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Court of Appeals of Minnesota.

Joseph Francis DOTRAY, petitioner, Appellant,
v.
COMMISSIONER OF PUBLIC SAFETY, Respondent.

No. A10-642. | Nov. 16, 2010.

West KeySummary

1 **Automobiles**
Refusal to take test

Automobiles
Refusal of test

For purposes of a motorist's challenge to revocation of his license under an implied-consent law for refusal of test, a police officer had a legally sufficient basis to execute a traffic stop. The officer testified that he stopped the motorist's vehicle because he saw the vehicle fail to stop at a stop sign. While the motorist cross-examined the officer regarding whether he used speed-detection equipment to confirm that the vehicle failed to stop and implied the officer could not have seen whether the motorist had stopped, the motorist failed to offer any testimony whether he stopped at the stop sign. Additionally, the court found the officer's testimony credible. U.S.C.A. Const.Amend. 4; Minn. Const. art. I, § 10; Minn.Stat. § 169.30(b) (2008).

Cases that cite this headnote

LeSueur County District Court, File No. 40-CV-09-1156.

Attorneys and Law Firms

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Considered and decided by LARKIN, Presiding Judge; PETERSON, Judge; and HUDSON, Judge.

Opinion

UNPUBLISHED OPINION

LARKIN, Judge.

***1** Appellant challenges the district court's order sustaining the revocation of his license to drive under the implied-consent law, claiming that the revocation stems from an illegal traffic stop and that his refusal to submit to chemical testing was reasonable. We affirm.

FACTS

On October 10, 2009, Officer Mike Thelemann was on routine patrol in Le Sueur County. Officer Thelemann observed appellant Joseph Francis Dotray driving a vehicle ahead of him. At approximately 12:30 a.m., Officer Thelemann observed that Dotray drove past a stop sign without stopping and that Dotray was not wearing a shoulder harness. For these reasons, Officer Thelemann initiated a traffic stop. Because he suspected that Dotray was under the influence of alcohol, Officer Thelemann asked Dotray to perform standardized field sobriety tests. Dotray cooperated with a horizontal-gaze-nystagmus test, but refused to perform any other tests. Officer Thelemann placed Dotray under arrest for driving while impaired (DWI) and transported him to the Montgomery Police Department.

Officer Thelemann read Dotray the implied-consent advisory. Officer Thelemann informed Dotray that refusal to submit to testing is a crime and that he had a right to consult with a lawyer. Dotray telephoned and spoke with an attorney and then refused to take a blood or urine test. Dotray was charged with test-refusal, a driving-while-impaired offense. *See* Minn.Stat. § 169A.20, subd. 2 (2008).

Dotray's license to drive was revoked under the implied-consent law as a result of his refusal to submit to chemical testing. Dotray challenged the revocation, claiming that the traffic stop was unlawful and that his refusal to submit to chemical testing was reasonable. An implied-consent hearing was held on January 27, 2010. Officer Thelemann and Dotray testified at the hearing. The district court credited Officer Thelemann's testimony that Dotray failed to stop at the stop sign and concluded that this failure provided a legally sufficient basis for the traffic stop. The district court therefore did not address the alleged seatbelt violation. The district court also concluded that Dotray's test-refusal was not reasonable and sustained the revocation of Dotray's license to drive. This appeal follows.

DECISION

I.

Dotray claims that the district court erred by concluding that his seizure was lawful. The U.S. 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.' " *State v. Anderson*, 683 N.W.2d 818, 822-23 (Minn.2004) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981)). "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 823; *see also State v. Wagner*, 637 N.W.2d 330, 335-36 (Minn.App.2001) (recognizing the rule). This court reviews "a district court's determination regarding the legality of an investigatory traffic stop and questions of reasonable suspicion de novo." *Wilkes v. Comm'r of Pub. Safety*, 777 N.W.2d 239, 242-43 (Minn.App.2010).

***2** Officer Thelemann testified that he stopped Dotray's vehicle because he saw the vehicle fail to stop at a stop sign. Dotray offered no testimony regarding whether he stopped the vehicle at the stop sign. Instead, Dotray cross-examined Officer Thelemann regarding whether he used speed-detection equipment to confirm that the vehicle failed to stop. And he implied that Officer Thelemann was not in a position to see whether Dotray stopped. But the district court credited Officer Thelemann's testimony that Dotray failed to stop the vehicle at the stop sign, explicitly stating in its supportive memorandum, "[t]he [c]ourt finds [Officer Thelemann's] testimony credible." We defer to this credibility determination. *See Snyder v. Comm'r of Pub. Safety*, 744 N.W.2d 19, 22 (Minn.App.2008) (stating that "[d]ue regard is given the district court's opportunity to judge the credibility of witnesses").

"Every 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) (2008). Officer Thelemann's observation of Dotray's statutory violation provided a legal basis to stop Dotray's vehicle. Because Dotray's failure to stop at the stop sign provided a legally sufficient basis for the traffic stop, we do not address Dotray's argument regarding the alleged seatbelt violation.

II.

