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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1501**

William Robert Johnson, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed June 12, 2017
Affirmed
Johnson, Judge**

Crow Wing County District Court
File No. 18-CV-16-429

William Robert Johnson, Crosslake, Minnesota (*pro se* appellant)

Lori Swanson, Attorney General, Lindsay Lavoie, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

The commissioner of public safety revoked William Robert Johnson's driver's license after he was arrested for driving while impaired. Johnson petitioned to rescind the revocation. The district court denied the petition. We affirm.

FACTS

On December 28, 2015, at approximately 6:30 p.m., Officer Lasher of the Crosslake Police Department observed Johnson's vehicle speeding. The officer's radar device showed that Johnson's vehicle was traveling 60 m.p.h. in a 45-m.p.h. zone and, shortly thereafter, 76 m.p.h. in a 55-m.p.h. zone.

Officer Lasher initiated a traffic stop. Johnson got out of the vehicle and spoke with Officer Lasher while standing approximately three to four feet away from him. Officer Lasher observed that Johnson had bloodshot and watery eyes and slurred speech. Officer Lasher asked Johnson to perform field sobriety tests. Johnson was unable to complete the horizontal-gaze nystagmus test, and he declined to perform the nine-step walk-and-turn test and the one-leg-stand test. Officer Lasher attempted to administer a preliminary breath test (PBT), but the PBT device malfunctioned. Officer Lasher radioed for assistance from Officer Garcia of the Breezy Point Police Department and asked him to bring his PBT device. Officer Garcia administered a PBT, which indicated an alcohol concentration of 0.15.

Officer Lasher arrested Johnson for DWI and transported him to the Crow Wing County jail. Officer Lasher read Johnson the implied-consent advisory. After speaking with an attorney, Johnson agreed to take a breath test. The test was administered by Officer Hicks, a correctional officer for Crow Wing County who is a certified DataMaster operator. The breath test revealed an alcohol concentration of 0.12. The department of public safety revoked Johnson's driver's license.

In January 2016, Johnson petitioned the district court for rescission of the revocation of his driver's license. The district court conducted an implied-consent hearing in late March 2016. Johnson appeared *pro se*. The commissioner called three witnesses: Officer Lasher, Officer Garcia, and Officer Hicks. Johnson testified but did not call any other witnesses. In July 2016, the district court issued an order in which it identified eight issues, rejected Johnson's argument with respect to each issue, and denied the petition. Johnson appeals.

D E C I S I O N

Johnson argues that the district court erred by denying his petition to rescind his license revocation. We construe his *pro se* brief to make three specific arguments.

I. Reasonable Suspicion for Traffic Stop

Johnson first argues that Officer Lasher did not have a reasonable, articulable suspicion of criminal activity to justify the investigatory stop of his vehicle.

The Fourth Amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; *see also* Minn. Const. art. I, § 10. The Fourth Amendment protects the right of the people to be secure in their motor vehicles. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). As a general rule, a law-enforcement officer may not seize a person in a motor vehicle without probable cause. *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). But a law-enforcement officer may, consistent with the Fourth Amendment, conduct a brief investigatory detention of a person in a motor vehicle if the officer has a reasonable, articulable suspicion that the person might be

engaged in criminal activity. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) (citing *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968)). Even a minor traffic violation, “however insignificant,” may justify a traffic stop. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997); *see also Berge v. Commissioner of Pub. Safety*, 374 N.W.2d 730, 732-33 (Minn. 1985). To be specific, a reasonable suspicion of speeding justifies a traffic stop. *See, e.g., State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003); *State v. Thiel*, 846 N.W.2d 605, 609-10 (Minn. App. 2014), *review denied* (Minn. Aug. 5, 2014).

In this case, Officer Lasher testified that he saw Johnson driving fast and used his radar device to measure Johnson’s speed at 76 m.p.h. in a 55-m.p.h. zone. Officer Lasher also testified that his radar device was working normally. The district court found Officer Lasher to be credible and relied on his testimony in finding that the officer “articulated a particular and objective basis for suspecting the Petitioner of criminal activity (speeding) and, therefore, had reasonable articulable suspicion to stop Petitioner’s vehicle.”

Johnson challenges the district court’s reliance on Officer Lasher’s testimony on the ground that the officer’s testimony about the video-recording captured by his dashboard camera is contradicted by the contents of that video-recording. Johnson attempted to persuade the district court that the video-recording undercut Officer Lasher’s testimony, but the district court found otherwise. A district court’s credibility finding is entitled to deference on appeal. *Snyder v. Commissioner of Pub. Safety*, 744 N.W.2d 19, 22 (Minn. App. 2008).

In Minnesota, it is unlawful to drive at a speed in excess of the posted speed limit. Minn. Stat. § 169.14, subd. 2(a) (2014). In light of the law and the facts found by the

district court, which are not clearly erroneous, Officer Lasher had a reasonable articulable suspicion that Johnson was engaging in unlawful behavior. Thus, the traffic stop was not unreasonable.

II. Probable Cause for Arrest

Johnson also argues that Officer Lasher did not have probable cause to arrest him and, thus, did not have a justification for requiring him to submit to a breath test.

