STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0326

Patrick Jerald Martini, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed December 2, 2019
Affirmed
Ross, Judge

Stearns County District Court
File No. 73-CV-18-2534

Charles A. Ramsay, Daniel J. Koewler, Ramsay Law Firm, P.L.L.C., Roseville, Minnesota (for appellant)

Keith Ellison, Attorney General, William Young, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Kalitowski, 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

ROSS, Judge

A Minnesota trooper arrested Oregon resident Patrick Martini for drunk driving, administered a breath test confirming Martini's intoxication, and issued Martini a "Notice and Order of Revocation" of his Minnesota driving privileges. The notice stated that the revocation would begin seven days later, but the trooper mistakenly told Martini he was immediately prohibited from driving. The district court rejected Martini's petition to rescind the revocation. In this appeal we too reject Martini's due-process theory and affirm the district court because Martini was not misled about the consequences of refusing a chemical test, he had actual notice of the practical revocation date, and the loss of an insignificant amount of hardship relief does not result in a due-process violation.

FACTS

Oregon resident Patrick Martini was driving a rental car when Minnesota State Patrol Trooper Matthew Carlson stopped the car and arrested Martini on suspicion of drunk driving. Trooper Carlson read Martini the implied-consent advisory and administered a breath test that revealed an alcohol concentration of 0.11.

The trooper issued Martini a notice and order of revocation announcing the revocation of Martini's Minnesota driving privileges for 90 days effective seven days after the notice. But the trooper incorrectly believed that, because Martini had an out-of-state license, the administrative seven-day grace period affording temporary driving privileges did not apply. He therefore told Martini, wrongly, that he was immediately prohibited from driving in Minnesota.

Martini left the jail in St. Cloud after his release the following morning, and he discovered that his rental car had been impounded. Martini planned to fly back to Oregon later that day and needed to get from St. Cloud to the Minneapolis-St. Paul Airport. Martini read the notice Trooper Carlson had given him, including the provision about the seven-day grace period. But based on the trooper's contrary oral statement that driving was immediately prohibited, he decided to summon an Uber to take him to the airport. Martini did not retrieve the rental vehicle from impoundment, incurring additional costs.

Martini petitioned for judicial review, asking the district court to rescind the revocation. He argued that his due-process rights were violated because Trooper Carlson had incorrectly told him that his license revocation was effective immediately rather than after seven days and that he suffered prejudice because of the error. The district court sustained the revocation. Martini appeals.

D E C I S I O N

Martini appeals from the district court's denial of his petition to rescind the revocation of his privilege to drive in Minnesota. He argues that the trooper's erroneous instruction violated his due-process rights because he detrimentally relied on the misstatement of law, which in turn curtailed his use of the seven-day grace period during which it was not unlawful for him to drive. Whether an appellant's due-process rights were violated is a constitutional question that we review de novo. *Bendorf v. Comm'r of Pub. Safety*, 727 N.W.2d 410, 413 (Minn. 2007). For the following reasons, we conclude that Martini has identified no due-process violation.

Martini has identified a constitutionally protected interest. The United States and Minnesota Constitutions provide that the government may not abridge a person's right to property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. The license to drive is a property interest subject to due-process protections. *Heddan v. Dirkswager*, 336 N.W.2d 54, 58 (Minn. 1983). The commissioner therefore cannot abridge Martini's privilege to drive in Minnesota without having afforded him due process.

Martini maintains that the trooper's mistaken oral explanation of the practical revocation date violated his due-process rights. We take this opportunity to clarify a point of law and to properly frame the mistake Martini is arguing about. A revocation "becomes effective at the time . . . a peace officer acting on behalf of the commissioner notifies the person of the intention to revoke, disqualify, or both, and of revocation or disqualification." Minn. Stat. § 169A.52, subd. 6 (2018); *see also State v. Goharbawang*, 705 N.W.2d 198, 201–02 (Minn. App. 2005) (holding revocation effective immediately upon notification of intent to revoke regardless of seven-day temporary-license provision), *review denied* (Minn. Jan. 17, 2006). The parties and record conflate this *legally* effective date of Martini's revocation with what we will call its *practically* effective date: the expiration of the seven-day grace period. Martini's due-process argument concerns only the practically effective revocation date.

