

*This opinion is nonprecedential except as provided by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
A20-1639**

Robert Herman Larsen, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed September 7, 2021
Affirmed
Worke, Judge**

Lincoln County District Court
File No. 41-CV-20-6

Gregg L. Solomon, Diebold Law Firm, LLC, Marshall, Minnesota (for appellant)

Keith Ellison, Attorney General, Ryan Pesch, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Slieter, Judge; and Rodenberg,
Judge.*

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

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges the district court's decision to sustain the revocation of his driver's license, arguing that officers did not have reasonable articulable suspicion to stop him and denied him his right to an additional chemical test. We affirm.

FACTS

In the afternoon of November 11, 2019, Officer Vatsaas was on routine patrol. The officer typically looks at drivers to see if they are using their cellphones or not wearing a seatbelt. Appellant Robert Herman Larsen drove by the officer, traveling in the opposite direction. Looking through the driver's side window, Officer Vatsaas noticed that Larsen was not wearing a seatbelt or was wearing it improperly. The officer stopped Larsen.

The officer told Larsen why he stopped him and asked if the seatbelt was tucked under his arm. Larsen replied, "I think it just . . . yeah, I got all these clothes on today." The officer asked Larsen if he put the seatbelt over his shoulder when the officer was about to stop him. Larsen replied, "I guess, I don't know . . . I'm just not sure."

The officer ultimately arrested Larsen for suspicion of driving while impaired (DWI) and transported him to the jail. The officer read Larsen the breath-test advisory, and Larsen contacted an attorney before agreeing to submit to the breath test. Larsen's alcohol concentration tested over the legal limit, and he was charged with DWI. Respondent Commissioner of Public Safety revoked Larsen's driver's license. Larsen petitioned for judicial review of the revocation, challenging the basis for the stop and claiming that he was denied his right to a second chemical test.

The district court held a hearing. Officer Vatsaas testified that he stopped Larsen for a seatbelt violation. When he approached the vehicle, Larsen had his seatbelt on. He testified that it is not uncommon for a person to put their seatbelt on after they are stopped. When Officer Vatsaas asked Larsen about his seatbelt use, Larsen did not offer a clear answer and stated that he did not know when he had put his seatbelt on.

Officer Vatsaas testified that he offered Larsen a breath test. When asked if Larsen asked about another test, Officer Vatsaas testified that “[e]ither directly before [or during] the Breath Test Advisory, [Larsen] requested to provide a blood sample as his evidentiary test.” Officer Vatsaas told Larsen that he was only offering a breath test because he did not want to get a search warrant for a different chemical test. Officer Vatsaas testified that Larsen never requested an additional test. If he had, the officer’s practice is to provide a phone book, phone, and an opportunity to arrange a test. Officer Vatsaas testified that if Larsen had requested an additional test it would have been documented in his report, but nothing related to a request for an additional test was in his report.

Officer Szerlip testified that he was working at the jail on November 11, 2019. He testified, “Every time that I recall being asked for additional tests, I’ve always provided phone books and phone.” He noted requests for additional tests in the jail log. There was nothing in the jail log related to Larsen requesting an additional test.

Larsen testified that his vehicle’s windows are tinted, implying that the officer could not have seen into his vehicle to observe an alleged seatbelt violation. When asked if he requested an additional test, Larsen testified:

I wanted to take a different type of test. I wanted to take, like, a chemical test -- like a urine or blood test. And, uh, and I just, uh, yeah, you know, Vatsaas said that, you know, you can't. You know, I -- I can't get a search warrant for that so -- so I need to have a search warrant. So I took the test. And then, uh, immediately after I took that test, then I -- I realized that I was just over the legal limit. So, I've always been told that -- that tests can come out differently, so I immediately requested a different type of test. But I was told at that point and time that, Larsen, you have -- we're putting you in a twelve-hour hold. You can make one call and, from that point, you can go on -- you know, you can make one call and your call is -- is for your pick-up in the morning because we're -- we're taking your cell phone, we're taking everything -- all your rights away at this point in time and we're throwing you in a cell.

The district court sustained the revocation of Larsen's driver's license. The district court found both officers' testimonies to be credible and concluded that Officer Vatsaas had a reasonable articulable suspicion of criminal activity to stop Larsen for a seatbelt violation, and that the officers did not deny Larsen an additional test because he requested an alternative test, not an additional test. This appeal followed.

DECISION

Investigatory stop

Larsen first argues that the district court erred by concluding that Officer Vatsaas had reasonable articulable suspicion to stop his vehicle. This court reviews a district court's determination that an officer had reasonable articulable suspicion to justify an investigatory stop de novo. *Hoekstra v. Comm'r of Pub. Safety*, 839 N.W.2d 536, 539 (Minn. App. 2013). In conducting this de novo review, this court reviews the findings of fact supporting the district court's decision for clear error and will not reverse unless "left with a definite and firm conviction that a mistake has been committed." *Jasper v. Comm'r*

of Pub. Safety, 642 N.W.2d 435, 440 (Minn. 2002) (quotation omitted). A factual finding “is not clearly erroneous if it is reasonably supported by the evidence as a whole.” *State v. Barshaw*, 879 N.W.2d 356, 366 (Minn. 2016). This court defers to the district court’s credibility determinations. *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012).

