

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0574**

State of Minnesota,
Respondent,

vs.

Lewis Henry Kaufman,
Appellant.

**Filed March 11, 2019
Affirmed
Halbrooks, Judge**

Stearns County District Court
File No. 73-VB-17-3026

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, Kyle R. Triggs, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

John J. Neal, Willenbring, Dahl, Wocken & Zimmermann, PLLC, Cold Spring, Minnesota
(for appellant)

Considered and decided by Bratvold, Presiding Judge; Halbrooks, Judge; and
Jesson, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges his conviction of speeding, arguing that the state is required to
prove that the entity with jurisdiction over the roadway adopted a 35-mile-per-hour zone,

or, alternatively, that Minn. Stat. § 169.06, subd. 4(c) (2018), creates an unconstitutional mandatory presumption that relieves the state of its burden of proof. We affirm.

FACTS

In March 2017, appellant Lewis Henry Kaufman was driving north on Highway 15 in St. Augusta. Kaufman drove past a sign that indicated a reduced speed limit of 35 miles per hour. A Minnesota state trooper was stationed on the side of Highway 15 with a radar gun. The radar indicated that Kaufman’s vehicle was traveling at 52 miles per hour. The trooper pulled Kaufman over and issued him a speeding ticket in violation of Minn. Stat. § 169.14, subd. 2(a) (2016).

A court trial was held in which the state trooper was the sole witness. Kaufman argued to the district court that the state did not prove that the entity with jurisdiction over the rural residential district had adopted a speed limit of 35 miles per hour, therefore requiring dismissal of the citation. The district court ruled that the state did not need to prove that the speed limit had been adopted and found Kaufman guilty of speeding. This appeal follows.

DECISION

Kaufman first asserts that the state must prove that the entity with jurisdiction over the road adopted a 35-mile-per-hour speed limit in order to convict him of speeding under Minn. Stat. § 169.14, subd. 2(a)(8). He contends that the clause “if adopted by the road authority” creates an additional element of proof.

Whether the adoption clause in subdivision 2(a)(8) creates an additional element of the offense presents a question of statutory interpretation, which we review de novo. *State*

v. Fleck, 810 N.W.2d 303, 307 (Minn. 2012). “The objective of statutory interpretation is to ascertain and effectuate the Legislature’s intent.” *State v. Struzyk*, 869 N.W.2d 280, 284 (Minn. 2015). When we interpret a statute, we give words and phrases their plain and ordinary meaning. *Id.* If the language of the statute is clear, we interpret the statute according to its plain meaning. *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). When the language of the statute is susceptible to more than one reasonable interpretation, we may consider the canons of statutory construction to ascertain its meaning. *Struzyk*, 869 N.W.2d at 285.

Speed limits are established in Minn. Stat. § 169.14 (2018). Subdivision 2 provides a default speed for locations not specifically set forth in the section. *See* Minn. Stat. § 169.14, subd. 2(a)(3) (stating “55 miles per hour in locations other than those specified in this section”). This subdivision also provides two alternative speed limits that the road authority with jurisdiction over the roadway may adopt. One is provided in Minn. Stat. § 169.14, subd. 2(a)(8): “35 miles per hour in a rural residential district if adopted by the road authority having jurisdiction over the rural residential district.” A speed limit adopted under subdivision 2(a)(8) “is not effective unless the road authority has erected signs designating the speed limit and indicating the beginning and end of the rural residential district for the roadway on which the speed limit applies.” Minn. Stat. § 169.14, subd. 2(c).

When considering the plain meaning of subdivision 2(a)(8), we first must determine if the adoption clause creates an additional element of proof for speeding in a rural residential district. Kaufman argues that the statute is unambiguous and that its meaning is plain. He contends that because the adoption clause appears in two of the eight speed-

limit sections of the subdivision, it creates an additional proof element for those subdivisions. See Minn. Stat. § 169.14, subd. 2(a)(1)-(8). In its brief, the state suggested that the statute is ambiguous. But at oral argument, the state proposed that we find the statute unambiguous and that its plain meaning precludes the creation of an additional element of proof based on the adoption clause.

We agree that the statute is unambiguous. When interpreting a statute, we read and construe a statute as a whole and interpret each section in light of the surrounding sections in order to avoid conflicting interpretations. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). While statutory interpretation focuses on the language of the provision, it is sometimes necessary to analyze the provision in its surrounding context. *Id.* at 278. In light of section 169.14 as a whole, and specifically subdivision 2(c), subdivision 2(a)(8) unambiguously provides for an optional reduced speed limit for rural residential districts.

The adoption clause in subdivisions 2(a)(7) and 2(a)(8) is the mechanism within the provisions to differentiate these subdivisions from the default speeds listed above. The adoption clause is the means by which the legislature authorized optional speed limits. It does not create an additional element that the state must prove when a person is cited for speeding in rural residential districts. Instead, subdivision 2(c) addresses what is required to show that the speed limit on a road in a rural residential district is reduced to 35 miles per hour: posted speed-limit signs that mark the beginning and end of the reduced speed limit. Here, there is no dispute about the posted speed limit.

A plain reading of section 169.14 as a whole reinforces the unambiguous meaning that the adoption clause does not create an additional element of proof. While subdivision 2 sets maximum speed limits, subdivision 4 allows for the commissioner of transportation to set speeds greater or less than the existing speed limit. This allows the commissioner to effect a speed limit that conflicts with those set forth in subdivision 2 by erecting speed-limit signs.

