STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1670

State of Minnesota,
Respondent,

vs.

Theodore William Krinke,
Appellant.

Filed August 11, 2009
Affirmed
Hudson, Judge

Washington County District Court
File No. K0-07-6078

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2134; and

Doug Johnson, Washington County Attorney, Michael Hutchinson, Assistant County Attorney, Law Enforcement Center, 15015 62nd Street North, P.O. Box 6, Stillwater, Minnesota 55082 (for respondent)

Marie Wolf, Interim Chief Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, Minnesota 55104 (for appellant)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Muehlberg, 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.

U N P U B L I S H E D O P I N I O N

HUDSON, Judge

On appeal from his conviction of criminal vehicular homicide, appellant argues that the district court erred by refusing to suppress evidence of his preliminary breath test (PBT) and subsequent blood test. Because the district court did not err, we affirm.

FACTS

Just before 1:00 p.m. on September 4, 2007, Cottage Grove police officer Valerie Lonetti was dispatched to a report of an accident involving a pickup truck and a motorcycle. When she arrived at the accident scene, she saw motorcycle parts strewn across the road and a truck on the side of the road about 300 feet south of the accident site. Officers and medical personnel were attending to the motorcyclist, who was transported to a hospital where he later died as a result of injuries sustained in the crash.

Officer Lonetti spoke with the driver of the truck, appellant Theodore William Krinke, who explained that just prior to the crash he had been traveling northbound behind the motorcycle. The motorcyclist slowed as he approached an intersection and signaled that he was preparing to turn left. Krinke did not notice that the motorcycle was slowing down until it came to a complete stop. Krinke swerved his truck to the right, but ended up hitting the motorcycle with the driver's side of his truck.

After hearing how the crash occurred, Officer Lonetti asked Krinke where he was coming from, and Krinke stated that he had been boating. Then, Officer Lonnetti asked Krinke if he had been drinking, and he responded that he had "a couple" drinks before driving.

At Officer Lonetti's request, Krinke performed two field sobriety tests—the one-legged stand test and the walk-and-turn test. His performance on the one-legged stand test was inadequate because he held his arms out too far. Officer Lonetti explained that by holding his arms out too far, Krinke was relying on them for balance, which tended to suggest that he was intoxicated. Officer Lonnetti then asked Krinke to perform the walk-and-turn test; he satisfactorily completed that test. Officer Lonetti did not observe any of the typical signs of intoxication, such as stumbling, slurred speech, swaying, or bloodshot or watery eyes. Likewise, Officer Lonetti did not smell alcohol emanating from Krinke and observed that Krinke was not belligerent and did not fumble when he provided her with his driver's license or insurance information, although he did appear to be nervous.

Officer Lonetti then administered a PBT, which revealed an alcohol concentration of .127. Krinke was arrested for driving while impaired and taken to jail. He later submitted to a blood test, which showed an alcohol concentration of .08.

Based on these facts, the state charged Krinke with two felony counts of criminal vehicular homicide and two gross misdemeanor counts of third-degree driving while impaired. Krinke moved to suppress the results of the PBT and any other evidence discovered as a result of the PBT, arguing that the police lacked the reasonable articulable suspicion to administer the PBT. Following a contested omnibus hearing, the district court denied Krinke's motion to suppress, explaining that Officer Lonetti possessed the requisite articulable suspicion because (1) Krinke told her that he had consumed "a couple" of drinks; (2) Krinke's performance on the one-legged stand test showed an indicator of intoxication; and (3) Krinke admitted that he had driven his truck

inattentively by failing to notice that the motorcycle directly in front of him had stopped, with a turn signal on, waiting to make a left turn.

Krinke's jury trial was scheduled for April 7, 2008. On that date, Krinke waived his right to a jury trial and agreed to submit the second count of the amended complaint—criminal vehicular homicide, driving while having an alcohol concentration of .08 or more within two hours of driving, in violation of Minn. Stat. § 609.21, subd. 1(4) (2006)—to the district court under *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). The district court found Krinke guilty of that offense. At a subsequent sentencing hearing, the district court imposed the presumptive sentence of 42 months.

This appeal follows.

