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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1674**

Gary Michael Jirovec, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed April 8, 2013
Affirmed
Chutich, Judge**

Ramsey County District Court
File No. 62-CV-12-840

Stephen V. Grigsby, Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Mathew A. Ferche, Assistant Attorney General, Jeffrey S. Bilcik, Assistant Attorney General, Kristi A. Nielsen, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Chutich, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Appellant Gary Michael Jirovec challenges the district court's denial of his petition to reinstate his cancelled driver's license. He contends that the district court hearing denied him procedural due process and that the cancellation of his license

violated his right to substantive due process. Because Jirovec failed to raise these issues before the district court, and because the district court properly weighed the evidence and testimony presented at the hearing, we affirm.

FACTS

Jirovec committed several offenses involving alcohol and driving in the mid-1980s, and the Commissioner of Public Safety cancelled his driving privileges in 1986. Jirovec's driver's license was reinstated in 1989 after he completed rehabilitation. As part of the license reinstatement, Jirovec signed a Statement Attesting to Rehabilitation, also known as a "last drink statement," in which he acknowledged that his "driving privileges will be cancelled and denied if the Commissioner has sufficient cause to believe that [he has] consumed alcohol." He specifically agreed to "abide by these conditions as long as [he] wish[es] to be licensed to drive in Minnesota." Despite this lifelong driving restriction, Jirovec's most recently issued driver's license states that he has no restrictions on his driving privileges.

In the early-morning hours of July 31, 2011, Crosslake police officer Jake Maier responded to a noise complaint on the shore of Cross Lake. Officer Maier shined his flashlight on a docked boat playing loud music, and heard someone yell "shine that on me again, f---er, I'll kick your a--." The officer approached and saw Jirovec and two other people. According to his incident report, Officer Maier smelled a strong odor of alcohol on Jirovec's breath and observed that Jirovec's speech was slurred and his eyes were bloodshot and watery. Jirovec told the officer "that he made a bad choice because he was drinking." Officer Maier reported Jirovec's drinking to the commissioner, who

determined that Jirovec violated the abstinence restriction on his driver's license and cancelled his license for three years.

Jirovec filed a petition in district court to reinstate his driving privileges, and the district court held a hearing at which Jirovec testified, along with his niece and her husband who were with Jirovec on July 31. The niece and her husband testified that Jirovec was a sober person, they had never seen him drink, and he was not drinking alcohol at all on the day in question. On cross-examination, however, they admitted that they were both drinking all day and did not know exactly what Jirovec was drinking throughout the day.

Jirovec denied drinking any alcohol on July 31. He admitted yelling at Officer Maier when he saw the flashlight, but denied telling Officer Maier that he was drinking. Jirovec stated that his eyes were bloodshot and watery not because he was drinking, but because he woke up very early that day and had been sitting by a campfire, smoking cigars. He explained the slurred speech described by Officer Maier as due to a speech impediment. Jirovec also claimed that he was not aware of the restriction on his driving privileges that he abstain from alcohol.

The district court denied Jirovec's petition, concluding that the commissioner acted within its authority in cancelling Jirovec's license and that the commissioner was not estopped from revoking Jirovec's license even though the abstinence restriction was not listed on his license. Jirovec now appeals.

DECISION

I.

“The commissioner shall cancel and deny the driver’s license . . . of a person on sufficient cause to believe that the person has consumed alcohol . . . after the documented date of abstinence.” Minn. R. 7503.1700, subp. 6 (2011). A person whose driver’s license has been cancelled by the commissioner may petition the district court for reinstatement under Minn. Stat. § 171.19 (2012). The district court then “conducts a trial de novo and independently determines whether a driver is entitled to license reinstatement.” *Madison v. Comm’r of Pub. Safety*, 585 N.W.2d 77, 82 (Minn. App. 1998), *review denied* (Minn. Dec. 15, 1998). The district court must “take testimony and examine into the facts of the case to determine whether the petitioner is entitled to a license or is subject to . . . cancellation.” Minn. Stat. § 171.19. The petitioner bears the burden of proving entitlement to reinstatement. *McIntee v. State, Dep’t of Pub. Safety*, 279 N.W.2d 817, 821 (Minn. 1979). To support cancellation because of a violation of an abstinence restriction, the commissioner “must present some evidence to show that sufficient cause existed to believe a violation of the total abstinence clause occurred.” *Igo v. Comm’r of Pub. Safety*, 615 N.W.2d 358, 360 (Minn. App. 2000), *review denied* (Minn. Oct. 17, 2000); Minn. R. 7503.1700, subp. 6.

