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STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0433

Wade Justin Hoffman, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed November 2, 2020
Affirmed
Connolly, Judge

Wright County District Court
File No. 86-CV-19-6255

Rodd A. Tschida, Minneapolis, Minnesota (for appellant)

Keith Ellison, Attorney General, William J. Young, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Segal, Chief Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant challenges the denial of his petition to rescind the cancellation of his driver's license, arguing that the district court erred by considering respondent's exhibits

filed prior to the hearing and by failing to apply the correct burden of proof. He also challenges the decision to cancel his license, arguing that no evidence showed that appellant violated the abstinence provision on his license so the cancellation was arbitrary and capricious. Because there was no error in the district court's application of the law and we defer to its ability to weigh the evidence, we affirm.

FACTS

In September 2015, appellant Wade Justin Hoffman signed a "Last Use Statement" acknowledging that: (1) he stopped using alcohol on July 11, 2015; (2) he was not allowed to operate a motor vehicle until he was informed that his driving privilege was reinstated; (3) his license would "contain a restriction that [he] may not consume any drink or product containing alcohol or controlled substances at any time"; (4) he was not allowed to consume any drink or product containing alcohol "even when not operating or in physical control of a motor vehicle"; and (5) respondent the Commissioner of Public Safety would "cancel and deny [appellant's] privilege to drive if there [was] sufficient cause to believe that, after the abstinence date . . . attested to above [i.e., July 11, 2015, appellant had] consumed any drink or product containing alcohol or controlled substances."

On June 22, 2019, shortly after 2:00 a.m., a police officer was driving on patrol. He saw appellant sitting outside a bar holding a plastic cup that he threw into the travel lane of the road as the officer passed. The officer wrote a report of his subsequent encounter with appellant.

In his report, the officer stated that he parked in front of the bar, appellant entered the bar; he followed appellant into the bar, asked appellant to come outside, and told

appellant that he had been stopped for littering and having intoxicating liquor on a public sidewalk. The officer asked for appellant's ID, and appellant said he did not have an ID. The officer asked for appellant's name and appellant "was not forthcoming." Appellant said he had never had a state ID, then gave his first name as Wade, his last name as Hoffman, a date of birth, and an address. He would not give his middle name. When the officer had dispatch run the name, a Wade Hoffman was listed with a different address. The officer, "[b]ased on [appellant's] unwillingness to provide his name and stating that he had never had contact with the police or a state ID, . . . suspected that he was possibly not being truthful." As the officer spoke with appellant, he "observed [appellant] was slurring his speech and had difficulty holding a conversation. [Appellant] appeared to be under the influence of alcohol." The officer noticed that appellant's license "would invalidate with any use of drugs or alcohol" and "believed this was why [appellant] was not forthcoming with his name." The officer told appellant he "would issue a verbal warning for the littering and alcohol in public." The officer's report concluded with a "Disposition," which stated that appellant was "warned for open bottle on public street and littering on a public roadway" and concluded with the directive to "[f]orward this report to [the] appropriate place for review of license violations and alcohol use."

In November 2019, appellant was sent a notice that, as of October 31, 2019, his license had been cancelled as inimical to public safety and that the requirements for reinstatement were enrolling in an ignition interlock device program and completing an alcohol/drug rehabilitation program. Appellant petitioned under Minn. Stat. § 171.19 (2018) for judicial review of the cancellation. Respondent replied to the petition by filing

an affidavit with four documents: copies of appellant's driving record, his last use statement, his notice of cancellation, and the officer's report of the June 2019 incident.

At the hearing, both parties were represented by counsel.[1] The officer did not appear, and appellant objected to the admission of the officer's report as hearsay and as a violation of the confrontation clause. He did not object to the admission of the other documents. Appellant testified that he had not used alcohol in June 2019 and was then on medication, which caused the behavior that the officer observed. The district court found that: (1) no evidence other than appellant's testimony indicated his medication caused slurred speech and difficulty in conversing; (2) the officer's observations gave respondent sufficient cause to believe appellant had consumed alcohol, and (3) appellant had not met his burden of showing that respondent acted unreasonably. Appellant's motion to rescind the cancellation was denied.

Appellant challenges the denial, arguing that the district court abused its discretion in admitting and considering the officer's report and erred in concluding that appellant had the burden of proof; he also challenges the cancellation of his license, arguing that the commissioner's decision to cancel was arbitrary and capricious.[2]

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[1] Appellant is represented by different counsel on appeal.

[2] Appellant did not raise either the district court's alleged abuse of discretion in considering the officer's report or the commissioner's allegedly arbitrary and capricious decision to cancel appellant's license to the district court, so they are arguably not before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). In the interest of completeness, we nevertheless address them.