An officer serving a notice and order of revocation of a Minnesota driver's license shall issue the driver a temporary license to drive effective for only seven days. Minn. Stat. § 169A.52, subd. 7(c)(2) (2018); Minn. R. 7503.0900, subp. 1 (2017). A driver not licensed in Minnesota is not issued a temporary license because the temporary license is merely a

substitute for a revoked *Minnesota* license. *Gray v. Comm'r of Pub. Safety*, 918 N.W.2d 220, 226–27 (Minn. App. 2018).[1] A person who drives while his license is revoked after the grace period has expired violates the law in one way, *see* Minn. Stat. § 171.24, subd. 2 (2018), while a person who was issued a temporary license but who fails to carry it while driving during the grace period violates the law in a different way, *see* Minn. Stat. § 171.08 (2018).

Martini relies on *McDonnell v. Commissioner of Public Safety* for the proposition that a due-process violation occurs whenever a driver prejudicially relies on an officer's misleading statement about the driver's rights and duties. 473 N.W.2d 848 (Minn. 1991). He reads too much into *McDonnell*. The *McDonnell* court held that an officer's advisory violated a driver's due-process rights by threatening unauthorized criminal charges if she refused to submit to testing. *Id.* at 851, 855. As the supreme court later clarified *McDonnell*'s holding, an officer's mistaken implied-consent advisory will violate a driver's due-process rights only when the case includes three circumstances: (1) the officer's statements inaccurately informed the suspected impaired driver of the legal consequences of refusing a chemical test; (2) the driver submitted to a chemical test; and

[1] Both parties presume that Martini was entitled to seven days of temporary operating privileges, a premise we therefore assume for the purposes of Martini's appeal. Consistent with *Gray*, 918 N.W.2d at 226–27, we note that the statute does not explicitly afford the seven-day grace period to out-of-state drivers. *Compare* Minn. Stat. § 169A.52, subd. (c)(2) (directing officer to issue temporary *license*), *with* Minn. Stat. § 169A.52, subd. 4(a) (2018) (distinguishing "license" from "nonresident operating privilege"). The statute directs the peace officer, on the commissioner's behalf, to notify the offending driver of the applicable revocation period for test failure, *id.*, subds. 4(a), 7(a), and the commissioner's notice in this case expressly indicated a delayed practical effective date that afforded Martini the seven-day grace period afforded to those licensed in Minnesota.

(3) the driver's submission to the test resulted from prejudicially relying on the officer's inaccurate information. *Johnson v. Comm'r of Pub. Safety*, 911 N.W.2d 506, 508–09 (Minn. 2018). This case includes one of these circumstances, as Martini in fact submitted to a breath test. But it includes neither of the others. The trooper's inaccuracy did not misinform Martini of any legal consequences of refusing a test. And Martini submitted to the test *before*—not *as a consequence of*—the trooper's mistake about the revocation's practical onset. *McDonnell* is inapposite.

We emphasize that the practical effective date of the revocation of Martini's driving privileges was not immediate but rather seven days after the trooper issued the written notice, as the written notice provided. The district court found that Martini's practical revocation did not commence until that date. Martini does not contest the finding. And as his counsel implicitly acknowledged at oral argument, the Minnesota revocation also had no immediate effect in Oregon. *See* Or. Rev. Stat. § 809.400(2) (2017) ("The department may suspend or revoke the driving privileges of any resident of this state upon receiving notice from another state . . . that the person's driving privileges in that jurisdiction have been suspended or revoked."). The trooper's incorrect oral statement about the revocation's practical onset therefore had no effect on Martini's actual driving privileges anywhere.

Even if we were to recognize, as Martini urges, that prejudicial reliance on an officer's misstatement could constitute a due-process violation outside the *McDonnell* setting, Martini has not established that his reliance was reasonable. Martini's theory would require us to accept that an officer's oral misstatement of the revocation's practical onset constitutes a due-process violation even when the officer simultaneously provides the

driver clear, accurate, written notice. Martini offers no caselaw or logical explanation supporting the theory, and we do not assume any exists. Aware of the irreconcilable inconsistency between the oral statement and the written statement about the revocation's practical onset, Martini was on notice that one of the statements was certainly wrong. He could have resolved the discrepancy by referring to the relevant statutes and rule.

