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NO. A07-0059

State of Minnesota
In Court of Appeals

Charles Aaron Sands,

Respondent,

vs.

Commissioner of Public Safety,

Appellant.

RESPONDENT'S BRIEF AND APPENDIX

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STATEMENT OF ISSUES

In Minnesota, when a driver of a motor vehicle submits to a chemical test for intoxication and it reveals a blood alcohol concentration of 0.08 and under 0.20, the Commissioner of Public Safety will revoke the driver's driving privileges for 90 days.1 If the driver has a blood alcohol concentration of 0.20 or more, this results in a 180 day revocation period. The Peace Officer's Certificate used to certify the revocation to the Commissioner of Public Safety does not have a box to check if the blood alcohol concentration is .20 or more. Thus, the issue in this case is whether Officer Boyer properly certified Respondent's breath test result of 0.20 or more to the Commissioner of Public Safety when he filled out the current version of the Peace Officer's Certificate. Officer Boyer checked the box indicating that Respondent provided a breath sample "which indicated an alcohol concentration of 0.08 or more," rather than checking a box - which doesn't exist in the current Peace Officer's Certificate - indicating an alcohol concentration of .20 or more.

> The trial court found that Officer Boyer did not properly certify Respondent's .20 or greater blood alcohol concentration.

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1 This is true with a first time DWI. There are many different configurations/doubling periods that occur with multiple DWIs and test refusals. However, for purposes of this case, we need only worry about the ramifications of a first time DWI.

STATEMENT OF FACTS

On October 3, 2006, Annandale Police Officer Shawn Boyer arrested Respondent for driving under the influence of alcohol.2 Officer Boyer invoked the Implied Consent Law, read the Minnesota Motor Vehicle Implied Consent Advisory, and asked Respondent to take a breath test. Respondent submitted to an intoxilyzer test, which revealed an alcohol concentration of 0.24.

After processing Respondent's arrest, Officer Boyer completed various forms and reports. One of these forms was the Implied Consent Peace Officer's Certificate. At paragraph nine of the Peace Officer's Certificate, Officer Boyer checked the box that indicated that Respondent provided a breath sample "which indicated an alcohol concentration of .08 or more." The only two other options that Officer Boyer had to choose from were that Respondent "refused to provide a breath sample" or that Respondent provided a blood or urine sample "which indicated the presence of a hazardous substance or schedule I or II controlled substance."

Officer Boyer sent the Peace Officer's Certificate, along with Respondent's test record, the Minnesota Motor Vehicle Implied Consent Advisory, and the officer's supplemental narrative report, to the commissioner of Public Safety. Thereafter, the Commissioner revoked Respondent's driving privileges for 180 days.

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2 All facts are taken directly from the Fact portion of Appellant's Brief.

Respondent received a Notice of Order and Revocation. The Notice and Order of Revocation explained that because Respondent's alcohol concentration was over .20, his driver's license would be revoked for 180 days, (double the period of 90 days for a motorist whose test disclosed an alcohol concentration of over .08).

At the Implied Consent Hearing held on December 4, 2007, Respondent argued that his over .20 certification - and hence his 180 day revocation period - was invalid. The trial court found that the Peace Officer's Certificate does not provide a separate box for an officer to check in order to certify that a driver tested at .20 or more. And because of that, the trial court concluded that Officer Boyer did not properly certify Respondent's alcohol concentration (.24) to the Department of Public Safety. By way of an Order dated December 13, 2006, the trial court rescinded the revocation of Respondent's driver's license to the extent that the revocation exceeded 90 days.

Appellant appeals from that Order.

ARGUMENT

I. STANDARD OF REVIEW

Statutory interpretation is a question of law, which an appellate court reviews de novo. State v. Zacher, 504 N.W.2d 468, 470 (Minn. 1993). The objective of statutory interpretation is to ascertain and effectuate the legislature's intent. Minn.Stat. § 645.16 (2000). "Every law shall be construed, if possible, to give effect to all its provisions." Id. If the statutory language is unambiguous, an appellate court relies on its plain meaning, which manifests legislative intent. In Re Estate of Nordland, 602 N.W.2d 910, 913

(Minn. Ct. App. 1999). If the statute is ambiguous, however, an appellate court relies on the rules of statutory construction to determine and give effect to the legislature's intent. Id. A statute is ambiguous if it is reasonably susceptible to more than one meaning. State by Beaulieu v. RSJ, Inc., 552 N.W.2d 695, 701 (Minn. 1996).

II. THE COMMISSIONER MAY NOT REVOKE A LICENSE IN AN IMPLIED CONSENT PROCEEDING UNLESS THE OFFICER HAS CERTIFIED THE RESULT OF TESTING TO BE TRUE. THIS ALLEGED .20 TEST RESULT WAS NOT CERTIFIED AS TRUE BECAUSE THE PEACE OFFICER'S CERTIFICATE DOES NOT COMPLY WITH STATUTORY REQUIREMENTS. THUS, THE TRIAL COURT CORRECTLY REDUCED THE REVOCATION.

