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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2294**

State of Minnesota,
Respondent,

vs.

Abdi Mohamed Ali,
Appellant.

**Filed December 17, 2012
Affirmed
Collins, Judge***

Hennepin County District Court
File No. 27-CR-11-18945

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Collins, Judge.

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

UNPUBLISHED OPINION

COLLINS, Judge

Appellant Abdi Mohamed Ali challenges his conviction of first-degree DWI test refusal, arguing that the officer lacked probable cause to arrest him. Ali also contends that the district court erred in refusing his requests for an interpreter. We affirm.

FACTS

On June 25, 2011, M.B., a private security guard at Village Market in Minneapolis, observed a running car parked illegally in a loading zone, with Ali in the driver's seat, drinking from a whiskey bottle. After M.B. asked Ali for identification and the two had a brief conversation, Ali became "belligerent," was "yelling," said "[c]ome and get me," and ran. M.B. was able to spray chemical irritant in Ali's eyes and detain him. Ali continued to be "combative," swearing, and trying to hit M.B.

Sergeant Brian Anderson of the Minneapolis Police Department, who was working off-duty providing security for Village Market, was called to the scene. Sergeant Anderson saw a Windsor whiskey bottle inside Ali's car, and the key in the ignition. He noticed that Ali smelled "very strong[ly]" of alcohol, had difficulty walking in a straight line, repeated questions, was "very belligerent," required support to walk, and slurred his speech. Sergeant Anderson did not conduct sobriety tests because Ali was uncooperative and had been sprayed with chemical irritant. Ali was arrested on probable cause for DWI, was given the implied-consent advisory, refused testing, and was subsequently charged with first-degree DWI test refusal, in violation of Minn. Stat. §§ 169A.20, subd. 2, .24, subds. 1(1), 2 (2010).

Ali came to the United States in 1997; his first language is Somali. An interpreter was available to Ali at the July 27, 2011 pretrial hearing. Ali used the interpreter at the beginning of the hearing and again when reviewing his petition to proceed pro se. But, after Ali demonstrated the ability to communicate in English without assistance, the district court excused the interpreter. During the hearing, after Ali complained about the jail food, the district court stated: “There might be a language issue or maybe I don’t understand what’s required by Ramadan. At this point, I don’t understand what you’re asking me or why.” The district court subsequently clarified that Ali’s English was understandable; it was the requirements of Ali’s religion that the court had not understood.

At the *Rasmussen* hearing a month later, Ali again initially communicated through an interpreter. But the district court excused the interpreter after observing that Ali spoke to his attorney without assistance. The district court denied Ali’s request for an interpreter, noting (1) the absence of indicators that Ali lacked knowledge or familiarity with English, (2) Ali’s unaided communications with his attorney, and (3) Ali’s willingness and ability “to discuss a very complex, important legal issue with the [district court].”

Ali contended that Sergeant Anderson did not have probable cause to arrest him and moved for dismissal. Following the hearing the district court denied the motion, finding that (1) Sergeant Anderson had been informed by M.B. that Ali was in the driver’s seat of a running vehicle, drinking from a whiskey bottle, and (2) Sergeant Anderson observed the key in the ignition; the Windsor bottle in the car; and Ali’s strong

odor of alcohol, slurred speech, difficulty walking, repetition of questions, and “belligerence.”

Ali dismissed his attorney on the day of the trial, despite the district court cautioning that his attorney was “representing [Ali’s] best interest” and “providing [Ali] with excellent legal advice.” The district court detailed the ramifications of Ali dismissing his attorney, and Ali expressed his willingness to accept the risks.

Ali participated fully in the trial, including giving an opening statement, cross-examining witnesses, and making a final argument. In his opening statement, Ali admitted that he was drinking in public, was under the influence of alcohol, and ran away after M.B. asked for his identification. The jury found Ali guilty as charged. The district court adjudicated the conviction and sentenced Ali to probation. This appeal followed.

D E C I S I O N

I.

