STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0462

John Joseph Vondrachek, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed December 18, 2017
Affirmed
Rodenberg, Judge

Washington County District Court
File No. 82-CV-16-3402

Jeffrey S. Sheridan, Sheridan & Dulas, P.A., Eagan, Minnesota (for appellant)

Lori Swanson, Attorney General, Maria N. Zaloker, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Rodenberg, Judge; and Kirk, Judge.

S Y L L A B U S

A driver's Fourth Amendment rights are not violated when a police officer, acting on reasonable suspicion of impaired driving, asks the driver of a lawfully stopped motor vehicle to exit and perform roadside field sobriety tests.

O P I N I O N

RODENBERG, Judge

Appellant John Joseph Vondrachek appeals from the district court's order sustaining the revocation of his driver's license under Minn. Stat. §§ 169A.50 to .53 (2014), arguing

that (1) the officer lacked probable cause to arrest him because the roadside sobriety tests and preliminary breath test were impermissible warrantless searches; and (2) the DataMaster breath-test result lacked a reliable foundational basis and should not have been admitted into evidence. We affirm.

FACTS

On July 24, 2016, at approximately 2:00 a.m., Officer John Miller of the Bayport Police Department was on patrol and stopped a car that was traveling 61 miles per hour in a posted 40-miles-per-hour speed zone. Officer Miller approached the car and spoke to the driver through the car window. He identified the driver as appellant from his driver's license. While speaking with appellant, Officer Miller "detected a strong odor of alcohol" on appellant's breath. When asked, appellant said that he had two alcoholic drinks before driving. Suspecting that appellant was driving under the influence of alcohol, but unsure of that, Officer Miller decided to investigate further.

Officer Miller told appellant that he was "just going to have [him] step out real quick to make sure [he was] okay to be driving tonight," intending to conduct roadside sobriety testing. After appellant got out of his car, Officer Miller had appellant complete the horizontal gaze nystagmus test. During this test, Officer Miller said he "observed lack of smooth pursuit in both right and left eye [a]nd nystagmus at maximum deviation at both left and right eye." These observations indicated that appellant was impaired by alcohol. Next, Officer Miller explained and demonstrated the nine-step walk-and-turn test. Appellant indicated that he understood the test and performed it without signs of impairment. Finally, Officer Miller explained the one-legged-stand test to appellant, who

indicated that he understood the test. When appellant performed this test, Officer Miller noticed that appellant "used his arms for balance and swayed while balancing." This also indicated that appellant was impaired by alcohol. Officer Miller neither asked appellant if he wanted to complete the tests nor told him that he did not have to perform them.

After appellant finished the roadside sobriety tests, Officer Miller administered a preliminary breath test (PBT) in accordance with Minn. Stat. § 169A.41, subd. 1 (2014). He neither sought a warrant nor asked appellant if he wanted to complete the test; instead, Officer Miller described the test, asked appellant if he understood it, and then appellant supplied an adequate breath sample. The record contains no evidence of any objection or refusal to comply with this PBT testing. Officer Miller, the only witness at the implied-consent hearing, was asked whether he had made an "offer" of a PBT test. He testified that he had. When asked, "[d]id [appellant] agree to take a PBT?," the officer answered, "He did." On cross-examination, Officer Miller agreed that he did not ask appellant "whether or not he wanted to do [the PBT]." The PBT revealed an alcohol concentration of 0.13. Based on the tests and Officer Miller's training and experience, he believed that appellant was under the influence of alcohol and arrested appellant for driving while impaired. Appellant was placed in the back of the squad car at 2:14 a.m.

Officer Miller took appellant to the Washington County Jail, arriving just before 2:20 a.m. At 2:22, Officer Miller went to the restroom. He left the restroom at 2:24. Officer Miller then read appellant the implied-consent advisory at 2:30, and appellant agreed to a breath test using the DataMaster DMT-G (DMT). Officer Miller, a certified DMT operator who had attended a three-day training at the Bureau of Criminal

Apprehension on how to use the DMT, testified that a 15-minute observation period immediately preceding the test is important to ensure the accuracy and reliability of the test. Officer Miller further testified that, before conducting the DMT test, he observed appellant for 15 minutes from the time of arrest and that he did not notice appellant burp, belch, vomit, place anything in his mouth, or do anything else of concern. However, the district court, taking Officer Miller's restroom break into account, found that "[b]ased on the timeline, . . . there was neither a continuous [n]or direct observation of [appellant] that lasted for more than ten minutes."

