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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0728**

Heidi Marie Kempin, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed December 30, 2013
Affirmed
Smith, Judge**

Stearns County District Court
File No. 73-CR-12-9567

Rodd Tschida, Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Jeffrey S. Bilcik, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Kirk, Presiding Judge; Smith, Judge; and Harten,
Judge.*

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

UNPUBLISHED OPINION

SMITH, Judge

We affirm the district court's decision to sustain the revocation of appellant's driver's license under the implied-consent law because there was probable cause to believe that she was driving while impaired.

FACTS

A caller reported a bumper in the middle of County Road 44 in Linden Township on the night of September 13, 2012. In response, at approximately 11:21 p.m., the Stearns County Sheriff's Office dispatched deputies to investigate the possible motor-vehicle accident. In less than 15 minutes, several deputies arrived at the scene and observed a red bumper, with a license plate, in the middle of the road. Following a brief search, a deputy located the corresponding vehicle at the nearby home of its registered owners, appellant Heidi Marie Kempin and her husband.

At the residence, deputies Robert Theisen and Nathan Watson made contact with Kempin's husband, who indicated that Kempin had driven the vehicle home "not too long ago," or approximately one hour prior. The deputies inspected the vehicle and Deputy Theisen felt warm air coming from the front of the vehicle, leading him to "believe the vehicle was recently driven." The deputies questioned Kempin, who admitted driving the vehicle and losing its bumper, allegedly due to striking a raccoon or other animal in the road. Kempin estimated that "she had been home for maybe an hour, hour and a half" and said she planned to retrieve the bumper the following day. The deputies observed

that, during the exchange, Kempin emitted an odor of alcoholic beverage, had “very glossy” eyes and difficulty focusing, swayed, made slow, deliberate movements, gave very short answers, and tried to avoid them. When asked if she had consumed alcohol that night, Kempin said she had not. Kempin submitted to a chemical test that indicated a blood alcohol concentration of 0.16. The deputies arrested Kempin for driving while impaired.

The Commissioner of Public Safety subsequently revoked Kempin’s driver’s license. Kempin petitioned for judicial review and, following a hearing, the district court sustained the revocation.

D E C I S I O N

Under the implied-consent law, the commissioner of public safety shall revoke a person’s driver’s license if a peace officer certifies that (1) there was probable cause to believe the person committed the offense of driving while impaired and (2) the person submitted to a chemical test that indicated an alcohol concentration of 0.08 or more. Minn. Stat. § 169A.52, subd. 4(a) (2012). A person commits the offense of driving while impaired if the person drives while under the influence of alcohol or, absent the affirmative defense of postdriving consumption, has an “alcohol concentration at the time, or as measured within two hours of the time, of driving” of 0.08 or more. Minn. Stat. §§ 169A.20, subd. 1(1), (5), .46, subd. 1 (2012).

Kempin challenges the district court's probable cause determination.¹ Probable cause exists when the officer knows facts and circumstances that warrant a prudent person to believe that an individual committed the offense of driving while impaired. *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011). We evaluate probable cause based on the totality of the circumstances and from the arresting officer's point of view, giving deference to the officer's experience and judgment. *Delong v. Comm'r of Pub. Safety*, 386 N.W.2d 296, 298 (Minn. App. 1986), *review denied* (Minn. June 13, 1986). When the facts are not significantly in dispute, we review the issue of whether an officer had probable cause as a matter of law. *See Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985).

It is undisputed that Kempin drove on the night in question. It is also undisputed that, when questioned at her home, Kempin was under the influence of alcohol and a test indicated an alcohol concentration of 0.16. The only issue is whether there is a sufficient temporal connection between these two facts. *See Eggersgluss v. Comm'r of Pub. Safety*, 393 N.W.2d 183, 185 (Minn. 1986) (“[T]he officer clearly had probable cause to believe that defendant had been driving at the time of the accident, and that defendant was presently under the influence of alcohol. The only issue is whether he had probable cause to believe that defendant was under the influence of alcohol at the time of the accident.”); *Dietrich v. Comm'r of Pub. Safety*, 363 N.W.2d 801, 803 (Minn. App. 1985) (there must

¹ Although Kempin initially raised the affirmative defense of postdriving consumption, the district court concluded that Kempin failed to establish this defense. Kempin explicitly waives this issue on appeal.

be a temporal connection between an individual's unobserved driving and observed intoxication).

Here, the deputies arrived at the scene of the accident less than 15 minutes after being dispatched, and they searched the area only briefly before locating the involved vehicle at Kempin's residence, approximately five minutes down the road. After the deputies located the vehicle, Kempin's husband informed Deputy Theisen "that [Kempin] had that car and that she just got home not too long ago." Deputy Theisen then felt warm air coming from the front of the vehicle. Kempin herself acknowledged driving the vehicle, losing its bumper, and leaving the bumper at the scene. She estimated that "she had been home for maybe an hour, hour and a half." It was clear to the deputies that Kempin was under the influence of alcohol, and a chemical test indicated an alcohol concentration of 0.16—twice the legal threshold for driving while impaired.

At the time of the arrest, the deputies were aware of facts and circumstances that would lead a prudent person to believe that Kempin had driven home while under the influence of alcohol or with an alcohol concentration above the legal threshold. Because the totality of the circumstances establishes probable cause to believe that Kempin committed the offense of driving while impaired, the district court did not err by sustaining the revocation of her driver's license.

Affirmed.