D E C I S I O N

"When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). Minnesota law permits a peace officer to administer a PBT to a driver if the officer has reason to believe from the manner in which the person is driving or acting upon departure from the vehicle that the driver may be impaired. Minn. Stat. § 169A.41, subd. 1 (2006). "An officer need not possess probable cause to believe that a DWI violation has occurred in order to administer a [PBT]." *State v. Vievering*, 383 N.W.2d 729, 730 (Minn. App. 1986), *review denied* (Minn. May 16, 1986). Rather, an officer may request a PBT if the officer can point to specific, articulable facts that form the basis to believe that a person is or has been driving a vehicle while under the

influence of alcohol. *State, Dep't of Pub. Safety v. Juncewski*, 308 N.W.2d 316, 317 (Minn. 1981).

Articulable suspicion is an objective standard and is determined from the totality of the circumstances. *Paulson v. Comm'r of Pub. Safety*, 384 N.W.2d 244, 246 (Minn. App. 1986). A single, objective indication of intoxication may constitute reasonable and probable grounds to believe the driver is under the influence and provide adequate justification for administration of a PBT. *Martin v. Comm'r of Pub. Safety*, 353 N.W.2d 202, 204–05 (Minn. App. 1984); *Holtz v. Comm'r of Pub. Safety*, 340 N.W.2d 363, 365 (Minn. App. 1983). Appellate courts "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).

Although Krinke concedes that he told Officer Lonetti that he had consumed a couple of drinks, he argues that this information is not specific enough to provide an articulable suspicion of driving while under the influence of alcohol because Officer Lonnetti failed to determine exactly when he had consumed those drinks or how many he had consumed. But Krinke cites no caselaw requiring an officer to engage in a further inquiry after a driver admits to having consumed alcohol. Here, the record reflects that Officer Lonnetti asked Krinke where he was coming from when the accident occurred, and Krinke stated that he had been boating. Officer Lonnetti asked if Krinke had had anything to drink, and Krinke admitted, "[Y]es, a couple." Officer Lonnetti further testified that Krinke had told her that he had consumed the drinks "[w]hile he was on the boat just prior to him driving."

Krinke further argues that his subsequent interaction with Officer Lonetti should have dispelled any legitimate suspicion of intoxication, and as a result, she lacked a basis for administering the PBT. He explains that he satisfactorily performed the second field sobriety test—the walk-and-turn test—and that the only reason Officer Lonetti criticized his performance on the one-legged stand test was because he held his arms out approximately ten inches, which is four to six inches more than the officer would normally allow. He also points out that Officer Lonetti testified that he did not fumble when asked to provide information to the officer; that he was not belligerent; that he did not slur his speech; that he did not sway when he walked; that his eyes were not bloodshot or watery; and that she never smelled any alcohol on him.

Officer Lonnetti did not observe the presence of alcoholic beverages in Krinke's truck or smell alcohol emanating from Krinke. But Krinke admitted that he had consumed "a couple" of drinks and that he had been involved in a serious accident. *See State v. Lee*, 585 N.W.2d 378, 383 (Minn. 1998) (concluding that officer had probable cause to administer a blood test where driver was involved in fatal single-car accident; driver was incoherent; and passenger reported she and driver had been at a party); *Eggersgluss v. Comm'r of Pub. Safety*, 393 N.W.2d 183, 185 (Minn. 1986) (holding that under the totality of the circumstances, probable cause existed to believe that a defendant was under the influence at the time of an accident where the defendant had been involved in a one-car rollover and when the passenger reported that the defendant had been drinking before the accident). Additionally, Krinke's performance on one of the field sobriety tests revealed that he had to rely on his arms for balance, which tended to

indicate that he was intoxicated. *See Giddings v. Comm'r of Pub. Safety*, 354 N.W.2d 579, 581 (Minn. App. 1984) (observing that one objective indicator of intoxication is an inability to balance on one foot). Krinke's subsequent satisfactory performance of another field sobriety test did not negate the officer's reasonable suspicion that Krinke was impaired.

Under these circumstances, Officer Lonetti had a specific and articulable suspicion that Krinke was driving under the influence of alcohol, and, therefore, her request for a PBT was proper. The district court did not err by denying Krinke's motion to suppress the PBT results and the evidence acquired after the PBT results, namely, the results from the subsequent blood test.

Affirmed.