

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1034**

Tyler Edward Connell,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed February 5, 2024
Affirmed
Larkin, Judge**

Watonwan County District Court
File No. 83-CV-23-84

Thomas K. Hagen, Christopher D. Cain, Kohlmeyer Hagen Law Office, Chtd., Mankato,
Minnesota (for appellant)

Keith Ellison, Attorney General, Rebecca K. Webster, Assistant Attorney General, St.
Paul, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Larkin,
Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the district court's order sustaining the revocation of his
driving privileges, which stemmed from his arrest for driving while impaired (DWI). We
affirm.

FACTS

Respondent Commissioner of Public Safety revoked appellant Tyler Edward Connell's driver's license after he was arrested for DWI and chemical testing indicated that he had driven a snowmobile with a blood alcohol concentration over the legal limit.

Connell petitioned for judicial review of the license revocation. At the hearing on his petition, Connell limited the issues for the district court's review to whether there was reasonable, articulable suspicion justifying his initial seizure and whether there was reasonable, articulable suspicion justifying the expansion of the initial seizure to include a DWI investigation. All other issues were waived.

The district court received exhibits, heard testimony from the arresting officer, and found the facts to be as follows.

On February 12, 2023, at 12:51 a.m., [an officer] was on routine patrol when two snowmobiles came to his attention. He initially observed the two snowmobiles traveling south in the ditch on the designated snow trail. As the snowmobiles approached a culvert, there was a sign directing the snowmobiles to drive to the left to avoid the culvert. [The officer] observed the snowmobiles [drive] up onto the shoulder before dipping back onto the snowmobile trail. The snowmobiles came close to the highway as they drove onto the shoulder. There was space to the right of the hazard sign for the snowmobiles to drive on. Based on his observations, [the officer] initiated a traffic stop.

One of the two snowmobiles came to a stop. [The officer] approached the snowmobile. The driver (later identified as [Connell]) was very argumentative and refused to take his helmet off. When [the officer] asked [Connell] where he was coming from, his responses were delayed. [Connell] also slurred his speech. Based on his training and experience, [Connell's] slurred speech indicated impairment. [The officer] asked [Connell] to repeatedly take off his helmet. When [Connell] finally removed his goggles, [the

officer] saw that [Connell] had bloodshot, watery eyes. In [the officer's] experience, bloodshot, watery eyes are typically a sign of impairment. Because of the signs of impairment he observed, [the officer] asked [Connell] to perform the horizontal gaze nystagmus test ("HGN"). Ultimately, [the officer] arrested [Connell] for suspicion of driving while impaired. [Connell's] breath test results were 0.15.

(Citations omitted.)

The district court concluded that both the initial seizure and the expansion were supported by reasonable, articulable suspicion and therefore sustained the revocation of Connell's driving privileges.

Connell appeals.

DECISION

Under Minnesota's implied-consent law:

Upon certification by the peace officer that there existed probable cause to believe the person had been driving, operating, or in physical control of a motor vehicle in violation of section 169A.20 (driving while impaired) and that the person submitted to a test and the test results indicate an alcohol concentration of 0.08 or more . . . then the commissioner shall revoke the person's license . . . to drive

Minn. Stat. § 169A.52, subd. 4 (2022); *see* Minn. Stat. § 169A.50 (2022) ("Sections 169A.50 to 169A.53 may be cited as the Implied Consent Law.").

A driver whose license has been revoked under the implied-consent law may petition for judicial review of the revocation under Minn. Stat. § 169A.53 (2022). The scope of a judicial review hearing is limited to 12 issues. Minn. Stat. § 169A.53, subd. 3(b)(1)-(12). An unconstitutional traffic stop is not listed among them. However,

this court has ordered rescission of a license revocation based on an unconstitutional seizure. *Ascher v. Comm’r of Pub. Safety*, 505 N.W.2d 362, 370 (Minn. App. 1993) (ordering rescission of a license revocation where the revocation stemmed from an unconstitutional sobriety checkpoint), *aff’d*, 519 N.W.2d 183 (Minn. 1994).

The Fourth Amendment of the U.S. Constitution and article I, section 10 of the Minnesota Constitution protect “against unreasonable searches and seizures.” Warrantless searches and seizures are per se unreasonable unless they fall under an established exception. *State v. Othoudt*, 482 N.W.2d 218, 221-22 (Minn. 1992). However, a police officer may temporarily detain an individual based on reasonable, articulable suspicion that the individual is engaged in criminal activity. *State v. Diede*, 795 N.W.2d 836, 842-43 (Minn. 2011). “Ordinarily, if an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle.” *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

The Minnesota Supreme Court has adopted “the principles and framework of *Terry* [v. *Ohio*] for evaluating the reasonableness of seizures during traffic stops.” *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004). When assessing the validity of an investigative seizure, a court considers two issues: whether the seizure was justified at its inception, and whether the actions of the police during the seizure were “reasonably related to and justified by the circumstances that gave rise to the stop in the first place.” *Id.* at 364.

“We review 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).

I.

Connell contends that his traffic stop was unconstitutional because it was based on a mistake of law. An officer’s mistaken belief that conduct violates the law is not a valid basis for a stop. *See State v. Anderson*, 683 N.W.2d 818, 824 (Minn. 2004) (holding that “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”).

