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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1274**

State of Minnesota,
Respondent,

vs.

Anthony Owen Kelley,
Appellant.

**Filed April 1, 2019
Reversed
Cleary, Chief Judge**

Hennepin County District Court
File No. 27-CR-17-21872

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

Jesse D. Berglund, Eden Prairie Prosecutor, Gregerson, Rosow, Johnson & Nilan, Ltd.,
Minneapolis, Minnesota (for respondent)

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Considered and decided by Rodenberg, Presiding Judge; Cleary, Chief Judge; and
Stauber, Judge.*

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

UNPUBLISHED OPINION

CLEARY, Chief Judge

In this direct appeal following a stipulated-facts trial and final judgment of conviction for second-degree driving while impaired (DWI), appellant Anthony Owen Kelley appeals the district court's order denying his motion to suppress, arguing that the officer did not have a reasonable, articulable basis to stop him for making a wide left turn. Because Minn. Stat. § 169.19, subd. 1(b) (2018)¹ does not dictate in which lane of the roadway being entered a left turn must be completed, we reverse.

FACTS

On September 2, 2017, Eden Prairie Police Officer Chad Streiff was working the nightshift patrol and traveling westbound on Singletree Lane in Eden Prairie. At the suppression hearing, Officer Streiff testified that around 3:17 a.m., he observed a truck, later determined to be driven by Kelley, stopped at a red light at the intersection of Singletree Lane and Prairie Center Drive. At this location, Singletree Lane runs from east to west and has two eastbound lanes and two westbound lanes, divided by a grass median. Similarly, Prairie Center Drive runs from north to south and has two northbound lanes and two southbound lanes, also divided by a grass median.

Kelley's truck was stopped in the left-most lane of the westbound portion of Singletree Lane. That lane is the only lane from which a left-hand turn onto Prairie Center

¹ Although the traffic stop occurred in 2017, we cite to the current version of the statute as it remains unchanged.

Drive can be legally made, and there are no markers extending the lanes through the intersection onto Prairie Center Drive.²

Kelley's turn signal was activated, indicating his intent to make a left-hand turn onto southbound Prairie Center Drive. Officer Streiff testified that when the light turned green, he watched Kelley's truck make "a wide turn and actually turn into the far right lane, not the near lane when making the left hand turn." Upon exiting the intersection, Kelley completed his turn into a lane on the right side of Prairie Center Drive, which was not the inner-most lane, and then almost immediately, he signaled his turn into the right-turn lane to exit off Prairie Center Drive.

Officer Streiff testified that he believed the wide left turn was a traffic violation, so he initiated a traffic stop. He further testified that the wide turn and failure to signal were the only reasons he initiated the traffic stop, and that his "sole basis for stopping [Kelley] was the left hand turn from Singletree onto Prairie Center Drive;" it was not the "conduct once [Kelley] was on Prairie Center Drive."

After stopping the truck, Officer Streiff identified Kelley as the driver. While speaking with Kelley, Officer Streiff smelled an overwhelming odor of an alcoholic beverage coming from Kelley's truck and noticed other indicia of intoxication. Officer

² This is not a two-lane roadway with two left-turn lanes where Minn. Stat. § 169.19, subd. 1(f), might apply. Minn. Stat. § 169.19, subd. 1(f) (2018). Subdivision 1(f) authorizes local authorities to "cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection." *Id.* When markers, buttons or signs are so placed, "no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs." *Id.*

Streiff then had Kelley perform field sobriety tests, the results of which suggested impairment. Kelley took a preliminary breath test, which indicated that his alcohol concentration was 0.21. Officer Streiff arrested Kelley and transported him to the Hennepin County Jail. Later that morning, around 4:22 a.m., Kelley took a breath test indicating that his alcohol concentration was .20.

The state charged Kelley with second-degree DWI—two or more aggravating factors, under Minn. Stat. § 169A.20, subd. 1(1) (2016); second-degree DWI—alcohol concentration of .08 within two hours, under Minn. Stat. § 169A.20, subd. 1(5) (2016); and careless driving, under Minn. Stat. § 169.13, subd. 2 (2016).

Kelley moved to suppress the evidence and to dismiss the charged offenses, arguing that the officer did not have a reasonable, articulable basis for the stop because his left turn was legal. The district court held a suppression hearing where the arresting officer testified and exhibits and the officer's squad-car video were received as evidence. The district court denied Kelley's motion, concluding that the stop was justified because Minn. Stat. § 169.19, subd. 1(b), required Kelley to "enter the lane closest to the centerline when he turned onto southbound Prairie Center Drive." The district court reasoned that the officer had a valid legal basis for the stop because the officer observed a traffic violation when he saw Kelley make a wide left turn and there was nothing obstructing Kelley's ability to pull into the lane closest to the centerline.

The state dismissed the careless-driving offense, and the case proceeded to a stipulated-facts trial under Minn. R. Crim. P. 26.01, subd. 4, reserving this suppression issue for appeal.