The DMT process began at 2:39. Before appellant provided a breath sample, the DMT performed a diagnostic check, which showed that the machine was operating correctly. Next, the machine ran through an air-blank test, which produced results within acceptable limits. Appellant then provided his first breath sample at 2:42, which showed a result of 0.128. There was another air-blank test, a control sample test, and a third air-blank test, all of which produced results within acceptable limits. Appellant provided a second breath sample at 2:48, which showed a result of 0.122. Finally, the DMT ran another air-blank test, which produced a result within acceptable limits. The DMT printed a final report at 2:49 showing appellant's alcohol concentration as 0.12. Officer Miller testified that he did not notice anything during the test that suggested that the DMT was not in working order and that he believed the results of the test were accurate.

The district court found that there was sufficient admissible evidence to establish probable cause to arrest appellant and invoke the implied-consent law even before the roadside sobriety tests. The district court went on to hold that, because roadside sobriety

tests and PBTs are not considered full searches and are therefore not subject to the Fourth Amendment warrant requirement, the evidence gathered from these tests was admissible. Finally, the district court found that respondent established that the DMT test was reliable and that "Officer Miller's failure to properly observe [appellant] does not invalidate the test results unless [appellant] in fact ingested or regurgitated a substance that affected the result." Since there was "no evidence or claim that [appellant] burped, belched, vomited or had any substance in his mouth that would affect the validity of the test result," the district court found the DMT test results to be reliable and accurate. As such, the district court sustained the revocation of appellant's driver's license.

This appeal followed.

ISSUES

I. Are roadside field sobriety tests a search within the meaning of the Fourth Amendment?

II. Did the PBT violate appellant's Fourth Amendment rights?

III. Did the district court abuse its discretion in admitting the DMT test result?

ANALYSIS

Appellant argues that the roadside sobriety tests and PBT were administered in violation of his constitutional right to be free from unreasonable searches and seizures because they were warrantless, and that the results of those tests must be suppressed. He argues that the remaining evidence was insufficient to support probable cause for his arrest. He also argues that there was insufficient foundation for the DMT to justify admitting the test result in evidence.

I. The district court did not err in concluding that the evidence from the PBT and roadside sobriety tests was obtained in compliance with the Fourth Amendment to the United States Constitution.

Appellant first argues that roadside sobriety tests and PBTs are searches under the Fourth Amendment, and that evidence resulting from those tests is therefore inadmissible absent a warrant or a valid exception to the warrant requirement. He further argues that, absent the evidence resulting from those tests, the remaining evidence fails to establish probable cause to have arrested him. Consequently, he argues that the threshold Fourth Amendment violation compels suppression of all of the evidence obtained after the stop.

In *State, Dep't of Pub. Safety v. Juncewski*, the Minnesota Supreme Court held that an officer may request a PBT if the officer possesses "specific and articulable facts" that form a basis to believe that a person has been driving a motor vehicle while impaired. 308 N.W.2d 316, 321 (Minn. 1981). Since *Juncewski,* we have applied a reasonable-and-articulable-suspicion test in evaluating the propriety of roadside sobriety testing and PBTs. *See, e.g., State v. Klamar*, 823 N.W.2d 687, 696 (Minn. App. 2012) (determining that the trooper developed reasonable articulable suspicion to perform an initial stop and concluding that two indicia of intoxication reasonably justified roadside sobriety tests and a PBT). We have specifically rejected appellant's argument that roadside sobriety tests and PBTs must be predicated on probable cause. *State v. Vievering*, 383 N.W.2d 729, 730 (Minn. App. 1986) ("An officer need not possess probable cause to believe that a DWI violation has occurred in order to administer a preliminary breath test."), *review denied* (Minn. May 16, 1986). *Juncewski* was a statutory-construction case and did not address the constitutional arguments advanced by appellant here.

