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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1697**

Craig Philip Christianson, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed May 29, 2018
Affirmed
Florey, Judge**

Mille Lacs County District Court
File No. 48-CV-17-929

Rodd Tschida, Minnesota Criminal Defense, Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Drew D. Bredeson, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Larkin, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Appellant challenges the district court's order sustaining the revocation of his driving privileges, arguing that there was not probable cause for his arrest. He argues that there was insufficient evidence to establish a temporal connection between his intoxication and driving conduct. We affirm.

FACTS

At 5:57 p.m. on April 8, 2017, a sheriff's deputy was dispatched to contact the wife of appellant Craig Philip Christianson. Appellant's wife told the deputy that appellant had been missing the night before and had returned home at 3:00 p.m. that day. She believed he was intoxicated "when he came home," and he then left again on an all-terrain vehicle (ATV). She did not know where he went. The deputy understood that appellant's wife had not seen appellant since 3:00 p.m.

The deputy located appellant at 6:39 p.m. Appellant appeared to be passed out on the ATV. The deputy woke appellant and observed that his eyes were bloodshot and watery, his speech was very slurred, and he emitted a strong odor of alcohol. Appellant told the deputy that he had been sitting there for 20 minutes and he had not consumed any alcohol while sitting there. Appellant admitted to driving the ATV to where he was found. Appellant's balance was so poor that the deputy did not have him perform any field sobriety tests except nystagmus and a preliminary breath test (PBT). The deputy observed signs of intoxication during the nystagmus test, and the PBT resulted in a 0.206 alcohol concentration. The deputy arrested appellant and transported him to jail, where he took a breath test resulting in a 0.27 alcohol concentration.

Respondent Commissioner of Public Safety revoked appellant's license to drive, and appellant petitioned for judicial review of the revocation. Appellant did not dispute that he drove the ATV to where he was found and did not dispute that he was intoxicated when he was arrested. However, appellant challenged the temporal proximity between his driving conduct and the intoxication and argued a post-driving-consumption defense.

The district court sustained the license revocation. The district court concluded that the evidence was sufficient to establish a temporal connection between the driving conduct and the intoxication to satisfy probable cause. The district court based this conclusion on evidence that appellant's wife believed he had been intoxicated at home before he left on the ATV as well as appellant's statement to the deputy "that he had driven to the location 20 minutes prior to being found and [he] had not consumed any alcohol at the location." The district court rejected appellant's post-driving-consumption defense, concluding that appellant's story that he consumed alcohol after he drove the ATV was not credible.

This appeal followed.

DECISION

"A determination of probable cause is a mixed question of fact and of law." *Groe v. Comm'r of Pub. Safety*, 615 N.W.2d 837, 840 (Minn. App. 2000), *review denied* (Minn. Sept. 13, 2000). We review the district court's findings of fact supporting an order sustaining a license revocation for clear error, "giving due weight to inferences drawn from those facts by the district court." *Mell v. Comm'r of Pub. Safety*, 757 N.W.2d 702, 708 (Minn. App. 2008) (quotation omitted). We will "defer to the district court's credibility determinations and ability to weigh the evidence." *Constans v. Comm'r of Pub. Safety*, 835 N.W.2d 518, 523 (Minn. App. 2013). "After the facts are determined, this court must apply the law to determine if probable cause existed." *Groe*, 615 N.W.2d at 840. This court does not review probable cause de novo; "instead, we determine if the police officer had a substantial basis for concluding that probable cause existed at the time of invoking the implied consent law." *Id.* (quotation omitted).

Probable cause exists when, “based on the totality of the circumstances, there is a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing” that the person drove or exercised physical control of the vehicle. *Shane v. Comm’r of Pub. Safety*, 587 N.W.2d 639, 641 (Minn. 1998) (quotation omitted). We evaluate probable cause from the arresting officer’s point of view, giving deference to the officer’s experience and judgment. *Delong v. Comm’r of Pub. Safety*, 386 N.W.2d 296, 298 (Minn. App. 1986), *review denied* (Minn. June 13, 1986).

