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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1582**

Marianna Kretsu Maki, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed May 15, 2023
Affirmed
Bryan, Judge**

Wright County District Court
File No. 86-CV-20-5533

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Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this implied consent appeal, appellant argues that the district court erred in denying reinstatement of her driver's license for the following five reasons: (1) the underlying traffic stop was not supported by reasonable suspicion; (2) expansion of the stop was not supported by reasonable suspicion; (3) her arrest was not supported by

probable cause; (4) the written statement in support of the warrant to obtain a sample of her blood or urine contained inaccuracies; and (5) she did not unreasonably refuse to take a test. We affirm.

FACTS

On November 29, 2020, appellant Marianna Kretsu Maki was arrested for refusal to submit to a chemical test of her blood or urine. Respondent Commissioner of Public Safety (the commissioner) administratively revoked Maki's driver's license. Maki petitioned for judicial review of the commissioner's order. The following factual summary is taken from the testimony and evidence at the subsequent judicial review hearing, including the video recordings from the arresting officer's squad car.

Kila Rice, a deputy with the Wright County Sherriff's office, testified that at 1:45 a.m. on Sunday, November 29, she observed a vehicle traveling west on a county road. Rice noted that although the posted speed limit was 55 miles per hour, the vehicle was traveling approximately 45 miles per hour—something she considered unusual due to the clear weather, lack of traffic, and favorable road conditions. She began to follow and continue observing the vehicle. Rice did not initially turn on her overhead emergency lights, and she drove two car lengths behind the vehicle. A video recording from Rice's squad car captured the events that followed.

After Rice began following the vehicle, she testified that she saw it drive on the center line and the fog line of the road. The squad video shows the vehicle driving on the fog line. It does not clearly show the vehicle driving on the center line, but Rice can be heard saying near the beginning of the video that the vehicle had just driven on the center

line. Rice also testified that the vehicle made a delayed transition into a left-turn lane prior to turning left at a stop sign. In her testimony, Rice also acknowledged that the turn lane was protected by solid lines, it was dark at the intersection, and that Maki signaled her turn a proper distance from the stop sign and stopped for an appropriate amount of time. Based on Rice's observations that the driver drove on the center and fog lines, made a delayed transition into a left-turn lane, and drove well below the speed limit in clear weather, Rice suspected that the driver of the vehicle was under the influence of an unknown substance. She turned on her emergency lights and pulled the vehicle over.

Rice approached the vehicle, and the driver provided her name and identification. Rice testified that Maki's pupils were "very constricted," suggesting "possible drug impairment." Rice asked Maki if she knew her current location and the current speed limit. Maki initially stated that she believed that she was driving "towards Labeaux" and that the speed limit was 30 miles per hour. Rice testified that Maki "appeared very disoriented" regarding her location and the speed limit. Maki told Rice that she was on her way to a friend's birthday party, which Rice believed was unusual given the time of the encounter.

Believing that Maki was under the influence of a controlled substance, Rice instructed Maki to exit the vehicle. Maki complied, and Rice conducted a series of field sobriety tests. Prior to the field sobriety tests, Maki informed Rice that she had an ACL injury and Rice responded, "we'll make sure that your knee stays fine." Rice also asked Maki if she had any traumatic brain injuries or illnesses and whether she was wearing contact lenses; Maki replied that she had no brain injuries but was wearing contacts.

First, Rice conducted the “horizontal gaze nystagmus” test, a test of a person’s eye movements. Rice testified that she did not observe any clues of intoxication on this test but did observe that Maki exhibited “[v]ery pronounced,” unusual eye twitching. Second, Rice next conducted the “walk and turn” test, which required Maki to take several steps and turn around. Rice observed that Maki “stepped out of the instruction stance one time” and “conducted an improper turn.” Third, Rice conducted the “one-leg stand test,” which required Maki to balance on one leg. Before taking the test, Maki again noted that she had a torn right ACL and was wearing a knee brace. Nevertheless, Maki stated that she could still complete the test as long as she balanced on her uninjured left knee. Rice testified that Maki “swayed while balancing [on her left knee] and put her foot down multiple times.” Fourth, Rice performed a time-estimation and balance test. Rice testified that Maki estimated the time correctly but continued to display “significant tremors in her eyes.” Finally, Rice ordered Maki to take a preliminary breath test (PBT), which indicated that Maki had not consumed alcohol. Rice testified that she did not believe Maki was under the influence of alcohol but used the PBT to rule out alcohol as opposed to other controlled substances. Maki repeatedly denied having consumed any alcohol, drugs, or prescription medications that night, but suggested that she may have taken CBD oil at some point.