Appellant contends that *Juncewski* and its progeny do not survive the United States Supreme Court's determination that "[i]n those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so." *Missouri v. McNeely*, 569 U.S. 141, 152, 133 S. Ct. 1552, 1561 (2013). *McNeely* arose out of a warrantless, nonconsensual seizure of a blood sample premised solely on the exigency created by the natural dissipation of alcohol. *Id.* at 148, 133 S. Ct. at 1558. *McNeely* addressed only a single-factor-exigency exception to the warrant requirement in the context of a warrantless seizure of blood. *Id.*

A. Roadside field sobriety testing is not a search within the meaning of the Fourth Amendment.

We first consider appellant's contention that roadside field sobriety tests are searches for Fourth-Amendment purposes.[1] Such roadside tests differ in significant ways from what is ordinarily considered a search. Searches generally involve the collection of some physical evidence. *See Olmstead v. United States*, 277 U.S. 438, 464, 48 S. Ct. 564, 567-68 (1928) ("The amendment itself shows that the search is to be of material things."). Roadside sobriety tests, on the other hand, are observations of the subject made by a police

[1] In this opinion, our discussion of roadside field sobriety tests refers to a trained peace officer's visual observations of physical signs of intoxication or impairment. These tests include observing a subject while the subject performs specified physical acts, such as walking on a straight line in a prescribed manner, and the officer observing the involuntary physical manifestations of impairment, such as a nystagmus in a subject's eyes. Although a PBT is often administered roadside, we do not in this opinion include the PBT in this discussion of roadside or field sobriety tests, and we separately consider it below in part I.B.

officer who is trained to discern clues of impairment. But "visual observation is no 'search' at all." *Kyllo v. United States*, 533 U.S. 27, 32, 121 S. Ct. 2038, 2042 (2001). While it is true that, in the traffic-stop situation, the officer directs the subject to complete the actions from a position of authority, the subject is able to decline performing the requested tests. Many drivers do in fact decline to perform roadside sobriety tests. *See State v. Olson*, 887 N.W.2d 692, 696 (Minn. App. 2016) (driver refused to perform roadside sobriety tests); *Johnson v. Comm'r of Pub. Safety*, 756 N.W.2d 140, 141-42 (Minn. App. 2008) (same); *State v. Mellett*, 642 N.W.2d 779, 788 (Minn. App. 2002) (same). We evaluate the propriety of roadside sobriety testing as an investigatory expansion of a traffic stop rather than as a search. *See Klamar*, 823 N.W.2d at 696 ("[A]n intrusion that is not closely related to the initial justification for the seizure is invalid unless there is independent reasonableness to justify that particular intrusion." (Quotation omitted.)). An officer's request that a driver perform roadside sobriety testing is not a search within the meaning of the Fourth Amendment.

The roadside field sobriety tests did not violate appellant's rights under the Fourth Amendment.

B. The PBT did not violate appellant's Fourth Amendment rights.

Appellant argues that a PBT is a search entitled to full Fourth Amendment protection, and therefore violates his constitutional rights absent either a warrant or an exception to the warrant requirement. He argues that the evidence obtained through the warrantless PBT should be suppressed and that, after suppression, the remaining evidence is insufficient to constitute probable cause to support his arrest.

The state, relying on pre-*McNeely* law and one post-*McNeely* unpublished opinion of this court, argues that the PBT was reasonable and that no warrant was necessary to obtain a sample of appellant's breath for purposes of the PBT. We agree with the state that there are good policy reasons to question whether the holding in *McNeely* should apply to a PBT. As the Supreme Court explained in its later *Birchfield* decision, the Supreme Court has specifically approved of "the general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists . . . and nothing we say here should be read to cast doubt on them." *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2185 (2016) (citations omitted). And the PBT, which is inadmissible in evidence by statute, is a part of Minnesota's implied-consent process. Minn Stat. § 169A.41, subd. 2 (2014).

This case does not require that we reach or resolve the issue concerning whether a PBT administered in accordance with Minn. Stat. §169A.41, subd. 1, is a search entitled to the same treatment as other chemical tests post-*McNeely*, because there are two clear reasons that suppression of the PBT result would not follow in any event. First, under well-established law, appellant voluntarily consented to the PBT, regardless of whether it is characterized as a search. Second, at the point in time when appellant blew into the PBT, after several different roadside sobriety tests had indicated impairment, the officer was acting on probable cause to believe that appellant had been driving while impaired; as such, the officer was authorized to arrest appellant and seize appellant's breath incident to that arrest, without a warrant.

