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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1166**

State of Minnesota,
Respondent,

vs.

Sedrick Lamar Holt,
Appellant.

**Filed June 4, 2018
Affirmed
Jesson, Judge**

Dakota County District Court
File No. 19HA-CR-16-4381

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

James C. Backstrom, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Reyes, Judge; and Kalitowski,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, §10.

UNPUBLISHED OPINION

JESSON, Judge

Appellant Sedrick Lamar Holt was driving a car and failed to signal a turn. He was pulled over, falsely identified himself, smelled of alcohol, refused to complete preliminary sobriety tests, and, even after nine tries, did not provide an adequate breath sample for alcohol-content testing. He was subsequently convicted of first-degree driving while impaired—test refusal, false information to police, and driving after cancellation. Holt challenges his driving-while-impaired conviction, arguing the officer lacked the requisite reasonable, articulable suspicion to request a preliminary breath test and lacked the requisite probable cause to request a breath test under the implied consent law. We affirm.

FACTS

On November 23, 2016, a law enforcement officer noticed a car with only one functioning headlight and witnessed it fail to signal when it made a turn. The officer initiated a stop. Upon request, the driver provided proof of insurance, but not a driver's license. He identified himself and provided a date of birth, but when the officer entered that information into his system, it brought up a photo that did not match the driver. The officer continued to attempt to identify the driver, but the driver could not confirm his address or when he last had his license renewed. The officer placed the driver under arrest for giving a false name.

While walking the driver to his squad car, the officer noticed he smelled of alcohol and asked how much alcohol he had to drink that night. The driver was nonresponsive. At the same time, a second officer searched the driver's car and found a gun.

After transporting him to a police station, the officer was able to identify the driver as appellant Sedrick Lamar Holt. Once identified, the officer discovered Holt's driving privileges were cancelled, and he had an active felony warrant. The officer also noticed Holt's eyes were red and watery. The officer asked Holt to complete field sobriety tests or a preliminary breath test, but Holt refused. Holt was then read the Implied Consent Advisory, after which he called and spoke to multiple lawyers.

Holt agreed to a breath test. He was instructed on how to provide an accurate sample, but after nine tries Holt was unable to provide that sample. The officer deemed Holt's failure to provide an adequate sample a refusal.

Holt was charged by complaint with first-degree driving while impaired—refusal to submit to a chemical test, in violation of Minnesota Statutes section 169A.20, subdivision 2 (2016); possession of a pistol without a permit, in violation of Minnesota Statutes section 624.714, subdivision 1(a) (2016); providing false information to police, in violation of Minnesota Statutes section 609.506, subdivision 2 (2016); and driving after cancellation inimical to public safety, in violation of Minnesota Statutes section 171.24, subdivision 5 (2016).

Holt filed a motion to suppress evidence and dismiss the charges, arguing the officer had neither a reasonable basis for the stop, nor probable cause to ask Holt to provide a breath test. A contested omnibus hearing was held on the matter, where the two officers involved in Holt's arrest testified, and the district court viewed the squad and booking videos.

The district court denied Holt's motion, deciding:

[The first officer] reported that he pulled over the Vehicle because, among other reasons, the Vehicle did not signal when it turned right on to Annapolis Street. Not signaling to take a right is a traffic violation. Therefore, [the first officer] had the requisite particularized and objective basis for the traffic stop.

And that:

[The first officer] had probable cause to request that Defendant take the implied consent test. There were multiple indicators that would lead a cautious person to believe that Defendant was under the influence. [The first officer] notice[d] the smell of alcohol emanating from Defendant's breath and he also noticed that Defendant had red, watery eyes. Moreover, Defendant was not willing to cooperate and declined to take either a PBT or any field sobriety tests when asked. These were three common indicia of intoxication (i.e. odor of alcohol, bloodshot watery eyes, and uncooperative attitude), and were sufficient to constitute probable cause to request that Defendant take the implied consent testing.