Minnesota Statutes section 169A.52, subdivision 7(a), provides, "*On behalf of the commissioner*, a peace officer . . . shall *serve* immediate notice of intention to revoke and of revocation on a person who . . . submits to a test the results of which indicate an alcohol concentration of 0.08 or more." (Emphasis added.) The statute does not authorize or require the peace officer to advise the driver regarding the nature or effect of the revocation because the legislature has delegated this responsibility to the commissioner. *See* Minn. Stat. § 169A.52, subd. 4(a) ("the commissioner shall revoke the person's . . . nonresident operating privilege"); Minn. Stat. § 169A.75(a) (2018) ("The commissioner may adopt rules to carry out the provisions of this chapter. The rules may include the format for notice of intention to revoke . . . [and] the format for revocation . . . ."). The commissioner has adopted a form of notice declaring, "A completed revocation notice must contain . . . the date that notice is served and when the revocation is effective . . . ." Minn. R. 7503.0900, subp. 3(B)(2) (2017). Rather than rely on the written notice required to be served "on behalf of the commissioner," Martini elected to rely on the interpretation of the peace officer charged only with serving notice. Under these circumstances, Martini has not established that reliance on the trooper's mistaken oral notice was objectively reasonable.

We add that we have rejected due-process arguments in other situations when the arresting officer provided the driver with a physical copy of the notice. *See, e.g.*, *Gray*, 918 N.W.2d at 225–26 (holding adequate notice when the driver left the notice and order behind at the sheriff's office and it was mailed to him days later). And we are confident that the Due Process Clause is not implicated here.

Finally, we observe that even if an officer's misinformation could constitute a due-process violation outside the *McDonnell* setting, and even if Martini had reasonably relied on the misinformation, the only interest implicated is his loss of the right to drive temporarily before the revocation had any practical effect. The procedural setting establishes the limited constitutional right at stake. It is well-settled that the state may revoke a suspected drunk driver's privilege to drive before affording the driver a hearing but that a prehearing revocation may run afoul of the Due Process Clause if it fails to afford the driver with a degree of hardship relief. *See Mackey v. Montrym*, 443 U.S. 1, 11–12, 99 S. Ct. 2612, 2617–18 (1979); *Heddan*, 336 N.W.2d at 60–61; *Davis v. Comm'r of Pub. Safety*, 517 N.W.2d 901, 904–05 (Minn. 1994). The seven-day grace period is only part of the hardship relief available to drivers following a license revocation. *Heddan*, 336 N.W.2d at 60. And the availability of hardship relief is only one factor that courts weigh when considering whether a prehearing deprivation of a person's privilege to drive satisfies due process. *Id.* Martini argues that his prejudicial reliance on the trooper's misstatement of law effectively deprived him of this form of hardship relief. But for two reasons, he fails to establish that the loss of hardship relief would necessarily constitute a due-process violation under the circumstances of this case.

First, the deprivation in this case was of little practical significance and had no relationship to the primary reason that the state affords the grace-period component of relief. Although courts have highlighted the seven-day grace period as one procedural safeguard in license-revocation cases, we have rejected the idea that it is the "keystone" to the constitutionality of a prehearing revocation. *Williams v. Comm'r of Pub. Safety*, 830 N.W.2d 442, 447 (Minn. App. 2013), *review denied* (Minn. Jul. 16, 2013). An integral purpose of the seven-day grace period is to protect a driver's continued employment by giving him time to make other arrangements to travel to and from work before he is unable to drive. *See Davis*, 517 N.W.2d at 905 ("We do not doubt that there are people who lose their jobs if they are deprived of the use of their automobiles . . . ."). Martini resided in Oregon, not Minnesota, and he does not contend that relying on the trooper's misstatement of law had any impact on his ability to maintain employment or interfered with any other essential travel. Martini also had little need for temporary driving privileges in Minnesota for *any* purpose because he was an out-of-state driver whose visit in Minnesota ended just hours after his release from jail. The effect of Martini's reliance on the trooper's misstatement was therefore his loss of a very small part of the seven-day period, and his only hardship—having to incur Uber costs for a single trip to the airport and extra costs associated with his rental-car return—is not of the nature or magnitude of hardship that the grace period is designed to alleviate. Once Martini left the state, his being deprived of the balance of the seven-day grace period to drive in Minnesota was entirely inconsequential.

And second, other procedural safeguards remained available to protect Martini's interest even if he had remained in Minnesota. For example, a person whose driving

privileges have been revoked may be issued a limited license if he meets certain conditions. Minn. Stat. § 171.30, subd. 1(a)–(b) (2018); *see also, e.g.*, Minn. Stat. § 171.306, subd. 4 (2018) (providing for an ignition-interlock-device program available under specified circumstances). Martini has not argued that he would not qualify for other statutory safeguards.

For all of these reasons, we hold that Martini suffered no due-process violation from the trooper's misstatement of law. The district court appropriately rejected his petition to rescind the revocation.

Affirmed.