

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE CITY OF LIVONIA,

Plaintiff-Appellee,

v

ROBIN ANN DINHA,

Defendant-Appellant.

UNPUBLISHED

October 30, 2001

No. 233186

Wayne Circuit Court

LC No. 01-500010

Before: Hoekstra, P.J., and Saad and Whitbeck, JJ.

PER CURIAM.

Defendant appeals by leave granted. The district court denied her motion to quash or dismiss the charge of operating a motor vehicle under the influence of liquor/unlawful blood alcohol level, MCL 257.625(1). The circuit court denied her leave to appeal. She now challenges the adequacy of the evidence to bind her over for trial. We affirm.

I. Facts and Procedural History

On the evening of June 4, 2000, Officer Patrick Henahan received a call to investigate an automobile accident on Six Mile Road in Livonia. The accident occurred when the driver of a white Chevrolet drove onto Six Mile without yielding to traffic. Defendant, who drove a station wagon, hit the Chevrolet on the driver's side door.

When Officer Henahan arrived at the scene, defendant and her passenger stood near the station wagon and the passenger appeared intoxicated. Officer Henahan later testified that defendant did not appear intoxicated and that he did not smell alcohol on her breath. A witness at the scene then told Officer Henahan that he saw defendant's passenger take cans of beer out of the station wagon and throw them into some nearby bushes. The officer found several cans of beer near a pine tree about thirty-five feet from the vehicle. Based on this information, and as part of standard procedure, Officer Henahan asked defendant, the driver of the vehicle, if she had been drinking and defendant replied that she drank two beers at a wedding reception. Though Officer Henahan testified that he saw no outward signs of intoxication, her admission and the surrounding circumstances led him to administer a preliminary breathalyzer test (PBT). Based on those results, Officer Henahan arrested defendant for operating a motor vehicle under the influence of liquor/unlawful blood alcohol level (OUIL/UBAL). Officer Henahan ultimately determined that the Chevrolet driver caused the accident.

At defendant's preliminary examination, she moved to quash and/or dismiss the OUIL/UBAL charge and argued that Officer Henahan should not have administered the PBT because there was no evidence that defendant was intoxicated and because the officer did not perform any field sobriety tests to determine whether she was intoxicated. The district court denied defendant's motion and found that, under the circumstances, Officer Henahan correctly asked defendant to submit to the PBT.

Defendant applied to the circuit court for leave to appeal the district court's denial of her motion. Specifically, defendant argued that Officer Henahan unlawfully administered the PBT because he did not have reasonable cause to believe that the consumption of liquor affected her ability to operate her car. However, the circuit court ruled that the district court did not abuse its discretion in denying defendant's motion to quash and dismiss. The court reasoned that an experienced officer like Henahan acted properly in administering the test because defendant admitted she was drinking, she admitted she drove the car, testimony established that beer cans were removed from the car, and she consented to submit to the PBT. On April 17, 2001, this Court granted defendant's application for leave to appeal. *People of City of Livonia v Dinha*, unpublished order of the Court of Appeals, entered April 17, 2001 (Docket No. 233186).

II. Analysis

This Court reviews a trial court's decision regarding a motion quash an information on legal grounds de novo. *People v Jenkins*, 244 Mich App 1, 14; 624 NW2d 457 (2000). We review a district court's decision to bind over a defendant for an abuse of discretion. *People v Djordjevic*, 230 Mich App 459, 461; 585 NW2d 610 (1998). This case concerns a police officer's administration of a PBT under MCL 257.625a(2) which provides, in pertinent part:

A peace officer who has reasonable cause to believe that a person was operating a vehicle upon a public highway . . . and that the person by the consumption of intoxicating liquor may have affected his or her ability to operate a vehicle . . . may require the person to submit to a preliminary chemical breath analysis. The following provisions apply with respect to a preliminary chemical breath analysis administered under this subsection:

(a) A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis.

The plain language of the statute states that a police officer may require a motorist to submit to a PBT if the officer has reasonable cause to believe a motorist's consumption of alcohol *may have affected the motorist's ability to operate the vehicle*. We hold that "reasonable cause" was established under the circumstances of this case.

Contrary to defendant's arguments, the statute does not require reasonable cause to believe that a suspect's use of intoxicants *did impair* his or her ability to drive. The language explicitly provides that the officer must have reasonable cause to believe that intoxicants *may* have affected the suspect's ability to operate the vehicle. Thus, the fact that Officer Henahan ultimately determined that the Chevrolet driver caused the accident is not determinative of whether he had reasonable cause to ask defendant to submit to the PBT. Further, though Officer Henahan did not smell alcohol on defendant's breath and did not notice slurred speech or

staggering, those are not the only indicators that might lead an experienced police officer to reasonably suspect alcohol may have affected her ability to drive.

Officer Henahan asked defendant to take the PBT following a two-car collision and after defendant admitted that she had been drinking. These facts would lead a reasonably diligent police officer to suspect, at the very least, that defendant's alcohol consumption *may* have affected her reaction time in avoiding the errant Chevrolet. Further, "reasonable cause" was bolstered when Officer Henahan learned that defendant's passenger threw beer out of the car and secreted it away from the accident scene. Common sense would lead an officer to reasonably conclude that the passenger did so out of fear that an investigating officer might suspect that alcohol consumption contributed to the accident, especially if beer were spotted inside the vehicle. Thereafter, upon finding the discarded beer cans and in light of the surrounding circumstances, we find there was a reasonable basis for Officer Henahan's concern about defendant's ability to drive away from the scene, after the investigation. We also note that Officer Henahan administered the PBT only after he advised defendant of her rights and she consented to take the test.

The totality of circumstances here provided Officer Henahan reasonable cause to believe defendant's admitted consumption of alcohol may have affected her ability to drive. "A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis." MCL 257.625a(2)(a). Officer Henahan's arrest of plaintiff based on the results of the test was, therefore, valid. Our de novo review convinces us that the district court did not err in denying defendant's motion to quash and did not abuse its discretion in binding over defendant on the OUIL/UBAL charge and that the circuit court properly affirmed the district court's order.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Henry William Saad
/s/ William C. Whitbeck