A “temporal connection” between the driving conduct and the officer’s observation of intoxication must exist in order to establish probable cause to believe a person was driving a motor vehicle under the influence of alcohol. *Dietrich v. Comm’r of Pub. Safety*, 363 N.W.2d 801, 803 (Minn. App. 1985). Here, appellant does not deny that he drove the ATV to the location and does not deny that he was intoxicated when he interacted with the officer. But he argues the commissioner failed to establish a temporal connection between his driving of the ATV and the officer’s observation of intoxication. He essentially argues that the officer could not know if appellant drove one, two, or three hours prior to being found by the officer, and if he was legally intoxicated when he drove.

In *Dietrich*, we affirmed a district court’s determination that the evidence failed to link the time of driving to when the driver was found to be under the influence. *Id.* at 803. In *Dietrich*, the driver was in an accident and left the scene. *Id.* at 802. Witnesses identified Dietrich as the driver but did not indicate whether he appeared intoxicated at the scene. *Id.* The officer went to Dietrich’s home, where Dietrich appeared intoxicated, failed field

sobriety tests, tested above a 0.10 alcohol concentration, and admitted to drinking alcohol. *Id.* But the officer did not provide information about when the accident occurred, and stated only that he was on duty around 9:19 p.m. and provided the implied-consent advisory at 10:24 p.m. *Id.* We concluded that the evidence failed to establish the connection between the driving conduct and the officer's observations of intoxication. *Id.* at 803. We indicated that the time the officer was on duty did not establish when Dietrich had been driving. *Id.* We concluded that the facts established a sequence of events culminating in Dietrich's intoxication but that there was no temporal connection between the intoxication and the driving conduct. *Id.*

“Where there is no evidence whatsoever connecting the time of driving with the time of an officer's observations, the officer's proof of probable cause is inadequate.” *Hedstrom v. Comm'r of Pub. Safety*, 410 N.W.2d 47, 49 (Minn. App. 1987). However, we have affirmed cases where the officer is aware that the driver consumed alcohol before driving, and also where the officer observed indicia of intoxication hours after driving. *See Eggersgluss v. Comm'r of Pub. Safety*, 393 N.W.2d 183, 185 (Minn. 1986) (affirming revocation where passenger admitted the driver had been drinking before the accident despite a 2.5-hour delay between the accident and the officer's observations); *Weldon v. Comm'r of Pub. Safety*, 400 N.W.2d 816, 818 (Minn. App. 1987) (affirming revocation where driver told officer he had been at a bar earlier, he was then in an accident, and showed signs of intoxication 1.5 hours after the accident). We have also indicated that there is no requirement that the officer establish the exact time the driver was driving or actually

observe the driving. *DeLong*, 386 N.W.2d at 298; *Graham v. Comm’r of Pub. Safety*, 374 N.W.2d 809, 811 (Minn. App. 1985).

The record establishes that appellant’s wife saw appellant at 3:00 p.m. and believed that he was intoxicated. She told the deputy that appellant then drove away on his ATV. The deputy located appellant on the ATV, visibly intoxicated, and appellant admitted to driving the ATV to that location. Appellant told the deputy that he had been sitting there for 20 minutes and had not consumed any alcohol while sitting there. The preliminary breath test indicated that appellant’s alcohol concentration was significantly above the legal limit. While appellant argues there is some ambiguity over whether appellant meant he had only been sitting on the ATV for 20 minutes, rather than that the ATV had come to rest there 20 minutes earlier, the circumstances, taken from the officer’s point of view, are sufficiently strong for a reasonable person to believe that appellant operated the ATV while under the influence of alcohol. Respondent provided sufficient evidence to establish a temporal connection between the intoxicated state appellant was found in and the driving conduct.

Affirmed.