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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1123**

Gene Alan Rechtzigel, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed January 23, 2012
Affirmed
Stauber, Judge**

Dakota County District Court
File No. 19AVCV10669

Erick G. Kaardal, Mohrman & Kaardal, P.A., Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Kristi Nielsen, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Klaphake, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from the district court's decision sustaining the revocation of appellant's driver's license under the implied-consent law, appellant argues that (1) his statements to the police officer should be suppressed because he was in custody at the time he made the statements, but the requisite *Miranda* warning was not given; (2) the

officer's seizure of appellant was unlawful; and (3) the commissioner failed to prove that appellant's alcohol concentration was over the legal limit within two hours of driving. Because the district court did not err by sustaining the revocation of appellant's driver's license, we affirm.

FACTS

On January 2, 2010, at 3:05 a.m., Officer Jessica Swaner of the Lakeville Police Department was dispatched to a single vehicle accident on Kenyon Avenue in Lakeville. Kenyon Avenue is a frontage road to Interstate 35 that is visible from the interstate. When Officer Swaner arrived at the accident scene, she observed an unoccupied vehicle lying on its side with its headlights illuminated.

Officer Swaner surveyed the area for the vehicle's occupants and observed a male, later identified as appellant Gene Alan Rehtzigel, walking in the parking lot of a closed business about 200 to 250 feet from the accident. The officer identified herself and asked appellant to stop. When appellant failed to stop, the officer cut across the parking lot and caught up to appellant. Officer Swaner testified that appellant was not free to leave.

Officer Swaner asked appellant if he was involved in the accident. Appellant admitted that he had been in the accident and stated that he was the only person in the vehicle. During this exchange, Officer Swaner observed appellant's eyes to be bloodshot and watery. She also smelled an odor of alcohol emanating from appellant. Appellant admitted to consuming alcohol, and field sobriety tests were administered. Based upon appellant's performance on the sobriety tests, Officer Swaner concluded that appellant

was under the influence of alcohol. A subsequent blood test revealed that appellant had a blood alcohol concentration of 0.08 or more.

Respondent Commissioner of Public Safety (the commissioner) revoked appellant's driver's license for driving under the influence with an alcohol concentration of 0.08 or more. Appellant filed a petition for judicial review pursuant to Minn. Stat. §§ 169A.50, .53, subd. 2 (2008). Following the implied-consent hearing, the district court issued an order sustaining the license revocation. This appeal follows.

D E C I S I O N

I.

Appellant argues that after he was “intercepted” by the police officer, he was in a custodial situation thereby requiring a *Miranda* warning. Appellant contends that because no *Miranda* warning was provided, any statements made to the police and the fruits of those statements were inadmissible and should have been suppressed.

The commissioner argues that appellant failed to raise the *Miranda* issue below and, therefore, the issue has been waived. We agree. It is well settled that arguments not raised before the district court will not be reviewed on appeal. *Connolly v. Comm'r of Pub. Safety*, 373 N.W.2d 352, 354 (Minn. App. 1985). Here, the record reflects that appellant failed to raise the *Miranda* issue before the district court. Therefore, appellant has waived the issue.

But even if the *Miranda* issue were properly before this court, appellant is not entitled to relief. As this court recognized in *Steinberg v. State*, an implied-consent proceeding is civil in nature. 357 N.W.2d 413, 415 (Minn. App. 1984). Thus, no Fifth

Amendment right attaches, and “*Miranda*’s exclusionary rule does not apply in implied consent proceedings.” *Id.*

II.

Appellant next challenges the district court’s conclusion that there was a valid legal basis for his initial seizure. When, as here, the facts are not in dispute, we determine whether the peace officer’s actions constitute a seizure and, if so, whether the officer articulated an adequate basis for the seizure. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

The Fourth Amendment to the United States Constitution and Article I, Section 10 of the Minnesota Constitution protect against unreasonable searches and seizures. A seizure occurs when an officer, “by means of physical force or show of authority, has in some way restrained the liberty of a citizen.” *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995) (quotation omitted). A person has been seized when, under the totality of circumstances, a reasonable person would believe that, because of the conduct of the police, “he or she was neither free to disregard the police questions nor free to terminate the encounter.” *Id.* If a seizure has occurred, “the police must be able to articulate reasonable suspicion justifying the seizure.” *In re Welfare of E.D.J.*, 502 N.W.2d 779, 783 (Minn. 1993). Reasonable, articulable suspicion must be present at the moment a person is seized. *Terry v. Ohio*, 392 U.S. 1, 21–22, 88 S. Ct. 1868, 1880 (1968); *see also Cripps*, 533 N.W.2d at 391.