While warrantless searches are generally unreasonable, *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008), an officer may conduct a warrantless limited investigatory stop when the officer has reasonable articulable suspicion of criminal activity. *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). The reasonable-suspicion standard is “not high.” *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011) (quotation omitted). But while an officer “need not be absolutely certain of the possibility of criminal activity,” he cannot rely on “an inchoate and unparticularized suspicion or hunch.” *State v. Schrupp*, 625 N.W.2d 844, 847 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. July 24, 2001). An officer’s reasonable suspicion is based on the totality of the circumstances while “appropriately relying on inferences and deductions that might elude someone without similar training.” *Wilkes v. Comm’r of Pub. Safety*, 777 N.W.2d 239, 244 (Minn. App. 2010). “Generally, if an officer observes a violation of a traffic law, no matter how insignificant the traffic law, that observation forms the requisite particularized and objective basis for conducting a traffic stop.” *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004).

Here, Officer Vatsaas stopped Larsen for a seatbelt violation. Under Minn. Stat. § 169.686, subd. 1(a) (2018), “a properly adjusted and fastened seat belt, including both the shoulder and lap belt when the vehicle is so equipped, shall be worn by the driver.”

“Driving without a seat belt is a crime. . . . When an officer observes a driver not wearing a seat belt, he has a reasonable suspicion to stop that person for criminal activity.” *State v. Poehler*, 935 N.W.2d 729, 733 (Minn. 2019). But the officer must articulate facts that support the conclusion that the driver was not wearing a seatbelt. *Id.* at 733-34.

Officer Vatsaas articulated facts that supported his conclusion that Larsen was not wearing a seatbelt. The officer testified that he observed that Larsen was not wearing a seatbelt or not wearing it properly. Larsen responded evasively when the officer questioned him about the seatbelt. The officer asked Larsen if he put his seatbelt on when he noticed the officer preparing to stop him, and Larsen replied “I guess, I don’t know.” Additionally, the recording of the stop from the officer’s dash camera shows Larsen turning to his right and looking down, as someone would if they were affixing a seatbelt. Moreover, the district court found that the officer credibly testified that he did not see Larsen wearing a seatbelt. Thus, the record supports the conclusion that the officer had reasonable articulable suspicion to stop Larsen for a seatbelt violation.

Additional chemical test

Larsen also argues that the district court erred by concluding that the officers did not violate his right to an additional chemical test. Whether an officer unlawfully denied an additional test involves questions of law and fact. *Schulz v. Comm’r of Pub. Safety*, 760 N.W.2d 331, 333 (Minn. App. 2009). “The district court’s findings of fact must be sustained unless clearly erroneous, but this court reviews de novo whether, as a matter of law, the driver’s right to an independent test was [violated].” *Id.*

A person given a chemical test has the right to have someone of their choosing administer a chemical test in addition to any administered by an officer. Minn. Stat. § 169A.51, subd. 7(b) (2018). If an officer prevents or denies a person an additional test, evidence of the test administered by the officer is not admissible. *Id.* The person given a chemical test has the responsibility to assert his intent to have an additional test. *See Davis v. Comm’r of Pub. Safety*, 509 N.W.2d 380, 390 (Minn. App. 1993), *aff’d*, 517 N.W.2d 901 (Minn. 1994). And it is the duty of an attorney, not a police officer “to explain the extent and scope of the right to an additional test.” *Schulz*, 760 N.W.2d at 335 n.1 (quotation omitted).

Larsen argues that “Trooper Vatsaas asked [him] . . . [to] take a breath test. [Larsen] . . . ask[ed] the trooper whether he has any ‘other options,’ to which Trooper Vatsaas then replies, ‘No,’ This evidence is enough to conclude that Trooper Vatsaas prevented or denied [Larsen] from obtaining an additional test.” But as the district court concluded, the record shows that Larsen requested a different test, not an additional test.

First, Officer Vatsaas testified that Larsen did not request an additional test. Second, both officers testified that they routinely provide individuals requesting additional tests a phone and phone books, and they indicate the request in police reports and jail logs. Neither officer found any documentation in the police report or the jail log indicating that Larsen requested a second test. The district court found the officers to be credible.

Larsen relies on the implied-consent recording to support his claim that he asserted his right. In the recording, after Larsen spoke with an attorney, Officer Vatsaas asked him to take a breath test. Larsen asked if he had other options, and the officer replied, “No.”

Larsen asked if he could take a urine or a blood test, again the officer replied, “No.” This shows that Larsen requested a test other than a breath test, not an additional test. Although Larsen argues that he requested an additional test after the implied-consent recording ended, he offers nothing to support this argument. The district court found that Larsen testified that he “believe[d]” he requested “an additional” test after the recording ended, but that he also admitted that his memory of the incident is “not good.” Based on the record, the district court did not err in concluding that the officers did not violate Larsen’s right to an additional chemical test.

Affirmed.