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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0843**

State of Minnesota,
Respondent,

vs.

Addison Roger Creviston-Lerud,
Appellant.

**Filed March 18, 2019
Affirmed
Larkin, Judge**

Clay County District Court
File No. 14-CR-17-2007

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Anthony J. Weigel, Assistant County Attorney,
Moorhead, Minnesota (for respondent)

Luke T. Heck, Drew J. Hushka, Vogel Law Firm, Fargo, North Dakota (for appellant)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his convictions of fourth-degree driving while impaired (DWI), arguing that the district court erred by denying his motion to suppress evidence obtained during the underlying traffic stop. We affirm.

FACTS

Respondent State of Minnesota charged appellant Addison Roger Creviston-Lerud with fourth-degree DWI (driving a motor vehicle under the influence of alcohol) and fourth-degree DWI (driving a motor vehicle with an alcohol concentration of 0.08 or more). Creviston-Lerud moved to suppress the evidence supporting the charges, arguing that “law enforcement lacked a reasonable and articulable basis to investigate [him] for Driving While Impaired.” The district court held a hearing on Creviston-Lerud’s suppression motion, and Officer Elias Hoversten of the Dilworth Police Department testified at the hearing. The district court found the relevant facts to be as follows.

At approximately 1:11 a.m. on June 9, 2017, Officer Hoversten observed a vehicle with inoperable license-plate lights. Officer Hoversten initiated a traffic stop. Officer Hoversten approached the vehicle, made contact with the driver, and identified him as Creviston-Lerud. Upon making contact with Creviston-Lerud, Officer Hoversten immediately smelled an odor of alcohol. Based on the smell, Officer Hoversten was “positive that alcohol was in the vehicle or had been consumed by someone in the vehicle.” Creviston-Lerud was the only person in the vehicle. Officer Hoversten requested, and Creviston-Lerud provided, his driver’s license and proof of insurance. Officer Hoversten

told Creviston-Lerud that he thought he “caught a whiff of alcohol” and asked Creviston-Lerud if he had been drinking. Creviston-Lerud told Officer Hoversten that he had not consumed any alcohol. Officer Hoversten responded, “I did catch a whiff of alcohol. You haven’t had anything at all?” Creviston-Lerud again denied drinking any alcohol.

Officer Hoversten returned to his squad car and informed a second officer who had arrived at the scene that he thought he had smelled alcohol when he spoke with Creviston-Lerud. Officer Hoversten went back Creviston-Lerud’s vehicle and told him: “[L]ike I said, I did catch a whiff of alcohol. Maybe it’s nothing. Maybe I’m smelling things, but I’m just gonna check your eyes real quick, and I’m gonna give you a breathalyzer.” Officer Hoversten noticed open cans in the backseat of the vehicle, but he later determined that they were not alcoholic-beverage cans. Officer Hoversten asked Creviston-Lerud to step out of the vehicle, and he did so.

After Creviston-Lerud exited his vehicle, Officer Hoversten saw that his eyes were bloodshot and watery. Officer Hoversten had not noticed the condition of Creviston-Lerud’s eyes while he was in his automobile due to inadequate lighting. Creviston-Lerud submitted to a preliminary breath test, which registered a 0.110 alcohol concentration. Officer Hoversten arrested Creviston-Lerud for DWI.

The district court denied Creviston-Lerud’s motion to suppress, and Creviston-Lerud stipulated to the prosecution’s case to obtain review of the district court’s ruling. Creviston-Lerud stipulated to the admission of police reports and chemical test results indicating that he submitted to a breath test at the Clay County Jail, which registered a 0.12

alcohol concentration. The district court found Creviston-Lerud guilty as charged. This appeal follows.

DECISION

The United States and Minnesota Constitutions guarantee “[t]he right of the people to be secure in their persons, houses, papers, and effects” against “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. However, a police officer may initiate a limited, investigative stop without a warrant if the officer has reasonable, articulable suspicion of criminal activity. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999) (citing *Terry v. Ohio*, 392 U.S. 1, 22, 88 S. Ct. 1868, 1880 (1968)).

“[E]ach incremental intrusion during a stop must be ‘strictly tied to and justified by the circumstances which rendered the initiation of the stop permissible.’” *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (quoting *Terry*, 392 U.S. at 19, 88 S. Ct. at 1878) (other quotation omitted). Under the Minnesota Constitution, “an intrusion not strictly tied to the circumstances that rendered the initiation of the stop permissible must be supported by at least a reasonable suspicion of additional illegal activity.” *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012). The extension of a traffic stop does not violate Minn. Const. art. I, § 10 “as long as each incremental intrusion during the stop is tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in *Terry v. Ohio*.” *Id.* (quotation omitted). The administration of field sobriety tests and a preliminary breath test is an expansion of a traffic stop that requires reasonable suspicion of DWI. *Vondrachek v. Comm’r of Pub. Safety*, 906 N.W.2d 262, 268-69 (Minn. App. 2017), *review denied* (Minn.

Feb. 28, 2018). 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. *Smith*, 814 N.W.2d at 350.