Subdivision 2 simply provides another method for setting a speed limit other than those listed in subdivision 2(a)(1)-(6). It authorizes optional speed limits for residential roadways and rural residential districts that conflict with the default 55-mile-per-hour speed limit, which are made effective through the posting of speed-limit signs when adopted by the local authority and without the authority of the commissioner of transportation. A plain reading of the section as a whole suggests that the speed-limit signs for these areas, whether posted by the commissioner of transportation or the local road authority, set the official speed limit. And any speed in excess of the posted limit is unlawful.¹ Because the language of the statute is clear, we conclude that a reduced speed limit can be adopted by the local road authority. The new speed limit takes effect when the speed is posted with signs marking the beginning and end of the reduced speed.

¹ This is consistent with caselaw in which this court relied solely on the posted speed limit of the roadway. See *State v. Ali*, 679 N.W.2d 359, 361 (Minn. App. 2004) (affirming speeding violation in which defendant drove in excess of the posted speed limit of 30 miles per hour); *State, City of St. Louis Park v. Bogren*, 410 N.W.2d 383, 384-85 (Minn. App. 1987) (affirming speeding violation in which defendant drove in excess of the posted speed limit of 30 miles per hour); *State v. Champion*, 400 N.W.2d 185, 186 (Minn. App. 1987) (affirming speeding violation when defendant drove in excess of posted speed limit when sign read “speed limit 55”).

Relying on *Brechon*, Kaufman argues that the adoption clause creates an additional element of proof because it is incorporated into the definition of the offense. But his reliance on *Brechon* is unsupported. In *State v. Brechon*, the defendant was convicted of trespass and the supreme court was required to determine if the clause, “without claim of right,” constituted an element of the crime. 352 N.W.2d 745, 749 (Minn. 1984). The supreme court stated, “The test for determining what constitutes a basic element of rather than an exception to a statute has been stated as whether the exception is so incorporated with the clause defining the offense that it becomes in fact a part of the description.” *Id.* (quotation omitted).

Using the *Brechon* analysis, the question is whether the adoption clause is so incorporated into the definition of the offense that it becomes part of the description. *See id.* As discussed above, the adoption clause was not intended to *define* the offense of speeding in rural residential districts. Instead, the clause was intended to provide for a safer, reduced speed in rural residential areas where the local authority deemed a 55-mile-per-hour limit too high. Minn. Stat. § 169.14, subd. 2(c), makes it clear that adopting the reduced speed limit is not enough to set a maximum speed, but that it must be effected through posted signage of the reduced limit. The adoption clause therefore does not create an additional element under *Brechon* as it does not define the nature of the offense.

Kaufman additionally argues that the district court failed to account for the comments to the Jury Instruction Guides for speeding. The district court, in part, utilized the jury instructions to find Kaufman guilty. According to 10A *Minnesota Practice*, CRIMJIG 29.51 (2015), a person is guilty of speeding when he “drives a vehicle at a speed

in excess of the posted speed limit.” The jury instruction, 10A *Minnesota Practice*, CRIMJIG 29.52 (2015), advises the fact-finder that the elements of speeding are: (1) the defendant drove a vehicle in an area where there was a posted speed limit, (2) the speed of the defendant’s vehicle exceeded the posted speed limit, and (3) the defendant’s act occurred in the county on the specified date. The comment section provides:

This instruction is a generic compilation of M.S.A. § 169.14, subds. 4, 5, 5a and 5b, and is designed for the typical case where the only issue is whether or not the defendant was exceeding the posted limit. For those cases where there is a contested issue as to the authority or manner in which the limit was determined or posted, reference should be made to the particular subdivision, as well as to M.S.A. § 169.06, subd. 4.

CRIMJIG 29.52. Minn. Stat. § 169.06, subd. 4(c), provides: “Whenever official traffic-control devices² are placed in position approximately conforming to the requirements of this chapter, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.”

Kaufman contends that the district court should have considered that he was cited for violating subdivision 2(a)(8), instead of relying solely on the three elements provided in the jury instruction. But the district court did not err based on the presumption in Minn. Stat. § 169.06, subd. 4(c), that official traffic-control devices are presumed to have been placed by the lawful authority. Because the 35-mile-per-hour speed limit was posted, the

² “Official traffic-control devices” are defined as “all signs, signals, markings, and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.” Minn. Stat. § 169.011, subd. 49 (2018).

district court correctly presumed that the reduced speed had been adopted by the appropriate authority.

Kaufman alternatively argues that Minn. Stat. § 169.06, subd. 4(c), creates an unconstitutional mandatory presumption. In a criminal case, the state must establish each element of the crime charged beyond a reasonable doubt. *State v. Williams*, 324 N.W.2d 154, 160 (Minn. 1982). “[P]resumptions cannot be used in criminal cases to establish an essential element of the offense because it casts on defendant the burden of proving his innocence.” *State v. O’Neill*, 216 N.W.2d 822, 831 (Minn. 1974). Here, Kaufman argues that the adoption clause is an element of the offense and that subdivision 4(c) mandatorily presumes the adoption-clause element.

Because we conclude that the adoption clause does not constitute an element of the crime of speeding under Minn. Stat. § 169.14, subd. 2(a)(8), Kaufman’s argument fails. There is no need to address the constitutionality of Minn. Stat. § 169.06, subd. 4(c), because the presumption does not pertain to an element of the offense. *See id.* (“We have held that presumptions cannot be used in criminal cases to establish an *essential element* of the offense.” (emphasis added)).

Because the state does not need to prove that the entity with jurisdiction over a rural residential district roadway adopted a 35-mile-per-hour zone under Minn. Stat. § 169.14, subd. 2(a)(8), we affirm.

Affirmed.