Rice still believed that Maki was under the influence of a controlled substance and arrested Maki for driving while impaired. Rice drove Maki to a hospital and applied for a search warrant to obtain a sample of Maki’s blood or urine. The application for the search warrant included the following written statement:

Observed the vehicle travelling at a slow rate of speed, hit center line and fog lines. Failed to turn into left turn lane when making left hand turn. Delayed response at stop sign. When asking the driver where she was and what the speed limit was, she stated she thought she was in a 30 mph zone and believed she was several miles away from her actual location. Driver performed [field sobriety tests] and provided clues. She later admitted to possibly consuming CBD oil. Believe driver to be impaired under THC, marijuana, or another controlled substance.

Rice later testified that by “[d]elayed response at stop sign,” she had meant that Maki was slow to get into the turn lane.

The search warrant was signed. Rice informed Maki that she had obtained a warrant, showed it to her, and told her that “refusal to take a test is a crime.” Rice then asked Maki: “will you take a blood test?” Maki responded that she wanted an attorney. Rice said, “it’s a yes or no question; will you take a blood test?” Maki asked, “for what?” and indicated she wanted to exercise her rights. Rice explained that “either you say you’re going to take the blood test, yes or no, it would be considered a refusal if you do not . . . say yes to a blood test or a urine test.” Rice did not specifically tell Maki that she did not have a right to an attorney. Rice asked Maki if she would take a blood test six times, and on the sixth time, Maki responded, “no.” Rice then asked Maki, “will you take a urine test,” and Maki responded, “not until I speak to my attorney.” Rice considered these answers a refusal to take a blood or urine test.

Following the hearing, the district court issued a written order denying Maki’s petition. The district court found that Rice stopped Maki based on her driving on the center and fog lines, delayed entry into a turn lane, and slow speed. The district court credited

Rice's testimony about the encounter, including her testimony that Maki displayed confusion, balance issues, constricted pupils, and eye twitching during the stop and field sobriety tests. The district court also observed, based on its own viewing of the squad video, that Maki had driven on the fog line and that Rice saw Maki drive on the center line. Based on these findings, the district court determined that Rice had reasonable suspicion at the time of the initial encounter that Maki was driving while impaired. In addition, the district court concluded that Rice had probable cause to believe Maki was driving while impaired at the time of arrest. The district court also denied Maki's motion to suppress the warrant, concluding that although the written statement contained factual inaccuracies (that Maki failed to use the left-turn lane and had a delayed response at a stop sign when turning), "there are no facts to demonstrate that Deputy Rice included these statements knowing they were false or with reckless disregard of the truth." Finally, the district court found that Maki refused to take a chemical test and that this refusal was not reasonable because Maki did not have the right to consult an attorney and Rice did not mislead Maki. Maki appeals.

DECISION

Under Minnesota's implied-consent law, a person must submit a sample of their blood, breath, or urine to determine the presence of a controlled substance when an officer has probable cause to believe the person was driving while impaired and the person has been lawfully placed under arrest for that offense. Minn. Stat. § 169A.51, subd. 1 (2020); *see also* Minn. Stat. § 169A.20 (2020) (defining the criminal offense of "[d]riving while impaired"). When a peace officer certifies that there was probable cause to believe the person was driving while impaired and that the person refused to submit to a test, the

commissioner shall revoke the person's driver's license. Minn. Stat. § 169A.52, subd. 3 (2020); *see also* Minn. Stat. § 171.177, subd. 4 (2020) (providing for license revocation upon refusal to submit to blood or urine test directed pursuant to a search warrant). A person may petition for judicial review of such a license revocation, as Maki did here. Minn. Stat. § 169A.52, subd. 2 (2020); Minn. Stat. § 171.177, subd. 11 (2020).

A proceeding to challenge license revocation is civil in nature, not criminal. *Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 919-20 (Minn. App. 2010). The commissioner carries the burden of proof in implied consent cases, and the standard of proof is a preponderance of the evidence. *Johnson v. Comm'r of Pub. Safety*, 392 N.W.2d 359, 362 (Minn. App. 1986). We will not reverse a district court's findings of fact "unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01; *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002) (applying clear error review in implied consent case). "We hold findings of fact as clearly erroneous only when we are left with a definite and firm conviction that a mistake has been committed." *Jasper*, 642 N.W.2d at 440 (quotation omitted). We review questions of law in an implied consent case de novo. *Harrison*, 781 N.W.2d at 920.