Appellant argues that the seizure was not supported by the requisite reasonable articulable suspicion. But appellant failed to provide a transcript of the proceedings

below. “An appellant has the burden to provide an adequate record,” and when an appellant does not provide us with a transcript of the district court proceedings, the scope of our review is limited to determining whether the district court’s factual findings support its conclusions of law. *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995).

This court has held that an officer has a duty to make a reasonable investigation of vehicles parked along roadways to offer assistance and inquire into the physical condition of those inside. *Kozak v. Comm’r of Pub. Safety*, 359 N.W.2d 625, 628 (Minn. App. 1984). Here, the district court concluded that the seizure of appellant was “justified by the circumstances of a single-vehicle accident and law enforcement wanting to make sure no one needed medical attention.” The court supported this conclusion by finding that Officer Swaner was dispatched to a single-vehicle accident at 3:05 a.m. in the middle of January. The court also found that upon arriving at accident scene about three minutes after being dispatched, the officer observed an unoccupied vehicle lying on its side and an individual walking in a parking lot approximately 200 feet from the accident. The findings further indicate that the first question the officer asked appellant was whether he “was involved in the accident.” These findings support the district court’s conclusion that the seizure was lawful, and because appellant failed to provide a transcript to challenge these findings, any further review is hindered by the lack of a complete record.

III.

Appellant argues that the district court erred by sustaining the revocation of his driver's license because the commissioner failed to prove that appellant had an alcohol concentration more than legal limit within two hours of driving. Generally, the district court's conclusions of law will be overturned only upon a determination that the district court has erroneously construed and applied the law to the facts of the case. *Dehn v. Comm'r of Pub. Safety*, 394 N.W.2d 272, 273 (Minn. App. 1986).

The commissioner must revoke a person's driver's license if it is shown that a police officer had probable cause to believe that the person was driving a motor vehicle in violation of Minn. Stat. § 169A.20 (2008), and the person submitted to a breath test indicating an alcohol concentration of 0.08 or more. Minn. Stat. § 169A.52, subd. 4(a) (2008). A person is entitled to judicial review of the license revocation, but review is limited, in part, to whether the peace officer had probable cause to believe that the person was driving a vehicle in violation of Minn. Stat. § 169A.20 and whether the test results indicate, at the time of testing, an alcohol concentration of 0.08 or more. Minn. Stat. § 169A.53, subd. 3(b)(1), (8) (2008). The criminal driving-while-impaired statute states:

It is a crime for any person to drive, operate, or be in physical control of any motor vehicle within this state or on any boundary water of this state:

. . . .

(5) when the person's alcohol concentration at the time, or as measured within two hours of the time of driving, operating, or being in physical control of the motor vehicle is 0.08 or more[.]

Minn. Stat. § 169A.20, subd. 1.

Appellant asserts that he was not in violation of Minn. Stat. § 169A.20, subd. 1(5), because the commissioner failed to show that appellant's alcohol concentration was greater than 0.08 *at the time* of driving or *within two hours* of the time of driving.

Appellant claims that because the commissioner failed to establish that he violated Minn. Stat. § 169A.20, the district court erred by sustaining the revocation of his driver's license under Minn. Stat. § 169.51, subd. 1.

Appellant appears to erroneously contend that his alcohol concentration must be measured within two hours of the time of driving for there to be a violation of the implied-consent law. *See Rohlik v. Comm'r of Pub. Safety*, 400 N.W.2d 791, 793 (Minn. App. 1987) (stating that there is no requirement that the breath test be conducted within two hours), *review denied* (Minn. Apr. 17, 1987). Although Minn. Stat. § 169A.20, subd. 1, has a two-hour time requirement, the implied-consent statute does not have this requirement. *Compare* Minn. Stat. § 169A.20, *with* Minn. Stat. §§ 169A.50–.53. For there to be a violation of the implied-consent law, the police officer must have probable cause to believe that the individual was driving a vehicle while under the influence of alcohol, and that the test results, *at the time of testing*, must indicate an alcohol concentration of 0.08 or more. Minn. Stat. §§ 169A.52–.53. Because the implied-consent law does not require appellant's alcohol concentration to be measured within two hours of the time of driving, the district court properly relied on the results of appellant's blood test in affirming the revocation of his driver's license.

Affirmed.