STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0681

State of Minnesota,
Respondent,

vs.

Jeffrey Lee Kapus,
Appellant.

Filed March 23, 2020
Affirmed
Smith, John, Judge[*]

Morrison County District Court
File No. 49-CR-18-8

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brian J. Middendorf, Morrison County Attorney, Michel P. Chisum, Assistant County Attorney, Little Falls, Minnesota (for respondent)

Steven K. Budke, Leverson Budke, P.A., Eagan, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Slieter, Judge; and Smith, John, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving 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

SMITH, JOHN, Judge

We affirm appellant's third-degree driving while impaired (DWI) convictions for driving a motor vehicle under the influence of alcohol, Minn. Stat. § 169A.20, subd. 1(1) (2016), and for driving a motor vehicle with an alcohol concentration of 0.08 or more as measured within two hours of driving, Minn. Stat. § 169A.20, subd. 1(5) (2016), because the district court did not err in denying the appellant's motion to suppress the results of appellant's breath test.

FACTS

A few minutes after 11 p.m. on December 30, 2017, Minnesota State Trooper Samuel Catlin came upon appellant Jeffrey Lee Kapus sitting in his car in the ditch on the wrong side of a county road in Morrison County. It was -15 degrees Fahrenheit and windy that night, but the road was "clear," "dry," and "not difficult to travel." When Catlin approached and engaged Kapus in conversation, he noticed that Kapus's speech was slurred, his left eye was watery,[1] and he began "swaying" on his feet in a "circular motion" as soon as he stepped out of his car. Catlin also noticed that Kapus had several unusual responses to his situation: he was very "laid back" about his car being in the ditch, which in Catlin's experience is contrary to the typical driver responses of being either "upset" or "apologetic," and he gave a slow and seemingly untruthful answer to Catlin's question about where he was coming from that night—answering that he had gone to purchase

[1] Kapus has a prosthetic right eye.

gasoline for his car. From these circumstances, Catlin formed the belief that Kapus had been driving while under the influence of alcohol.

Because of the extreme weather, Catlin did not ask Kapus to perform any field sobriety tests, but he did ask Kapus to take a preliminary breath test (PBT), making the request less than a minute after he first approached Kapus. Kapus agreed to take the test and followed Catlin to his squad car. Once in the squad car, Catlin could smell alcohol on Kapus. After the PBT revealed an alcohol concentration of 0.194, Kapus admitted that he had "had a couple."

Kapus was arrested and charged with the two counts of third-degree DWI. At the pretrial hearing, Kapus moved to exclude all evidence obtained from the seizure, arguing that Catlin lacked reasonable suspicion to believe that he had committed a crime—specifically, that "there was insufficient evidence to justify the request for the preliminary breath test that formed the basis for [the] arrest." The district court denied the pretrial motion, and Kapus agreed to submit the record to the district court for a stipulated-evidence trial under Minn. R. Crim. P. 26.01, subd. 4. The district court found Kapus guilty of both charges and imposed a jail sentence of 365 days on one count, with all but 30 days stayed. This appeal followed.

D E C I S I O N

The U.S. and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "A police officer may, however, initiate a limited investigative seizure without a warrant if the officer has reasonable articulable suspicion of criminal activity." *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012).

Specifically, a law enforcement officer may seize a stopped driver and "request a PBT if the officer possesses 'specific and articulable facts' that form a basis to believe that a person has been driving a motor vehicle while impaired." *Vondrachek v. Comm'r of Pub. Safety*, 906 N.W.2d 262, 268 (Minn. App. 2017) (quoting *Dep't. of Pub. Safety v. Juncewski*, 308 N.W.2d 316, 321 (Minn. 1981)), *review denied* (Minn. Feb. 28, 2018).

"Reasonable suspicion must be based on specific, articulable facts that allow the officer to be able to articulate . . . that he or she had a particularized and objective basis for suspecting the seized person of criminal activity." *State v. Morse*, 878 N.W.2d 499, 502 (Minn. 2016) (alteration in original) (quotation omitted). The reasonable-suspicion standard is not high, and law enforcement officers may draw inferences that are based on the totality of circumstances, including those "that might well elude an untrained person." *Id*. (quotations omitted); *see State v. Carver*, 577 N.W.2d 245, 248 (Minn. App. 1998) (stating that for probable cause to arrest a driver on suspicion of DWI, "[a]n officer needs only one objective indication of intoxication") (quotation omitted). In weighing whether reasonable suspicion exists, a district court "may consider the officer's experience, general knowledge, and observations; background information, including the nature of the offense suspected and the time and location of the seizure; and anything else that is relevant." *Klamar*, 823 N.W.2d at 691.

We review de novo a district court's reasonable-suspicion determination. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). In conducting that review, we accept the district court's factual findings unless they are clearly erroneous. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005).

Kapus argues that Trooper Catlin did not observe any odor of alcohol on him before asking him to take a PBT and that other circumstances were insufficient to suggest that he had been drinking and driving. We disagree. Caselaw mandates that we consider the totality of all circumstances suggestive of Kapus's alcohol consumption. *See, e.g.*, *Costillo v. Comm'r of Pub. Safety*, 416 N.W.2d 730, 733 (Minn. 1987) (considering the driver's involvement in an accident, lying to police, bloodshot eyes, odor of alcohol, slurred speech, and abnormal behavior); *Otto v. Comm'r of Pub. Safety*, 924 N.W.2d 658, 660 (Minn. App. 2019) (including bloodshot and watery eyes among indicia of a driver's intoxication); *Reeves v. Comm'r of Pub. Safety*, 751 N.W.2d 117, 119 (Minn. App. 2008) (considering the driver's erratic driving, bloodshot/watery eyes, odor of alcohol, admission of alcohol consumption, swaying, and failure of at least one field sobriety test). In *State v. Lugo*, a controlled-substance case, the supreme court considered circumstances including the driver's leaving a house known to be involved with controlled substances, taking an unusually long time to stop his vehicle, lying to police about the ownership of the vehicle, and recent arrest on a similar charge. 887 N.W.2d 476, 487 (Minn. 2016). There, none of the collective circumstances directly linked the defendant to present use or possession of controlled substances, but they were held sufficient to justify the stop of the defendant's vehicle on reasonable suspicion of drug-related criminal activity. *Id*. at 487-88.

Here, the particular circumstances supporting Catlin's suspicion that Kapus was driving under the influence of alcohol include that he was involved in a one-car accident where he crossed over an oncoming traffic lane to drive into the ditch on the opposite side of the road when the roadway was clear and dry; he swayed in a circular pattern that was

unrelated to the wind when he left his vehicle; his speech was slurred and his eye was watery; and he behaved abnormally when talking about the accident and gave a pretextual reason for driving late at night when the weather was very cold. In addition, Catlin noted that there were several bars in the immediate vicinity.

These circumstances were sufficiently suspicious to provide Catlin proper grounds for asking Kapus to perform a PBT. While Kapus suggests that Catlin should have asked him to complete field sobriety tests before asking him to take a PBT, the extreme weather was not conducive to doing so, and Kapus, on his own initiative, demonstrated some of the physical conduct that could have been established through field sobriety testing. Because Trooper Catlin reasonably suspected Kapus of criminal activity, he could ask Kapus to take a PBT. *See Vondrachek*, 906 N.W.2d at 268. We conclude that the district court did not err in declining to suppress the evidence recovered by Catlin.

Affirmed.