STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1705

State of Minnesota,
Respondent,

vs.

Andrew T. Muraski,
Appellant.

Filed October 21, 2008
Affirmed
Worke, Judge

Washington County District Court
File No. K3-06-1589

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

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Jeffrey S. Sheridan, Strandemo, Sheridan & Dulas, P.A., 320 Eagandale Office Center, 1380 Corporate Center Curve, Eagan, MN 55121 (for appellant)

Considered and decided by Worke, Presiding Judge; Klaphake, Judge; and Peterson, Judge.

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

WORKE, Judge

On appeal from a conviction for refusal to submit to chemical testing, appellant argues that (1) the test-refusal statute violates his Fourth Amendment rights and his right

to privacy, (2) the use of an unchallenged driver's license revocation to enhance a future alcohol-related driving charge is a violation of his due-process rights, and (3) the Minnesota standard for dealing with lost or destroyed evidence sets a higher standard than the federal counterpart. We affirm.

D E C I S I O N

Fourth Amendment

Appellant Andrew T. Muraski argues that the test-refusal statute, under which he was convicted, violates the Fourth Amendment prohibition against unreasonable searches and seizures. *See* Minn. Stat. § 169A.20, subd. 2 (2006) (making it a crime for a person to refuse to submit to a chemical test for intoxication). The constitutionality of a statute is a question of law, which is reviewed de novo. *State v. Melde*, 725 N.W.2d 99, 102 (Minn. 2006). A statute is presumed constitutional, and "will not be declared unconstitutional unless the party challenging it demonstrates beyond a reasonable doubt that the statute violates some constitutional provision." *Miller Brewing Co. v. State*, 284 N.W.2d 353, 356 (Minn. 1979).

This court has held that Minn. Stat. § 169A.20, subd. 2, does not violate an individual's Fourth Amendment rights. *State v. Mellett*, 642 N.W.2d 779, 785 (Minn. App. 2002), *review denied* (Minn. July 16, 2002). This court has also held that Minn. Stat. § 169A.20, subd. 2, "neither authorizes an unreasonable search nor conditions a privilege on surrendering a constitutional right[.]" *State v. Netland*, 742 N.W.2d 207, 215 (Minn. App. 2007), *review granted* (Minn. Feb. 27, 2008). The holdings in *Mellett*

and *Netland* are dispositive of appellant's Fourth Amendment challenge to Minn. Stat. § 169A.20, subd. 2; therefore, his argument fails.

Right to Privacy

Appellant also argues that the test-refusal statute violates his constitutional right to privacy. The constitutionality of a statute is reviewed de novo. *Melde*, 725 N.W.2d at 102.

The Minnesota Constitution includes a right to privacy. *State v. Gray*, 413 N.W.2d 107, 111 (Minn. 1987). "The right to privacy begins with protecting the integrity of one's own body and includes the right not to have it altered or invaded without consent." *Jarvis v. Levine*, 418 N.W.2d 139, 148 (Minn. 1988). But the right to privacy is not without limitations. *See Minn. State Bd. of Health v. City of Brainerd*, 308 Minn. 24, 36, 241 N.W.2d 624, 631 (1976) (holding that an individual's right to bodily integrity, like other constitutional rights, is not absolute). When there is an allegation of interference by the state with a protected right of privacy, the court must balance the interest in the privacy against the state's need to intrude on that privacy. *R.S. v. State*, 459 N.W.2d 680, 689 (Minn. 1990).

The state has a compelling interest in protecting residents from intoxicated drivers. *See Netland*, 742 N.W.2d at 215 (stating that the test-refusal statute serves the state's compelling interest in protecting its residents from the "severe threat" that intoxicated drivers pose to the public health and safety). As a result, officers must be able to test those whom they have probable cause to believe have been driving while impaired. The balancing test favors intrusion by the state on the privacy rights held by appellant.

Because the state had probable cause to arrest appellant, the state has not violated his right to privacy.

Enhancement Using License Revocations

Appellant next argues that his prior unchallenged license revocations may not be used to enhance his sentence because doing so would violate his due-process rights. A reviewing court is not bound by and need not give deference to a district court's decision on a purely legal issue. *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 393 (Minn. 2003). The application of law to undisputed facts is a question of law, which this court reviews de novo. *Morton Bldgs., Inc. v. Comm'r of Revenue*, 488 N.W.2d 254, 257 (Minn. 1992).

"A person who violates section 169A.20 . . . is guilty of first-degree driving while impaired if the person: (1) commits the violation within ten years of the first of three or more qualified prior impaired driving incidents[.]" Minn. Stat. § 169A.24, subd. 1(1) (2006). A prior impaired-driving-related loss of license is a qualified prior impaired-driving incident for enhancement purposes. Minn. Stat. § 169A.03, subd. 22 (2006). A prior impaired-driving-related loss of license includes driver's license suspension, revocation, cancellation, denial, or disqualification. Minn. Stat. § 169A.03, subd. 21(a)(1) (2006). An individual is permitted to seek either administrative or judicial review of license revocations. Minn. Stat. § 169A.53, subds. 1, 2 (2006). Uncounseled civil findings may be used to enhance subsequent criminal charges. *State v. Dumas*, 587 N.W.2d 299, 302 (Minn. App. 1998), *review denied* (Minn. Feb. 24, 1999).

Failure to seek administrative or judicial review of driver's license revocation does not prohibit the state from using the prior revocation to enhance subsequent alcohol-related driving charges. The United States Supreme Court has held "that where a determination made in an administrative proceeding is to play a critical role in the subsequent imposition of a criminal sanction, there must be *some* meaningful review of the administrative proceeding." *United States v. Mendoza-Lopez*, 481 U.S. 828, 837-38, 107 S. Ct. 2148, 2155 (1987). This court relied on *Mendoza-Lopez* to hold that because a driver had the opportunity, albeit unexercised, for meaningful judicial review of the prior license revocation, using the revocation as an aggravating factor to support an enhanced DWI charge did not violate the driver's due-process rights. *State v. Coleman*, 661 N.W.2d 296, 301 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003).

Appellant had the opportunity to exercise his right to either an administrative or judicial review of his two prior driver's license revocations, but failed to do so. Therefore, the state may use the prior unchallenged revocations to enhance the current charge without violating his due-process rights.

Lost or Destroyed Evidence

Appellant argues that the Minnesota standard for granting relief based on lost or destroyed evidence sets a higher standard than the federal standard and that the Minnesota standard places an insurmountable burden on a party that has never had access to a piece of evidence.

The United States Supreme Court has held that "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence

does not constitute a denial of due process of law." *Arizona v. Yougblood*, 488 U.S. 51, 58, 109 S. Ct. 333, 337 (1988). Under Minnesota law, courts look at whether the loss of the evidence by the state was intentional "to avoid discovery of evidence beneficial to the defense" and whether the evidence was exculpatory. *State v. Koehler*, 312 N.W.2d 108, 109 (Minn. 1981) (quotation omitted).

Appellant has presented no evidence to show that the loss of the booking video was intentional or that the evidence on the recording was exculpatory. Furthermore, appellant failed to demonstrate that the Minnesota standard is different from the federal standard. Thus, appellant's argument fails.

Affirmed.