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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0222

Daniel Gerard Poncelet, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed July 29, 2013
Affirmed
Toussaint, Judge[*]

Goodhue County District Court
File No. 25-CV-12-1351

Jeffrey Stephen Sheridan, Eagan, Minnesota (for appellant)

Lori Swanson, Attorney General, Natasha Malea Karn, James Eric Haase, Assistant Attorneys General, St. Paul, Minnesota (for respondent)

Considered and decided by Smith, Presiding Judge; Chutich, Judge; and Toussaint, Judge.

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

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

TOUSSAINT, Judge

In this implied-consent appeal, appellant Daniel Poncelet argues that (1) his refusal to submit to chemical testing was reasonable and his due process rights were violated because the deputy misstated the law and actively misled him when reading the implied-consent advisory; and (2) his due process rights were violated because the deputy gave him a Notice and Order of Revocation (NOR) indicating a license revocation period of one year when, based on his driving record, the revocation period should have been two years. Because the deputy did not misstate the law when reading the implied-consent advisory and because appellant failed to show that he suffered a direct and personal harm from the deputy giving him the NOR and respondent Commissioner of Public Safety later giving him a new Notice of Revocation letter (NOR letter) stating the correct two-year revocation period, we affirm.

D E C I S I O N

When reviewing a decision in an implied-consent proceeding, we consider legal conclusions de novo. *Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985). Findings of fact are reviewed under a clearly erroneous standard. *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2000). Whether a person has been denied due process of law is a legal issue, which we review de novo. *Williams v. Comm'r of Pub. Safety*, 830 N.W.2d 442, 444 (Minn. App. 2013).

I.

When an officer requests that an individual take a chemical test, the person must be informed that Minnesota law requires the person to take a test "to determine if the person is under the influence of alcohol, controlled substances, or hazardous substances." Minn. Stat. § 169A.51, subd. 2(1) (2012). The person must also be informed that refusal to take a test is a crime. *Id.*, subd. 2(2) (2012). If a person refuses to permit a test, then a test must not be given. Minn. Stat. § 169A.52, subd. 1 (2012). Under the implied-consent statute, "[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." Minn. Stat. § 169A.53, subd. 3(c) (2012).

Minnesota appellate courts have recognized a driver's confusion as a reasonable basis for refusal. *See, e.g., State, Dep't of Highways v. Beckey*, 291 Minn. 483, 485-87, 192 N.W.2d 441, 444-45 (1971) (concluding that driver's refusal was reasonable based on driver's confusion about whether *Miranda* rights apply in implied-consent proceeding); *Frost v. Comm'r of Public Safety*, 401 N.W.2d 454, 456 (Minn. App. 1987) (holding driver's refusal reasonable based on driver's confusion regarding whether he had right to have personal doctor present for breath test). And "[a] refusal may be reasonable if the police have misled a driver into believing a refusal was reasonable or if the police have made no attempt to explain to a confused driver his obligations." *Frost*, 401 N.W.2d at 456. Whether a person had reasonable grounds to refuse to submit to chemical testing is generally characterized as a question of fact. *Beckey*, 291 Minn. at 486, 192 N.W.2d at 444-45. "But where there is no dispute as to facts, the legal

significance of the facts may be a question of law." *Maietta v. Comm'r of Pub. Safety*, 663 N.W.2d 595, 598 (Minn. App. 2003), *review denied* (Minn. Aug. 19, 2003).

"Under the federal constitution, due process does not permit the government to mislead individuals as to either their legal obligations or the penalties they might face should they fail to satisfy those obligations." *State v. Melde*, 725 N.W.2d 99, 103 (Minn. 2006). In the implied-consent context, the Minnesota Supreme Court has "taken notice of whether individual suspects were actively misled by police regarding their statutory obligation to undergo testing." *McDonnell v. Comm'r of Pub. Safety*, 473 N.W.2d 848, 854 (Minn. 1991). The *McDonnell* court expressly limited its holding to "identical due process claim[s]." *Id.*

Deputy Rodney Roberts of the Goodhue County Sheriff's Office arrested appellant on May 22, 2012, for driving while impaired (DWI). The Deputy read the Minnesota Implied Consent Advisory to appellant, including the following paragraph:

> 1. Minnesota law requires you to take a test to determine:
>   *(Check applicable portion when read)*
>   a.) if you are under influence of alcohol,
>   b.) if you are under the influence of hazardous or Schedule I thru V controlled substances **or** to determine the presence of a controlled substance or its metabolite listed in schedule I or II, other than marijuana or tetrahydrocannabinols.