A person may be required to submit to a chemical test of his or her blood, breath, or urine if “an 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).” Minn. Stat. § 169A.51, subd. 1(b) (2014). Probable cause exists if “there are facts and circumstances known to the officer which would warrant a prudent man in believing that the individual was driving or was operating’ or was in physical control of a motor vehicle while impaired.” *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011) (quoting *State v. Harris*, 295 Minn. 38, 42, 202 N.W.2d 878, 881 (1972)). “The existence of probable cause depends on ‘the particular circumstances, conditioned by [officers’] own observations and information and guided by the whole of their police experience.’” *Id.* (quoting *State v. Olson*, 436 N.W.2d 92, 94 (Minn. 1989), *aff’d sub nom. Minnesota v. Olson*, 495 U.S. 91, 110 S. Ct. 1684 (1990)). “Nonetheless, ‘[t]he reasonableness of the officer’s actions is an objective inquiry,’ even if reasonableness is evaluated in light of an officer’s training and experience.” *Id.* at 363 (quoting *State v. Hardy*, 577 N.W.2d 212, 216 (Minn. 1998)). “The fact that it later turns out that the officers were wrong does not

mean that they did not have probable cause at the time they made their assessment.” *State v. Johnson*, 314 N.W.2d 229, 230 (Minn. 1982).

In this case, Officer Lasher testified that he observed that Johnson’s eyes were watery and bloodshot and that his speech was slurred. The officer also testified that Johnson did not pass two field sobriety tests. And Officer Garcia testified that a PBT indicated an alcohol concentration of 0.15. Based on that evidence, the district court found that the facts known to Officer Lasher “would lead a person of ordinary care and prudence to entertain a strong and honest suspicion that Petitioner was driving while intoxicated.” On appeal, Johnson does not challenge the evidence underlying the district court’s finding or the district court’s application of the probable-cause standard. We agree with the district court’s analysis in all respects. Thus, Officer Lasher had probable cause to arrest Johnson and was justified in requiring Johnson to submit to chemical testing.

III. Reliability of Breath Test

Johnson last argues that the result of the breath test is unreliable.

A driver may challenge the revocation of his or her driver’s license by raising the following issue: “Was the testing method used valid and reliable and were the test results accurately evaluated?” Minn. Stat. § 169A.53, subd. 3(b)(10) (Supp. 2015). If a breath test is challenged, the commissioner has the initial burden of showing that “the test is reliable and ‘that its administration in the particular instance conformed to the procedure necessary to ensure reliability.’” *Kramer v. Commissioner of Pub. Safety*, 706 N.W.2d 231, 235 (Minn. App. 2005) (quoting *State v. Dille*, 258 N.W.2d 565, 567 (Minn. 1977)). If the commissioner satisfies the initial burden, “[t]he driver must then produce evidence

to impeach the credibility of the test results.” *Bielejeski v. Commissioner of Pub. Safety*, 351 N.W.2d 664, 666 (Minn. App. 1984).

In this case, Johnson raised this issue in the district court. During the commissioner’s case, Officer Hicks testified that he is a certified DataMaster operator, that he received training from the bureau of criminal apprehension (BCA), and that the DataMaster performed diagnostic tests within acceptable limits on the day in question. Johnson cross-examined Officer Hicks by asking him whether he is an “international scientist in measurement,” a “doctor,” or a “forensic scientist.” Officer Hicks answered each question in the negative. Johnson concluded by asking Officer Hicks whether he “performed any diagnostic tests that would have recorded bias and uncertainties of your DataMaster machine?” Officer Hicks again answered in the negative.

The district court resolved the issue by citing and quoting the following statute:

[T]he results of a breath test, when performed by a person who has been fully trained in the use of an infrared or other approved breath-testing instrument, . . . pursuant to training given or approved by the commissioner of public safety . . . , are admissible in evidence without antecedent expert testimony that an infrared or other approved breath-testing instrument provides a trustworthy and reliable measure of the alcohol in the breath.

Minn. Stat. § 634.16 (2014). The district court noted the evidence that Officer Hicks is a certified DataMaster operator and that he had received training and certification from the BCA. The district court also found that “nothing out of the ordinary occurred that would skew the reliability of the test results.”

On appeal, Johnson contends that the DataMaster is not accurate or reliable. He makes a few broad assertions in support of that contention, but he does not cite any evidence that was introduced at the implied-consent hearing. His cross-examination of Officer Hicks did not expose any particular reasons why the test results might not be accurate or reliable. Likewise, Johnson did not testify to the assertions that he makes in his appellate brief. His own testimony was very brief and was limited to introducing evidence that he was taking prescription medication on the day of his arrest. Given the scarcity of relevant evidence elicited by Johnson, we conclude that he failed to introduce any evidence that might “impeach the credibility of the test results.” *See Bielejeski*, 351 N.W.2d at 666. Thus, the DataMaster test results are reliable.

In sum, the district court did not err by denying Johnson’s petition to rescind the revocation of his driver’s license.

Affirmed.