On appeal, “[w]e review de novo the district court’s application of the law in proceedings held pursuant to section 171.19.” *Pallas v. Comm’r of Pub. Safety*, 781 N.W.2d 163, 167 (Minn. App. 2010). We review the district court’s factual findings for clear error. Minn. R. Civ. P. 52.01. We will affirm a license determination if it is

supported by substantial evidence and is not arbitrary or capricious. *Igo*, 615 N.W.2d at 360. In reviewing driver’s license matters, we apply a “presumption of regularity and correctness.” *Thorson v. Comm’r of Pub. Safety*, 519 N.W.2d 490, 493 (Minn. App. 1994).

The commissioner may not deprive a person of a driver’s license without procedural due process. *Riehm v. Comm’r of Pub. Safety*, 745 N.W.2d 869, 877 (Minn. App. 2008), *review denied* (Minn. May 20, 2008). “Due process requires a prompt and meaningful postrevocation review.” *Fedziuk v. Comm’r of Pub. Safety*, 696 N.W.2d 340, 346 (Minn. 2005). We review de novo a claim that a person has been denied due process. *Plocher v. Comm’r of Pub. Safety*, 681 N.W.2d 698, 702 (Minn. App. 2004).

Jirovec bases his procedural-due-process argument on the district court’s consideration of Officer Maier’s police report as substantive evidence that Jirovec consumed alcohol. Jirovec did not object to the admission of the police report at the hearing, however, and therefore waived this argument for purposes of appellate review.¹ *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that an appellate court must only consider those issues presented to and considered by the district court).

We will address, however, Jirovec’s argument that the district court gave the police report undue weight in considering his petition for reinstatement, especially where no witness testified to the report’s accuracy. In a license-reinstatement hearing “the district court must weigh witness credibility and all of the evidence, and independently

¹ Jirovec’s counsel acknowledged the admissibility of the police report at the district court hearing, stating, “I know with what the commissioner filed that this [police report] is hearsay evidence that is admissible at these kinds of hearings.”

determine whether cancellation is justified,” *Igo*, 615 N.W.2d at 361, and we defer to the district court’s credibility determinations and ability to weigh the evidence. *Thorson*, 519 N.W.2d at 493.

Sufficient cause to believe a person consumed alcohol may be shown by one of several possible sources, including a police report. Minn. R. 7409.0100, subp. 8a (2011). Officer Maier’s report reflected his observations of Jirovec’s physical state (slurred speech, bloodshot and watery eyes, odor of alcohol), along with Jirovec’s statement to the officer that he was drinking. The district court properly considered the officer’s observations as direct evidence that Jirovec consumed alcohol. *See Antl v. State Dep’t of Pub. Safety*, 353 N.W.2d 240, 242–43 (Minn. App. 1984) (stating that officers’ observations of “bloodshot eyes, slurred and abusive speech, staggering gait, belligerent attitude and strong odor of alcohol on respondent’s breath” must be considered direct evidence of alcohol use). Further, although the police report contained hearsay, the district court was entitled to consider the report without live-witness testimony to its accuracy. *See Gardner v. Comm’r of Pub. Safety*, 423 N.W.2d 110, 113–14 (Minn. App. 1988) (stating that the district court properly considered a police report accompanied by an affidavit from the commissioner under the public-records exception to the hearsay rule).

Moreover, while Jirovec’s niece, her husband, and Jirovec all testified that Jirovec was not drinking on July 31, the district court clearly set out its reasons for not crediting that testimony. The court noted that the niece and her husband “had a significant amount of alcohol on the day in question, and have a natural bias to help their uncle,” and found

that Jirovec’s “version of events was not credible.” Specifically, the district court found that Jirovec’s speech impediment “was subtle and was not mistakeable for a sign of intoxication,” and that he had “a motive to help his case, so that his license and driving privileges are not cancelled.” Given the rule specifically authorizing consideration of a police report and our deference to the district court’s credibility determinations and ability to weigh the evidence, the district court did not err in concluding that the commissioner had sufficient cause to believe that Jirovec violated the abstinence restriction.

II.

Jirovec’s second argument concerns the commissioner’s failure to list the abstinence restriction on his driver’s license. Jirovec frames this argument in terms of substantive due process and “official authorization.” Because he did not make this argument to the district court, however, we decline to address it on appeal. *Thiele*, 425 N.W.2d at 582.

To the extent Jirovec challenges the district court’s decision that equitable estoppel does not apply to preclude the commissioner from enforcing the abstinence restriction, we affirm the decision. Jirovec cannot show the most important element of an equitable estoppel claim against the government, that an authorized government agent engaged in “wrongful conduct.” *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 25–26 (Minn. 2011). Besides claiming that the commissioner erroneously omitted the alcohol restriction on his driver’s license, Jirovec has not alleged or proved that this oversight

was anything more than an inadvertent omission or mistake on the part of the commissioner. *See id.*

The district court therefore did not err in determining that equitable estoppel does not apply, and we affirm its denial of Jirovec's petition for reinstatement.

Affirmed.