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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1757**

Kenneth Richard Hunt, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed May 19, 2014
Affirmed
Halbrooks, Judge**

Scott County District Court
File No. 70-CV-13-10950

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Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and
Harten, Judge.*

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

UNPUBLISHED OPINION

HALBROOKS, Judge

On appeal from an order sustaining the revocation of his driver's license under Minn. Stat. § 169A.53, subd. 3 (2012), the implied-consent law, appellant argues that the district court erred by determining that (1) his rights were not violated by the failure to provide an American Sign Language (ASL) interpreter, (2) he frustrated the implied-consent process, and (3) his right to counsel was vindicated. We affirm.

FACTS

At 1:35 a.m. on April 7, 2013, appellant Kenneth Richard Hunt was pulled over by Belle Plaine police officer Mickey Semantel after he observed Hunt repeatedly swerving back and forth in his lane. Hunt informed Officer Semantel that he is deaf, but that he uses a hearing aid and can read lips. Officer Semantel suspected Hunt of driving while impaired (DWI) because Hunt smelled strongly of alcoholic beverage, and his eyes were watery and glassy. Hunt acknowledged that he had been drinking that evening. He later testified that he had consumed 12 cans of beer between 6:00 p.m. and 12:30 a.m.

Officer Semantel asked Hunt to step out of the vehicle and attempted to administer three standard field sobriety tests. Following Officer Semantel's instructions to him, Hunt performed the horizontal gaze nystagmus and the walk-and-turn tests but did so unsuccessfully. Officer Semantel attempted to explain the one-leg-stand test, which Hunt stated he did not understand. At that same time, Officer Semantel's partner, who knew Hunt from previous contacts, arrived and explained the one-leg-stand test again, which Hunt then performed. Hunt was arrested after he failed the field sobriety tests and a

preliminary breath test (PBT). Officer Semantel brought him to an interview room at the Belle Plaine police department, where Hunt began texting on his cell phone.

Officer Semantel activated his digital recorder at 2:06 a.m., and slowly and clearly read the Minnesota Implied Consent Advisory (MICA) through the question, “Do you understand what I have just explained?” Hunt quickly responded “No. No.” The officer asked what he did not understand, and Hunt replied, “No. It’s the law, get an interpreter.” Officer Semantel subsequently made six phone calls in an effort to locate an ASL interpreter. While the officer was engaged in this task, Hunt spoke freely with the officer’s partner as well as with an unidentified man at the station.

It soon became apparent that an ASL interpreter would not be available until daytime. Officer Semantel and his partner renewed their efforts to clarify the meaning of the MICA by showing Hunt the printed form and explaining the words that Hunt said he did not understand. The officers also offered to use a machine that would transcribe spoken words and write things out. Hunt insisted that the law required the provision of an ASL interpreter and that no alternatives would suffice, as is evidenced by this exchange:

Officer Semantel: Okay so you don’t want me to re-read this and explain this to you?

Hunt: No you’ve *Inaudible*

Officer Semantel: But if you can read and you can hear me—

Hunt: It’s the law, remember it’s the law.

Officer Semantel: But if you can understand what I’m saying, Kenneth[—]

Hunt: Yes I do, and it’s against the law, because I’m hard of hearing.

Officer Semantel: Yep.

Hunt: It doesn’t matter, it’s against the law.

Officer Semantel: Even if you can hear me?

Hunt: It's, it's[—]If you want to fight about it, *inaudible*
wrong *Inaudible* know that.

Shortly before 3:00 a.m., Hunt asked to be taken to jail, stating that he understood why he was being arrested and did not “want to hear anything that has to do with the police.” Officer Semantel ended the implied-consent advisory without having reached the specific question of whether Hunt wanted to consult with an attorney.

At the implied-consent hearing, Hunt testified through an ASL interpreter that he reads at a second- or third-grade level, finished tenth grade, reads lips “sometimes, but not well,” and uses adaptive technology at home such as video captioning for television programs. Hunt acknowledged that the police had read and shown him the MICA and that in two previous DWI arrests he had submitted to testing without the assistance of an interpreter. But he testified that he had not understood the implied-consent proceeding due to his hearing impairment.

