

NOT DESIGNATED FOR PUBLICATION

No. 125,616

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

CITY OF COLBY,  
*Appellee,*

v.

RYAN ARENSDORF,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Thomas District Court; KEVIN BERENS, judge. Opinion filed August 11, 2023.  
Affirmed.

*Michael S. Holland II*, of Holland and Holland, of Russell, for appellant.

*Heather F. Alwin*, city prosecutor, for appellee.

Before ATCHESON, P.J., MALONE and PICKERING, JJ.

PER CURIAM: Defendant Ryan Arensdorf contends the Thomas County District Court erroneously denied his motion to suppress evidence, including a blood test showing him to be over the legal limit, in his appeal of a driving under the influence charge originally filed in Colby Municipal Court. The police officer who arrested Arensdorf had probable cause to do so, rendering the blood test and other evidence properly admissible contrary to Arensdorf's sole contention in this appeal from the district court. We, therefore, affirm the conviction and resulting sentence the district court imposed under the Colby Municipal Code for a second misdemeanor DUI.

## FACTUAL AND PROCEDURAL BACKGROUND

Given the issue on appeal, we draw the facts from the credited testimony of Colby Police Officer Lucas Taylor at the hearing on the motion to suppress. Arensdorf does not dispute that account for purposes of his appeal.

Officer Taylor was on routine patrol in Colby about 2:30 a.m. on June 19, 2021, when he tracked a gray SUV going 36 miles an hour in a 20-mph zone. Officer Taylor engaged the emergency lights on his patrol vehicle and began pursuing the SUV. The driver continued for eight or nine blocks, passing several locations where he easily could have pulled over. The driver turned into the parking lot of an apartment complex and stopped the SUV askew in the entrance.

Officer Taylor approached the SUV to speak with Arensdorf, the driver and sole occupant of the vehicle. Officer Taylor immediately noted the smell of an alcoholic beverage about Arensdorf and the SUV's interior. Arensdorf's speech was mumbled and slurred. His eyes were bloodshot and watery. He had some difficulty calling up his insurance information on his smartphone. Although Officer Taylor had observed no driving errors other than the excessive speed, his training and experience caused him to suspect Arensdorf might be under the influence of alcohol. Officer Taylor treated the traffic stop as a possible DUI.

Arensdorf told Officer Taylor that he had various physical maladies that interfered with his ability to walk, so he declined to perform any standard field sobriety tests. Officer Taylor then asked Arensdorf to recite a portion of the alphabet; he declined to do that, too. Arensdorf satisfactorily performed a finger dexterity test. But he did not correctly count down numbers in conformity with instructions Officer Taylor had given him. Those nonstandard tests tend to measure mental acuity and the ability to remember and follow instructions—skills that may be impaired by alcohol consumption.

Arendsdorf told Officer Taylor he would like to park his vehicle and walk to his home—a location Officer Taylor knew to be about five blocks away. Officer Taylor considered the request to be incongruent with Arendsdorf's assertion he had impairments affecting his walking. Officer Taylor asked Arendsdorf to get out of the SUV and described him as unsteady in doing so. Based on those circumstances, Officer Taylor arrested Arendsdorf for DUI and transported him to the police station for booking and a blood-alcohol breath test. But Officer Taylor did not offer Arendsdorf a preliminary breath test before arresting him.

At the station, Arendsdorf refused to take the breath test. Officer Taylor applied for and received a search warrant to obtain a blood draw from Arendsdorf. The blood test showed Arendsdorf to be over the blood-alcohol level for driving under the influence.

Arendsdorf was charged and convicted of DUI in Colby Municipal Court. He appealed the conviction to the district court. In the district court, Arendsdorf filed a motion to suppress the results of the blood draw and other evidence on the grounds Officer Taylor lacked both reasonable suspicion to stop the SUV and probable cause to then arrest him, so all of the evidence would have been obtained in violation of the Fourth Amendment to the United States Constitution. The district court held an evidentiary hearing on the motion to suppress at which Officer Taylor was the only witness. The district court issued a written ruling denying the motion. The district court later convicted Arendsdorf in a trial based on stipulated facts and duly sentenced him. Arendsdorf has appealed.