Connell argues that “[w]hen the conduct in question is legal, the mistaken belief cannot alone justify an investigative stop.” Connell cites several decisions in which traffic stops were invalid because they were based on mistakes of law. In each of those cases, the stop was based on conduct that was not illegal under the court’s interpretation of the relevant statute. *See George*, 557 N.W.2d at 576 (“A law enforcement officer’s belief a motorcycle headlight configuration to be illegal is not an objective legal basis for a traffic stop where the headlight configuration clearly conformed to Minnesota law.”); *Anderson*, 683 N.W.2d at 820 (“Minnesota Statutes § 169.18, subd. 11 (2002), which requires a motorist to move ‘a lane away’ from an emergency vehicle on the side of the road does not require a motorist to provide a lane between the passing vehicle and the emergency vehicle.”); *State v. Kilmer*, 741 N.W.2d 607, 608 (Minn. App. 2007) (“It is not a violation of state traffic laws for a motorist to enter a controlled intersection on a yellow light, and that conduct alone cannot be the basis for an investigative stop by a law-enforcement

officer.”); *see also Birkland v. Comm’r of Pub. Safety*, 940 N.W.2d 822, 824 (Minn. App. 2020) (“Minnesota Statutes section 169.19, subdivision 1(b) (2018) does not mandate that a driver turning left from a single left-turn lane must turn into the innermost lane of the roadway being entered.”).

The officer in this case stopped Connell because he believed that it was illegal for Connell to drive on the shoulder of the road. The relevant statute generally provides that “[n]o person shall operate a snowmobile upon the . . . shoulder . . . of any trunk, county state-aid, or county highway in this state,” except as otherwise allowed under one of several exceptions set forth in the statute. Minn. Stat. § 84.87 (2022). Connell argues that he was authorized to operate his snowmobile on the shoulder under an exception that allows a snowmobile to “be operated upon a *bridge* . . . when required for the purpose of avoiding obstructions to travel when no other method of avoidance is possible.” Minn. Stat. § 84.87, subd. 1(c)(6) (emphasis added). Connell asserts that this exception authorized him “to cross the bridge to avoid obstructions.” Connell’s argument that his use of the shoulder was authorized under the bridge exception fails for the simple fact that there is no evidence that the officer stopped him for driving on a bridge.

In addition to relying on the bridge exception, Connell generally cites to all of the other exceptions in section 84.87, subdivision 1(b) and 1(c), without addressing the specific application of any of them. Connell asserts that the other exceptions allow “snowmobiles to drive on the shoulder to avoid obstacles.” For the reasons that follow, we disagree.

The exceptions set forth in subdivision 1(b)(1)-(4) allow “two-way operation” of snowmobiles on one side of the road. Minn. Stat. § 84.87, subd. 1(b). The exceptions in subdivision 1(c)(1)-(5) allow a snowmobile to “make a direct crossing of a street or highway.” Minn. Stat. § 84.87, subd. 1(c). Because this case does not involve the two-way operation of a snowmobile on one side of the road or the direct crossing of a street or highway—or a bridge—none of the exceptions in section 84.87 excuse Connell’s use of the shoulder.

In sum, Connell’s reliance on the exceptions in section 84.87 to establish that his conduct was legal is unavailing. And because no exception applies, his use of the shoulder was illegal. Thus, the officer’s stop was not based on a mistake of law, and the officer’s observation of a violation of section 84.87 provided reasonable, articulable suspicion for the traffic stop. We therefore do not address the state’s argument that the officer also had reasonable, articulable suspicion to believe that Connell engaged in careless driving.

II.

Connell contends that the officer unlawfully expanded the traffic stop to include a DWI investigation. “An intrusion not closely related to the initial justification for the search or seizure is invalid under article I, section 10 unless there is independent probable cause or reasonableness to justify that particular intrusion.” *Askerooth*, 681 N.W.2d at 364.

Caselaw recognizes several indicia of intoxication that may give rise to reasonable, articulable suspicion of DWI. For example, failing to observe traffic laws may indicate intoxication. *State v. Driscoll*, 427 N.W.2d 263, 265 (Minn. App. 1988). Time of day is

a relevant consideration. *See Otto v. Comm’r of Pub. Safety*, 924 N.W.2d 658, 661 (Minn. App. 2019) (considering 1:20 a.m. on a Saturday morning to be a “time of day when drinking is often found to be involved”). Bloodshot and watery eyes, slurred speech, and an uncooperative attitude also indicate intoxication. *Holtz v. Comm’r of Pub. Safety*, 340 N.W.2d 363, 365 (Minn. App. 1983).

The district court’s findings include several indicia of intoxication supporting reasonable, articulable suspicion of DWI. Connell operated his snowmobile on the shoulder in violation of the law. That violation occurred at around 12:52 in the morning. Connell was argumentative with the officer, provided delayed responses to the officer’s questions, and slurred his speech. Finally, Connell had bloodshot, watery eyes.

Under the totality of the circumstances, there was reasonable, articulable suspicion to believe that Connell had driven while impaired and, therefore, to expand the traffic stop to include a DWI investigation.

III.

Finally, Connell contends that his arrest was not supported by probable cause. At the judicial review hearing in district court, Connell expressly waived all issues other than whether his traffic stop and DWI investigation were supported by reasonable, articulable suspicion.

An appellate court generally will not decide issues that were not raised in district court, including constitutional questions of criminal procedure. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Moreover, although Connell lists the probable-cause issue in his brief along with the applicable standard of review, he provides no argument on this issue.

An appellate court may decline to address an issue in the absence of adequate briefing. *State, Dep't of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997).

Because Connell waived the probable-cause issue in district court and the issue is not adequately briefed on appeal, we do not address whether Connell's arrest was supported by probable cause.

Affirmed.