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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0626**

David Leroy Burandt, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed May 6, 2008
Affirmed
Halbrooks, Judge**

Carver County District Court
File No. 10-CV-06-1091

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(for appellant)

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Considered and decided by Halbrooks, Presiding Judge; Klaphake, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the revocation of his driver's license, arguing that the district court erred in concluding that probable cause existed for his arrest. Because we conclude that the district court did not err, we affirm.

FACTS

On October 16, 2006, appellant David Burandt was driving his car on Highway 212 in Chaska between 3:00 and 3:30 p.m., when he was involved in an accident. He called and reported the accident to the police. Burandt stated that another vehicle crossed the centerline, struck his car, and then drove away. Approximately one hour later, Chaska police officer Elroy Schmidt was dispatched to Burandt's residence to investigate the accident.

Officer Schmidt later testified that he thought that the accident details that Burandt provided were "questionable." For example, Officer Schmidt thought it unlikely that Burandt would be in the left lane on his side of a four-lane highway when his route required him to turn right on Highway 41. In addition, Burandt stated that he had driven to a carwash. Officer Schmidt found this unlikely because it was drizzling that day. Officer Schmidt observed numerous signs that Burandt had been consuming alcohol. Burandt's eyes were glassy and bloodshot, he had an odor of alcohol, and his pants were wet. When Officer Schmidt asked Burandt if he had had anything to drink, Burandt stated that he had consumed one beer at a bar prior to the accident.

At that point, Officer Schmidt asked Burandt to perform field sobriety tests; Burandt failed. Officer Schmidt also asked Burandt to take a preliminary breath test (PBT); the test result evidenced an alcohol concentration of .094. Officer Schmidt then arrested Burandt for driving while impaired (DWI) and took him to the Carver County Jail. Following the implied-consent-advisory warning, Burandt refused to submit to further testing.

Burandt's license was subsequently revoked by the Commissioner of Public Safety based on his refusal to test. Burandt moved the district court for rescission of the revocation of his license. At a subsequent hearing, Burandt argued that Officer Schmidt lacked probable cause to arrest him. Burandt testified that he had one beer at a bar after work and three more beers after he got home. Burandt's wife testified that she saw Burandt drinking a beer when she arrived home and that she saw two beers on the kitchen counter. But both Burandt and his wife conceded that when Officer Schmidt questioned them on the day of the accident concerning whether Burandt had had anything to drink, neither mentioned that he had consumed any beer after arriving home.

Officer Schmidt testified that he asked Burandt whether he had had anything to drink and that Burandt told him that he had one beer before driving home. Officer Schmidt also testified that he specifically asked Burandt and his wife if Burandt had anything to drink after he got home, and they both said that Burandt had not. While Burandt and his wife agreed that Officer Schmidt had asked them general questions about Burandt's alcohol consumption, they denied that the officer asked them about post-accident consumption.

The district court sustained the revocation of Burandt's license, concluding that Officer Schmidt had probable cause to arrest Burandt. This appeal follows.

DECISION

Burandt contends that Officer Schmidt did not have probable cause to arrest him for DWI because any evidence of intoxication resulted from his consumption of three beers after driving home. An officer may require a person to submit to a blood, breath, or

urine test when the 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), and . . . the person has been lawfully placed under arrest for violation of section 169A.20.” Minn. Stat. § 169A.51, subd. 1(b)(3) (2006). Probable cause to arrest requires “a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious [person] in believing the accused to be guilty.” *Clow v. Comm’r of Pub. Safety*, 362 N.W.2d 360, 362 (Minn. App. 1985) (alteration in original) (quotations omitted), *review denied* (Minn. Apr. 26, 1985). Although a determination of probable cause is a finding of fact and law, we do not review probable cause de novo; “instead, we determine if the police officer had a substantial basis for concluding that probable cause existed at the time of invoking the implied consent law.” *Groe v. Comm’r of Pub. Safety*, 615 N.W.2d 837, 840 (Minn. App. 2000) (quotation omitted), *review denied* (Minn. Sept. 13, 2000).

Burandt bases his probable-cause argument on this court’s decision in *Dietrich v. Comm’r of Pub. Safety*, 363 N.W.2d 801 (Minn. App. 1985). But that case is distinguishable. The appellant in *Dietrich* was in an automobile accident but was not present when an officer arrived at the scene. 363 N.W.2d at 802. The officer drove to Dietrich’s home, spoke to him, and observed that he showed signs of intoxication. *Id.* A PBT established that Dietrich’s alcohol concentration was .10. *Id.* In response to the officer’s questioning, Dietrich stated that he had had “a couple” of alcoholic drinks. *Id.* Following the district court’s determination that probable cause did not exist to support the officer’s belief that Dietrich had driven while intoxicated, the district court rescinded

the driver's license revocation. *Id.* at 803. The commissioner appealed. *Id.* at 802. We affirmed the district court, concluding that the district court properly found that the officer's testimony did not establish a sufficient temporal connection between the time the accident occurred and when the officer believed Dietrich to have been driving while intoxicated. *Id.* at 803.

In a subsequent case, we stated that “*Dietrich* does not establish a rule of law that the officer must explicitly testify as to the time of the accident” in order to establish a temporal connection between the driving and the accident. *Graham v. Comm’r of Pub. Safety*, 374 N.W.2d 809, 811 (Minn. App. 1985). But “there must be a time frame established showing a connection between drinking and driving.” *Delong v. Comm’r of Pub. Safety*, 386 N.W.2d 296, 298 (Minn. App. 1986), *review denied* (Minn. June 13, 1986).

Here, uncontroverted testimony established that (1) Officer Schmidt received dispatch's call at 4:27 p.m. and arrived at Burandt's home within a short time; (2) Burandt appeared intoxicated during his conversation with Officer Schmidt at his home; (3) Burandt stated that he had one drink before driving; (4) neither Burandt nor his wife claimed in the interview with Officer Schmidt that Burandt consumed alcohol post-accident; (5) Burandt failed subsequent field sobriety tests, and (6) he registered an alcohol concentration of .094 on a PBT. We conclude that the district court properly found that a sufficient temporal connection is established by this record and that probable cause for the arrest existed. Therefore, Burandt's driver's license was properly revoked.

While Burandt testified that he had had one beer at a bar before the car accident and claimed that his PBT reading resulted from his post-accident consumption of three additional beers at home, the district court credited the officer's testimony that neither Burandt nor his wife gave that version of events when initially interviewed. In its order, the district court stated:

The [district] [c]ourt notes only that absent a specific finding by the [district] [c]ourt that Officer Schmidt did not testify truthfully, [Burandt's] argument that he drank after he arrived home—and that this was why he was intoxicated—is not relevant to the issue of whether Officer Schmidt had probable cause to arrest [Burandt] for DWI. The court is not making such a finding. That argument may have some merit in the trial in this matter, but certainly not at the probable cause to arrest stage.

We defer to the district court's credibility determinations. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

Affirmed.