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Court of Appeals of Minnesota.

John Joseph BAUER, petitioner, Appellant,
v.
COMMISSIONER OF PUBLIC SAFETY, Respondent.

No. A09-996. | May 18, 2010.

West KeySummary

1 **Automobiles**
Refusal to Take Test

Police officer had probable cause to believe that driver was driving while impaired outside of the driver's refusal to take field sobriety tests, supporting the revocation of the driver's license pursuant to the implied consent law. The police officer saw the driver run a red light and smelled alcohol on him when he pulled him over. The driver had red, watery eyes and admitted to drinking a couple of alcoholic beverages. Additionally, the driver was belligerent, uncooperative, slurred his speech, and was swaying while on his feet. M.S.A. § 169A.51.

Cases that cite this headnote

Dakota County District Court, File No. 19WS-CV-09-159.

Attorneys and Law Firms

Jeffrey S. Sheridan, Eagan, MN, for appellant.

Lori Swanson, Attorney General, Sara P. Boeshans, Assistant Attorney General, St. Paul, MN, for respondent.

Considered and decided by PETERSON, Presiding Judge; KLAPHAKE, Judge; and STONEBURNER, Judge.

Opinion

UNPUBLISHED OPINION

PETERSON, Judge.

***1** In this appeal from a district court order sustaining the revocation of appellant's driver's license, appellant argues that there was no probable cause to invoke the implied-consent law. We affirm.

FACTS

After seeing a car drive through a red light, City of Rosemount Police Officer Daniel Gleason stopped the car, which was driven by appellant John Joseph Bauer. Gleason approached the car, and when appellant rolled down the window, Gleason noticed a strong odor of an alcoholic beverage and saw that appellant's eyes were bloodshot and watery. Gleason asked appellant if he knew the color of the light that he had just traveled through, and appellant said that it was "auburn." Gleason asked appellant if he had been drinking and how much he had to drink, and appellant said that he had a couple of drinks.

Gleason asked appellant to step out of the car. Appellant was uncooperative. Gleason again asked appellant how much he had to drink, and appellant said, "[J]ust take me to jail." Gleason told appellant that he was not under arrest and asked appellant to submit to a field sobriety test, and appellant refused. Gleason noted that appellant's speech was slurred and that he was swaying from side-to-side as he spoke with Gleason. Gleason tried to administer a preliminary breath test, but appellant refused.

Gleason arrested appellant for driving while impaired (DWI), and respondent commissioner of public safety revoked appellant's driver's license. Following an implied-consent hearing, the district court concluded that Gleason had probable cause to invoke the implied-consent law under Minn.Stat. § 169A.51, subd. 1(b)(3) (2008), and sustained the revocation of appellant's license. This appeal followed.

DECISION

Appellant argues that because he was stopped solely because he drove through a light that had just turned red and there is no evidence of other suspicious or illegal driving conduct, his license should be reinstated because Gleason did not have probable cause to invoke the implied-consent law. Appellant contends that "[t]here was simply no probable cause to invoke the implied consent law without the field sobriety tests and refusal to participate in those tests is not a substitute for probable cause."

A police officer may invoke the implied-consent law and require a person to submit to a blood, breath, or urine test if the officer "has probable cause to believe the person was driving, operating, or in physical control of a motor vehicle in violation of section 169A.20 (driving while impaired), and ... the person has refused to take the screening test provided for by section 169A.41 (preliminary screening test)." Minn.Stat. § 169A.51, subd. 1(b)(3) (2008).

"Probable cause exists when all the facts and circumstances would lead a cautious person to believe that the driver was under the influence." *Davis v. Comm'r of Pub. Safety*, 509 N.W.2d 380, 392 (Minn.App.1993), *aff'd*, 517 N.W.2d 901 (Minn.1994).

> ***2** A determination of probable cause is a mixed question of fact and of law. After the facts are determined, this court must apply the law to determine if probable cause existed. This court does not review probable cause determinations de novo, instead, we determine if the police officer had a substantial basis for concluding that probable cause existed at the time of invoking the implied consent law.

Groe v. Comm'r of Pub. Safety, 615 N.W.2d 837, 840 (Minn.App.2000) (citations and quotation omitted), *review denied* (Minn. Sept. 13, 2000). The determination is based on the totality of the circumstances, and there is no "mechanical or numerical equation." *State v. Driscoll*, 427 N.W.2d 263, 265 (Minn.App.1988) (quotation omitted).

Appellant's claim that the only evidence of suspicious or illegal driving conduct is that he drove through a light that had just turned red is not consistent with the totality of the circumstances found by the district court. In addition to finding that appellant entered an intersection on a red light, the district court found that (1) there was a strong odor of an alcoholic beverage emanating from appellant, and he had red and watery eyes; (2) appellant admitted that he had consumed a couple of alcoholic drinks that evening; (3) when Gleason asked appellant to step out of the vehicle, appellant reached for the shifter to put the vehicle in park, even though it was already in park; (4) appellant was belligerent and uncooperative; (5) and appellant had slurred speech and was swaying while on his feet. Although none of these facts, by itself, proves that appellant was driving illegally, they are all part of the total circumstances Gleason needed to consider when determining whether probable cause existed at the time he invoked the implied-consent law.

