

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0436**

Gerald Richard Zachman, petitioner,  
Appellant,

vs.

Commissioner of Public Safety,  
Respondent.

**Filed September 9, 2013  
Affirmed  
Halbrooks, Judge**

Benton County District Court  
File No. 05-CV-12-1237

Rodd Tschida, Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Frank Aba-Onu, Assistant Attorney General, St. Paul, Minnesota (for respondent)

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

**UNPUBLISHED OPINION**

**HALBROOKS**, Judge

Appellant challenges the revocation of his driver's license under Minn. Stat. § 169A.50-53 (2012), the implied-consent law, arguing that his preliminary breath test (PBT) was unlawfully obtained. Because there was a reasonable, articulable basis for

suspecting appellant of driving while impaired (DWI) when the test was administered, we affirm.

### **FACTS**

On June 23, 2012, State Trooper James Kotten received a report of a motorcycle accident shortly before 6:00 p.m. on Highway 23 near Foley. After speaking with the on-scene deputies and witnesses, Trooper Kotten learned that four motorcyclists were traveling together on Highway 23 when one of them laid down his motorcycle. That motorcyclist was injured and airlifted out. No other motorists were involved in the accident.

Trooper Kotten spoke with the three remaining motorcyclists, including appellant Gerald Richard Zachman, to determine the cause of the accident. The motorcyclists stated that the accident was likely due to a pickup truck that stopped abruptly in front of them before taking a left turn. Trooper Kotten left the motorcyclists to question the motorist who had been driving in between the pickup truck and the group of motorcyclists when the accident occurred. The motorist told Trooper Kotten that the pickup truck did not stop abruptly and instead slowed and signaled before turning off the road.

Trooper Kotten, joined by Lieutenant Brad Quart, returned to the motorcyclists. Both troopers detected an odor of alcohol coming from the group. Lieutenant Quart smelled alcohol coming from Zachman. The motorcyclists explained that they were involved in a charity ride earlier that day, had stopped at 2 or 3 bars, and had each consumed approximately 4 to 5 alcoholic drinks during the course of the day. They

further admitted to having recently left a nearby bar. The troopers suspected that the accident was alcohol-related.

At this point in their investigation, neither Trooper Kotten nor Lieutenant Quart believed that any of the three motorcyclists were “drunk.” Yet Trooper Kotten “figured there was a good possibility” that they might have been at or near the legal limit. The troopers administered a PBT on each motorcyclist to avoid the possibility of “sending [motorists] down the road [who] were under the influence.” Lieutenant Quart testified that had the motorcyclists declined to take the PBT he would have taken other measures to determine whether any of them were impaired.

The PBT of the first two motorcyclists revealed alcohol-concentration levels within the legal limit. Zachman failed his test, registering an alcohol-concentration level of .11. Based on these results, Lieutenant Quart pulled Zachman aside and administered standardized field sobriety tests. Zachman failed those tests and was arrested for DWI. Zachman’s driver’s license was subsequently revoked.

The district court sustained the license revocation, reasoning that the odor of alcohol from the group together with their statements that they had been drinking provided a sufficient basis for administering the PBT. Zachman appeals the district court’s decision.

## **D E C I S I O N**

When the facts of a case are undisputed, application of the implied-consent law involves a question of law, which we review de novo. *Mell v. Comm’r of Pub. Safety*, 757 N.W.2d 702, 709 (Minn. App. 2008). Under the implied-consent law, a peace officer

may administer a PBT if the officer “has reason to believe” that a driver may be violating or has violated the DWI laws. Minn. Stat. § 169A.41, subd. 1 (2012). The Minnesota courts have interpreted this standard to require a reasonable, articulable suspicion of driving under the influence of alcohol. *See State v. Vievering*, 383 N.W.2d 729, 730 (Minn. App. 1986), *review denied* (Minn. May 16, 1986). Reasonable suspicion is determined by viewing the totality of the circumstances under an objective standard. *Paulson v. Comm’r of Pub. Safety*, 384 N.W.2d 244, 246 (Minn. App. 1986).

Zachman argues that Trooper Kotten and Lieutenant Quart lacked the requisite level of suspicion to justify the PBT because they did not believe that he was intoxicated when they administered the test. Zachman maintains that the reasonable-suspicion standard turns on the state of mind of these troopers and requires a subjective belief on their part that Zachman was guilty of DWI. But the Minnesota Supreme Court has rejected this approach, holding that “[a]n individual officer’s subjective state of mind is not the relevant consideration” when examining reasonable suspicion. *State v. Jackson*, 742 N.W.2d 163, 179 (Minn. 2007); *see also Brigham City, Utah v. Stuart*, 547 U.S. 398, 404, 126 S. Ct. 1943, 1948 (2006) (“An action is reasonable under the Fourth Amendment, regardless of the individual officer’s state of mind, as long as the circumstances, viewed *objectively*, justify the action.” (quotation omitted)). An officer’s subjective belief about a driver’s level of intoxication is merely one circumstance among many that we will consider when evaluating the legality of a PBT. *See Sarb v. Comm’r of Pub. Safety*, 362 N.W.2d 405, 406 (Minn. App. 1985) (holding that courts determine probable cause based on all the evidence and “not just the officer’s opinion”).

The circumstances in this case provide an objective basis for suspecting Zachman of DWI. Both Trooper Kotten and Lieutenant Quart detected an odor of alcohol coming from the three motorcyclists, and Lieutenant Quart smelled alcohol coming directly from Zachman. All three motorcyclists admitted to having consumed several alcoholic beverages that day and to having recently left a bar located just a few miles from the accident site. Furthermore, the troopers could discern no reasonable explanation for the motorcycle accident in which Zachman's companion was involved and suspected that alcohol may have been a factor in causing it. Because these circumstances provide a sufficient basis for administering a PBT, the district court did not err by sustaining the revocation of Zachman's driver's license.

**Affirmed.**