I. Reasonable Suspicion for the Traffic Stop

Maki first argues that Rice did not have the reasonable suspicion necessary for a traffic stop. We disagree.

The United States and Minnesota constitutions both prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. "But an officer does not

violate the prohibition if she stops a vehicle to conduct an investigation based on the officer's reasonable suspicion that the driver is engaging in criminal activity.” *Soucie v. Comm’r of Pub. Safety*, 957 N.W.2d 461, 463-64 (Minn. App. 2021), *rev. denied* (Minn. June 29, 2021). “Reasonable suspicion must be ‘particularized’ and based on ‘specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.’” *State v. Taylor*, 965 N.W.2d 747, 752 (Minn. 2021) (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). Generally, observing a violation of a traffic law, “no matter how insignificant,” forms “the requisite particularized and objective basis for conducting a traffic stop.” *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004). “This court reviews a district court’s determination of reasonable suspicion *de novo*, but accepts the district court’s factual findings unless they are clearly erroneous.” *Kruse v. Comm’r of Pub. Safety*, 906 N.W.2d 554, 557 (Minn. App. 2018).

The district court found that Rice initiated the traffic stop to investigate the criminal offense of driving while impaired.¹ The district court noted that Rice’s decision was based on the following three observations that Rice made prior to initiating the traffic stop: (1) Maki drove on both the center line and the fog line; (2) Maki delayed transitioning into the turn lane before a left turn; and (3) Maki drove ten miles per hour below the speed limit in clear weather. Maki concedes on appeal that she “touched the lines” while driving, but she asserts that “[t]here is no law against touching the fog line while driving or weaving

¹ Maki asserts generally that Rice’s testimony was not credible. But the district court credited Rice’s testimony, and this court defers to the district court’s credibility determinations. *Lewis v. Comm’r of Pub. Safety*, 737 N.W.2d 591, 594 (Minn. App. 2007).

within one's lane of traffic." This assertion is contrary to established caselaw. This court has previously held "that the markings that establish lanes for traffic are not part of the lanes within the meaning of [section 169.18], that driving onto such a marking is movement from a lane, and that such movement could constitute a violation of the statute." *Kruse*, 906 N.W.2d at 560. In addition, this court has also held that an officer's observation of a vehicle "touching the edge of the fog line" justifies an investigative stop. *Soucie*, 957 N.W.2d at 465. Based on this case law and the district court's undisputed factual finding that Rice observed Maki driving on a lane line, Rice had the requisite reasonable suspicion to conduct a traffic stop.

II. Expansion of the Stop

Maki next argues that, even if Rice initially had reasonable suspicion to stop Maki, she did not have reasonable suspicion to "expand the scope of the initial investigation and intrusion." As a threshold matter, we note that in many similar arguments, appellants challenge the basis of an officer's request that the driver submit to field sobriety or preliminary breath tests. Here, however, Maki does not specify what police actions or investigative steps she challenges as unjustified "expansions" of the initial stop. Without knowing what specific investigative actions are challenged, we are not able to determine whether Rice had sufficient reasons to suspect Maki of driving while impaired at the time she took the additional investigative step. "Because inadequately briefed issues are not properly before an appellate court," *Builders Ass'n of Twin Cities v. Bd. of Elec.*, 965 N.W.2d 350, 364 n.6 (Minn. App. 2021), we need not address Maki's argument. Nevertheless, to the extent that Maki challenges Rice's request that Maki submit to field

sobriety and preliminary breath tests, we conclude that Rice reasonably suspected Maki of driving under the influence at the time Rice made her requests.²

Even when a stop is justified at its inception, the actions of police during the stop must be “reasonably related to and justified by the circumstances that gave rise to the stop in the first place,” unless there is independent probable cause or reasonableness to justify further intrusion. *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004). In this case, the district court credited Rice’s testimony that, when she first encountered Maki, she observed that Maki had constricted pupils and was confused about the speed limit and her location. Constricted pupils are one indicia of intoxication that, coupled with evidence of improper driving, constitutes reasonable suspicion that a driver is under the influence of a controlled substance. *See Holtz v. Comm’r of Pub. Safety*, 340 N.W.2d 363, 365 (Minn. Ct. App. 1983) (“[A]n officer need only have one objective indication of intoxication to constitute reasonable and probable grounds to believe a person is under the influence.”); *see also State v. Hegstrom*, 543 N.W.2d 698, 702 (Minn. App. 1996), *rev. denied* (Minn. Apr. 16, 1996) (concluding that constricted pupils and strong evidence of inattentive driving established probable cause to believe the driver was driving while impaired). Maki asserts that Rice’s testimony about her pupils was not credible, and that Rice’s actions were “clearly pretextual,” but again we defer to the district court’s credibility determination.