Appellant consented to the PBT, and there is no record evidence to the contrary. He argues that his consent was not voluntary. In considering whether a person's consent is

voluntary, courts consider the totality of the circumstances, "including the nature of the encounter, the kind of person the defendant is, and what was said and how it was said." *State v. Brooks*, 838 N.W.2d 563, 569 (Minn. 2013) (quotation omitted). A person can voluntarily consent "even if the circumstances of the encounter are uncomfortable for" that person, but not "simply by acquiescing to a claim of lawful authority." *Id.* (citation omitted).

The Minnesota Supreme Court identified seven factors in concluding that the defendant in *Brooks* voluntarily consented to chemical testing. First, the fact that a refusal to submit to a chemical test could be admitted as evidence in a criminal trial for driving under the influence does not necessarily render the consent a result of coercion.[2] *Id.* at 570. Second, the existence of a penalty for refusing testing bears on voluntariness but does not automatically render consent coerced. *Id.* Third, whether a driver retains the right to refuse to submit to the testing in question is a consideration. *Id.* at 571. Fourth, an arrest before the claimed consent makes it less likely that consent was voluntary. *Id.* Fifth, repeated questioning or extended custody make it more likely that the driver's "will had been overborne and his capacity for self-determination critically impaired." *Id.* Sixth, whether a driver had the opportunity to consult with an attorney before agreeing to take a test is a factor influencing whether consent was coerced. *Id.* Finally, courts consider whether a

[2] The supreme court cited to *South Dakota v. Neville*, 459 U.S. 553, 564, 103 S. Ct. 916, 923 (1983), and *McDonnell v. Comm'r of Pub. Safety*, 473 N.W.2d 848, 855-56 (Minn. 1991), for this proposition, noting that, while both cases were decided within the context of the Fifth Amendment, "the question in both cases was whether the existence of a consequence for refusing to take a chemical test rendered the driver's choice involuntary." *Brooks*, 838 N.W.2d at 570.

driver was told he could refuse to consent. *Id.* at 572. The supreme court in *Brooks*, balancing these considerations, held that the totality of the circumstances indicated that the driver had voluntarily consented to the chemical tests. *Id.*

Here, two of the *Brooks* factors might suggest that appellant did not voluntarily consent to the PBT. Appellant did not have the opportunity to consult with an attorney before deciding whether to submit to the PBT,[3] and Officer Miller did not tell him that he had the right to refuse to submit to the PBT. But the remaining *Brooks* factors strongly support the conclusion that appellant voluntarily consented to the PBT. Appellant was detained for only a very brief time before being asked to provide a PBT, he was not formally arrested before he took the PBT, and he was not subjected to extended questioning. While appellant was not told that he had the option of refusing, neither was he told that he was required to submit.

Moreover, and very significantly in our judgment, appellant faced no criminal penalty for refusing to blow into the PBT, and he retained the right to refuse. *Brooks* held that even when a driver's consent to testing is obtained after a threat of criminal charges for refusal, that threat does not necessarily render consent involuntary. 838 N.W.2d at 571. And there was no such threat here. The statute governing PBTs, Minn. Stat. § 169A.41, subd. 1, differs significantly from both the warrantless blood seizure in *McNeely* and the

[3] The Minnesota Supreme Court has held that, under the Minnesota Constitution, the right to counsel in a DWI proceeding does not attach until after arrest when the driver is asked to submit to a chemical test after being read the implied-consent advisory. *Friedman v. Comm'r of Pub. Safety*, 473 N.W.2d 828, 832-33 (Minn. 1991). Because appellant was not arrested before the PBT, he was not given the opportunity to consult with an attorney before he submitted to the PBT.