In this case, the trial court found that Minnesota's certification statute is ambiguous as it is subject to two interpretations. The statute, Minn.Stat. § 169A.52, subd. 4(a) reads:

> 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 ...; then the commissioner shall revoke the person's license or permit to drive ...:
> (1) for a period of 90 days
> (2) if the person is under the age of 21 years, for a period of six months;
> (3) for a person with a qualified prior impaired driving incident within the past ten years, for a period of 180 days; or
> (4) if the test results indiciate an alcohol concentration of 0.20 or more, for twice the applicable period in clauses (1) to (3).

Minn.Stat. § 169A.52, subd. 4(a) (2006).

A reasonable interpretation of the above statute could lead some to believe that the legislature requires a specific certification for a BAC of over 0.20 – in order for the

doubling provisions to kick in. Another reasonable reading could lead some to believe that the legislature did not have this intent. The statute is ambiguous – either reading is reasonable. That is exactly what the trial court concluded. And in order to resolve the issue, the court interpreted the statute in favor of the Respondent.

Respondent is alleged to have tested .20 or greater, and for that reason only, Respondent's license was revoked for twice as long as would occur for a driver who's test result was certified to have been .08 to .19. And because of the .20 test allegation, Respondent has to wait twice as long for hardship relief in the form of a work permit. Respondent also had his vehicle plates destroyed by the police.3 Thus, .20 tests are a different beast, they carry entirely different periods of revocation as well as other consequences – all which occur when the officer certifies the test results as true in his Peace Officer's Certificate. But the Peace Officer's Certificate does not have a box to check in order to certify the 0.20 or higher reading.

So, in this case, all the officer did was certify that Respondent failed the test with a .08 result or more. He did <u>not</u> certify the actual result, <u>nor</u> did he certify a .20 or greater result to be true. Yet, Respondent suffered the consequences of a 0.20 certification.

Certification is mandatory. A peace officer must certify the results of a test before the Commissioner of Public Safety can act against a license. Minn.Stat. § 169A.52, subd.4 (2006). There is good reason why the legislature enacted this law. Tremendous

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3 In addition, the alleged .20 test result qualifies one for a mandatory jail hold, $12,000 bail, mandatory court appearance, a gross misdemeanor charge instead of a misdemeanor, and vehicle forfeiture if there isn't one prior within 10 years, among other consequences.

consequences befall those who lose their driver's licenses.4 The officer's certification is tantamount to the oath we administer in court to witnesses, under criminal penalties, to assure reliability, because much will turn upon the testimony about to be given. Thus, this issue is not about the accuracy of the test or the amount of information sent to the commissioner in support of a revocation, it is about the reliability of reports upon which harsh action will be taken. It is about following the requirements of the statutory scheme. We are a nation of laws; if we all do not follow the law, anarchy will be the result.

The commissioner's own rules also require the certificate and certification in order to take action against a driver's license. See, Minn. Rules, 7503.0900, Subp. 3 & 7503.2500. According to the Commissioner's rules, when the officer revokes on behalf of the commissioner, the officer must send the commissioner, the next business day, the seized driver's license, the reports, the advisory and the peace officer's certificate.

In order to accomplish this, the commissioner revised the old Peace Officer's Certificate. Now, the peace officer can execute the certification by simply checking a box that already asserts, if checked, that the test result was .08 or greater, as opposed to the old form where the officer had to do the rather *de minimus* task of writing the actual test result in the blank space provided.

Under this new scheme, the commissioner gets a generic allegation that the test showed an alcohol concentration of .08 or greater, rather than certification of the actual

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4 CD Treatment, license loss, plate loss, vehicle forfeiture, loss of fourth amendment right when driving, a prior for enhancement of future criminal charges, including felonies, a fine-like reinstatement fee of $680.00, and insurance consequences all befall drivers for the IC revocation, even if they are acquitted of the DWI criminal charge!

results in the given case. This is not certifying a test result; and regardless of whether such a generalization suffices to certify a test result for the .08 cases, the current form does not even purport to generalize about a .20 result. Assuming the form is sufficient for the .08 cases, the State has neglected to revise the form to allow even this kind of summary-form-execution to certify a .20 test result. Yet, that is why the commissioner revoked this driver with these particular consequences, unique only to the .20 cases, despite no showing that the officer ever certified such a result was true. This was the exact issue the trial court ruled on in this case.

CONCLUSION

Based upon all of the foregoing, Respondent respectfully requests that this Court affirm the decision below.

Respectfully submitted,
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Dated this 5th day of March, 2007.