² We also note that the district court found that Rice reasonably suspected Maki of driving while impaired prior to the initiation of the stop. Maki does not contest this finding, and the finding is supported by Rice’s testimony that based on the driving conduct she observed, Rice suspected that the driver was intoxicated. To the extent that the initial traffic stop was based on a reasonable suspicion that the driver was intoxicated, Maki’s argument is misplaced because there would have been no expansion of the investigation.

Lewis, 737 N.W.2d at 594. Thus, we conclude that Rice had sufficient and independent reasonable suspicion that Maki was driving while impaired when she asked Maki to submit to field sobriety tests and a preliminary breath test.

III. Probable Cause for Arrest

Maki next argues that Rice lacked probable cause to arrest her for driving while impaired because Maki performed well on some of the field sobriety tests and because the preliminary breath test indicated she had not consumed alcohol. Based on the facts and circumstances known to Rice at the time of arrest, we conclude that Rice had probable cause to believe that Maki was driving while impaired.

To arrest a person for driving while impaired, an officer must have probable cause to believe that the person is under the influence of alcohol, a controlled substance, or an intoxicating substance. Minn. Stat. § 169A.20, subd. 1; *see also* Minn. Stat. § 169A.52, subd. 3 (requiring probable cause that a person has violated section 169A.20 to revoke that person's driver's license). "Probable cause to arrest a person for DWI exists when the facts and circumstances available at the time of arrest reasonably warrant a prudent and cautious officer to believe that an individual was driving while under the influence." *Reeves v. Comm'r of Pub. Safety*, 751 N.W.2d 117, 120 (Minn. App. 2008).

In general, "[w]hether the arresting officer's actions were reasonable is an objective inquiry," and "[t]he existence of probable cause depends on the facts of each individual case." *State v. Moorman*, 505 N.W.2d 593, 599 (Minn. 1993). Depending on the circumstances, "[a]n officer needs only one objective indication of intoxication to constitute probable cause to believe a person is under the influence." *State v. Kier*, 678

N.W.2d 672, 678 (Minn. App. 2004). “Further, an officer may have probable cause even if none of the commonly-known physical indicia of intoxication is [sic] present.” *State v. Lee*, 585 N.W.2d 378, 382 (Minn. 1998). “To establish probable cause, facts need not exclude all innocent explanations for conduct nor conclusively show that conduct was illegal.” *State v. Hawkins*, 622 N.W.2d 576, 577 (Minn. App. 2001). “[W]e review the district court’s findings of historical fact relating to the probable cause determination for clear error . . . but we independently review de novo the issue of probable cause.” *Lee*, 585 N.W.2d at 383 (emphasis omitted).

Maki asserts that the totality of the circumstances in this case do not support the existence of probable cause.³ We are not persuaded because the relevant facts in this case include multiple indicia of intoxication: (1) Maki’s slow driving and her swerving onto the fog and center lines; (2) Maki’s confusion regarding her location and the speed limit; (3) Rice’s observation that Maki’s pupils were constricted and her eyes were twitching throughout the stop and field sobriety tests; (4) Maki’s improper turn on the walk-and-turn test; and (5) Maki’s swaying during the one-legged-stand test.

Maki also argues that some of the tests were “poorly administered,” her ACL injury could have caused the lack of balance observed during the one-legged-stand test, she performed well on some of the field sobriety tests, and the preliminary breath test did not indicate she had consumed alcohol. Again, we remain unconvinced. Maki does not dispute

³ Maki again argues that Rice was not credible, that her claims were “self-serving,” and that the squad video could not corroborate all of her testimony. As noted above, however, we defer to the district court’s credibility determinations. *Lewis*, 737 N.W.2d at 594.

that Rice permitted Maki to stand on her uninjured leg for the test, and this court has held that passing some field sobriety tests does not negate probable cause when there are other indicia of intoxication. *State v. Prax*, 686 N.W.2d 45, 49 (Minn. App. 2004), *rev. denied* (Minn. Dec. 14, 2004); *see also Mesenburg v. Comm’r of Pub. Safety*, 969 N.W.2d 642, 649-50 (Minn. App. 2021), *rev. denied* (Minn. Mar. 15, 2022) (holding that successful completion of field sobriety tests did not negate reasonable suspicion for requiring preliminary breath test). Finally, the district court found that Rice arrested Maki under suspicion of driving under the influence of a controlled substance, not under the influence of alcohol. For these reasons, and given the multiple indicia of intoxication described above, we conclude that the facts known to Rice at the time of the arrest could “reasonably warrant a prudent and cautious officer to believe” that Maki was driving while impaired. *Reeves*, 751 N.W.2d at 120.