#### ANALYSIS

On appeal, Arendsdorf argues only that the district court erred in denying his motion to suppress, and he has narrowed that challenge to the finding Officer Taylor had probable cause to arrest him for DUI. He no longer disputes the legal sufficiency of the

initial traffic stop. We need not launch an exegesis on Fourth Amendment law and when evidence may be suppressed for a violation of a person's constitutional protections against unreasonable searches or seizures. In short, if Officer Taylor had probable cause to arrest Arensdorf for DUI, then the district court properly relied on the results of the blood draw and the other evidence in finding him guilty. See K.S.A. 8-1001(b)(1); *Birchfield v. North Dakota*, 579 U.S. 438, 474-75, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016) (recognizing blood draw test constitutionally permissible if conducted with a warrant following lawful arrest). And we must, in turn, affirm the conviction.

In opposing the motion to suppress, the prosecution had to prove the lawfulness of Arensdorf's arrest—the existence of probable cause—by a preponderance of the evidence. *State v. Patterson*, 304 Kan. 272, 274, 371 P.3d 893 (2016). Arensdorf has not separately challenged the sufficiency of the application for the search warrant for the blood draw, the warrant itself, or the execution of the warrant.

In reviewing a district court's factual findings and legal conclusions made in deciding a motion to suppress, we apply a well-known bifurcated standard. We ask whether substantial competent evidence supports the factual findings, giving due deference to the district court's reconciliation of conflicting evidence and its related credibility determinations. We then consider whether those findings support the ultimate legal conclusion, a call we make without deferring to the district court's ruling. *Patterson*, 304 Kan. at 274; *State v. Woolverton*, 284 Kan. 59, 70, 159 P.3d 985 (2007). Where, as here, the facts are undisputed, what remains for us functionally becomes a question of law. *Patterson*, 304 Kan. at 274.

Probable cause is a somewhat elastic measure of proof requiring sufficient evidence to cause a person of reasonable prudence to believe a crime has been committed and the defendant committed it. *State v. Keenan*, 304 Kan. 986, 994, 377 P.3d 439 (2016); *State v. Ingram*, 279 Kan. 745, Syl. ¶ 6, 113 P.3d 228 (2005). Probable cause establishes

something to be more than a reasonable suspicion but not so much as more probably true than not true.

Having surveyed the legal landscape, we turn to the relevant facts. Arensdorf displayed numerous indicators of intoxication. First, he failed to respond promptly to the emergency lights on Officer Taylor's patrol car, and when he did, he parked his SUV oddly, impeding access to an apartment complex. Those circumstances suggest inattention and, in turn, possible impairment. See *State v. Hazen*, 176 Kan. 594, 595, 272 P.2d 1117 (1954); *Hoover v. Kansas Dept. of Revenue*, No. 96,490, 2007 WL 2992427, at \*2 (Kan. App. 2007) (unpublished opinion) (citing *Hazen*). Arensdorf smelled of alcohol, slurred his words, had bloodshot eyes, and was unsteady on his feet—all indicators of intoxication to an experienced law enforcement officer. He had difficulty retrieving his insurance information from his smartphone and incorrectly performed one nonstandard field sobriety test, while adequately performing a second. That constellation of evidence comports with probable cause to believe a driver is under the influence. See *State v. Huston*, No. 121,232, 2020 WL 4249411, at \*2, 4 (Kan. App. 2020) (unpublished opinion); *Homeier v. Kansas Dept. of Revenue*, No. 117,611, 2018 WL 2073518, at \*4 (Kan. App. 2018) (unpublished opinion); *State v. Ross*, No. 113,081, 2016 WL 3856847, at \*7-8 (Kan. App. 2016) (unpublished opinion). In *Ross*, the driver admitted having drunk an undetermined amount of alcohol at an undetermined time before the law enforcement encounter. That sort of vague admission doesn't add much to an officer's observation that a driver smells of an alcoholic beverage.