The district court sustained the revocation of Hunt’s license, finding that (1) Hunt had sufficient command of the language to understand the implied-consent proceeding without an interpreter, (2) Hunt’s insistence on an interpreter frustrated the process, and (3) Hunt’s limited right to counsel was vindicated. This appeal follows.

D E C I S I O N

“Statutory interpretation presents a question of law, which we review de novo.” *Johnson v. Comm’r of Pub. Safety*, 756 N.W.2d 140, 143 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008). We give due regard to the district court’s opportunity to

judge the credibility of witnesses, and findings of fact will not be set aside unless clearly erroneous. *Snyder v. Comm'r of Pub. Safety*, 744 N.W.2d 19, 22 (Minn. App. 2008).

I.

Hunt argues that reversal is required because he was not provided an ASL interpreter at the time of the implied-consent advisory. To protect or facilitate the exercise of constitutional rights, it is the policy in Minnesota to provide persons “disabled in communication” with a qualified interpreter in certain proceedings. Minn. Stat. § 611.30 (2012). A person is “disabled in communication” when he: (1) has a “hearing, speech or other communication disorder, or (2) because of difficulty in speaking or comprehending the English language, [the person] cannot fully understand the proceedings.” Minn. Stat. § 611.31 (2012).

The threshold question is whether Hunt is a person disabled in communication under the statute. The district court found that “[w]hile [Hunt] may have indicated that he had difficulty understanding some words, he responded appropriately to the officers, demonstrated sufficient command of the language, and did not give the officers a reason to believe that he didn’t understand the ICA.” Implicit in the district court’s findings is a determination that Hunt is not a “person disabled in communication” under the statute.

Hunt and amicus curiae Mid-Minnesota Legal Aid/Minnesota Disability Law Center challenge the district court’s findings about Hunt’s ability to communicate. Hunt asserts that because he was born deaf, reads at about a second- or third-grade level, and his first language is ASL, he is a “person disabled in communication” and was entitled to

an interpreter under the statute. There is no dispute that Hunt is hearing impaired. But this does not end our inquiry.

Section 611.31 establishes that entitlement to an interpreter depends not merely on whether the individual suffers a disability, but on whether a communication disorder or language barrier prevents that person from fully understanding the proceedings. One who fully understands the arrest and postarrest implied consent proceeding despite having hearing and speech deficiencies is not a “person disabled in communication” and is therefore not entitled to an interpreter.

State v. Kail, 760 N.W.2d 16, 19 (Minn. App. 2009) (addressing applicability of Minn. Stat. § 611.31 in context of motion to suppress breath-test evidence in a DWI proceeding).

The record reflects that despite his hearing impairment, Hunt was able to communicate with the officers—through speech, lip reading, written English, or a combination of methods. Hunt informed Officer Semantel that he is deaf, wears hearing aids, reads lips, and usually wears glasses. Officer Semantel and his partner explained and administered three standard field sobriety tests. Officer Semantel explained the PBT process, which Hunt performed despite, as he communicated, having asthma.

Hunt also communicated with officers about the whereabouts of his wallet and whether his insurance card was valid. He initiated a casual conversation with an unidentified man about a past experience with the fire department. He asked what certain noises were. He stated that he was thirsty, asked for a drink, and obtained permission to use the drinking fountain. Hunt declined to use adaptive technology that would print out Officer Semantel’s spoken words. He repeatedly expressed his opinion that Officer

Semantel should have focused his enforcement efforts on drivers who were exceeding the speed limit. And notably, Hunt verbalized his opinion that even if he could understand what the officers were saying, he was entitled to an interpreter because of his hearing impairment.

In *Yokoyama v. Comm'r of Pub. Safety*, this court concluded that a driver who spoke Japanese and understood no English was not entitled to an interpreter in an implied-consent proceeding because he understood that he had been asked to take a test. 356 N.W.2d 830, 831 (Minn. App. 1984). And in *Kail*, we concluded, “The statute does not contemplate a per se requirement that any person unable to speak and hear, even if fully competent in written English, is entitled to a sign-language interpreter; rather, it conditions the requirement on the person’s capacity to understand.” 760 N.W.2d at 21.

