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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1148**

Nathan Curtis Jans, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed January 14, 2013
Affirmed
Stoneburner, Judge**

Clay County District Court
File No. 14-CV-12-1133

Jade M. Rosenfeldt, Vogel Law Firm, Moorhead, Minnesota (for appellant)

Lori Swanson, Minnesota Attorney General, Joan M. Eichhorst, Mathew A. Ferche, Assistant Attorneys General, St. Paul, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Kalitowski, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the district court's order sustaining the revocation of his driver's license, arguing that the police officer who arrested him lacked probable cause to believe that appellant, who was admittedly intoxicated at the time of arrest, had driven his vehicle while intoxicated. We affirm.

FACTS

At 3:16 a.m. on a day in March 2012, Ryan Carey, a Clay County Deputy Sheriff, was dispatched to the scene of a vehicle that had rolled over in a ditch. Carey found a white pickup truck upside down in the ditch with the driver's side buried in the snow. No one was in or near the truck. Beer cans were spread out all over the ditch area, some underneath the truck. Two sets of tracks led from the passenger's side of the truck, which was the only possible exit from the truck. Carey determined that the truck was registered to appellant Nathan Curtis Jans.

While he was at the scene, Carey received a dispatch informing him that the occupants of the truck were at a gas station in south Moorhead. Carey went directly to the gas station, which was four or five miles away from the scene of the rollover, and found Jans and Adam Steinbeiser. They said that they had been occupants of the rolled truck, and Jans said he owned the truck. Carey observed that Jans's knuckles were bloody and ascertained that neither man needed medical attention. Carey observed that both individuals had an odor of an alcoholic beverage coming from them and that their eyes were bloodshot and watery. Carey asked Jans if he had been drinking, and Jans said that he had been drinking beer. Steinbeiser volunteered the information that he had been a backseat passenger in the truck. Carey asked Jans to perform field sobriety tests. Jans denied driving the truck, and, according to Carey, said a person named "Steve" or "Steven" had been driving. But Jans was unable to provide any further information about this person or his whereabouts.

Based on Jans's performance on the field sobriety tests and Carey's conclusion that Jans had been driving the truck, Carey arrested Jans for driving while impaired (DWI). Jans's subsequent breath test showed an alcohol concentration of .16, and his driver's license was revoked under Minn. Stat. § 169A.52, subd. 4 (2010).

Jans petitioned for judicial review of the revocation, arguing that Carey lacked probable cause to arrest him for DWI. The only issue at the implied-consent hearing was whether Carey had probable cause to believe that Jans was the driver. The district court concluded that Carey had probable cause to believe that Jans was driving while under the influence and sustained the revocation. This appeal followed.

D E C I S I O N

“When the facts of a case are undisputed, probable cause is a question of law to be reviewed *de novo*.” *Shane v. Comm’r of Pub. Safety*, 587 N.W.2d 639, 641 (Minn. 1998). “Conclusions of law will be overturned only upon a determination that the [district] court has erroneously construed and applied the law to the facts of the case.” *Dehn v. Comm’r of Pub. Safety*, 394 N.W.2d 272, 273 (Minn. App. 1986).

A petition for judicial review of a license revocation requires the district court to hold a hearing in which it determines, among other things, whether “the peace officer ha[d] 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.53, subd. 3(b)(1) (2010). Probable cause “must be evaluated from the point of view of a prudent and cautious police officer at the time of arrest, and great deference should be paid to the officer’s experience and judgment.” *Hedstrom v. Comm’r of Pub.*

Safety, 410 N.W.2d 47, 49 (Minn. App. 1987) (quotations omitted). “A reviewing court must consider the totality of the circumstances when determining probable cause.” *Groe v. Comm’r of Pub. Safety*, 615 N.W.2d 837, 840 (Minn. App. 2000) (citing *Eggersgluss v. Comm’r of Pub. Safety*, 393 N.W.2d 183, 185 (Minn. 1986)), review denied (Minn. Sept. 13, 2000).

“Probable cause exists when all the facts and circumstances would warrant a cautious person to believe the suspect was driving a motor vehicle while under the influence.” *Hedstrom*, 410 N.W.2d at 49; see also *Llona v. Comm’r of Pub. Safety*, 389 N.W.2d 210, 212 (Minn. App. 1986). An officer need not actually observe a person driving the vehicle to have probable cause to believe that the person was doing so. See *State v. Harris*, 295 Minn. 38, 39, 41-42, 202 N.W.2d 878, 879-81 (1972) (holding that the totality of the circumstances gave the officer probable cause to believe that the defendant was driving the vehicle while under the influence of alcohol even though at the time the officer saw the defendant, the defendant was slumped over the steering wheel of a nonmoving vehicle). And an officer’s stated reasons for finding probable cause are not controlling because “the issue is whether there was objective probable cause, not whether the officers subjectively felt that they had probable cause.” *State v. Speak*, 339 N.W.2d 741, 745 (Minn. 1983). “The actual, subjective beliefs of the officer are not the focus in evaluating reasonableness.” *State v. Koppi*, 798 N.W.2d 358, 363 (Minn. 2011).

Jans argues that Carey lacked probable cause to believe that Jans was driving his truck because Carey did not witness him driving, have information that he was the driver, or articulate sufficient facts to support a finding of probable cause. As noted above,

Carey's failure to witness Jans driving the truck is not fatal to a finding of probable cause that Jans was driving, and Jans has no authority to support his implied assertion that the officer had to believe his statement that he was not the driver. Jans's first argument is without merit.

At the implied consent hearing, Carey articulated that he suspected that Jans was the driver because it was unlikely that Jans would have allowed anyone else to drive his valuable truck. Because probable cause is evaluated based on the totality of the circumstances, the analysis of the existence of probable cause is not limited to the reasons articulated by Carey. *See Koppi*, 798 N.W. 2d at 363. Here the relevant circumstances—Jans's ownership of the truck, his failure to dispute that Steinbeiser was a passenger, his inability to identify the person he claimed was driving, and the fact that tracks leading from the truck indicated that only two people occupied the truck at the time of the rollover—establish that Carey had probable cause to believe that Jans was the driver. *See Johnson v. Comm'r of Pub. Safety*, 366 N.W.2d 347, 350 (Minn. App. 1985) (“In reviewing an officer's actions, the [district] court should consider the totality of the circumstances and should remember that trained law-enforcement officers are permitted to make inferences and deductions that might well allude an untrained person. Great deference should be paid to the officer's experience and judgment.” (quotation omitted)).

Jans's final argument, raised for the first time on appeal, assumes that he was the driver, but asserts that the record does not contain a sufficient temporal connection between his driving and his intoxication to support probable cause for the DWI arrest. *See Hedstrom*, 410 N.W.2d at 49 (stating that “when there is no evidence whatsoever

connecting the time of driving with the time of an officer's observations, the officer's proof of probable cause is inadequate"). But Jans failed to raise this argument at the implied consent hearing where he only asked the district court to consider whether there was probable cause to believe that he was the driver. Generally, we do not consider matters not argued to and decided by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Jans's failure to raise this issue in district court deprived the commissioner of the opportunity to develop the record of temporal connection beyond the fact that Carey encountered Jans shortly after he left the scene of the rollover, and we decline to address this issue on appeal.

Affirmed.