“[T]he reasonable suspicion standard is not high.” *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted); *see also State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012) (“The factual basis required to justify an investigative seizure is minimal.”). And it is “obviously less demanding than . . . probable cause.” *Alabama v. White*, 496 U.S. 325, 330, 110 S. Ct. 2412, 2416 (1990) (quotation omitted). But it requires more than an unarticulated “hunch.” *Timberlake*, 744 N.W.2d at 393. “There is no fixed or definitive test for the reasonableness of an investigatory seizure.” *Klamar*, 823 N.W.2d at 693 (quotation omitted). In determining whether reasonable suspicion exists, Minnesota courts “consider the totality of the circumstances and acknowledge that trained law enforcement officers are permitted to make inferences and deductions that would be beyond the competence of an untrained person.” *State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001).

This court has stated that “[a]n officer needs only one objective indication of intoxication to constitute probable cause to believe a person is under the influence” and that “[c]ommon indicia of intoxication include an odor of alcohol, bloodshot and watery eyes, slurred speech, and an uncooperative attitude.”¹ *State v. Kier*, 678 N.W.2d 672, 678

¹ Similarly, an odor of alcohol alone may give rise to probable cause to search an automobile for open bottles of alcohol. *State v. Schinzing*, 342 N.W.2d 105, 109 (Minn. 1983); *State v. Lopez*, 631 N.W.2d 810, 815 (Minn. App. 2001), *review denied* (Minn. Sept. 25, 2001); *State v. Schuette*, 423 N.W.2d 104, 106 (Minn. App. 1988).

(Minn. App. 2004) (quotation omitted), *review denied* (Minn. June 15, 2004); *see State v. Oevering*, 268 N.W.2d 68, 74 (Minn. 1978) (finding “little difficulty” concluding that officer had probable cause to arrest defendant on criminal negligence grounds because officer knew a traffic accident involving a fatality had occurred, defendant smelled of alcohol, and a witness had identified defendant as the driver of a vehicle involved in the accident).

Nonetheless, Creviston-Lerud contends that an odor of alcohol alone cannot give rise to reasonable articulable suspicion of DWI. Creviston-Lerud argues that “consuming alcohol and driving is only illegal if the consumption of alcohol causes impairment to the driver” and that because a “whiff of alcohol alone provides no indicia of impairment,” it does not provide reasonable suspicion of DWI.

The flaw in Creviston-Lerud’s argument is that not all DWI offenses require impaired driving. A DWI offense can be based on either impairment or having an alcohol concentration above the legal limit. *See* Minn. Stat. § 169A.20, subd. 1 (2016) (providing that a person commits DWI if “the person is under the influence of alcohol” or if “the person’s alcohol concentration at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of [a] motor vehicle is 0.08 or more”); *see also State v. Shepard*, 481 N.W.2d 560, 562 (Minn. 1992) (“The state may obtain a [DWI] conviction even if the driver’s blood alcohol concentration was less than [the legal limit] provided the state shows that the driver had drunk enough alcohol so that the driver’s ability or capacity to drive was impaired in some way or to some degree.”). Thus, contrary to Creviston-Lerud’s argument, evidence of impaired driving is not necessary to sustain a

conviction of DWI, much less reasonable suspicion to believe a person has committed a DWI offense.

As noted above, one objective indication of intoxication may give rise to probable cause to believe a person has committed a DWI offense. *See Kier*, 678 N.W.2d at 678. Given that the reasonable-articulable-suspicion standard is lower than the probable-cause standard, *White*, 496 U.S. at 330, 110 S. Ct. at 2416, we do not see why a single objective indication of intoxication is inadequate to create reasonable suspicion of DWI. Again, there is no firm test for determining whether the reasonable-suspicion standard is satisfied. *See Klamar*, 823 N.W.2d at 693. We do not suggest that administration of field sobriety tests is automatically justified based on any one circumstance, but we reject Creviston-Lerud's argument that a single indicium of intoxication, without evidence of impaired driving, is never adequate to constitute reasonable suspicion.

We turn now to the facts of this case. Officer Hoversten lawfully stopped Creviston-Lerud at approximately 1:11 a.m. for driving with inoperable license-plate lights. Creviston-Lerud was the sole occupant of his vehicle. Upon making contact with Creviston-Lerud, Officer Hoversten immediately smelled an odor of alcohol. Creviston-Lerud denied drinking, but Officer Hoversten was not required to accept that denial. In fact, Creviston-Lerud's denial arguably enhanced the officer's suspicion because it was inconsistent with the reasonable conclusion that Creviston-Lerud was the source of the odor of alcohol. We have no difficulty concluding that the totality of these circumstances created reasonable suspicion to believe that Creviston-Lerud had committed a DWI offense.

Again, “the reasonable suspicion standard is not high.” *Timberlake*, 744 N.W.2d at 393. It merely requires more than an unarticulated “hunch.” *Id.* Given the circumstances, Officer Hoversten had reasonable suspicion to expand Creviston-Lerud’s traffic stop to include a DWI investigation.

Affirmed.