STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1308

Paul A. Poydras, Jr., petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed March 24, 2009
Affirmed
Connolly, Judge

Ramsey County District Court
File No. 62-CV-07-3012

Paul A. Poydras, Jr., 2034 Yorkshire Avenue, Apt. 204, St. Paul, MN 55116 (pro se appellant)

Lori Swanson, Attorney General, Jeffrey F. Lebowski, Assistant Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, MN 55101 (for respondent)

Considered and decided by Worke, Presiding Judge; Hudson, Judge; and Connolly, Judge.

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

CONNOLLY, Judge

Appellant argues that the district court erred in sustaining the revocation of his driving privileges because the arresting police officer perjured himself while testifying at

the implied consent hearing. Because the district court's credibility determinations were not clearly erroneous, we affirm.

FACTS

On September 7, 2007, St. Anthony Police Officer James South initiated a traffic stop of appellant Paul Poydras's vehicle at approximately 2:20 a.m. After observing indicia of impairment, Officer South arrested appellant for DWI. Officer South transported appellant to the Saint Anthony Police Department, where he read the implied consent advisory to appellant at approximately 2:45 a.m.

After reading the implied consent advisory, Officer South asked appellant if he understood what had just been explained to him, and appellant answered "Yes, sir." Officer South then asked if appellant would like to consult with an attorney, and appellant responded "No." Lastly, Officer South asked appellant if he would submit to a breath test. Appellant responded that he would not take the breath test because he did not believe that Officer South had probable cause and because he had already taken a test and was not willing to take any more. Officer South testified at the implied consent hearing that appellant did not appear to be confused and was not tentative in his refusal to take the test.

Appellant testified on his own behalf at the implied consent hearing, stating that Officer South read the implied consent advisory to him on the side of the road, not at the police station. Appellant testified that Officer South actually took appellant's girlfriend to her home while another officer, Officer Schlingman, transported him to the police station. Furthermore, according to appellant, when he refused to take the breath test,

Officer Schlingman radioed Officer South, and Officer South directed Officer Schlingman to seize appellant's vehicle.

On rebuttal, Officer South testified that Officer Schlingman had arrived on the scene of the traffic stop and waited with appellant's girlfriend for the tow truck, while Officer South transported appellant to the police station. Once the tow truck arrived, Officer Schlingman took appellant's girlfriend to her home. Thereafter, following appellant's test refusal, Officer Schlingman transported appellant to the Ramsey County Jail. During that transport, Officer South radioed Officer Schlingman to inform him that appellant had a prior DWI from Georgia and therefore Officer Schlingman should serve appellant with forfeiture papers and the license plate impoundment form.

Following the implied consent hearing, the district court issued an order sustaining the revocation of appellant's driving privileges. This appeal follows.

D E C I S I O N

Appellant argues that because Officer South committed perjury the district court erroneously sustained the revocation of his driving privileges. But the district court found Officer South to be credible and therefore sustained the revocation of appellant's driving privileges.

"Due regard is given to the district court's opportunity to judge the credibility of witnesses, and findings of fact will not be set aside unless clearly erroneous." *Snyder v. Comm'r of Pub. Safety*, 744 N.W.2d 19, 22 (Minn. App. 2008). "Conclusions of law will be overturned only upon a determination that the trial 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).

Appellant and Officer South have differing accounts of what happened on the night that appellant was arrested for driving while impaired. The district court found Officer South's testimony to be credible. Based on that finding, the district court determined that appellant's right to counsel had been vindicated because appellant was read the implied consent advisory at the police station and stated that he did not wish to consult an attorney. Appellant outright refused to submit to a breath test and consequently his driving privileges were revoked. The district court's finding that Officer South was more credible than appellant is not clearly erroneous because the district court had an opportunity to listen to the testimony and judge the witnesses' demeanor. Therefore, appellant's contention that his driving privileges were improperly revoked because Officer South perjured himself and did not read him the implied consent advisory at the police station is without merit.

Lastly, appellant submitted his Petition for Judicial Review of Driver's License and Privileges Revocation along with his pro se brief. In that petition, appellant alleged numerous constitutional violations. Generally, an appellant must raise a constitutional challenge at the district court to preserve it for appeal. *State v. McLaughlin*, 725 N.W.2d 703, 713 (Minn. 2007) (concluding that factual record was not adequately developed to depart from usual rule, so court would not consider challenge to long-standing *M'Naughten* rule). Because the scheduling order for the implied consent hearing stated that only the right to counsel and the final, uncounseled decision regarding testing would

be considered by the district court at the implied consent hearing, the constitutional arguments are waived on appeal.

Affirmed.