When Deputy Roberts completed reading the advisory, appellant said that he understood what was read to him. Deputy Roberts asked appellant if he would like to consult with an attorney, and appellant said "no." Appellant then refused to submit to chemical testing.

Appellant argues that his test refusal was reasonable and that his right to due process was violated because Deputy Roberts misstated the law and actively mislead him about his statutory obligation to undergo testing. Appellant asserts that Deputy Roberts misstated the law when he read paragraph 1(b) of the implied consent advisory, which explains that testing will determine whether an individual is under the influence of hazardous or controlled substances, although Deputy Roberts suspected appellant of being under the influence of only alcohol. We disagree.

Deputy Roberts did not misstate the law; he merely explained Minnesota's implied consent law, which provides that, "At the time a test is requested, the person must be informed: (1) that Minnesota law requires the person to take a test: (i) to determine if the person is under the influence of alcohol, controlled substances, *or* hazardous substances." Minn. Stat. § 169A.51, subd. 2 (emphasis added). Deputy Roberts testified that he routinely reads all of this paragraph of the advisory to arrestees. Although Deputy Roberts also testified that he believed that appellant was under the influence of alcohol but not hazardous or controlled substances, his reading of the paragraph concerning hazardous or controlled substances was not a misstatement of the law. Because Deputy Roberts did not misstate the law when reading appellant the implied consent advisory, we conclude that appellant's test refusal was not reasonable and that appellant was not denied due process.

II.

After a person fails or refuses an alcohol-concentration test under the implied-consent law, the commissioner shall revoke the person's driver's license. Minn. Stat.

§ 169A.52, subds. 3(a), 4(a) (2012). The revocation becomes effective when "the commissioner or a peace officer acting on behalf of the commissioner notifies the person of the intention to revoke . . . and of revocation." *Id.,* subd. 6 (2012). The implied consent law authorizes the district court, after a hearing on a driver's petition for judicial review, to sustain or to rescind the revocation. Minn. Stat. § 169A.53, subd. 3(e) (2012).

The United States and Minnesota Constitutions provide that a person's liberty will not be deprived by the government "without due process of law." U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. "A driver's license is an important property interest subject to due process protection." *Davis v. Comm'r of Pub. Safety*, 509 N.W.2d 380, 388 (Minn. App. 1993), *aff'd*, 517 N.W.2d 901 (Minn. 1994). But "[a]n appellant cannot assert a procedural due-process claim without first establishing that he has suffered a 'direct and personal harm' resulting from the alleged denial of his constitutional rights." *Riehm v. Comm'r of Pub. Safety*, 745 N.W.2d 869, 877 (Minn. App. 2008) (quoting *Davis*, 509 N.W.2d at 391), *review denied* (Minn. May 20, 2008). This court has held that an officer's administrative oversight in failing to properly complete forms required for an implied consent revocation does not "automatically result in reversal of a revocation." *Johnson v. Comm'r of Pub. Safety*, 756 N.W.2d 140, 144 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008).

Following appellant's test refusal, Deputy Roberts gave appellant a NOR indicating that appellant's driving privileges would be revoked for one year. The commissioner later mailed appellant the NOR letter setting forth the correct two-year revocation period, based on appellant's driving record. Appellant's driving record shows

that he has qualified impaired driving incidents from 1989 and 1991. The NOR letter maintained the same starting date as the NOR, giving appellant credit for the revocation time already served. [1]

Appellant argues that he was denied due process because the NOR indicated his driver's license would be revoked for one year. In his appellate brief, appellant admits he is subject to a two-year revocation. But appellant has not identified a direct and personal harm that he has suffered from being provided with the NOR that indicated the revocation period was one year, and later being provided with the NOR letter stating that the revocation period was two years. Significantly, the NOR letter identified the same offense date, the same basis for the revocation of refusal to test, and gave credit to appellant for the revocation time served. We conclude that appellant's due process claim fails. Thus, the district court did not err in sustaining appellant's license revocation.

Affirmed.

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[1] At his review hearing on November 13, 2012, appellant argued to the district court that his due process rights were violated because the NOR erroneously stated that the revocation period was for one year. Appellant was to submit his written argument on this issue by November 30, 2012, and the commissioner was to respond by December 7, 2012. The commissioner mailed appellant the NOR letter on December 6, 2012.