Following the district court's decision, Holt pleaded guilty to driving after cancellation, but proceeded to a jury trial on the other charges. The jury found Holt guilty of test refusal and providing false information to police, but acquitted him of possession of a firearm without a permit. The district court sentenced Holt to 46 months in prison for first-degree driving while impaired—test refusal, and concurrent 365-day sentences for providing false information to police and driving after cancellation.

Holt appeals.

D E C I S I O N

Holt argues the district court erred by denying his motion to suppress the evidence and dismiss the charges because (1) the officer did not have a reasonable, articulable suspicion to support a request that Holt submit to a preliminary breath test; (2) the officer

did not have probable cause to request Holt submit to a test via the implied consent procedure; and (3) the district court made erroneous factual findings.¹ “When reviewing a district court’s pretrial order on a motion to suppress evidence, ‘we review the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.’” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quoting *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007)).

I. The officer had a reasonable basis to request Holt complete a preliminary breath test.

Under Minnesota Statutes section 169A.41, subdivision 1 (2016), an officer may require a preliminary screening test when that officer “has reason to believe from the manner in which a person is driving, operating, controlling, or acting upon departure from a motor vehicle” that the person was driving while impaired. The officer must have a reasonable, articulable suspicion, meaning a “particularized and objective basis for suspecting the particular person stopped of criminal activity.” *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S. Ct. 690, 695 (1981).

Whether an officer has a reasonable, articulable suspicion is determined by the totality of the circumstances. *State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998). Articulable suspicion can arise when there is evidence of sufficient indicia of intoxication. *State v. Driscoll*, 427 N.W.2d 263, 265-66 (Minn. App. 1988). Both an odor of alcohol and bloodshot and watery eyes are indicia of intoxication. *State v. Klamar*, 823 N.W.2d 687, 696 (Minn. App. 2012). And a traffic violation coupled with indicia of intoxication

¹ Holt does not challenge the basis for the stop on appeal.

can provide reasonable, articulable suspicion. *Holtz v. Comm'r of Pub. Safety*, 340 N.W.2d 363, 365 (Minn. App. 1983). The district court determined the totality of the circumstances provided the officer with reasonable, articulable suspicion. We agree.

Here, the officer stopped Holt after observing him commit a traffic violation—he failed to signal a turn. The officer approached the vehicle, and Holt only rolled down his window two to three inches to talk to the officer. After talking to the officer and failing to confirm necessary information to prove his identity, Holt was removed from the car and placed under arrest for providing a false name to police. It was when Holt was removed from his car and placed into a squad car that the officer first noticed Holt smelled of alcohol and asked how much alcohol Holt had to drink that evening. And once the officer brought Holt to the police station, he noticed Holt had red and watery eyes. The officer then asked Holt to complete field sobriety tests or a preliminary breath test. Because the officer witnessed a traffic violation and noticed multiple signs of intoxication prior to requesting the preliminary test, he had reasonable, articulable suspicion that Holt was driving while impaired by alcohol consumption. *See Holtz*, 340 N.W.2d at 365.

Holt argues the officer lacked reasonable, articulable suspicion because (1) he did not notice the indicia of intoxication immediately upon contact with Holt; and (2) the officer stated he wanted Holt to take the test to help him to determine *if* Holt was too intoxicated to drive the vehicle. We are not persuaded.

Holt attempts to distinguish this case from others where officers observed indicia of intoxication immediately upon contact with a driver. *See, e.g., State v. Kier*, 678 N.W.2d 672, 674 (Minn. App. 2004) (during the officer's initial conversation with the driver, he

observed a strong odor of alcohol coming from the driver's breath, bloodshot watery eyes, and slurred speech). And he asserts the officer here could not have the same reasonable, articulable suspicion because his observations of indicia of intoxication were not similarly immediate. But none of the cases cited by Holt stand for the proposition that an officer's observations of indicia of intoxication *must* be immediate to support reasonable, articulable suspicion.