DECISION

Kelley challenges the district court's denial of his suppression motion. When considering the denial of a pretrial suppression motion, we review the district court's factual findings for clear error and its legal conclusions de novo. *State v. Molnau*, 904 N.W.2d 449, 451 (Minn. 2017). A determination as to the existence of reasonable, articulable suspicion is reviewed de novo. *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999). "The State bears the burden of proving that police obtained the challenged evidence in accord with the Constitution." *Molnau*, 904 N.W.2d at 451.

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. But a law enforcement officer may conduct a brief investigatory stop of a person if the officer has a reasonable, articulable suspicion that the person might be engaged in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 19-21, 88 S. Ct. 1868, 1879-81 (1968); *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). The reasonable-suspicion standard is not high, but the suspicion must be something more than a mere hunch; the officer must have objective support for his belief that the person is involved in criminal activity. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). The intrusion must not be the "product of mere whim, caprice or idle curiosity, but [be] based upon 'specific and articulable facts which, taken together with

rational inferences from those facts, reasonably warrant that intrusion.” *State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996) (quoting *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880).

Generally, if an officer observes a violation of a traffic law, no matter how insignificant, 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); *George*, 557 N.W.2d at 578. But an officer’s mistaken interpretation of a statute may not form the particularized and objective basis for suspecting criminal activity necessary to justify a traffic stop. *Anderson*, 683 N.W.2d at 824; *State v. Kilmer*, 741 N.W.2d 607, 609 (Minn. App. 2007) (explaining that when a stop is premised on an ostensible violation of a traffic law, a mistaken interpretation of that law cannot provide the requisite objective basis for suspecting the motorist of criminal activity). “This holding applies even if the officer believes, in good faith, that the driving conduct that prompted the stop was illegal.” *Kilmer*, 741 N.W.2d at 609.

Kelley does not dispute that he did not turn into the inner portion of the lane when completing the left turn. Instead, he argues that the district court and the officer erred in relying on Minn. Stat. § 169.19, subd. 1(b) to conclude that he violated a traffic law. He asserts that the district court and the officer misinterpreted the statute because “Minnesota law does not dictate which lane of the roadway being entered that a left turn must be completed in.”

Whether Minn. Stat. § 169.19, subd. 1(b) required Kelley to turn into the inner-most lane is a question of statutory interpretation, which we review de novo. *Kruse v. Comm’r*

of *Pub. Safety*, 906 N.W.2d 554, 558 (Minn. App. 2018). The goal of statutory interpretation is to ascertain and effectuate the legislature’s intent. *Id.*; Minn. Stat. § 645.16 (2018). Statutory provisions which are part of the Highway Traffic Regulation Act, Minn. Stat. § 169, are “in pari materia” and are therefore to be construed together. *State v. Bissonette*, 445 N.W.2d 843, 844-45 (Minn. App. 1989). “Statutes in pari materia are those relating to the same person or thing or having a common purpose.” *Id.* (quotation omitted).

If the language of the statute is unambiguous, we apply its plain meaning. *State v. Haywood*, 886 N.W.2d 485, 488 (Minn. 2016). In the absence of a statutory definition, we generally turn to the plain and ordinary meaning of a statutory phrase. *Id.* (quotation omitted). We construe nontechnical words and phrases according to their plain and ordinary meanings and look to dictionary definitions to determine the plain meanings of words. *Kruse*, 906 N.W.2d at 558. When the text of a law is plain and unambiguous, we must not engage in any further construction. *Anderson*, 683 N.W.2d at 821. We must first examine the statute to determine if any ambiguities exist; a statute is ambiguous if it is reasonably susceptible to more than one interpretation. *Id.* at 821-22.

The relevant portion of the left-turn statute provides that the driver of a vehicle intending to turn at an intersection shall do so as follows:

(b) 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).

The first sentence of subdivision 1(b) provides guidance as to how one should approach the intersection to make a left turn and requires that approach for a left turn, on other than one-way roadways, be made in the portion of the roadway nearest the centerline.

Id. Here, there is no dispute that Kelley complied with this requirement.

Kelley argues that the district court and the officer erred in interpreting the second phrase of the first sentence. Kelley argues that the statute’s language only requires that a vehicle be on the *right side* of the centerline—not in the lane *nearest* the centerline—when completing a turn in the roadway being entered.

To determine whether the statute requires a driver to complete the turn in the innermost lane, we look to statutory definitions and dictionary definitions. *State v. Thonesavanh*, 904 N.W.2d 432, 436 (Minn. 2017). The second phrase of the first sentence requires that “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.” Minn. Stat. § 169.19, subd. 1(b). Leave means “[t]o go out of or away from.” *The American Heritage Dictionary of the English Language*, 1000-01 (5th ed. 2011). Enter means “[t]o come or go into.” *Id.* at 594.