Dotray claims that because he was confused regarding the ramifications of his refusal to submit to chemical testing, his refusal was reasonable. When an officer requests that an individual take a chemical test to determine the presence of alcohol or controlled substances, the person must be informed that refusal to take a test is a crime. Minn.Stat. § 169A.51, subd. 2(2) (2008). If a person refuses to permit a test, then a test must not be given. Minn.Stat. § 169A.52, subd. 1 (2008). But the refusal may be a basis for revocation of the person's license to drive. *See id.*, subd. 3(a) (2008) (explaining the circumstances under which a test-refusal results in license revocation). A driver's reasonable refusal to submit to testing is an affirmative defense in a proceeding to review a resulting license revocation. Minn.Stat. § 169A.53, subd. 3(c) (2008).

Minnesota appellate courts have recognized a driver's confusion as a reasonable basis for refusal. *See, e.g.*, *State, Dep't of Highways v. Beckey*, 291 Minn. 483, 485-87, 192 N.W.2d 441, 444-45 (1971) (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 Public 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. "[D]ue process does not permit the government to mislead individuals as to either their legal obligations or the penalties they might face should they fail to satisfy those obligations." *State v. Melde*, 725 N.W.2d 99, 103 (Minn.2006).

***3** Whether a refusal is reasonable is generally characterized as a question of fact, which will be reversed only if clearly erroneous. *Beckey*, 291 Minn. at 486-87, 192 N.W.2d at 444-45. "But where there is no dispute as to facts, the legal significance of the facts may be a question of law." *Maietta v. Comm'r of Pub. Safety*, 663 N.W.2d 595, 598 (Minn.App.2003), *review denied* (Minn. Aug. 19, 2003). We overturn conclusions of law "only upon a determination that the [district] court has 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).

Dotray argues that he was confused, and that his confusion was apparent, when he asked Officer Thelemann whether there would be any ramifications if he refused to submit to testing. Dotray argues that Officer Thelemann actively misled him at this point by telling him he would be charged with "DUI" and that there would be no additional ramifications. Dotray specifically argues that Officer Thelemann misled him by failing to explain that he would be charged with test-refusal, as opposed to driving while impaired. But the recording of Dotray's conversation with Officer Thelemann, which was received at the implied-consent hearing, refutes Dotray's claim of confusion. When Officer Thelemann read the implied-consent advisory to Dotray, he explicitly informed Dotray that "refusal to take a test is a crime." And when Officer Thelemann asked Dotray if he understood that refusal to take a test is a crime, Dotray answered, "yes." Dotray later asked, "If I refuse, then I am automatically charged with a DUI?" Officer Thelemann replied "Exactly." Dotray then stated, "Without any rami ... without any ...," and Officer Thelemann again replied, "Exactly."

This record does not indicate that Dotray was obviously confused or that Officer Thelemann misled him by failing to inform him that he would be charged with test-refusal. Officer Thelemann told Dotray that "refusal to take a test is a crime" and confirmed that he would be charged with a "DUI." [1] The crime of test-refusal is one of several statutorily enumerated driving-while-impaired offenses. *See* Minn.Stat. § 169A.20, subd. 2. Thus, Officer Thelemann's statements were accurate. Moreover, it is not an officer's responsibility "to advise [drivers] of all the possible consequences they could face in refusing a ... test." *McDonnell v. Comm'r of Pub. Safety*, 473 N.W.2d 848, 853 (Minn.1991); *see also Melde*, 725 N.W.2d at 104 (concluding that "the lack of more specific warnings as to the consequences of a test-refusal does not violate federal due process"); *Moe v. Commr. of Pub. Safety*, 574 N.W.2d 96, 98 (Minn.App.1998) (stating that "a state does not violate the fundamental fairness inherent to due process by choosing not to advise individuals of all the possible consequences of refusing an alcohol concentration test"), *review denied* (Minn. Apr. 14, 1998). And the situation here is readily distinguishable from one in which an officer misrepresents the possibility of a criminal charge in order to influence a driver's testing decision. *See McDonnell*, 473 N.W.2d at 855 (finding that a police officer made actively misleading statements when "threaten[ing] criminal charges the state was not authorized to impose").

***4** It is also important to note that the exchange between Officer Thelemann and Dotray occurred after Dotray had consulted with an attorney. If Dotray had legal questions regarding the ramifications of test-refusal, he should have directed his questions to his lawyer, rather than relying on Officer Thelemann for legal advice. *See Maietta*, 663 N.W.2d at 598 (stating, "it is the responsibility of the attorney, not a police officer, to clear up any confusion on the part of a driver concerning the legal ramifications of test refusal"). Moreover, as the district court noted in its memorandum, "[Dotray] has gone through the implied-consent process on more than one occasion." Dotray testified that this was the third time that he had been through the implied-consent process.

We therefore affirm the district court's finding that Officer Thelemann did not mislead Dotray, its conclusion that Dotray's refusal was not reasonable, and its order sustaining the revocation of Dotray's license to drive.

Affirmed.

Footnotes

1 Minnesota statutes describe the relevant offense as "Driving While Impaired." Minn.Stat. § 169A.20 (2008). The offense is nonetheless commonly referred to as driving under the influence (DUI). Dotray does not claim that he was confused by the use of the acronym "DUI" instead of "DWI".

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