laws at issue in *Birchfield* and *Brooks*. In *Birchfield*, all of the challenged laws *criminalized* the refusal to submit to post-arrest testing. 136 S. Ct. at 2170-72. In expressly exempting implied-consent procedures from its *Birchfield* holding, the Supreme Court stated that "[i]t is another matter . . . not only to insist upon [testing], but also to impose criminal penalties on the refusal to submit" to testing. *Id.* at 2185. In contrast to the laws at issue in *Birchfield* and *Brooks*, and despite the statutory language that an officer may "require" a driver to provide a preliminary breath sample upon reasonable suspicion, Minnesota's PBT statute does not criminalize a refusal to submit to breath testing. Minn. Stat. § 169A.41 (2014). No penalty directly results from a driver's exercise of his or her right to decline the test. A driver can refuse a PBT; many drivers do. *See Johnson v. Comm'r of Pub. Safety*, No. A16-1470, 2017 WL 2062125, at *1 (Minn. App. May 15, 2017); *State v. Horvath*, No. A14-0364, 2014 WL 6863212, at *1 (Minn. App. Dec. 8, 2014); *Mikiska v. Comm'r of Pub. Safety*, No. A14-0495, 2014 WL 6609170, at *1 (Minn. App. Nov. 24, 2014); *State v. Elliot*, No. A13-0466, 2014 WL 2013334, at *1 (Minn. App. May 19, 2014), *review granted* (Minn. July 15, 2014) *and order granting review vacated* (Minn. Apr. 14, 2015); *State v. Mawolo*, No. A13-0770, 2014 WL 2013350, at *1 (Minn. App. May 19, 2014), *review denied* (Minn. Apr. 14, 2015); *Banks v. Comm'r of Pub. Safety*, No. A12-2288, 2013 WL 3868155, at *1 (Minn. App. July 29, 2013); *State v. Goepfert*, No. A07-0536, 2008 WL 2492260, at *1 (Minn. App. June 24, 2008), *review denied* (Minn. Sept. 23, 2008); *Prosser v. Comm'r of Pub. Safety*, No. A06-2076, 2007 WL 3076909, at *1 (Minn. App. Oct. 23, 2007); *Groehler v. Comm'r of Pub. Safety*, Nos. A03-765, A03-792, 2004

WL 885561, at *2 (Minn. App. Apr. 27, 2004); *State v. Lincoln*, No. C7-01-1094, 2002 WL 171691, at *1 (Minn. App. Feb. 5, 2002).

Officer Miller testified that he made an "offer" that appellant submit to a PBT. The only evidence of record is the officer's testimony that appellant did "agree to take a PBT." Appellant was not threatened with any criminal or other penalty should he have opted not to provide a PBT sample. *Cf. Birchfield*, 136 S. Ct. at 2170-72 (considering statutes that included criminal penalties for refusing a chemical test). Even more definitively than in *Brooks*, the record here conclusively demonstrates that appellant voluntarily consented to provide a sample of his breath for PBT testing. 838 N.W.2d at 571 (holding that consent was valid when nothing in the record suggested that the defendant's "will had been overborne"). Having consented to the PBT, appellant cannot complain that the search of his breath was not authorized by a warrant.

Even if appellant had not consented to the PBT, appellant's breath was subject to seizure incident to arrest based on the record here. In *State v. Bernard*, the Minnesota Supreme Court held that a warrantless breath test is constitutional under the search-incident-to-arrest exception to the warrant requirement. 859 N.W.2d 762, 767 (Minn. 2015). A search incident to arrest may precede the formal arrest "as long as the fruits of the search are not the basis for the probable cause to arrest and the arrest is contemporaneous with the search." *State v. Varnado*, 582 N.W.2d 886, 892 (Minn. 1998). Here, Officer Miller developed probable cause to believe that appellant was driving while impaired before appellant's PBT, based on appellant's speeding, the odor of alcohol on his

breath, and his performance on the roadside sobriety tests.[4] Based on these facts, the PBT results were not essential to establish probable cause for appellant's arrest. He could have been arrested after the roadside field sobriety tests indicated impairment, and his breath was subject to seizure incident to arrest. Therefore, and even absent appellant's consent, this PBT was lawfully conducted without a warrant under the search-incident-to-arrest exception to the warrant requirement. *Bernard*, 859 N.W.2d at 767.

II. The district court did not abuse its discretion in admitting the DMT result.

Appellant also argues that the district court erred in admitting the DMT result because the lack of a 15-minute observation period renders the test result unreliable.

"Rulings on evidentiary matters rest within the sound discretion of the district court and will not be reversed on appeal absent a clear abuse of discretion." *In re Source Code Evidentiary Hearings*, 816 N.W.2d 525, 537 (Minn. 2012). Admissibility of a chemical test result depends upon "prima facie proof of the trustworthiness of the test's administration." *State v. Dille*, 258 N.W.2d 565, 568 (Minn. 1977). "The commissioner must make a prima facie case that the test is reliable and 'that its administration in the particular instance conformed to the procedure necessary to ensure reliability.'" *Kramer v. Comm'r of Pub. Safety*, 706 N.W.2d 231, 235 (Minn. App. 2005) (quoting *Dille*, 258 N.W.2d at 567). "Once reliability is established, the driver must produce evidence suggesting why the test was untrustworthy." *Falaas v. Comm'r of Pub. Safety*, 388 N.W.2d

[4] Appellant also challenges the district court's alternative finding that Officer Miller had probable cause to arrest appellant even before the roadside sobriety tests, but we do not reach that question. As discussed above, roadside sobriety tests are not searches, and are analyzed as investigatory expansions of a traffic stop.