IV. Probable Cause for Search Warrant

Maki also argues that the search warrant was not supported by probable cause because the written statement in support of the warrant included inaccuracies. We conclude that the district court did not clearly err when it found no evidence that any inaccuracies in the warrant application were intentionally or recklessly false.

“A warrant is supported by probable cause if, on the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *State v. Holland*, 865 N.W.2d 666, 673 (Minn. 2015) (quotation omitted). There is “a presumption of validity with respect to the affidavit supporting the search warrant.” *Franks v. Delaware*, 438 U.S. 154, 171 (1978). “A search warrant is void, and the fruits

of the search must be excluded, if the application includes intentional or reckless misrepresentations of fact material to the findings of probable cause.” *State v. Andersen*, 784 N.W.2d 320, 327 (Minn. 2010) (quotations omitted); *see also State v. Moore*, 438 N.W.2d 101, 105 (Minn. 1989) (stating that “innocent or negligent misrepresentations will not invalidate a warrant”). “When a defendant seeks to invalidate a warrant, the two-prong *Franks* test requires a defendant to show that (1) the affiant deliberately made a statement that was false or in reckless disregard of the truth, and (2) the statement was material to the probable cause determination.” *Andersen*, 784 N.W.2d at 327 (quotation omitted). We review the district court’s factual findings regarding whether an inaccurate statement was intentional or reckless for clear error but review materiality de novo. *Id.*

Maki asserts that the written statement contained the following four inaccuracies or omissions: (1) the application did not explain the lighting of the area, the lack of any impact on traffic, or Rice’s conduct in following Maki closely; (2) it inaccurately stated that Maki failed to appropriately use a left-turn lane; (3) it was “vague” regarding the field sobriety tests and omitted that Maki passed certain tests and had a knee injury; and (4) it did not explain Rice’s reliance on Maki’s constricted pupils or convey that Maki was lucid. Although the district court agreed that Maki did not fail to use the left-turn lane and did not have a delayed response at a stop sign, the district court found that there was no basis to conclude that Rice made any statements or omissions “knowing they were false or with reckless disregard of the truth.”

Based on our review of the record, we conclude that the district court’s findings are not clearly erroneous. Although Maki generally attacks Rice’s credibility throughout her

brief, she does not otherwise point to any facts or evidence to support her conclusory assertion that Rice intentionally or recklessly included inaccurate statements in her warrant application. We are not persuaded to reverse based on Maki's arguments because the record does not include evidence showing intentional or reckless false statements.⁴

V. Test Refusal

Finally, Maki argues that she did not refuse to take a blood or urine test. Instead, her resistance reflected that she “was trying to speak with an attorney prior to submitting to a test.” Because the record supports the determination that Maki refused to take a test and did not have reasonable grounds to do so, the district court did not clearly err when it found that found that Maki unreasonably refused a blood or urine test.

If a person refuses to submit to a test following their arrest, the test shall not be given (except in certain circumstances), but the officer shall report the refusal to the commissioner and the commissioner shall revoke the person's driver's license. Minn. Stat. § 169A.52, subds. 1, 3 (2020); Minn. Stat. § 171.177, subds. 4, 13 (2020). A petitioner in an implied consent proceeding may assert as an affirmative defense that the refusal to test was reasonable. *Norman v. Comm'r of Pub. Safety*, 412 N.W.2d 22, 23 (Minn. App.

⁴ Moreover, even if the warrant application contained deliberate falsehoods or omissions, those errors are not material. “A misrepresentation or omission is material if, when the misrepresentation is set aside or the omission supplied, probable cause to issue the search warrant no longer exists.” *Andersen*, 784 N.W.2d at 327. Even if the warrant application excluded the two errors that the district court found and included the additional context that Maki believes was omitted, the remaining facts of this case—Maki's swerving, slow driving, confusion, eye symptoms, and performance on the field sobriety tests—were still sufficient to establish probable cause.

