STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0400

State of Minnesota,
Respondent,

vs.

Linda Kay Kronzer,
Appellant.

Filed December 24, 2012
Affirmed
Cleary, Judge

St. Louis County District Court
File No. 69DU-CR-10-4366

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Jonathan D. Holets, Assistant County Attorney, Duluth, Minnesota (for respondent)

John F. Hedtke, Hedtke Law Office, Duluth, Minnesota (for appellant)

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

U N P U B L I S H E D O P I N I O N

CLEARY, Judge

Appellant challenges her convictions of fourth-degree driving while impaired (DWI), third-degree test refusal, and restricted-license violation. She argues that there is insufficient evidence to support her convictions. We affirm.

FACTS

At 4:45 p.m. on December 15, 2010, the St. Louis County Sheriff's Department received a 911 call reporting that there was a car in the ditch on Twig Boulevard in St. Louis County. Deputy Troy Fralich responded to the call and observed that the car was still in the ditch and that it was partially blocking a lane of travel on Twig Boulevard. No one was in the car, but Deputy Fralich saw footprints leading away from the car. Deputy Fralich ran the license plate number of the car to determine who owned it and discovered that it was registered to appellant Linda Kronzer. He also noted that the car was located within 50 yards of appellant's driveway. Deputy Fralich approached appellant's home to inquire about her plans for moving the car because it was a hazard to other cars traveling on Twig Boulevard. He also wanted to make sure that appellant had made it home safely because the weather conditions were icy, snowy, and extremely cold.

When Deputy Fralich knocked on appellant's door, appellant answered the door and allowed him to come inside. While speaking with appellant, Deputy Fralich observed a moderate odor of alcohol coming from her. He also observed that her speech was slurred at times and that her eyes were red and watery. Appellant admitted to Deputy Fralich that she drank two or three beers at a bar that afternoon before she drove home and went into the ditch. She also told him, at least four or five times, that she had only had a sip of beer since she had arrived home. Deputy Fralich had appellant perform a field sobriety test and, based on the result, asked her to submit to a preliminary breath test (PBT).

Deputy Fralich testified that, during the PBT, appellant continually placed her tongue over the tube on the test machine, preventing the machine from taking a reading. Deputy Fralich was able to collect one reading that showed appellant's alcohol concentration to be over the legal limit for driving. He arrested appellant and took her to the Hermantown Police Department, where she again failed to provide a sufficient breath sample.

Following a jury trial, appellant was convicted of third-degree test refusal under Minn. Stat. § 169A.20, subd. 2 (2010), fourth-degree DWI under Minn. Stat. § 169A.20, subd. 1(1) (2010), and violation of a restricted license under Minn. Stat. § 171.09, subd. 1(d) (2010). This appeal follows.

D E C I S I O N

Appellant first argues that there is insufficient evidence to support her conviction of third-degree test refusal under Minn. Stat. § 169A.20, subd. 2. When considering a claim of insufficient evidence, this court's review "is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court is "limited to ascertaining whether, given the facts in the record and the legitimate inferences that can be drawn from those facts, a jury could reasonably conclude that the defendant was guilty of the offense charged." *Bernhardt v. State*, 684 N.W.2d 465, 476 (Minn. 2004) (quotation omitted).

"It is a crime for any person to refuse to submit to a chemical test of the person's blood, breath, or urine under section 169A.51 (chemical tests for intoxication), or 169A.52 (test refusal or failure; revocation of license)." Minn. Stat. § 169A.20, subd. 2. An officer can require a person to submit to a test "when an officer has probable cause to believe the person was driving, operating, or in physical control of a motor vehicle" while impaired. Minn. Stat. § 169A.51, subd. 1(b) (2010).

Probable cause "exists whenever 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) (quotation omitted).

Appellant argues that Deputy Fralich needed probable cause to approach her home. Appellant claims that, because Deputy Fralich did not have such probable cause, one element necessary to the conviction is missing and the evidence is insufficient.[1]

[1] Appellant bases her arguments on the instruction given to the jury regarding probable cause, an element of the test-refusal charge. The instruction stated:

> First, a peace officer had probable cause to believe that the defendant drove, operated, or was in physical control of a motor vehicle while under the influence of alcohol. "Probable cause" means that the officer, based upon the officer's observations, information, experience, and training, can testify to the objective facts and circumstances in this particular situation that gave the officer cause to approach the defendant in her home and the further objective observations that would lead a reasonable officer to entertain an honest and strong suspicion that the defendant was driving, operating, or in physical control of a motor vehicle while under the influence of alcohol.

Police officers do not need probable cause to approach the front of a dwelling or house. *See State v. Krech*, 403 N.W.2d 634, 637 (Minn. 1987) ("[P]olice do not need a warrant or even probable cause to approach a dwelling in order to conduct an investigation if they restrict their movements to places visitors could be expected to go (e.g., walkways, driveways, porches).") (quotation omitted); *State v. Crea*, 305 Minn. 342, 346, 233 N.W.2d 736, 739 (1975) ("Courts have held that police with legitimate business may enter the areas of the curtilage which are impliedly open to use by the public. Thus, police may walk on the sidewalk and onto the porch of a house and knock on the door if they are conducting an investigation and want to question the owner, and in such a situation the police are free to keep their eyes open and use their other senses.").

Because Minnesota caselaw clearly states that officers do not need probable cause to walk up an individual's driveway and knock on her door, appellant's argument fails. As he investigated the situation, Deputy Fralich was free to approach appellant's house to check on her safety and her plans for moving her car.

It was after Deputy Fralich had legally approached appellant that he smelled a moderate odor of alcohol coming from her, that he observed that her speech was slurred

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As discussed above, to the extent this jury instruction requires "cause" to approach the home, it misstates the applicable law because Deputy Fralich did not need cause to approach appellant's home. In fact, this instruction benefits appellant by making the state's burden of proof even heavier.

In her notice of statement of the case, appellant claimed that the court erred in "modifying and deviating" from the model jury instructions, but she does not make such an argument in her brief. "Where a defendant asserts error, but fails to address the error in [her] appellate brief, the issue is deemed waived." *State v Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997). Because appellant does not argue that the jury instruction was incorrect, we do not address it.

and that her eyes were red and watery, and that appellant conceded that she had been drinking before she drove her car into the ditch. Based on these observations, Deputy Fralich developed probable cause to suspect her of DWI.

Appellant next argues that there is insufficient evidence to support her convictions of fourth-degree DWI and restricted-license violation. She contends that Deputy Fralich did not have probable cause to approach her home and "could not articulate one objective fact" supporting the suspicion that appellant had been operating her car while impaired.

As discussed above, Deputy Fralich did not need probable cause to approach appellant's home. It was only after he legally approached her home as part of his ongoing investigation of the car in the ditch that he developed probable cause to believe that she had been operating her car while under the influence of alcohol. Deputy Fralich was able to articulate many objective facts; he observed a moderate odor of alcohol coming from appellant, he observed that her speech was slurred and that her eyes were red and watery, and she admitted that she drank before driving her car into the ditch.

Because Deputy Fralich did not need probable cause to approach appellant's home, and because there was sufficient evidence that Deputy Fralich developed probable cause based on his observations and appellant's admissions to support the convictions, we affirm.

Affirmed.