STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0042

Donny Warren, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed July 17, 2017
Affirmed
Rodenberg, Judge

Dakota County District Court
File No. 19AV-CV-16-2694

Donny Warren, Inver Grove Heights, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Rodenberg, Judge; and Toussaint, Judge.*

* 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

RODENBERG, Judge

Appellant Donny Warren challenges a district court order sustaining the revocation of his driver's license after he refused to provide a breath sample as required by Minnesota's implied-consent law. We affirm.

FACTS

Shortly after 1:00 p.m. on September 3, 2016, a Minnesota State Trooper received a dispatch report of a damage-to-property incident. The dispatcher reported that a suspect had gotten out of his car, broke the window of another car, and then drove away. The dispatcher provided the license plate number of the vehicle driven by the suspect. The trooper looked up the vehicle owner's name and address. Appellant was the registered owner. The trooper drove to appellant's apartment.

Upon arriving at appellant's apartment complex, the trooper saw appellant's car and two people near it. The trooper talked with the two people, one of whom claimed to be employed at the apartment complex. The two people then told the trooper where appellant lived. They said they were just returning from appellant's apartment, and that appellant had recently come home.

The trooper went to appellant's apartment and knocked on the door. C.S.M. came to the door. The trooper testified that C.S.M. told him appellant had only been home for about 30 minutes. The trooper then spoke with appellant about the damage-to-property incident. During the conversation, the trooper noticed that appellant smelled of alcohol and his eyes were watery and glassy. The trooper suspected that appellant had recently

been driving while impaired (DWI) and expanded his inquiry to investigate the possible DWI.

After a short conversation, the trooper asked appellant to submit to field sobriety testing, which appellant refused. Based on his training and observations, the trooper concluded that appellant was "highly intoxicated," and he arrested appellant for DWI. The trooper then invoked the Minnesota Implied Consent Advisory and requested that appellant submit to a breath test. Appellant refused. After appellant's refusal, he was issued a Notice and Order of License Revocation.

Appellant challenged his license revocation in district court. At the hearing, he appeared pro se. He argued that he was not intoxicated by alcohol while he was driving and only began drinking after he returned home. Both respondent's attorney and the district court attempted to explain to appellant that the issue before the court was whether the trooper had probable cause to invoke the implied-consent law, and that appellant would not prevail by arguing post-driving consumption of alcohol because he had refused chemical testing. Appellant said that he did not understand these explanations of the issues.

The trooper testified and explained that, after having received the call from dispatch and after his conversations with the apartment employees, C.S.M., and appellant, he believed appellant had been driving while impaired. On cross-examination, appellant attempted to characterize the trooper's testimony about his conversation with C.S.M. as "hearsay."

In summation, respondent identified the only issue as being whether the trooper had probable cause to believe that appellant was driving while impaired, and argued that the

trooper acted on probable cause. Appellant argued that he had not driven while impaired and that respondent's case was based on "hearsay" evidence.

The district court issued an order sustaining the revocation of appellant's license. This appeal followed.

D E C I S I O N

I. Because appellant refused chemical testing, the law precludes the defense of post-driving alcohol consumption.

Appellant argues that the record evidence does not support the district court's decision. Specifically, he argues that respondent failed to prove that he was driving at a time when he was impaired because of alcohol consumption.

Appellant exercised his statutory right to contest his driver's license revocation in district court. The legislature has identified a list of 11 issues available to be raised during a challenge to license revocation. Minn. Stat. § 169A.53, subds. 2, 3 (2016). Here, appellant's license was revoked because he refused to submit to an alcohol test, not because he was driving while impaired. *See* Minn. Stat. § 169A.52, subd. 3 (2016) ("Upon certification by the peace officer that there existed probable cause to believe the person had been driving . . . [while impaired], and that the person refused to submit to a test, the commissioner shall revoke the person's license or permit to drive . . . ."). The only permissible argument that appellant raised to the district court was whether the trooper had probable cause to believe that he was driving while impaired. *See* Minn. Stat. § 169A.53, subd. 3(1). While appellant wanted the court to decide whether he had actually been driving while impaired, that issue is not relevant to the revocation of his license after a test

refusal. Because appellant refused testing, Minnesota law does not require proof of impairment at the time of driving. The only issue is whether the trooper *had probable cause to believe* appellant was driving while impaired so as to have properly invoked the implied-consent law.

II. The district court had a substantial basis for concluding that probable cause existed.

Appellant argues that respondent did not introduce sufficient evidence to support the district court's finding of probable cause to have invoked implied-consent law. He points to the fact that the trooper did not witness appellant driving while impaired, respondent's failure to call any eyewitnesses to his driving, and respondent's choice to not introduce any recording of 911 calls related to the damage-to-property incident.

"A determination of probable cause is a mixed question of fact and of law." *Groe v. Comm'r of Pub. Safety*, 615 N.W.2d 837, 840 (Minn. App. 2000), *review denied* (Minn. Sept. 13, 2000). We review a probable cause determination for whether the trooper "had a substantial basis for concluding that probable cause existed at the time of invoking the implied consent law." *Id.* (quotation omitted).

An officer may require a person to submit to an alcohol test under the implied-consent laws if the officer has lawfully arrested that person for DWI and the person refuses chemical testing. Minn. Stat. § 169A.51. subd. 1(b) (2016). "Probable cause exists when all the facts and circumstances would lead a cautious person to believe that the driver was under the influence." *Groe*, 615 N.W.2d at 840 (quotation omitted). A strong smell of alcohol, glassy eyes, slurred speech, and dilated pupils are sufficient to establish probable

cause that a person was driving while impaired. *Davis v. Comm'r of Pub. Safety*, 509 N.W.2d 380, 392 (Minn. App. 1993), *aff'd*, 517 N.W.2d 901 (Minn. 1994). "The fact that there might have been an innocent explanation for [a defendant's] conduct does not demonstrate that [an officer] could not reasonably believe that [the defendant] had committed a crime." *State v. Hawkins*, 622 N.W.2d 576, 580 (Minn. App. 2001).

