

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0386**

Dean Gary Sternhagen, petitioner,  
Appellant,

vs.

Commissioner of Public Safety,  
Respondent.

**Filed February 12, 2008  
Affirmed  
Kalitowski, Judge**

Grant County District Court  
File No. 26-CV-06-181

Joseph Kaminsky, 6300 Shingle Creek Parkway, Suite 260, Brooklyn Center, MN 55430  
(for appellant)

Lori Swanson, Attorney General, Martin A. Carlson, Jeffrey Lebowski, Assistant  
Attorneys General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134  
(for respondent)

Considered and decided by Kalitowski, Presiding Judge; Randall, Judge; and  
Hudson, Judge.

**UNPUBLISHED OPINION**

**KALITOWSKI**, Judge

Appellant Dean Gary Sternhagen challenges the district court's order upholding the cancellation of his driver's license for his violation of the requirement that he totally abstain from alcohol. Appellant argues that the Commissioner of Public Safety presented

insufficient evidence to support the cancellation where appellant (1) presented testimony that he did not consume alcohol; (2) did not admit to consuming alcohol; and (3) was not tested for alcohol consumption. We affirm.

## DECISION

This court reviews the district court's factual findings for clear error. *In re Hutchinson*, 440 N.W.2d 171, 175 (Minn. App. 1989), *review denied* (Minn. Aug. 9, 1989). But “[t]his court is not bound by and need not give deference to a district court’s decision on a purely legal issue.” *State v. Ramirez*, 597 N.W.2d 575, 577 (Minn. App. 1999) (citation omitted).

The Commissioner of Public Safety may impose restrictions on a driver’s license. Minn. Stat. § 171.09(a) (2004). When the commissioner has sufficient cause to believe that an individual whose driver’s license is subject to a total-abstinence restriction has consumed alcohol, “[t]he commissioner shall cancel and deny the driver’s license . . . .” Minn. R. 7503.1700, subp. 6 (2005). However, “[a]ny person whose driver’s license has been . . . canceled . . . may file a petition for a hearing in the matter in the district court . . . and such court . . . shall . . . take testimony and examine into the facts . . . to determine whether the petitioner is entitled to a license or is subject to . . . cancellation . . . .” Minn. Stat. § 171.19 (2004). The petitioner has the burden of proving that he did not consume alcohol and is entitled to a driver’s license. *Madison v. Comm’r of Pub. Safety*, 585 N.W.2d 77, 82 (Minn. App. 1998), *review denied* (Minn. Dec. 15, 1998). “The decision of the agency will not be reversed unless the decision is fraudulent,

arbitrary, unreasonable, or not within the agency's jurisdiction or powers." *Gardner v. Comm'r of Pub. Safety*, 423 N.W.2d 110, 113 (Minn. App. 1988) (citation omitted).

Here, the district court properly determined that appellant did not meet his burden of proving that he did not consume alcohol at a wedding reception. Nor did appellant establish that the commissioner's decision was fraudulent, arbitrary, unreasonable, or not within his power. Although appellant produced three witnesses to attest that they had not seen him drinking at the reception, these witnesses admitted that they had no reason to pay particular attention to appellant's behavior. The witnesses further testified that they did not see appellant drinking *any* beverage, even though appellant stated that he drank three or four diet colas throughout the night.

The commissioner presented evidence that two officers detected an odor of alcoholic beverages coming from appellant and observed appellant's bloodshot eyes. In addition, one of the officers testified that appellant had slurred speech.

The district court was required to consider the law enforcement officers' observations as direct evidence even though the officers did not administer a sobriety test. *Antl v. State Dep't of Pub. Safety*, 353 N.W.2d 240, 243 (Minn. App. 1984). This court has stated that "[t]here is no law, logic, or reason to support the trial court's position that a test is needed to confirm what experienced officers' noses and eyes tell them." *Id.* Accordingly, appellant's contention that due process required the officers to administer a test is unsupported.

We conclude that the district court properly determined that appellant did not meet his burden of establishing that he is entitled to a driver's license and that there was sufficient evidence that appellant violated the abstinence restriction.

**Affirmed.**