonable suspicion exists if the police officer can “articulate a particularized and objective basis for suspecting the particular person stopped of criminal activity.” *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (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*, 777 N.W.2d at 243 (quotation omitted).

Under Minnesota law, “[e]very driver of a vehicle shall stop at a stop sign or at a clearly marked stop line before entering the intersection, except when directed to proceed by a police officer or traffic-control signal.” Minn. Stat. § 169.30(b) (2016). Based on the district court’s finding that Holm did not stop until the front of his car was already in the cross lane of traffic, it is clear that he failed to stop “before entering the intersection.” This traffic violation, observed by the officer whose testimony was found credible by the district court, provided an adequate basis for the stop.

II. It was not clear error to conclude that the blood test was voluntary.

The issue of whether a driver has refused to submit to chemical testing presents a question of fact which, as noted above, this court reviews for clear error. *Stevens v. Comm’r of Pub. Safety*, 850 N.W.2d 717, 722 (Minn. App. 2014). If an officer has “probable cause to believe [a] person was driving, operating, or in physical control of a motor vehicle” while impaired, the officer may request that the driver submit to a chemical test of the person’s blood, breath, or urine. Minn. Stat. § 169A.51, subd. 1(a)-(b) (2016). If a driver refuses to permit a test, “a test must not be given,” Minn. Stat. § 169A.52, subd.

1 (2016), but the commissioner of public safety will revoke the person's driver's license for one or more years. *Id.* at subd. 3(a) (2016).

Holm argues that he did not consent to a blood test and was “coerced into submission.” While Holm may have initially told the officer he was not “going to submit” to a future blood draw, it is reasonable that Holm changed his mind after learning of the signed warrant and test-refusal statute. When Holm was informed of the newly-acquired warrant and instructed to accompany the officer inside the hospital for a blood draw, he did not protest. At best Holm was unresponsive before freely exiting the squad car, calmly walking into the building, and fully cooperating with hospital staff. Based on the record before us, it was not clear error for the district court to conclude that this blood draw was voluntary.

Affirmed.