The trooper testified that he went to appellant's apartment after receiving information that someone driving appellant's car had been involved in a damage-to-property incident. An apartment employee told the trooper that appellant had just returned. The trooper testified that C.S.M. later told him that appellant had only been at the apartment "for approximately 30 minutes." This timeline reasonably suggested to the trooper that appellant had been driving at the time the trooper first received the dispatch, 10 to 15 minutes before he arrived at appellant's apartment. When the trooper spoke with appellant, he detected a "very strong odor of alcohol," appellant's "eyes were extremely bloodshot," appellant was "very sweaty," and his eyes were "very watery and glassy." While this testimony does not prove beyond question that appellant had been driving while impaired, it is sufficient to establish probable cause for the trooper to have believed that appellant had been recently driving while impaired. The district court concluded that the trooper acted on probable cause, and the record supports that conclusion.

III. The evidence relied on by the district court was admissible.

Appellant argues that the trooper's testimony about his conversation with the apartment employees and with appellant's roommate was inadmissible hearsay. Appellant correctly argues that the rules of evidence apply to implied-consent hearings. *See Heuton*

v. Comm'r of Pub. Safety, 541 N.W.2d 361, 363-64 (Minn. App. 1995) (applying the rules of evidence in an implied-consent hearing).

Hearsay is a "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(c). "The admission of evidence rests within the broad discretion of the trial court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Olson on behalf of A.C.O. v. Olson*, 892 N.W.2d 837 (Minn. App. 2017) (quotation omitted). "On appeal, the defendant bears the burden of establishing that the district court abused its discretion and that the evidentiary ruling prejudiced the defendant's substantial rights." *State v. Chavez-Nelson*, 882 N.W.2d 579, 588 (Minn. 2016).

The trooper's statements concerning what C.S.M. and the apartment employees told him are indeed out-of-court statements made by someone other than the person testifying at trial. However, the statements were not offered to prove the truth of the matter asserted—that appellant had recently arrived at home. They were offered as evidence supporting the trooper's *probable cause to believe* that appellant had been driving while impaired. *See State v. Purdy*, 278 Minn. 133, 147-48, 153 N.W.2d 254, 263 (1967) (holding that an officer's testimony regarding a radio message he received "was not introduced to prove the truth of the matter stated but only to prove . . . [the officers] had reasonable cause to believe that a felony was in the process of being committed"). The testimony was not hearsay because it was not offered to prove the truth of the matter asserted. The district court did not err in receiving the trooper's testimony.

IV. The district court did not violate appellant's due process rights.

Appellant also argues that his trial was conducted in an "unfair and unprofessional" manner, which violated his constitutional rights. He identifies three ways in which he claims his rights were violated: (1) the district court should have given him more guidance because he was a pro se litigant, (2) the district court judge was biased against him, and (3) the district court denied him the right to cross-examine witnesses.

Appellant argues that, as a pro se litigant, he "was expecting a little more guidance from the judge." He claims this lack of guidance from the district court deprived him of due process of law. "We review due-process challenges de novo." *Anderson v. Comm'r of Pub. Safety*, 878 N.W.2d 926, 928 (Minn. App. 2016) (quotation omitted). "Although some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). While district courts have a duty to allow reasonable accommodations to pro se litigants, they must not "permit bending of all rules and requirements." *Liptak v. State ex rel. City of New Hope*, 340 N.W.2d 366, 367 (Minn. App. 1983). The issues were explained to appellant.

Appellant next argues that the judge in his case was "very bias[ed]" and that he refused to admit certain medical records, did not ask if appellant wanted a trial by jury, and made a decision based on statements not made in court, again depriving him of due process of law.

"The Due Process Clause requires that a defendant receive a fair trial in a fair tribunal before a judge with no actual bias against the defendant or interest in the outcome

of his particular case." *State v. Crow*, 730 N.W.2d 272, 282 (Minn. 2007) (quotation omitted). When reviewing the conduct of a judge, we presume the judge properly discharged his or her judicial duties. *State v. Munt*, 831 N.W.2d 569, 580 (Minn. 2013). We are mindful that justice "should avoid the appearance of impropriety." *Id.* (quotations omitted). Adverse rulings alone are insufficient to show actual bias. *State v. Sailee*, 792 N.W.2d 90, 96 (Minn. App. 2010), *review denied* (Minn. Mar. 15, 2011). District court judges "should refrain from raising objections and should avoid demonstrating bias against one party in front of the jury," but appellate courts grant new trials based on judicial bias "only in those rare cases where the remark of the trial judge was so prejudicial to one party that it rendered a fair and impartial determination by the jury improbable." *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 894 (Minn. 2010).

While the district court did raise its own objection to appellant's offer of medical records as evidence, receiving those reports would not have changed the outcome of the case, given the limited issues properly before the district court for resolution. Minn. Stat. § 169A.53, subd. 3(7).

Appellant finally argues that the district court violated his constitutional rights by denying him the right to cross-examine witnesses. This argument is not supported by the record. The transcript of the hearing shows that appellant did cross-examine the only witness called at the hearing.

Appellant's other arguments fail to demonstrate judicial bias. There is no jury trial right in implied-consent hearings. *Schmidtbauer v. Comm'r of Pub. Safety*, 392 N.W.2d

668, 670 (Minn. App. 1986), *review denied* (Minn. Oct. 9, 1986). We see no unfairness or error in the district court's rulings or conduct.

Affirmed.