Based on our review of the implied-consent-advisory recording, the district court correctly found that Hunt understood what the officers were asking of him, despite his assertions to the contrary. Hunt demonstrated that he was capable of understanding the communications exchanged during his arrest and the implied-consent advisory. He therefore was not entitled to an interpreter as a “person disabled in communication” under sections 611.31 and 611.32.

Even if we concluded that Hunt is a “person disabled in communication” under the statute, the inability to provide an interpreter during the implied-consent proceeding would not require reversal here. The interpreter statute specifically applies to criminal proceedings, while implied-consent license revocation is civil in nature. *Warner v. Comm'r of Pub. Safety*, 498 N.W.2d 285, 288 (Minn. App. 1993), *review denied* (Minn.

May 28, 1993). As this court stated in *Warner*, “While making an interpreter available is desirable, it should not interfere with the evidence gathering purposes of the implied consent law.” 498 N.W.2d at 288 (citing *Yokoyama*, 356 N.W.2d at 831). Because an interpreter was not available until the following day,¹ providing one would have necessarily “interfere[d] with the evidence gathering purposes of the implied consent law.” *Warner*, 498 N.W.2d at 288; *see also* Minn. Stat. § 169A.20, subd. 1(5) (2012) (providing for a two-hour testing period).

In *Warner*, this court determined that because the driver could communicate and “the officer made every reasonable attempt to obtain an interpreter . . . [t]he fact that an interpreter was not available does not impair the validity of the revocation.” 498 N.W.2d at 288. A different result is not required here. The district court properly determined that Hunt was not entitled to an ASL interpreter for purposes of the implied-consent proceeding.

II.

Hunt argues that the district court erred when it concluded that he frustrated the implied-consent process by requesting an interpreter. He contends that, because he had a statutory right to an interpreter, his refusal to test without the assistance of an interpreter was reasonable.

¹ Amicus curiae Mid-Minnesota Legal Aid/Minnesota Disability Law Center argues that technology exists to provide video remote interpreting services in such situations. While that may be true, it is undisputed that this technology was not available to the officers at the time of Hunt’s arrest.

Under the implied-consent statute, “[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.” Minn. Stat. § 169A.53, subd. 3(c). But we have rejected Hunt’s argument that he was entitled to an interpreter. And although Hunt was not violent or aggressive, his refusal to proceed without an interpreter impacted the implied-consent proceeding. The officers spent approximately 40 minutes attempting to locate an interpreter and clarify the meaning of the MICA. When it became apparent that an interpreter was not available, Hunt asked to be taken to jail, effectively ending the proceeding. Under these circumstances, the district court properly concluded that Hunt frustrated the process.

III.

Hunt argues that his right to counsel was violated because he was not specifically asked, “Do you wish to consult with an attorney?” Whether an officer vindicated a driver’s right to counsel is a mixed question of fact and law. *Groe v. Comm’r of Pub. Safety*, 615 N.W.2d 837, 841 (Minn. App. 2000), *review denied* (Minn. Sept. 13, 2000). “Once the facts are established, their significance becomes a question of law for de novo review.” *Id.*

A driver has a limited right to counsel before deciding whether to submit to chemical testing under the Minnesota Constitution. Minn. Const. art. I, § 6; *Friedman v. Comm’r of Pub. Safety*, 473 N.W.2d 828, 835 (Minn. 1991). “Whether a person’s right to counsel has been vindicated is determined by the totality of the circumstances, including the evanescent nature of alcohol.” *Groe*, 615 N.W.2d at 841. The limited right

to counsel is vindicated when the officer reads the implied-consent advisory to the driver and the driver frustrates the process by his conduct. *See Kuhn v. Comm’r of Pub. Safety*, 488 N.W.2d 838, 842 (Minn. App. 1992) (“[W]e believe as a threshold matter the driver must make a good faith and sincere effort to reach an attorney.”), *review denied* (Minn. Oct. 20, 1992).

Here, the officers read the MICA to Hunt and showed him a written copy, explaining certain terms. Officer Semantel specifically explained that “consult” means “talk” and “directory” means “phone book.” Hunt made no effort to contact an attorney, although he had his own phone with him and used it during the implied-consent process. Hunt asked to be taken to jail and stated that he did not want to hear any more from the police. The district court properly found that Hunt’s “refusal to go forward can be construed as frustrating the process” and that his limited right to counsel was vindicated.

Affirmed.