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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0299**

Whitney Katherine LaBrash, petitioner,
Respondent,

vs.

Commissioner of Public Safety,
Appellant.

**Filed November 25, 2008
Reversed
Lansing, Judge**

Olmsted County District Court
File Nos. 55-CV-07-4542, 55-CR-07-3495

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Considered and decided by Connolly, Presiding Judge; Lansing, Judge; and Minge, Judge.

UNPUBLISHED OPINION

LANSING, Judge

Whitney LaBrash petitioned for judicial review of the order revoking her driver's license under Minn. Stat. § 169A.52, subd. 4(a) (2006). The district court rescinded the

revocation on the basis that the time frame for the driving conduct was insufficient to show probable cause. Because the totality of facts and circumstances demonstrates that the police officer who arrested LaBrash had probable cause to believe she drove while impaired, we reverse.

F A C T S

A Rochester police officer responded to a homeowner's trespass complaint shortly after 1:30 a.m. on April 14, 2007. The homeowner reported that a woman had entered his home and awakened members of his family. The homeowner believed the woman was intoxicated because she was unable to balance, bumped into tables, and did not know where she was.

The officer drove to the residence and arrived approximately fifteen minutes after the homeowner's report. The intruder had left the premises, but the homeowner showed the officer an unfamiliar vehicle that was parked in his driveway. This vehicle had not been in the driveway when the homeowner parked his car at 8:00 p.m. The driveway was long and narrow, and the unfamiliar vehicle had been parked at an angle, partially on a step, between the homeowner's vehicle and the garage. Leaves and brush in the front grille, paint-transfer on the homeowner's car, and tracks through the yard indicated that the vehicle had been driven through a three-foot-high brush line and sideswiped the homeowner's car before coming to a stop. Before the officer arrived, an unidentified man, possibly the homeowner's next-door neighbor, had given the homeowner car keys that he said belonged to the intruder. By checking the license-plate registration, the

officer determined that the vehicle was registered to a person with the last name of LaBrash.

While the officer was still talking to the homeowner, the dispatch center alerted him that a trespasser had been reported at a residence about two blocks away. The officer drove to the second residence and observed a female at the back of the house trying to get in the back door. The owners of the second house said that they did not know the female who was attempting to enter the house. The officer observed that the unknown female needed assistance walking, that her eyes were bloodshot and watery, and that she had a very strong odor of alcohol. She told the officer that she had been at that house since 10:15 that night.

The unknown female identified herself with the last name of LaBrash. Because of the commonality of the last name with the vehicle registration information obtained while at the first house, the officer asked LaBrash about the vehicle in the other homeowner's driveway. The officer took LaBrash back to the first house, where she identified her vehicle in the driveway. She then said that *this* was actually the house she had driven to and been at since 10:15 that night. She later simply denied having driven at all. The homeowner, meanwhile, positively identified LaBrash as the woman who had been first observed in his home at about 1:30 a.m.

The officer placed LaBrash under arrest at about 2:05 a.m., after a preliminary breath test showed that she had an alcohol concentration of .17. Later, at around 3:30 a.m., LaBrash took an Intoxilyzer test that showed her alcohol concentration was .16.

Following her arrest, LaBrash received a notice and order of license revocation. She filed a petition for judicial review, arguing that the revocation should be rescinded because it was unsupported by probable cause. The district court held an evidentiary hearing, determined that the arresting officer did not have probable cause to believe LaBrash drove while impaired, and granted LaBrash's petition to rescind the license revocation. The commissioner of public safety appeals.

D E C I S I O N

To revoke a driver's license under Minn. Stat. § 169A.52, subd. 4(a), the arresting officer must have "probable cause to believe the person has been driving, operating, or in physical control of a motor vehicle in violation of [Minn. Stat. § 169A.20 (2006)]." *See also* Minn. Stat. § 169A.53, subd. 3(b)(1) (2006) (authorizing person to raise issue of whether probable cause existed at judicial review hearing). A person violates Minn. Stat. § 169A.20 by driving under the influence of alcohol or by showing an alcohol concentration of .08 or more within two hours of having driven. *Id.*, subd. 1(1), (5); *see also State v. Shepard*, 481 N.W.2d 560, 562 (Minn. 1992) (noting that, even if driver's alcohol concentration is within legal limits, driver is under influence of alcohol if "driver's ability or capacity to drive was impaired in some way or to some degree" due to driver's consumption of alcohol).