1987).⁵ The petitioner has the burden of establishing reasonable refusal by a preponderance of the evidence. *Winder v. Comm’r of Pub. Safety*, 392 N.W.2d 21, 24 (Minn. App. 1986), *rev. denied* (Minn. Oct. 22, 1986). “The question whether a driver has refused to submit to chemical testing is a question of fact, to which this court applies a clear-error standard of review.” *Stevens v. Comm’r of Pub. Safety*, 850 N.W.2d 717, 722 (Minn. App. 2014). The question of whether a driver has reasonable grounds to refuse testing is also a question of fact. *State, Dep’t of Highways v. Beckey*, 192 N.W.2d 441, 444-45 (Minn. 1971).

First, the district court did not clearly err when it found that Maki refused to take a test. The record indicates that Rice told Maki that refusal to take a test is a crime and asked Maki multiple times if she would take a blood test, and that Maki responded, “no.” When Rice subsequently asked if Maki would take a urine test, Maki responded, “not until I speak to my attorney.” Although the latter answer was not a direct refusal, Rice had previously explained that “it’s a yes or no question,” and refusal to make a decision when presented

⁵ The commissioner asserts that this affirmative defense does not apply to refusal to take a blood or urine test pursuant to a search warrant. In analyzing this affirmative defense, the district court relied on Minnesota Statutes section 169A.53, subdivision 3(c) (2020), which provides that “[i]t is an affirmative defense for the petitioner to prove that, at the time of the refusal, the petitioner’s refusal to permit the test was based upon reasonable grounds.” Minnesota Statutes section 171.177, subdivision 12 (2020), which specifically pertains to license revocation pursuant to a search warrant for a blood and urine test, does not expressly provide for this affirmative defense as section 169A.53 does. The issues that can be raised in implied consent hearings are limited by statute. *See Axelberg v. Comm’r of Pub. Safety*, 848 N.W.2d 206, 209 (Minn. 2014), *superseded by statute*, Act of May 22, 2015, ch. 65, § 10, 2015 Minn. Laws 474, 527 (codified at Minn. Stat. § 169A.53, subd. 3 (Supp. 2015)). We need not address whether this defense was available to Maki, however, because assuming without deciding that it was, the district court did not err in determining that Maki’s refusal was unreasonable.

with a final opportunity to do so constitutes a refusal to test. *Linde v. Comm’r of Pub. Safety*, 586 N.W.2d 807, 810 (Minn. App. 1998), *rev. denied* (Minn. Feb. 18, 1999); *see also, e.g., Busch v. Comm’r of Pub. Safety*, 614 N.W.2d 256, 259 (Minn. App. 2000) (holding that refusal to answer questions and attempting to delay the testing process may constitute refusal). The district court’s finding is thus supported by the record.

Second, to the extent that Maki argues her refusal was reasonable because she was trying to speak with an attorney, we are not persuaded that the district court erred. The parties agree that Maki had no right to counsel: “the limited right to counsel . . . does not apply when a driver is presented with the choice to submit—or not to submit—to a blood test pursuant to a search warrant.” *State v. Rosenbush*, 931 N.W.2d 91, 99 (Minn. 2019). Maki argues that she was confused about whether she had a right to counsel and faults Rice for not clearing up this confusion before interpreting Maki’s conduct as refusal. To the extent that this argument relies on the legal proposition that a police officer has an affirmative duty to clear up a driver’s confusion, we conclude that this argument conflicts with established caselaw. *See, e.g., Maietta v. Comm’r of Pub. Safety*, 663 N.W.2d 595, 598-59 (Minn. App. 2003) (concluding that although a police officer “may not mislead a driver,” there is no “affirmative duty on the part of the police officer to clear up any and all confusion on the part of a driver”), *rev. denied* (Minn. Aug. 19, 2003).

Applying that caselaw here, we also conclude that the district court did not clearly err when it made findings of fact pertaining to whether Rice’s statements were misleading. The record does contain some evidence that Maki was confused about whether she had a right to counsel. However, the record contains no evidence that Rice’s statements were

confusing or otherwise resulted in Maki's confusion. The district court found that Rice properly informed Maki that refusal to take a test is a crime and that Maki needed to answer either "yes" or "no." In addition, the district court found that during the advisory, Rice did not deliberately mislead Maki or misrepresent Maki's rights. The record supports these findings. Because Rice had no affirmative duty to clear up any confusion that Maki may have expressed and because the district court did not clearly err in finding that Rice properly informed Maki regarding the law, we affirm the district court's decision.

Affirmed.