STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0625

Luke Mitchell Rebentisch, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed December 27, 2022
Affirmed
Reyes, Judge

Anoka County District Court
File No. 02-CV-21-181

Isabel L. McClure, Brandt Kettwick Defense, Anoka, Minnesota (for appellant)

Keith Ellison, Attorney General, Sarah A Mezera, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Slieter, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this appeal from a district court order denying recission of the revocation of appellant's driver's license, appellant argues that the district court erred by determining that an officer had reasonable, articulable suspicion to request a preliminary breath test (PBT) from appellant. We affirm.

FACTS

On January 16, 2021, appellant Luke Mitchell Rebentisch called 911 after being involved in a motor-vehicle accident. At approximately 5:32 p.m., an officer with the Coon Rapids Police Department responded to the call. When the officer arrived at the scene, he spoke with appellant, who was wearing a face mask. Appellant told the officer that he was driving southbound on Hanson Boulevard with a green light while the other driver, F.A., was traveling northbound on Hanson Boulevard. Appellant asserted that F.A. had a red light when she tried to make a U-turn going southbound on Hanson Boulevard and collided with appellant's motor vehicle. The officer then spoke with F.A.

F.A. confirmed that she was headed northbound on Hanson Boulevard and was approaching the intersection to make a left turn. Upon arriving, F.A. asserted that she went into the left-turn lane and received a green turn arrow. She made a U-turn going southbound on Hanson Boulevard when appellant ran a red light going southbound and hit her. F.A. also informed the officer that she smelled an odor of alcohol coming from appellant and believed that he may be under the influence. The officer decided to speak with appellant again.

This time appellant had removed his mask and the officer smelled an odor of alcohol coming from appellant, despite being a few feet away from him. Appellant admitted to drinking vodka earlier that day around noon. Even though the officer did not determine who was at fault for the accident, the officer concluded that, based on the damage to the vehicles, appellant's vehicle struck F.A.'s vehicle from behind. Based on the accident, the damage to both vehicles, the odor of alcohol emanating from appellant, and appellant's

admission to drinking, the officer suspected that appellant might be impaired by alcohol. The officer requested that appellant take a PBT, and appellant agreed.

The PBT results showed an alcohol concentration of 0.11. For that reason, the officer requested assistance from a DWI officer. The DWI officer took over the DWI investigation and ultimately arrested appellant for DWI. Appellant submitted to a breath test, which revealed an alcohol concentration of 0.10, above the legal limit of 0.08. The Minnesota Commissioner of Public Safety revoked appellant's driving privileges and appellant petitioned for judicial review. The district court heard the matter and sustained the revocation of appellant's driving privileges. This appeal follows.

DECISION

Appellant argues that the officer did not have reasonable, articulable suspicion to request that appellant submit to a PBT. We are not persuaded. "Reasonable suspicion must be based on specific, articulable facts," and the police officer must have "a particularized and objective basis for suspecting the seized person of criminal activity." *State v. Diede*, 795 N.W.2d 836, 842-43 (Minn. 2011) (quotation omitted). The reasonable, articulable suspicion standard is not high, but it must be based on more than a hunch. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). Reasonable, articulable suspicion can arise when there is evidence of sufficient indica of intoxication. *Mesenburg v. Comm'r of Pub. Safety*, 969 N.W.2d 642, 648 (Minn. App. 2021), *rev. denied* (Mar. 15, 2022). When determining whether reasonable, articulable suspicion exists, courts consider the totality of the circumstances. *See State v. Flowers*, 734 N.W.2d 239, 251 (Minn. 2007).

An officer may request a PBT from a person when the officer has "reason to believe from the manner in which a person is driving, operating, controlling, or acting upon departure from a motor vehicle, or has driven, operated, or controlled a motor vehicle, that the driver may" have been driving while impaired. Minn. Stat. § 169A.41, subd. 1 (2020); *see also State, Dept. of Pub. Safety v. Juncewski*, 308 N.W.2d 316, 320-21 (Minn. 1981). "We review a district court's determination regarding the legality of an investigatory traffic stop and questions of reasonable, [articulable] suspicion de novo." *Wilkes v. Comm'r of Pub. Safety*, 777 N.W.2d 239, 242-43 (Minn. App. 2010).

This court recently addressed this same issue. *See Mesenburg,* 969 N.W.2d. at 644. In that case, we concluded that a trooper had reasonable, articulable suspicion to request a PBT based on (1) Mesenburg's speeding; (2) an odor of alcohol emanating from Mesenburg; and (3) Mesenburg denying drinking. *Id*. at 648. In this case, the officer had stronger evidence than the trooper in *Mesenburg* to support his reasonable, articulable suspicion. Like in *Mesenburg*, the officer detected an odor of alcohol coming from appellant. The difference here is that appellant admitted to drinking earlier in the day and had been involved in an accident. Based on the totality of the circumstances, we conclude that the officer had a reasonable, articulable suspicion to request that appellant submit to a PBT.

While it is clear from the record that the three factors of the accident, the odor of alcohol and the admission of alcohol gave rise to the officer's reasonable, articulable suspicion, appellant appears to argue that the officer relied on a single factor alone without considering the other two factors. Appellant's argument is misguided. The officer's

suspicion first started after observing the damage to both vehicles. Appellant had damage in the front left of his vehicle while F.A. had damage in the left rear of her vehicle. Based on the damage to the vehicles, the officer determined that appellant's vehicle struck F.A.'s vehicle from behind. Then when the officer spoke with appellant again, the officer smelled an odor of alcohol emanating from appellant. As a result, the officer asked appellant whether he had been drinking, and appellant admitted to drinking vodka earlier in the day. The accident, odor of alcohol, and admission of alcohol consumption combined provided sufficient indicia of intoxication to give rise to the officer's reasonable, articulable suspicion. *Mesenburg*, 969 N.W.2d at 644. Therefore, the district court properly determined that the officer had reasonable, articulable suspicion to request that appellant submit to a PBT.

Affirmed.