

MINNESOTA JUDICIAL TRAINING UPDATE

“REASONABLE SUSPICION” After State v. Lorsung: What Every Judge and DWI Practitioner Needs to Know

QUESTION: If a driver admits to drinking three beers earlier in the evening, but shows no signs of impairment, speaks clearly, balances normally, passes the HGN test, and even the officer believes the driver is NOT impaired — Does the officer still have “Reasonable Suspicion”?



ANSWER: Prior to the Minnesota Supreme Court’s decision in *State v. Lorsung*, A24-0540 (Feb. 4, 2026), most judges and attorneys would have answered that question “NO - the officer does not have a reasonable suspicion”. However, the Court has now made clear that the absence of traditional indicia of impairment — and even the successful performance of a field sobriety test — does not automatically dispel reasonable suspicion.

Under *Lorsung*, those factors may weaken suspicion, but they do not eliminate it. If the remaining facts, viewed under the totality of the circumstances, still support a reasonable inference of impairment, an officer may request a PBT.

In other words, the Court has now clarified that reasonable suspicion does not require observable impairment, nor is it defeated by the lack of physical cues. In short, the absence of observable impairment and passing roadside tests may diminish reasonable suspicion — but they do not dispel it.

To understand how the Court reached that conclusion, it is necessary to examine the specific facts known to the officer at the moment the PBT was requested and the legal framework the Court applied in analyzing those facts.

State v. Lorsung, A24-0540, (Minn. Feb. 4, 2026)

FACTS

1. In *State v. Lorsung*, the defendant was involved in a minor late-night parking lot collision shortly after bar closing time. The officer responded to a report that the defendant had slowly backed her vehicle into a pedestrian.
2. During the investigation, the defendant admitted that she had consumed three beers earlier in the evening. At the same time, the officer observed no classic signs of impairment: no odor of alcohol was noted, her speech was clear, her balance appeared

normal, and she did not display bloodshot or watery eyes. The defendant also performed the Horizontal Gaze Nystagmus (HGN) test with zero clues. The officer's opinion was that the driver was not impaired.

3. Despite the absence of traditional indicia of impairment, the satisfactory HGN performance and the officer's belief that the driver was not impaired, the officer still requested that the defendant submit to a preliminary breath test (PBT) fully expecting she would pass. The result of the PBT was a surprising .14 and the defendant ultimately provided a breath sample that indicated alcohol above the legal limit.
4. The district court sustained the license revocation. The court of appeals reversed, concluding that reasonable suspicion had been dispelled. The Minnesota Supreme Court granted review.

Note: Procedural Posture of the Case: State v. Lorsung arose out of a civil implied-consent license revocation proceeding, not a direct appeal from a criminal DWI conviction. However, as is common in Minnesota practice, the implied consent proceedings can run parallel to — and often precede resolution of — the criminal DWI charges. While the case originated as a civil license revocation challenge, the Court's articulation of the reasonable-suspicion standard will directly shape suppression arguments in criminal DWI cases statewide.

ISSUE

Whether an officer has reasonable suspicion to request a PBT when a driver admits consuming alcohol but exhibits no observable signs of impairment and performs satisfactorily on an HGN test.

THREE GENERAL RULES THAT APPLY

1. Under Minn. Stat. § 169A.41, an officer may require a PBT if the officer has reason to believe the person was driving while impaired.

2. The Court interpreted this statutory standard consistently with Fourth Amendment principles governing investigative detentions. Reasonable suspicion exists when, under the totality of the circumstances, specific and articulable facts support a reasonable inference of criminal activity.
3. Importantly, the Court emphasized that reasonable suspicion is a low constitutional threshold. Suspicion is not eliminated merely because certain factors weigh against impairment. Rather, suspicion is dispelled only if the known facts “conclusively negate” the possibility of impairment.

ANALYSIS

1. The Court examined the facts known to the officer “at the moment” the PBT was requested. Those facts included:
 - The defendant’s admission to drinking three beers.
 - The late-night, bar-closing context.
 - The defendant’s involvement in a vehicle–pedestrian collision (albeit minor).
2. The Court acknowledged that the absence of physical signs of impairment and the satisfactory HGN result were relevant considerations. However, it rejected the conclusion that these factors automatically dispelled reasonable suspicion.
3. Instead, the Court reasoned that while such evidence may diminish suspicion, it does not necessarily eliminate it. Under the totality of the circumstances, the admission of alcohol consumption combined with the driving conduct and contextual factors provided a sufficient basis to justify the PBT request.
4. The Court declined to treat the absence of traditional impairment indicators as dispositive and reaffirmed that the reasonable suspicion inquiry does not require officers to rule out innocent explanations before proceeding with a limited investigative step.

CONCLUSION

The Minnesota Supreme Court reversed the court of appeals and held that the officer had reasonable suspicion to request the PBT. The Court clarified that the absence of physical indicia of impairment and satisfactory roadside performance do not automatically negate reasonable suspicion. Unless the facts “conclusively negate” (eliminate) the possibility of impairment, reasonable suspicion may still exist under the totality of the circumstances.

The Court’s requirement that evidence “conclusively negate” reasonable suspicion establishes a standard that will be exceptionally difficult to satisfy in practice.

SIX (6) KEY TAKE AWAYS

1. **Reasonable suspicion remains a low constitutional threshold.** The Court reaffirmed that officers need not observe classic signs of impairment before taking limited investigative steps. The standard was low before – now it is even lower.
2. **Absence of impairment cues is not dispositive.** The lack of odor, slurred speech, balance issues, or bloodshot eyes may weaken suspicion, but does not automatically eliminate it.
3. **A passed HGN test does not dispel reasonable suspicion.** Satisfactory roadside performance is a factor to consider, but it is not determinative.
4. **Admissions matter.** A driver’s acknowledgment of alcohol consumption will almost always carry significant weight in the totality-of-the-circumstances analysis.
5. **Suspicion is dispelled only when “conclusively negated”.** Unless the known facts eliminate the reasonable possibility of impairment, an officer may still possess reasonable suspicion. That is a nearly impossible hurdle for the defense to establish.
6. **The inquiry focuses on the moment of the investigative stop.** Courts must evaluate what the officer knew at the precise time the PBT was requested.

LONG TERM IMPLICATIONS FOR DWI PRACTITIONERS

Having clarified the Court's holding, the more difficult question is what this decision will mean for DWI litigation moving forward.

- *Lorsung* raises practical considerations for how defense attorneys advise clients about roadside encounters. The decision makes clear that satisfactory field sobriety performance and the absence of traditional impairment cues do not, alone, dispel reasonable suspicion. At most, they may weaken it.
- In addition, information volunteered during a stop — particularly admissions of alcohol consumption — is a critically important factor in the reasonable-suspicion and probable-cause analysis. And although field sobriety tests and preliminary breath tests (PBT) remain voluntary at the roadside stage, cooperation will almost always generate additional evidence rather than eliminate suspicion.
- While declining to answer questions or refusing voluntary tests does not guarantee that an investigation will end, the constitutional right to remain silent remains a significant protection.
- Following *Lorsung*, **Cooperation creates evidence: Silence preserves defenses.**

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Special thanks to Martine Law attorney Lizzy Cavanaugh for generously contributing her insight and expertise to this update. (Lizzy helped the Rogosheske Law Firm defense team on this appeal.)

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