A roadway is “that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the sidewalk or shoulder.” Minn. Stat. § 169.011, subd. 68 (2018). “In the event a highway includes two or more separate roadways, the term ‘roadway’ shall refer to any such roadway separately but not to all such roadways

collectively.” *Id.* A one-way roadway is “a street or roadway designated and signposted for one-way traffic and on which all vehicles are required to move in one indicated direction.” *Id.*, subd. 50 (2018). An intersection is

[T]he area embraced within the prolongation or connection of the lateral curb lines or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

Id., subd. 36(a) (2018).³

Here, the intersection is the square area where Singletree Lane and Prairie Center Drive intersect. The plain language of the statute required Kelley, after entering the intersection, to leave the intersection to the right of the centerline of Prairie Center Drive. The statute does not require that a left turn be completed in the inner-most, closest, or nearest lane “to the right of the centerline of the roadway being entered.” Minn. Stat. § 169.19, subd. 1(b). Both of the southbound lanes on Prairie Center Drive are to the right of the centerline, and Kelley’s turn into the outer lane, which was on the right side of the median, complied with this portion of the statute.

Moreover, unlike other provisions in Minn. Stat. § 169.19, subdivision 1(b) does not require a left turn to be made “as close as practicable to the . . . curb or edge of the

³ Minn. Stat. § 169.011, subd. 36(b) also defines “intersection” where a highway includes two roadways 30 feet or more apart. Minn. Stat. § 169.011, subd. 36(b) (2018). That definition of intersection is not applicable here because this is a “T” intersection. Moreover, Kelley also asserts that definition is inapplicable because the north and southbound lanes of Prairie Center Drive are separated by a median of no more than ten feet.

roadway.” Minn. Stat. § 169.19, subd. 1(a) (2018); *see also id.*, subd. 1(e) (2018) (providing that where both streets or roadways are one way, “both the approach for a left turn and a left turn shall be made as close as practicable to the left-hand curb or edge of the roadway”). The absence of language expressly stating that the turn must be completed in the right-hand lane nearest to the centerline indicates that the legislature intended to omit language dictating what lane a left turn is to be completed in on the roadway being entered. *See State v. Smith*, 899 N.W.2d 120, 123 (Minn. 2017) (expression of one thing is exclusion of the other); *Martin v. Dicklich*, 823 N.W.2d 336, 345 (Minn. 2012) (a statute should be interpreted whenever possible to give effect to all of its provisions).

The state argues that the second sentence of the subdivision required Kelley to turn into the inner-most lane of the roadway being entered because there was nothing obstructing Kelley’s ability to complete the turn in the inner-most lane. The state relies on the language in the second sentence of subdivision 1(b), which provides that “[w]henver 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).

Practicable means “reasonably capable of being accomplished.” *Black’s Law Dictionary*, 1361 (10th ed. 2014). Similarly, “practicable” has a plain-language definition to like effect: “[c]apable of being effected, done, or put into practice; feasible.” *American Heritage*, *supra*, at 1383. Synonyms of practicable include “possible.” *Id.* Whenever means “[a]t whatever time” and also “[w]hen.” *Id.* at 1971.

Given these plain-language meanings and the statutory definition of intersection, the “whenever practicable” provision in the statute only refers to a driver’s conduct when going through the intersection, not when completing the turn. Consequently, Kelley was not required to turn into the inner-most lane because it was “practicable” for him to do so. Because the statute does not require which lane of the roadway being entered a left turn must be completed in, the district court erred by concluding that Kelley was required to turn into the inner-most lane of Prairie Center Drive.

The district court, relying on our unpublished decision in *Battle*, concluded that while the statute does not require the turn to be made in the inner-most lane for all situations, because there “was nothing obstructing [Kelley’s] ability to pull into the lane closes[t] to the centerline” and therefore “there was [a] sufficient legal basis for the stop.” *See Battle v. Comm’r of Pub. Safety*, No. C2-01-113, 2001 WL 1222468, at *1 (Minn. App. Oct. 16, 2001). *Battle* is inapplicable here. In *Battle*, we did not interpret the left-turn statute because the appellant appeared to have agreed with the district court’s reasoning that the final sentence of the left-turn statute required completion of a left turn in the nearest lane, “[w]henever practicable.” *Id.* There, the appellant was not arguing that the statute did not require him to complete the turn in the inner-most lane. *Id.* Instead, the appellant conceded that he took a wide turn, but argued that a remand was necessary for the district court to determine if it was practicable for him to have turned into the lane closest to the centerline. *Id.* Consequently, because Kelley is challenging whether the statute required

him to complete his left turn in the inner-most lane of the roadway being entered, the district court erred by relying on *Battle*.

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. Because the officer's stop was premised upon a mistaken interpretation of the left-turn statute and was the officer's only reason for initiating the traffic stop, the officer did not have reasonable, articulable suspicion to conduct the traffic stop. As a result, the district court erred in denying Kelley's motion to suppress the evidence obtained from the traffic stop.

Reversed.