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STATE OF MINNESOTA
IN COURT OF APPEALS
A09-989

Michelle Christa Kruckow, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed March 30, 2010
Affirmed
Kalitowski, Judge

Cass County District Court
File No. 11-CV-09-48

Richard Kenly, Kenly Law Office, Backus, Minnesota (for appellant)

Lori Swanson, Attorney General, Natasha Karn, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and Bjorkman, Judge.

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

KALITOWSKI, Judge

Appellant Michelle Christa Kruckow challenges the district court's order sustaining respondent Minnesota Commissioner of Public Safety's revocation of her driver's license for driving while impaired under the implied consent law. Appellant

argues that the revocation was improper because the deputy's certification of the test results appears to have been dated before her urine test results were known. We affirm.

D E C I S I O N

I.

Whether the district court erred in concluding that the police officer complied with the certification requirement in Minn. Stat. § 169A.52, subd. 4(a) (2008), is an issue of statutory interpretation that this court reviews de novo. *Sands v. Comm'r of Pub. Safety*, 744 N.W.2d 24, 26 (Minn. App. 2008). The relevant portion of Minn. Stat. § 169A.52, subd. 4(a), provides:

> *Upon certification by the peace officer* that there existed probable cause to believe the person had been driving, operating, or in physical control of a motor vehicle in violation of section 169A.20 (driving while impaired) and *that the person submitted to a test and the test results indicate an alcohol concentration of 0.08 or more* or the presence of a controlled substance listed in schedule I or II . . . then the commissioner shall revoke the person's license. . . .

(Emphasis added.) Statutes prohibiting people from driving motor vehicles while intoxicated are liberally interpreted in favor of the public interest and against the private interest of drivers. *State v. Hanson*, 543 N.W.2d 84, 89 (Minn. 1996).

Appellant argues that "it appears" that the deputy certified the test results by checking the box on line nine indicating that appellant had an alcohol level of .08 or above and signing the form before the test results were known. But the district court found credible the deputy's testimony that he thought he checked the box after he got the

test results. Moreover, the record indicates that the box on line nine was marked in a different ink than the rest of the form.

Credibility determinations are the exclusive province of the fact-finder. *Conroy v. Kleinman Realty Co.*, 288 Minn. 61, 66, 179 N.W.2d 162, 165-66 (1970). They will not be disturbed on appellate review absent an abuse of discretion. *Koes v. Advanced Design, Inc.*, 636 N.W.2d 352, 360 (Minn. App. 2001), *review denied* (Minn. Feb. 19, 2002). Appellant has made no showing that the district court abused its discretion by finding the deputy's testimony credible, and by finding that the deputy checked the box after receiving the test results.

Moreover, in *Johnson v. Comm'r of Pub. Safety*, we concluded that despite a police officer's failure to check the same box at issue here, certification was proper when the officer submitted the following documents to the commissioner: (1) his narrative report stating that appellant's alcohol concentration was .25; (2) the notice and order of revocation; and (3) the breath-test results that indicated an alcohol concentration of .25. 756 N.W.2d 140, 143 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008). Further, we stated that the statute does not mandate that the peace officer's certificate be submitted or completed in a certain manner, and that errors on the certificate do not automatically result in reversal of a driver's license revocation. *Id.* at 143-44.

Like the police officer in *Johnson*, the deputy here forwarded to the commissioner, in addition to the allegedly defective certification: (1) his narrative reports; (2) the notice of order and revocation; and (3) the test results showing that appellant's alcohol concentration was .18. The deputy did not forward this information to the commissioner

until after the test results were known, so even if he mistakenly checked a box or signed the form before he received the results, appellant was not prejudiced. The district court concluded that appellant "failed to establish that her certificate was lacking in any material respect." Pursuant to *Johnson*, even if the peace officer's certificate was defectively completed, the other supporting documentation renders the certification proper. *See Johnson*, 756 N.W.2d at 143.

II.

Appellant also states that "[t]he revocation in this case offends due process and must be rescinded." Appellant's failure to brief or provide authority waives this issue. *See Grigsby v. Grigsby*, 648 N.W.2d 716, 726 (Minn. App. 2002), *review denied* (Minn. Oct. 15, 2002) (stating that failure to cite authority waives the issue). Moreover, "[a]n appellant cannot assert a procedural due-process claim without first establishing that he has suffered a direct and personal harm." *Riehm v. Comm'r of Pub. Safety*, 745 N.W.2d 869, 877 (Minn. App. 2008) (quotation omitted), *review denied* (Minn. May 20, 2008). In *Johnson*, this court concluded that improper certification was not a direct and personal harm sufficient to show a due-process violation when it was undisputed that appellant's breath-test results showing an alcohol concentration of .25 were sent to the commissioner. 756 N.W.2d at 144. Here, appellant has not shown a direct and personal harm, because it is undisputed that her urine tests results showing an alcohol concentration of .18 were sent to the commissioner. Thus, we conclude that appellant's argument is without merit.

Affirmed.