40, 42 (Minn. App. 1986). The district court determines whether the test is admissible if its reliability is challenged. *Bond v. Comm'r of Pub. Safety*, 570 N.W.2d 804, 806 (Minn. App. 1997).

"The commissioner meets his burden by showing that a certified [DMT] operator administered the test and that diagnostic checks showed that the [DMT] machine was in working order and the chemicals used were in proper condition." *Kramer*, 706 N.W.2d at 236. While appellant argues that the reference to "chemicals" in the *Dille* test is outdated since the chemicals used in the Breathalyzer tests are not used in the DMT, the *Dille* standard has continued to be applied to different breath-testing devices. The commissioner's burden is still met by showing that a certified DMT operator administered the test and that the diagnostic tests showed the DMT to be in working order. *Kramer*, 706 N.W.2d at 236. Here, Officer Miller was a properly trained and certified DMT operator. Before appellant provided a breath sample, the DMT performed a diagnostic check to show that it was operating correctly. The DMT also ran air-blank tests before, between, and after appellant's breath samples. Each of these air-blank tests produced results within acceptable limits. Based on these facts, respondent met its burden by showing that Officer Miller was a certified operator and that the machine was in working order.

"Once a prima facie showing of trustworthy administration has occurred, it is 'incumbent upon [the driver] to suggest a reason why the [chemical] test was untrustworthy.'" *Tate v. Comm'r of Pub. Safety*, 356 N.W.2d 766, 768 (Minn. App. 1984) (quoting *Dille*, 258 N.W.2d at 568). To do this, "the driver must present some evidence beyond mere speculation that questions the trustworthiness" of the report. *Kramer*, 706

N.W.2d at 236. The record here is devoid of any evidence or argument that appellant ingested or regurgitated any substance while Officer Miller was in the restroom. Instead, appellant argues only that Officer Miller's having gone into the restroom for two minutes during the observation period invalidates the test.

The following timeline is set out in the district court's findings of fact: Officer Miller brought appellant to the Washington County Jail around 2:20 a.m. Officer Miller went to the restroom at 2:22 and exited the restroom at 2:24. Officer Miller then read appellant the implied-consent advisory at 2:30. The DMT began at 2:39. By our count, based on the district court's findings, the period of time between when Officer Miller exited the restroom at 2:24 and when the DMT began at 2:39 was 15 minutes. This amounts to compliance with the suggested observation period. And, as discussed above, there is no record evidence that appellant did anything that would have introduced alcohol into his mouth at any point after his arrest at 2:14.

Moreover, we have held that "[a] slight interruption of the observation period or a less than perfect observation does not invalidate the test unless the driver has ingested or regurgitated a substance that affects the results." *Falaas v. Comm'r of Pub. Safety*, 388 N.W.2d 40, 42 (Minn. App. 1986). Instead, an imperfect observation period "merely gives the driver an opportunity to challenge the test's trustworthiness by suggesting why such a failure makes the test results unreliable." *State v. Wickern*, 411 N.W.2d 597, 599 (Minn. App. 1987). The driver has the burden of presenting evidence that he ingested or regurgitated a substance that would affect the results. *Falaas*, 388 N.W.2d at 42. "The argument that something *may have occurred* during observation to affect the test result is

speculation and should not be used without supporting evidence as the basis for rescinding a revocation." *Id.* Here, appellant presented no evidence of any alcohol or other substance in his mouth that would have affected the results, and the officer appears from the record evidence to have observed appellant for 15 continuous minutes after his trip to the restroom before the DMT commenced.

Admissibility is largely entrusted to the district court. Applying the *Dille* standard, the district court acted within its discretion in admitting the DMT results.

D E C I S I O N

Roadside field sobriety testing is not a search under the Fourth Amendment, and the district court did not err in admitting evidence from those tests. On this record, the PBT did not violate appellant's Fourth Amendment rights. Further, the district court acted within its discretion when it admitted the DMT results.

Affirmed.