On appeal, Ali reasserts that Sergeant Anderson did not have probable cause to arrest him for DWI.¹ Probable cause to arrest for DWI exists when the facts and circumstances available at the time of arrest reasonably allow a prudent and cautious officer to believe that an individual was driving while impaired. *Reeves v. Comm’r of Pub. Safety*, 751 N.W.2d 117, 120 (Minn. App. 2008). The officer makes a practical, common-sense decision in light of all the circumstances, including innocent behavior or

¹ Ali also argues that the arrest was not proper because “Anderson did not have probable cause to believe [] Ali committed a trespass, an assault, or that he illegally consumed alcohol in a motor vehicle.” Ali was not charged with those offenses, so whether Anderson had probable cause to arrest for such offenses is not relevant to this appeal.

behavior which may later be shown to have exculpatory explanations. *State v. Olson*, 342 N.W.2d 638, 640 (Minn. App. 1984). Whether there was probable cause to arrest depends on the district court's findings of fact, which are reviewed under the clearly erroneous standard, but it is ultimately a question of law that is reviewed de novo. *State, Lake Minnetonka Conservation Dist. v. Horner*, 617 N.W.2d 789, 795 (Minn. 2000).

Sergeant Anderson relied on information from M.B., his own observations, and his experience as a patrol officer in deciding to arrest Ali for DWI. In denying Ali's motion to dismiss for lack of probable cause, the district court likewise relied on M.B.'s account of the events and Sergeant Anderson's observations. Sergeant Anderson's observations included the Windsor whiskey bottle inside Ali's car and the key in the ignition. Specific to Ali, Sergeant Anderson observed the odor of alcohol, slurred speech, difficulty walking, repetition of questions, and belligerence. Information provided by M.B. included that Ali was seen in the driver's seat of his car with the engine running, drinking from the whiskey bottle, and trying to flee shortly after being asked for identification. Ali contends that the sprayed chemical irritant caused his slurred speech and walking difficulty. But, even accepting that, there remain several independent indicators leading a "prudent and cautious officer to believe" there was probable cause to arrest for DWI. *Reeves*, 751 N.W.2d at 120. Based on the collective observations of M.B. and Sergeant Anderson, we conclude that the district court did not err in determining that Sergeant Anderson had probable cause to arrest Ali for DWI.

II.

Ali also argues that the district court erred in refusing his requests for an interpreter. Minnesota law compels a district court to appoint an interpreter for a criminal defendant or witness who is “disabled in communication” because the person has “difficulty in speaking or comprehending the English language, cannot fully understand the proceedings or any charges made against the person, . . . or is incapable of presenting or assisting in the presentation of a defense.” Minn. Stat. §§ 611.31, .32 (2010); *Jama v. State*, 756 N.W.2d 107, 115 (Minn. App. 2008). We review the decision to appoint or not to appoint an interpreter under an abuse-of-discretion standard. *Jama*, 756 N.W.2d at 115. The district court is afforded broad discretion based on its first-hand view of indicators whether a person is handicapped in communication, including: mispronunciations, pauses, facial expressions, and gestures. *State v. Cham*, 680 N.W.2d 121, 126 (Minn. App. 2004), *review denied* (Minn. July 20, 2004).

Ali asserts that he was unable to accurately communicate during the court proceedings without an interpreter. However, he fails to explain instances such as the July 27 hearing, when he used the interpreter initially but for the remainder of the hearing chose to communicate without assistance. A month later, in refusing Ali’s request for an interpreter, the district court noted the absence of indicators that Ali lacked knowledge or familiarity with English, Ali’s unaided communications with his attorney, and his being “willing and able to discuss very complex, important legal issues with the [district] [c]ourt.”

Indeed, the record contains an extensive presentation of Ali's English skills. During the trial, Ali gave an opening statement, thoroughly cross-examined witnesses, and made a closing argument—all demonstrating that Ali understood the witnesses' testimony and the accusations against him. Although there were numerous occasions when Ali sought explanation, the district court guided, clarified, and repeated as necessary for Ali's benefit. On this record, we readily conclude that the district court did not abuse its discretion when it denied Ali's requests for an interpreter.

Affirmed.