STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0255

Jason Robert Albertson, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed November 19, 2012
Affirmed
Stauber, Judge

Anoka County District Court
File No. 02CV115244

Amber S. Thompson, Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Sara P. Boeshans, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Hudson, Presiding Judge; Stauber, Judge; and Chutich, Judge.

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

STAUBER, Judge

Appellant challenges the district court's order sustaining the cancellation of his driver's license under Minn. Stat. § 171.19 (2010), following a violation of a no-alcohol-use condition on his license, arguing that the evidence of the violation was obtained by

way of an illegal warrantless entry of his residence. Because the exclusionary rule does not apply to proceedings under section 171.19, we affirm.

FACTS

At approximately 9:00 p.m. on May 2, 2011, Officer William G. Jacobson of the Centennial Lakes Police Department observed a vehicle swerve around another vehicle, nearly causing an accident. Officer Jacobson believed that the vehicle was speeding, but he did not confirm this suspicion with his radar. The officer activated the squad car's emergency lights and attempted to conduct a traffic stop of the vehicle for speeding and failure to yield. By the time Officer Jacobson made a U-turn in the squad car and caught up to the vehicle, the vehicle had pulled into a driveway.

Officer Jacobson pulled into the driveway behind the vehicle as a garage door was closing. The officer observed a child exit the vehicle from the passenger seat before the door closed completely. The child saw the officer, said "Sorry, he was mad at me," and entered the residence. Officer Jacobson requested back-up officers at this time.

Officer Jacobson went to the front door of the residence and knocked, attempting to gain entry. The same child he had seen in the garage answered the door and told the officer that he would go and get his father. Nobody returned to the door for five minutes. After additional officers arrived, the police entered the residence and confronted appellant Jason Robert Albertson in a downstairs hallway. The officers did not have a warrant, consent, or permission to enter the home, and no exigent circumstances existed.

At the time of the entry, appellant was suspected of committing two petty misdemeanor driving offenses. After seizing appellant, Officer Jacobson detected the

odor of alcohol on appellant's person. Appellant admitted to drinking alcohol and performed field sobriety tests. Based on appellant's performance on the field sobriety tests, officers administered a preliminary breath test (PBT), which returned a result of 0.031. After administering the PBT, Officer Jacobson learned that appellant's driver's license had a no-alcohol-use restriction.

The matter was referred to the Commissioner of Public Safety, who cancelled appellant's driver's license for noncompliance with the no-alcohol-use condition. Appellant petitioned for judicial review of his license cancellation pursuant to Minn. Stat. § 171.19. At the hearing, the sole issue presented was whether the exclusionary rule applies to an administrative proceeding under the section. The district court found that, pursuant to *Ascher v. Comm'r of Pub. Safety*, 527 N.W.2d 122 (Minn. App. 1995) (*Ascher II*), *review denied* (Minn. Mar. 21, 1995), the exclusionary rule did not apply and sustained the cancellation of appellant's license. This appeal follows.

D E C I S I O N

"[T]here is a presumption of regularity and correctness when license matters are reviewed" by this court. *Thorson v. Comm'r of Pub. Safety*, 519 N.W.2d 490, 493 (Minn. App. 1994). "This court will not reverse a license determination unless it finds that it is unsupported by substantial evidence or is arbitrary and capricious." *Id.* Here, appellant's argument raises a question of law; to wit, the application of the exclusionary rule to proceedings under Minn. Stat. § 171.19. Questions of constitutional interpretation are reviewed de novo. *Fedziuk v. Comm'r of Pub. Safety*, 696 N.W.2d 340, 344 (Minn. 2005).

In *Ascher v. Comm'r of Pub. Safety*, 505 N.W.2d 362 (Minn. App. 1993), *aff'd*, 519 N.W.2d 183 (Minn. 1994) (*Ascher I*), a licensee with a no-alcohol-use condition sought judicial review of an implied-consent revocation on contending that a sobriety check was unconstitutional. This court determined that a sobriety checkpoint that gave rise to his test refusal was unconstitutional and rescinded the revocation of his driver's license, and the supreme court affirmed. *Ascher I*, 505 N.W.2d at 370. Following the decision in *Ascher I*, the licensee sought reinstatement of his driver's license. *Ascher II*, 527 N.W.2d at 124. The commissioner upheld the cancellation and denial of reinstatement on the grounds that granting reinstatement was "inimical to public safety." *Id.* On review, the district court rescinded the cancellation on the grounds that the evidence obtained from an unconstitutional checkpoint should be excluded. *Id.*

On appeal, we held that the potential for future unlawful police conduct in establishing illegal check points was adequately deterred by application of the exclusionary rule to DWI and implied-consent proceedings. *Id.* at 126. But we also concluded that application of the exclusionary rule to a proceeding under section 171.19 would not deter future unlawful police conduct to any significant degree. *Id.* Consequently, we held that the exclusionary rule did not apply to administrative proceedings under section 171.19, and the supreme court denied review. *Id.*

Appellant argues that *Ascher II* was improperly decided because the opinion equates a person with a no-alcohol-use condition with a probationer. While appellant states that he is not requesting this court overrule *Ascher II*, his argument requires us to take that exact action. Our holding in *Ascher II* specifically states that a driver's license

with a no-alcohol-use condition "may be cancelled and denied on the grounds that the licensee is inimical to public safety even if the evidence of alcohol consumption would not be admissible in an implied consent proceeding." *Id.* at 123-24.

Here, the undisputed evidence establishes that (1) appellant's driver's license contained a no-alcohol-use condition; (2) appellant violated that condition; and (3) law enforcement learned of the violation by way of an unconstitutional search. To be sure, the officer's warrantless entry into appellant's residence is deeply troubling, and we cannot condone such unconstitutional and wrongful conduct, particularly the entry into the sanctity of one's home. The evidence gained would surely be inadmissible in a criminal or implied-consent proceeding. But under the precedent established in *Ascher II* and its progeny, the exclusionary rule does not apply in cancellation proceedings under Minn. Stat. § 171.19, and we are unwilling to depart from our established precedent to address such unique circumstances. The district court correctly determined that the exclusionary rule did not apply, and the evidence was therefore admissible.

Affirmed.