STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0714

Steven Donald Hubbard, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed March 10, 2009
Affirmed
Peterson, Judge

Blue Earth County District Court
File No. 07-CV-07-3131

Richard L. Swanson, 207 Chestnut Street, Suite 235, P.O. Box 117, Chaska, MN 55318 (for appellant)

Lori Swanson, Attorney General, Melissa J. Eberhart, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134 (for respondent)

Considered and decided by Peterson, Presiding Judge; Bjorkman, Judge; and Crippen, 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

PETERSON, Judge

In this appeal from an order sustaining the revocation of his driver's license, appellant argues that Minn. Stat. § 634.15 (Supp. 2007), which provides that a report of the facts and results of a laboratory analysis that is prepared and attested by the person performing the analysis in a laboratory operated by the Bureau of Criminal Apprehension (BCA) is admissible in evidence in an implied-consent hearing, violates the Confrontation Clause and the separation-of-powers doctrine. We affirm.

FACTS

Appellant Steven Hubbard was transported to a hospital following a motorcycle accident. Hubbard provided a blood sample, which was sent to a BCA laboratory for analysis. Testing revealed that Hubbard had an alcohol concentration of 0.12. Respondent commissioner of public safety revoked Hubbard's driver's license, and Hubbard sought judicial review of the revocation. A hearing on Hubbard's petition was conducted under Minn. Stat. § 169A.53, subd. 3 (2006). At the hearing, the commissioner attempted to introduce a certified report of the BCA test results as permitted under Minn. Stat. § 634.15, subd. 1(a)(1), and Hubbard objected, arguing that Minn. Stat. § 634.15 is unconstitutional because it (1) deprives him of the right to confront the BCA scientist who prepared the report and (2) encroaches on powers reserved to the judiciary. The district court admitted the report and sustained the license revocation. This appeal followed.

D E C I S I O N

Hubbard argues that Minn. Stat. § 634.15 is unconstitutional. A statute's constitutionality presents a question of law, which we review de novo. *Hamilton v. Comm'r of Pub. Safety*, 600 N.W.2d 720, 722 (Minn. 1999). We presume that Minnesota statutes are constitutional and exercise our power to declare a statute unconstitutional "with extreme caution and only when absolutely necessary." *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989). The party challenging a statute has the burden of demonstrating its unconstitutionality beyond a reasonable doubt. *Id.*

Under Minn. Stat. § 634.15, subd. 1(a)(1), "a report of the facts and results of any laboratory analysis or examination if it is prepared and attested by the person performing the laboratory analysis or examination in any laboratory operated by the [BCA]" is admissible in evidence in a hearing pursuant to Minn. Stat. § 169A.53, subd. 3. Minn. Stat. § 634.15, subd. 1(a)(1), is designed in part to prevent "unnecessary and costly court appearances" by BCA scientists in implied-consent proceedings. *Glick v. Comm'r of Pub. Safety*, 362 N.W.2d 15, 16 (Minn. App. 1985).

I.

Citing *State v. Caulfield*, 722 N.W.2d 304, 310 (Minn. 2006), in which the supreme court held that a BCA laboratory report is testimonial hearsay subject to the Confrontation Clause, Hubbard argues that section 634.15 unconstitutionally permits a blood-test report to be admitted into evidence in an implied-consent hearing without giving him an opportunity to confront the scientist who prepared the report. But because

the Confrontation Clause does not apply to an implied-consent proceeding, Hubbard's reliance on *Caulfield* is misplaced.

The Confrontation Clause provides that "[i]n all *criminal prosecutions*, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI (emphasis added). Contrary to Hubbard's assertions, an implied-consent hearing is a civil proceeding, not a criminal prosecution. *State v. Wagner*, 637 N.W.2d 330, 337 (Minn. App. 2001). Unlike a criminal defendant who stands to lose a fundamental liberty interest if convicted, the petitioner in a civil implied-consent proceeding "has only his driving privileges at stake." *Id.* "The civil nature of the implied-consent proceeding means the defendant is not entitled to all the substantive constitutional rights associated with criminal matters." *Id.* at 337-38; *see also, e.g.*, *Hartung v. Comm'r of Pub. Safety*, 634 N.W.2d 735, 738-39 (Minn. App. 2001) (holding that criminal defendant's due-process right to potentially exculpatory evidence does not extend to implied-consent proceedings), *review denied* (Minn. Dec. 11, 2001); *Johnson v. Comm'r of Pub. Safety*, 392 N.W.2d 359, 362 (Minn. App. 1986) (noting that commissioner's burden of proof in implied-consent proceeding is a preponderance of the evidence, not beyond a reasonable doubt).

II.

Hubbard argues that because section 634.15 creates a rule of evidence, it unconstitutionally encroaches on a judicial function in violation of the separation-of-powers doctrine. This argument is without merit.

The separation-of-powers doctrine generally prohibits each branch of government from intruding upon another branch's unique constitutional functions. *State v. T.M.B.*, 590 N.W.2d 809, 812 (Minn. App. 1999), *review denied* (Minn. June 16, 1999). The power to regulate the admissibility of evidence is a matter that has been delegated exclusively to the judiciary. *State v. McCoy*, 682 N.W.2d 153, 160 (Minn. 2004). And as Hubbard correctly observes, section 634.15 purports to regulate the admissibility of certified laboratory reports prepared by BCA scientists. But the separation-of-powers doctrine is not as rigid as Hubbard suggests, and "there has never been an absolute division of governmental functions in this country, nor was such even intended." *State v. Baxter*, 686 N.W.2d 846, 851 (Minn. App. 2004) (quotation omitted). The doctrine "is premised on the belief that too much power in the hands of one governmental branch invites corruption and tyranny." *Id.* (quotation omitted). But "[t]hat there is some interference between the branches does not undermine the separation of powers; rather, it gives vitality to the concept of checks and balances critical to our notion of democracy." *Wulff v. Tax Ct. of App.*, 288 N.W.2d 221, 223 (Minn. 1979). Consequently, courts may enforce statutory rules of evidence out of respect for a coequal branch. *McCoy*, 682 N.W.2d at 160. And this court has let section 634.15 stand as a matter of comity because it "does not significantly impair the judicial function, but merely establishes a presumption of reliability that the driver may choose to rebut with [the preparing scientist's] live testimony." *State v. Pearson*, 633 N.W.2d 81, 86 (Minn. App. 2001).

Hubbard contends that "[t]he continuing validity of *Pearson* . . . is seriously in question" because *Caulfield* held that section 634.15 is unconstitutional. But as we have

already explained above, *Caulfield*'s holding is rooted in the Confrontation Clause, which does not apply in this civil proceeding. Consequently, we reject Hubbard's separation-of-powers argument.

Affirmed.