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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0294**

Steven Scott Manley, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed September 24, 2012
Affirmed
Huspeni, Judge***

Hennepin County District Court
File No. 27CV119845

Steven Scott Manley, Minneapolis, Minnesota (pro se appellant)

Lori A. Swanson, Attorney General, Stephen D. Melchionne, Joan M. Eichhorst,
Assistant Attorneys General, St. Paul, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Chief Judge; and
Huspeni, Judge.

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

UNPUBLISHED OPINION

HUSPENI, Judge

Pro se appellant challenges the district court's decision sustaining the revocation of his driver's license under the implied-consent law. Appellant's arguments are based on facts not in the record and on issues that were not preserved for appeal. Consequently, we affirm.

FACTS

On the evening of April 4, 2011, Officer Gregory Lease of the St. Louis Park police department was on duty when he observed a vehicle without working tail lights and followed it in his squad car. Appellant Steven Manley was driving the vehicle.

As Officer Lease followed appellant's vehicle, he observed it veer to the right on two occasions, with its right tires crossing the lane divider of the four-lane highway. Officer Lease then initiated a traffic stop.

When Officer Lease approached appellant's vehicle, he detected a strong odor of alcohol emanating from appellant and the inside of the vehicle, and observed that appellant's eyes were bloodshot, glassy, and watery. Appellant's speech was slurred and appellant was "mush-mouthed" and mumbling. When asked, appellant admitted to having consumed alcohol.

Officer Lease had appellant perform a series of field sobriety tests, which appellant failed. Officer Lease did not have appellant perform a balance test because appellant stated that he had suffered a traumatic brain injury and that the injury affected his balance. Appellant did not claim that the injury would have affected his ability to

perform any of the other field sobriety tests. He submitted to a preliminary breath test, which indicated an alcohol concentration of .156. Officer Lease arrested appellant for driving while impaired.

The record is silent regarding what happened following the arrest. There is no indication as to criminal charges, if any, brought against appellant, or as to the disposition of any criminal proceeding. A permissible inference can be drawn that appellant was charged with driving while impaired and that his driver's license was revoked by the Commissioner of Public Safety.

Appellant, through his former attorney, filed a boiler plate implied-consent petition. The petition alleged no facts. The matter came on for an implied-consent hearing at which appellant was not personally present; he appeared through his former attorney. Appellant's former attorney stated that the sole issue for the hearing was "[p]robable cause." In the memorandum that appellant's former attorney submitted following the hearing, however, she argued (1) that the arresting officer did not have a reasonable, articulable suspicion to request a preliminary breath test, and (2) that the arresting officer did not have probable cause to invoke the implied-consent advisory.

The district court sustained the revocation of appellant's driver's license, holding that the initial traffic stop was lawful, that the arresting officer had a reasonable, articulable suspicion to expand the scope of the traffic stop to investigate whether appellant was impaired, and that the preliminary breath test reading gave the officer probable cause to arrest appellant on suspicion of driving while impaired.

DECISION

Appellant's one-page brief appears to advance three grounds for reversal and appears to argue that (1) the behaviors on which the officer based his opinion that appellant was under the influence of alcohol were actually symptoms of appellant's traumatic brain injury, (2) appellant passed the field sobriety tests, and (3) appellant's pre-testing right to counsel was violated because appellant was only permitted seven minutes to attempt to contact an attorney.

This court does not consider matters not argued to and considered by the district court. "An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below." *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). This limitation applies to implied-consent proceedings. *Berge v. Comm'r of Pub. Safety*, 588 N.W.2d 177, 179 (Minn. App. 1999). Appellant's former attorney narrowed the issues before the district court to "[p]robable cause." As a consequence, appellant failed to preserve any of the issues argued in his brief.

The only issues preserved for appeal were articulable suspicion to initiate the traffic stop and probable cause to arrest, but appellant has not raised these issues in his brief. This court does not consider issues not raised or argued in an appellant's principal brief. *Fontaine v. Steen*, 759 N.W.2d 672, 679 (Minn. App. 2009). Therefore, appellant has waived review of these two issues. Appeals based on "mere assertion and not supported by any argument or authorities" are waived "unless prejudicial error is obvious on mere inspection." *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App.

1997) (quoting *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971)).

Appellant has cited no authority that would address any of the facts in the record.² Nor does the record contain any facts that would support the allegations made in appellant's brief. The only evidence with respect to the symptoms of appellant's traumatic brain injury is that the injury affected his balance. The only evidence with respect to appellant's performance during the field sobriety tests is that appellant failed them. No evidence was presented below as to whether appellant was read the implied-consent advisory, was permitted to vindicate his right to consult with an attorney, or was even asked to take an Intoxilyzer, blood, or urine test.

A mere inspection of the record does not present any obviously prejudicial errors. Even if this court were to disregard all restrictions on its scope of review and address on their merits the issues of articulable suspicion to stop appellant's car and probable cause to arrest him, we would affirm the revocation of his driver's license. The missing tail light and weaving of the car provide ample support for the stop. The indicia of consumption of alcohol provide ample support for the officer's further actions.

Affirmed.

² Appellant's brief cites Minn. Stat. § 169A.53, subd. 3(c) (2010), which provides that "[i]t is an affirmative defense for the petitioner to prove that, at the time of the refusal, the petitioner's refusal to permit the test was based upon reasonable grounds." However, nothing in the record indicated that appellant was asked to permit an Intoxilyzer, blood, or urine test. The only chemical test mentioned in the record was the preliminary breath test, which appellant did not refuse.