D E C I S I O N

Standard of Review

In reviewing an appeal brought under Minn. Stat. § 171.19, this court "review[s] de novo the district court's application of the law and defer[s] to the district court's credibility determinations and ability to weigh the evidence." *Constans v. Comm'r of Pub. Safety*, 835 N.W.2d 518, 523 (Minn. App. 2013) (citations omitted).

1. Admissibility of the Officer's Report

Minn. Stat. § 171.19 provides that, at a hearing on license reinstatement,

> [t]he commissioner may appear in person, or by agents or representatives, and may present evidence upon the hearing by affidavit personally, by agents, or by representatives. The petitioner may present evidence by affidavit, except that the petitioner must be present in person at such hearing for the purpose of cross-examination.

Respondent's attorney said, "[T]he statute under which [appellant's p]etition has been filed, [Minn. Stat. §] 171.19, specifically states that [respondent] may present evidence upon affidavit . . . and that is what we have done. We filed an affidavit with our exhibits [including Officer F.'s report] attached . . . . [T]hey are part of the record, they are a part of [respondent's] evidence in this case."

The district court agreed in its memorandum, noting that "[t]he Commissioner may present copies of departmental records if they are certified as true copies. Minn. Stat. § 171.21. Police reports are admissible, unless a lack of trustworthiness is indicated. *Gardner v. Comm'r of Pub. Safety*, 423 N.W.2d 110, 114 (Minn. App. 1988)."

The copies of the departmental records are stamped "Certified Copy Same As Original." No lack of trustworthiness in Officer F.'s report has been alleged or indicated.

Moreover, Minn. R. Evid. 803(8) includes among the exceptions to the hearsay exclusion, even when the declarant is available to testify:

> records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth . . . (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases and petty misdemeanors matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings except petty misdemeanors and against the State in criminal cases and petty misdemeanors, factual findings resulting from an investigation made pursuant to authority granted by law.

Thus, because this was a civil implied-consent hearing, the officer's report was not hearsay and was admissible under the rules of evidence.

The district court did not abuse its discretion in considering Officer F.'s report, which respondent had provided prior to the hearing.

2. Burden of Proof

Appellant argues that the district court erred in crediting Officer F.'s report over appellant's testimony because his testimony was "new evidence" and therefore the district court should not have deferred to respondent's decision, which was based on earlier evidence. For this argument, appellant relies on *Madison v. Comm'r of Pub. Safety*, 585 N.W.2d 77, 83 (Minn. App. 1998) (concluding that "[a]n appeal to the district court for license reinstatement pursuant to Minn. Stat. § 171.19 must be tried de novo"), *review denied* (Minn. Dec. 15, 1998).

But *Madison* is distinguishable: in that case, the district court relied on a police sergeant's letter saying that the defendant admitted to drinking alcohol rather than on testimony from the defendant's physician that the defendant had suffered a diabetic reaction that could have caused him to confuse "beer" and "root beer." *Madison*, 585 N.W.2d at 81-82. Moreover, the district court failed to make any finding as to whether the defendant had or had not consumed alcohol, and it concluded that the police sergeant's letter gave the commissioner sufficient cause to revoke the license. *Id.* at 83. This court reversed and remanded because the district court had not said whether the witnesses' testimony offered at the hearing was credible or whether the district court's decision to uphold the commissioner was based on testimony or on other evidence. *Id.*; *see also Gardner*, 423 N.W.2d at 112 (reversing and remanding because the district court had erroneously believed it could not consider the evidence and testimony presented at the hearing).

Here, the district court reiterated the contents of the officer's report and noted that (1) "given the totality of circumstances" appellant appeared under the influence of alcohol; (2) with the exception of appellant's testimony, no evidence indicated that his medication caused slurred speech or difficulty holding conversation; and (3) appellant failed to explain his evasive actions. Moreover, *Madison* explicitly stated that its decision "d[id] not affect the driver's burden of proving entitlement to license reinstatement under Minn. Stat. § 171.19." 585 N.W.2d at 82; *see also Plaster v. Comm'r of Pub. Safety,* 490 N.W.2d 904, 906 (Minn. App. 1992) (stating that a petitioner under Minn. Stat. § 171.19 must show that

the commissioner acted unreasonably in cancelling his license). The district court correctly noted that appellant had not met that burden.

3. The Commissioner's Decision

Appellant argues that the commissioner's decision was reversible as arbitrary and capricious because the commissioner had no evidence that the prohibition against consuming alcohol was on appellant's license when appellant consumed alcohol in 2019. But appellant agreed in his 2015 last-use statement not to consume alcohol while a restriction was placed on his license, and he agreed at the 2019 hearing that he may not consume alcohol and retain his driving privilege.

No evidence was presented that the restriction had been removed from appellant's license before he consumed alcohol in 2019; his driving record clearly shows that the restriction was imposed in 2015 and does not show that it was ever removed. Nor does appellant provide any support for his view that the restriction must appear on a license to be enforceable.

Affirmed.