Appellant argues that the district court did not make any determination regarding probable cause to support appellant's arrest and, instead, merely found that there was a sufficient basis to request a preliminary breath test and then substituted that basis and appellant's refusal to participate in field sobriety tests for the probable cause required to invoke the implied-consent law. Appellant contends that Gleason could not consider appellant's refusal to participate in field sobriety tests when determining whether there was probable cause to invoke the implied-consent law.

It is not clear from the record what role appellant's refusal to participate in field sobriety tests played in Gleason's decision to arrest appellant for DWI. Gleason testified that after initially talking to appellant, he returned to his squad car to complete some administrative tasks. He then returned to appellant's vehicle to conduct a further investigation. Appellant's attorney questioned Gleason about the further investigation as follows:

> ATTORNEY: And the purpose of that investigation was to determine whether you were simply dealing with a person who had consumed alcohol prior to driving or had a person who was impaired, correct?
>
> ***3** OFFICER: That would be correct.
>
> ATTORNEY: All right. And so with that in mind, you approached with the idea that you would ask him to, and presumably he would, perform certain field sobriety tests, yes?
>
> OFFICER: That's correct.

ATTORNEY: And the purpose of those tests were again to take you from that-that, okay, this person has consumed alcohol, to this person is impaired. You are trying to cover that gap between those two frames of mind, yes?

OFFICER: Correct.

ATTORNEY: And each test is designed for you to be able to develop an opinion, either stronger or weaker, whether the person is impaired or not, right?

OFFICER: It's to determine whether or not the person is impaired or not, yes.

ATTORNEY: Right. So with each test, if the person were to fail each test, presumably, your opinion would become stronger that this person is in fact impaired, correct?

OFFICER: Correct.

ATTORNEY: All right. Now, in this case, you asked him to perform that series of tests, and he told you he wouldn't do it, correct?

OFFICER: That is correct.

ATTORNEY: And having asked him, and having him say no, he then-you then placed him under arrest, correct?

OFFICER: Correct.

ATTORNEY: All right. So at the conclusion of him refusing the tests, that's when you decided to arrest him for DWI, yes?

OFFICER: Upon all of my observations and him refusing to provide me with tests, that was the conclusion I came to.

ATTORNEY: All right. So you did factor into your decision the fact that he was refusing to provide you with these tests?

OFFICER: No. I mean, that wasn't why I had arrested him.

ATTORNEY: Now, your-

OFFICER: Based on my observations of what he had done.

ATTORNEY: Right.

OFFICER: I didn't arrest him because he refused the testing, if that's what you are asking me.

ATTORNEY: Your answer to the question is, based upon your observations and his refusal to take the tests, you placed him under arrest. Is that an accurate statement?

OFFICER: Are you asking me if I arrested him because of the refusal?

ATTORNEY: I asked if that's an accurate statement, that based on the observations you made and his refusal to perform the tests, that you placed him under arrest. Is that what you did?

OFFICER: Yes.

Appellant contends that this line of questioning demonstrates that Gleason used appellant's refusal to participate in the tests to reach his conclusion that there was probable cause to invoke the implied-consent law, which appellant claims is improper. Appellant's interpretation of Gleason's testimony could be correct. But Gleason's testimony could also mean that after his initial encounter with appellant, Gleason believed that appellant had been driving while impaired, and he attempted to administer field sobriety tests to either confirm or refute his initial belief. When appellant refused to participate, Gleason was left with his initial observations, and, based on those observations, he arrested appellant for DWI.

***4** But we need not determine what Gleason's subjective beliefs were because the issue is not whether Gleason subjectively felt that he had probable cause but whether he had objective probable cause. *Costillo v. Comm'r of Pub. Safety*, 416 N.W.2d 730, 733 (Minn.1987). When Gleason invoked the implied-consent law, he knew that (1) appellant ran a red light; (2) there was a strong odor of an alcoholic beverage emanating from appellant, and appellant had red and watery eyes; (3) appellant admitted that he had consumed a couple of alcoholic drinks that evening; (4) appellant was belligerent and uncooperative; (5) and appellant had slurred speech and was swaying while on his feet. Based on the totality of these circumstances, which existed before appellant refused to submit to field sobriety tests, Gleason had a substantial basis for believing that appellant was driving a motor vehicle while impaired. These circumstances would lead a cautious person to believe that appellant was driving while under the influence. *See Holm v. Comm'r of Pub. Safety*, 416 N.W.2d 473, 475 (Minn.App.1987) (stating that field sobriety tests are encouraged and may aid officer in making probable-cause determination, but they are not required).

Affirmed.

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