Here, though, there is still more inculpatory evidence of intoxication. Arensdorf told Officer Taylor he could not do field sobriety tests because he had chronic difficulties walking but later offered to walk home if he could leave his SUV in the apartment complex parking lot—presumably avoiding arrest. Officer Taylor recognized the contradiction in Arensdorf's statements. In combination, they foster a reasonable inference Arensdorf actually sought to avoid the field sobriety tests because he had been

drinking and he believed he would perform poorly on them for that reason. See *State v. Rubick*, 16 Kan. App. 2d 585, 587-88, 827 P.2d 771 (1992); *State v. Garcia-Oregel*, No. 125,536, 2023 WL 3910587, at \*6-7 (Kan. App. 2023) (unpublished opinion); *Landram v. Kansas Dept. of Revenue*, No. 104,790, 2012 WL 924803, at \*3 (Kan. App. 2012) (unpublished opinion); 2012 WL 924803, at \*7-8 (Atcheson, J., dissenting). Arensdorf's refusal to attempt the alphabet test prompts the same inculpatory inference. Although Arensdorf did the finger dexterity test properly, he botched the number counting exercise. So his performance of the tests he chose to perform was, at best, mixed.

Arensdorf has tried to make much of Officer Taylor's failure to offer him a preliminary breath test—considerably too much in our view. Law enforcement officers are not required to provide preliminary breath tests before making arrests for driving under the influence. The tests do generate quantified evidence of legal intoxication and, therefore, can be a useful investigatory tool. But a failed test obviously is not a necessary condition for an arrest. And Arensdorf did not volunteer to take a preliminary breath test to exculpate himself.

On this point, Arensdorf relies heavily on *Casper v. Kansas Dept. of Revenue*, 309 Kan. 1211, 442 P.3d 1038 (2019), in which the Kansas Supreme Court affirmed the district court's decision that a Wichita police officer lacked probable cause to arrest Kelly Casper for DUI. But the reliance is misplaced. The officer did not offer Casper a preliminary breath test, so there were no inculpatory results to bolster his decision to arrest her. Conversely, there were no exculpatory results, either. The court essentially treated the absence of a preliminary breath test as an evidentiary cipher.

Otherwise, the officer testified he relied on "some odor" of alcohol about Casper's person—a conclusion Casper disputed in her testimony. The officer also relied on what he characterized as her inadequate performance on two standard field sobriety tests. Based on the officer's video recording of the stop, the court suggested that "on the

whole," Casper "performed well on the tests," although she did not strictly follow some of the instruction, many of which were delivered hastily. 309 Kan. at 1221. That assessment squared with the district court's factual finding, as well. Casper did not display common characteristics of intoxication, such as slurred speech, watery or bloodshot eyes, unsteady balance generally, or an impaired ability to comply with simple commands like producing a driver's license or proof of insurance. Similarly, she quickly and precisely pulled over in response to the officer's emergency lights, using her turn signal and stopping on a side street. 309 Kan. at 1212.

We choose not to belabor this opinion with another recitation of Arensdorf's actions and comportment leading up to and during the traffic stop. Both the counterpoint to *Casper* and the resulting legal conclusion are obvious. There was substantial evidence indicating Arensdorf likely was intoxicated—certainly enough to cross the probable cause threshold. There wasn't as to Casper. The common fact that neither was offered a preliminary breath test doesn't make their respective situations legally analogous. Nor does it in any meaningful way suggest the outcome in *Casper* should govern here.

In sum, the district court correctly denied Arensdorf's motion to suppress. Accordingly, the evidence against Arensdorf was properly admitted and used to convict him of DUI in violation of the Colby Municipal Code.

Affirmed.