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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-2257**

Patrick John Igo, petitioner,  
Appellant,

vs.

Commissioner of Public Safety,  
Respondent.

**Filed August 4, 2009  
Affirmed  
Stauber, Judge**

Ramsey County District Court  
File No. 62CV086803

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Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and  
Stauber, Judge.

**UNPUBLISHED OPINION**

**STAUBER**, Judge

Appellant challenges the district court's decision sustaining the cancellation of his  
restricted driver's license for violation of the requirement that he abstain from alcohol.

Because the evidence in the record supports the finding that appellant consumed alcohol in violation of the restriction on his license, we affirm.

### **FACTS**

In December 2007, appellant Patrick Igo met up with several friends at a bar in Vadnais Heights, Minnesota. At some point in the evening, appellant removed a novelty lighter from his pocket and used it to light a cigarette. The lighter was designed to look like a switchblade knife and contained a functioning spring-loaded blade. A bar patron noticed appellant holding the device and alerted Ramsey County Deputy John Ferrian, who happened to be responding to an unrelated incident inside the bar. Deputy Ferrian approached appellant and questioned him about the knife. Appellant denied displaying a knife, but a subsequent search of his pocket uncovered the combination lighter and knife. While talking to appellant, Deputy Ferrian detected the odor of alcohol on his breath and observed that his eyes were bloodshot and watery. Appellant also had difficulty following instructions.

Deputy Ferrian performed an outstanding warrant check on appellant, which revealed that appellant had a restricted driver's license that prohibited him from consuming any alcohol or controlled substances. Based on the visible signs of alcohol consumption that he had observed, Deputy Ferrian asked appellant if he had been drinking. Appellant denied consuming any alcohol that evening, and agreed to take a preliminary breath test (PBT). Deputy Ferrian twice attempted to administer the PBT, but each time the device was unable to register a breath sample sufficient for testing. Due to the lack of airflow through the PBT device, Deputy Ferrian concluded that

appellant was attempting to manipulate the test by placing his tongue over the mouthpiece of the device and pretending to blow. Deputy Ferrian then spoke with a bartender and the manager of the establishment who confirmed that appellant had been served at least two alcoholic beverages earlier in the evening. Neither employee observed appellant consume the beverages, but they both indicated that appellant was a regular customer who was known to drink alcohol.

Deputy Ferrian filed a police report with respondent Commissioner of Public Safety (commissioner) documenting his suspicions that appellant had violated the total abstinence restriction on his driver's license. Upon reviewing the report, the commissioner cancelled appellant's driving privileges as inimical to public safety for violating the total abstinence restriction. Appellant filed a petition for judicial review of the commissioner's decision, and an evidentiary hearing was held before the district court. At the hearing, appellant categorically denied consuming any alcohol and claimed that the drinks he purchased on the night in question were for his friends. Bar owners from other establishments that appellant frequented and a friend who was with appellant on the night in question also testified that appellant never drank alcohol and only purchased drinks for others. Conversely, Deputy Ferrian testified about the indicia of intoxication he observed while talking to appellant and the difficulties he had in administering the PBT. Deputy Ferrian also testified regarding his conversation with the bartender and manager. However, the bartender and manager did not testify. Following the hearing, the district court sustained the cancellation. This appeal followed.

## DECISION

The commissioner has the authority to require total abstinence from alcohol as a continuing condition for retaining a driver's license. *Askildson v. Comm'r of Pub. Safety*, 403 N.W.2d 674, 676-77 (Minn. App. 1987), *review denied* (Minn. May 28, 1987).

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 (2007). The burden is on the individual to prove 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). A presumption of regularity and correctness exists when license matters are reviewed. *Thorson v. Comm'r of Pub. Safety*, 519 N.W.2d 490, 493 (Minn. App. 1994). This court will not reverse a license determination unless it finds that the determination is unsupported by substantial evidence or is arbitrary and capricious. *Igo v. Comm'r of Pub. Safety*, 615 N.W.2d 358, 360 (Minn. App. 2000), *review denied* (Minn. Oct. 17, 2000). The commissioner "must present some evidence to show that sufficient cause existed to believe a violation of the total abstinence clause occurred." *Id.* In turn, appellant must demonstrate that the commissioner acted unreasonably. *Id.*

Appellant argues that the evidence was insufficient to support the cancellation of his driver's license. The district court relied primarily on Deputy Ferrian's testimony in sustaining the license cancellation. Deputy Ferrian testified that he detected the odor of alcohol on appellant's breath, observed that his eyes were bloodshot and watery, and

noted that he had difficulty following instructions. Deputy Ferrian also claimed that appellant attempted to manipulate the PBT test by placing his tongue over the mouthpiece of the device and pretending to blow. He confirmed his suspicions of alcohol consumption by talking to a bartender and manager who indicated that appellant had purchased at least two alcoholic beverages that evening and was a regular customer at the bar.

Appellant challenges the credibility of Deputy Ferrian's testimony and claims that he is entitled to reinstatement of his license because the testimony of his witnesses proves that he was not drinking on the night in question. We disagree. In affirming the cancellation of appellant's license, the district court implicitly found Deputy Ferrian's testimony more credible than the testimony of appellant's witnesses. We defer to the district court's credibility determinations on appeal. *Conrady v. Comm'r of Pub. Safety*, 396 N.W.2d 914, 916 (Minn. App. 1986). Appellant also argues that more obvious signs of alcohol consumption bordering on intoxication are necessary to cancel a party's license. This argument distorts the standard required for license cancellation. It was only necessary for the district court to conclude that appellant *consumed* alcohol. A finding of intoxication is not required. *See* Minn. R. 7503.1700, subp. 6 ("The commissioner shall cancel and deny the driver's license and driving privileges of a person on sufficient cause to believe that the person has *consumed* alcohol." (emphasis added)). Because Deputy Ferrian's testimony supports the finding that appellant consumed alcohol in violation of his license restriction, and because a police officer's testimony can independently form the basis for license cancellation, we affirm the cancellation of appellant's license. *See*

*Antl v. Dept. of Pub. Safety*, 353 N.W.2d 240, 243 (Minn. App. 1984) (stating that a police officer's observation of indicia of alcohol consumption may form the basis for license revocation).<sup>1</sup>

**Affirmed.**

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<sup>1</sup> Appellant also argues for the first time on appeal that the district court erred by allowing the commissioner to introduce a police report containing statements from the unidentified bartender and manager. Appellant alleges that the admission of this evidence violated Minn. R. 7503.0100, subp. 11 (2007). Because appellant failed to raise this issue below, we decline to address it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (limiting appellate review to those issues raised and decided by the district court).