Probable cause to revoke a license exists when all the facts and circumstances would lead a prudent and cautious officer to believe that the driver drove while impaired in violation of Minn. Stat. § 169A.20. *See State v. Harris*, 265 Minn. 260, 264, 121 N.W.2d 327, 331 (1963) (setting forth probable-cause standard). The district court must

evaluate probable cause from the officer's point of view at the time of the arrest, *id.*, and must consider the "totality of the circumstances." *Eggersgluss v. Comm'r of Pub. Safety*, 393 N.W.2d 183, 185 (Minn. 1986). When the facts are not significantly in dispute, we review the issue of whether an officer had probable cause to arrest as a matter of law. *Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985).

In this case, the totality of facts and circumstances demonstrates that the police officer who arrested LaBrash had probable cause to believe she drove while impaired in violation of Minn. Stat. § 169A.20. It is undisputed that LaBrash's last name matched the registration of the unknown vehicle in the homeowner's driveway, that LaBrash admitted that she had parked the vehicle in the homeowner's driveway, that LaBrash entered one stranger's home and attempted to intrude into another home, that the homeowner believed LaBrash was under the influence of alcohol when he observed her in his home around 1:30 a.m., and that the reporting officer himself observed that she was under the influence of alcohol. It is also undisputed that the officer observed LaBrash's vehicle parked between the garage and the homeowner's vehicle in a long, narrow driveway; that, because LaBrash's vehicle was not in the driveway when the homeowner parked his vehicle at 8:00 p.m., the driver of LaBrash's vehicle had to drive around the homeowner's vehicle; that there were brush and leaves caught in the front grille and undercarriage of LaBrash's vehicle indicating that the vehicle had been driven through the three-foot-high brush line that blocked the driveway; that there were tire tracks indicating that LaBrash's vehicle had been driven around the homeowner's vehicle on the

east side; that LaBrash's vehicle was "quite crooked" and was "up on a step"; and that there were paint markings on both vehicles indicating contact between the vehicles.

From the point of view of the police officer at the time of arrest, these facts would lead a prudent and cautious officer to conclude that LaBrash drove the car to its resting place in the homeowner's driveway and then entered his home in a state of disorientation and inebriation. Viewed together, the facts provide probable cause for the police officer to believe that LaBrash had parked the car while she was under the influence of alcohol.

In determining that the officer lacked probable cause to believe LaBrash drove while impaired, the district court relied on the fact that the officer did not know the precise time when LaBrash had driven the vehicle. But we have previously held that there is "no requirement that the officer establish the exact time the driver was driving." *Weldon v. Comm'r of Pub. Safety*, 400 N.W.2d 816, 818 (Minn. App. 1987). In concluding that the evidence failed to provide the necessary time frame to establish probable cause, the district court relied on *Dietrich v. Comm'r of Pub. Safety*, 363 N.W.2d 801, 802-03 (Minn. App. 1985). But *Dietrich* is distinguishable. In *Dietrich* there was no connection between the driver's accident and his inebriation because there was no evidence about when the accident occurred and no one who saw the petitioner at the scene testified about whether he was inebriated at that time. The accident in this case occurred at a stranger's home, and LaBrash was found having entered that home in a state of inebriation and disorientation. She was at the location of the accident in a drunken state and, even without having established the exact time the car came to rest in the driveway, the evidence connects her driving and her inebriation.

Because the totality of the facts and circumstances on the record in this case demonstrate that as a matter of law the officer who arrested LaBrash had probable cause to believe she drove while impaired in violation of Minn. Stat. § 169A.20, we reverse the district court's rescission of the license revocation.

Reversed.