Furthermore, the facts here demonstrate a reasonable basis for why the officers' observations were not immediate. As the arresting officer explained in his testimony, Holt's window was only slightly open when the officer talked to him in his car. And when Holt exited the car, approximately 20 minutes into the stop, the officer quickly noticed the smell of alcohol, demonstrated by the officer's question asking Holt how much alcohol he had to drink that night. And while the officer did not notice Holt's red or watery eyes until he was at the police station, this too is reasonable based on reduced visibility due to Holt's window being only slightly open and the fact that this stop took place at night. The timing of the officer's observation supporting intoxication does not invalidate the officer's reasonable, articulable suspicion.

Holt additionally argues that, because the officer told him he wanted him to take a preliminary breath test to assist "in determining if [the officer] believed that [Holt] was too intoxicated to have been driving his vehicle," the officer must not have had reasonable, articulable suspicion prior to requesting the test. This too is unpersuasive. First, this language refers to a "determination," more than a mere suspicion. The officer could have reasonably suspected Holt was too impaired to drive while waiting for test results to

confirm his suspicion. Second, the officer easily could have been referring not to a reasonable, articulable suspicion that he was too intoxicated to drive, but to the probable cause the officer would need to conduct implied consent procedures. The officer's comment does not invalidate his reasonable, articulable suspicion to request that Holt submit to a preliminary breath test.

Because the officer observed Holt commit a traffic violation and observed multiple indicia of intoxication, he had sufficient articulable suspicion to support his request that Holt submit to a preliminary breath test.

II. The officer had probable cause to request that Holt submit to a test under the implied consent law.

“Probable cause exists when all the facts and circumstances would lead a cautious person to believe that the driver was under the influence.” *Davis v. Comm’r of Pub. Safety*, 509 N.W.2d 380, 392 (Minn. App. 1993), *aff’d*, 517 N.W.2d 901 (Minn. 1994). And Minnesota Statutes section 169A.51, subdivision 1(b) (2016), provides that an officer can invoke the implied consent procedures when an officer has probable cause and the person has refused to take a preliminary test.

Holt’s entire probable cause argument rests on his previous argument that the officer did not have the requisite articulable suspicion to ask that he complete the preliminary breath test. Because there was sufficient reasonable, articulable suspicion to ask for that test, we conclude there was sufficient probable cause for the officer to request a test under the implied consent law. This probable cause is based on Holt’s refusal to take the

preliminary breath test, in addition to his traffic violation and the indicia of intoxication detailed above.

III. The district court's findings were not clearly erroneous.

In his pro se brief, Holt challenges several of the district court's factual findings.

First, he argues that one of the two officers involved in his arrest did not testify that he noticed a smell of alcohol or red and watery eyes, which undercuts the finding that indicia of intoxication were present. But the first officer, the one who actually made the arrest and interacted with Holt at the police station, did notice these attributes. The second officer did not have direct contact with Holt, he merely provided assistance and searched Holt's car.

Second, Holt takes issue with the fact that after the officer noticed a smell of alcohol he did not place him under arrest for DWI or ask him to do field sobriety tests in the field. As a result, Holt questions what he was actually arrested for. But as is demonstrated in the video, Holt was originally arrested for providing false information to police. The officer additionally explained that, even though he smelled alcohol on Holt's breath, Holt was already in handcuffs and the officer would not remove handcuffs and conduct field sobriety tests with an individual who was already lying to officers. At the station, Holt was asked to submit to field sobriety tests or a preliminary breath test, refused, and after failing to submit an adequate sample under the implied consent law, he was also placed under arrest for test refusal.

Third, Holt challenges the conclusions drawn from the fact that he had red and watery eyes, saying he had fallen asleep at the station—implying the red and watery eyes

were a result of the sleep. But the officer noticed Holt's red and watery eyes before asking him to take a preliminary test and before Holt fell asleep.

Finally, Holt implies that the officer did not have adequate knowledge to operate the breath test machine. But the officer testified at the omnibus hearing that he was trained to operate the machine. In sum, the district court's factual findings are supported by the record. Holt's pro se challenges to the contrary are without merit.

Affirmed.