STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2157

State of Minnesota,
Respondent,

vs.

Damon Roy Anderson,
Appellant.

Filed December 21, 2010
Affirmed
Kalitowski, Judge

Ramsey County District Court
File No. 62-CR-08-9649

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Susan Gaertner, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jessica Merz Godes, Jodie Lee Carlson, Assistant Public Defenders, St. Paul, Minnesota; and

Kirstin Kopp, Special Assistant Public Defender, Fridley, Minnesota (for appellant)

Considered and decided by Lansing, Presiding Judge; Kalitowski, Judge; and Minge, Judge.

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

KALITOWSKI, Judge

Following a court trial on stipulated facts, appellant Damon Roy Anderson challenges his convictions of first-degree driving while intoxicated (DWI), first-degree test refusal, driving after cancellation, and giving false information to a peace officer. Appellant argues that (1) the stop of the vehicle he was driving was not supported by reasonable, articulable suspicion of criminal activity; and (2) a prior implied-consent license revocation was unconstitutionally obtained and therefore improperly used to enhance the DWI charge to a felony. We affirm.

D E C I S I O N

This court reviews legal issues, including the legality of an investigatory stop, de novo. *Butala v. State*, 664 N.W.2d 333, 338 (Minn. 2003); *Wilkes v. Comm'r of Pub. Safety*, 777 N.W.2d 239, 242-43 (Minn. App. 2010).

I.

Appellant argues that his convictions should be reversed because the stop of the vehicle he was driving was not based on reasonable, articulable suspicion of criminal activity. We disagree.

If a law-enforcement officer has a reasonable, articulable suspicion of criminal activity, a brief investigatory stop does not violate the constitutional prohibitions against unreasonable searches and seizures. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). Subject to certain statutory exceptions, none of which were asserted here,

Minnesota law provides that vehicles are to be driven "upon the right half of the roadway." Minn. Stat. § 169.18, subd. 1 (2008).

Here, the district court found credible the officer's testimony that the left front and left rear tires of appellant's vehicle crossed the road's centerline. The driving conduct observed by the officer provided him with an objective basis for conducting the stop. *See State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) (stating that an officer's observation of a violation of any traffic law, "however insignificant," provides the officer with an objective basis for conducting a stop); *State v. Wagner*, 637 N.W.2d 330, 335 (Minn. App. 2001) ("When there is credible testimony that the driver actually crossed the center line, this court and the supreme court have uniformly found investigatory stops valid."). Thus, the district court did not err by concluding that the traffic stop was legal.

II.

A person who commits DWI is guilty of a felony if the person commits the violation within ten years of the first of three or more qualified prior impaired-driving incidents. Minn. Stat. § 169A.24 (2008). It is undisputed that appellant's DWI offense was committed within ten years of three qualified prior impaired-driving incidents, including a May 2008 implied-consent revocation. Appellant argues that this prior implied-consent revocation cannot be used to enhance the DWI offense to a felony because the revocation was "an uncounselled and unexamined civil conviction" that was obtained from him in violation of due process. We disagree.

This court has directly addressed the issue of whether a prior implied-consent license revocation may be used for enhancement if the defendant alleges that he did not

have the assistance of counsel in the revocation proceeding. *See State v. Mellett*, 642 N.W.2d 779, 789-90 (Minn. App. 2002), *review denied* (Minn. July 16, 2002). In *Mellett*, this court noted that a driver has a limited right under the Minnesota Constitution to consult with an attorney before submitting to chemical testing. *Id.* at 789; *see* Minn. Stat. § 169A.51, subd. 2 (2008). The *Mellett* court concluded that a defendant may raise the constitutionality of a prior license revocation by: (1) promptly notifying the state that his constitutional rights were violated during the prior license revocation; and (2) producing evidence in support of that contention with respect to each challenged revocation. *Mellett*, 642 N.W.2d at 789. The burden then shifts to the state to prove that the revocation was obtained in accordance with constitutional requirements. *Id.*

Appellant "is obligated to come forward with some evidence indicating that [he] was deprived of the right to counsel before the state must assume its burden of proof." *See id.* at 789-90. Here, appellant failed to meet this burden because he has produced no evidence to show that he was deprived of the right to consult an attorney before chemical testing. And appellant's argument that he was deprived of counsel at the revocation hearing is without merit. *See State v. Dumas*, 587 N.W.2d 299, 303 (Minn. App. 1998) (stating that a defendant has no right to an attorney at an implied-consent proceeding), *review denied* (Minn. Feb. 24, 1999).

Because appellant has failed to meet his burden to show that the May 2008 implied-consent license revocation violated his constitutional rights, the district court did not err by convicting appellant of the enhanced charge of felony DWI.

Affirmed.