

No. A07-2413

STATE OF MINNESOTA

IN COURT OF APPEALS

Mark Alan Johnson,

Appellant,

vs.

Commissioner of Public Safety,

Respondent.

RESPONDENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUES

1. Whether the Commissioner properly revoked Appellant's license under the Implied Consent Law?

The trial court found in the affirmative.

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

Sands v. Commissioner of Public Safety, 744 N.W.2d (Minn. Ct. App. 2008);

Mathews v. Eldridge, 424 U.S. 319 (1976);

Davis v. Commissioner of Public Safety, 509 N.W.2d 380 (Minn. Ct. App. 1993), *aff'd* 517 N.W.2d 901 (Minn. 1994).

STATEMENT OF THE CASE AND FACTS

This is an appeal from a decision sustaining the revocation of Appellant's driving privileges under Minn. Stat. §§ 169A.51-.53 (2006), the Implied Consent Law. It arises out of Appellant's arrest for driving while impaired ("DWI") on May 8, 2007, and the subsequent revocation of his driving privileges for driving a motor vehicle with an alcohol concentration of 0.08 or more. Appellant's implied consent hearing was held on September 27, 2007, before the Honorable David F. Harrington, Judge of Cass County District Court. By written Order dated October 25, 2007, the trial court sustained Appellant's implied consent revocation. *See* Trial Court Order, reproduced in Respondent's Appendix at RA1-RA6.¹ This appeal is taken from that Order.

On May 8, 2007, Officer Joseph Hastings of the Hackensack Police Department arrested Appellant for DWI. T. 7, 15.² At the Cass County Jail, Officer Hastings read the Implied Consent Advisory and Appellant agreed to take a breath test, which recorded Appellant's alcohol concentration at 0.25. T. 15. After the breath test was finished, Officer Hastings completed all of the necessary paperwork associated with Appellant's DWI arrest, including the Peace Officer's Certificate, the Implied Consent Advisory form, the breath test record, an arrest report for the Cass County Sheriff's Office, and a narrative report. T. 16. While completing the Peace Officer's Certificate, Officer

¹ "RA" references are to pages of Respondent's Appendix, which is attached hereto.

² "T." references are to pages of the transcript of the proceedings held before the Honorable David F. Harrington, Judge of Cass County District Court, on September 27, 2007.

Hastings inadvertently failed to check a box on Line 9 indicating that Appellant either refused to submit to testing or failed a chemical test. T. 28; Ex. 1.³ However, the officer did sign and date the Peace Officer's Certificate and attached all necessary documentation, including the test record indicating that Appellant's alcohol concentration was 0.25.⁴ T. 16; Ex. 1. All of this paperwork was then forwarded to Respondent, who subsequently revoked Appellant's license pursuant to the Implied Consent Law. T. 16; Ex. 2.

At his implied consent hearing held on September 27, 2007, Appellant raised several issues, including a challenge that his revocation was not properly certified to Respondent based on the officer's failure to check a box on Line 9 of the Peace Officer's Certificate. T. 4-5. The trial court heard testimony from Officer Hastings and accepted into evidence the packet of completed paperwork that Officer Hastings sent to Respondent, as well as a certified copy of Appellant's driving record indicating that his license had been subsequently revoked for test failure. T. 18-19; Ex. 1-2.

³ "Ex" references are to the exhibits admitted into evidence during the hearing held before the Honorable David F. Harrington, Judge of Cass County District Court, on September 27, 2007, which are attached hereto at RA7-RA14.

⁴ In the lower left-hand corner, the Peace Officer's Certificate contains written instructions for submitting all relevant information to Respondent: "send with copy of alcohol influence report, arrest or accident report, intoxilyzer records, laboratory report to Department of Public Safety" *See* Ex. 1.

By written Order dated October 25, 2007, the trial court sustained Appellant's implied consent revocation. *See* Trial Court Order at RA1. With regard to Appellant's improper certification issue, the trial court made the following factual findings:

On the POC, Officer Hastings did not check the box in paragraph 9 indicating that he provided a breath sample revealing an alcohol concentration of .08 or more. Instead, the test result of .25 was written into the POC. The test result was also written into the Notice and Order of Revocation and 7-day temporary license. This paperwork was then submitted to the Commissioner of Public Safety.

See Trial Court Order at RA3. Based on these facts, the trial court concluded that "although the implied consent statute has been technically violated given that the box in question number 9 was left unchecked, Officer Hastings certified that Petitioner's BAC was .25 when he submitted his paperwork to the Commissioner." *See* Trial Court Order at RA5. Accordingly, the trial court determined that Appellant's license had been properly revoked under the Implied Consent Law.

ARGUMENT

I. STANDARD OF REVIEW

A trial court's findings of fact are entitled to the same weight as the verdict of a jury and must be viewed in the light most favorable to the prevailing party. *See Gretsfield v. Commissioner of Public Safety*, 359 N.W.2d 744, 746 (Minn. Ct. App. 1985); *see also Georgopolis v. George*, 54 N.W.2d 137, 141 (Minn. 1952) (all possible inferences must be drawn in support of the findings). When a trial court hears conflicting testimony, findings of fact cannot be reversed "unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Minn.

R. Civ. P. 52.01; *see also Frost v. Commissioner of Public Safety*, 348 N.W.2d 803, 804 (Minn. Ct. App. 1984). Conclusions of law, on the other hand, can be overturned upon a showing that the trial court erroneously construed and applied the law to its factual findings. *See Dehn v. Commissioner of Public Safety*, 394 N.W.2d 272, 273 (Minn. Ct. App. 1986).

In this case, Appellant claims that his implied consent revocation was not properly certified and that his procedural due process rights were violated by the allegedly improper certification. *See* Appellant's Brief at 4-6. Whether a statute has been properly construed and whether a person's due process rights have been violated are both questions of law subject to *de novo* review. *See State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996); *Davis v. Commissioner of Public Safety*, 509 N.W.2d 380, 386 (Minn. Ct. App. 1993). Respondent submits that the trial court correctly concluded that Appellant's implied consent revocation was properly certified to Respondent. Accordingly, this Court should affirm the trial court's decision to sustain Appellant's license revocation.

II. THE TRIAL COURT CORRECTLY CONCLUDED THAT THE COMMISSIONER PROPERLY REVOKED APPELLANT'S LICENSE UNDER THE IMPLIED CONSENT LAW.

Under the Implied Consent Law, an individual's license shall be revoked when the Commissioner of Public Safety receives information from a peace officer indicating that: (1) there was sufficient probable cause to believe that the individual had been driving, operating or controlling a motor vehicle while impaired; and (2) the individual either failed a chemical test or refused to submit to testing. *See* Minn. Stat. 169A.52, subds. 3(a), 4(a) (2006). In this case, the trial court determined that Respondent properly

revoked Appellant's license under the Implied Consent Law based on the documents submitted by Officer Hastings to the Commissioner. *See* Trial Court Order RA1-RA6. Contrary to the trial court's decision, Appellant claims that his implied consent revocation was not properly certified under the implied consent statute because Officer Hastings failed to check a box on Line 9 of the Peace Officer's Certificate, which also constituted a violation of Appellant's right to procedural due process. *See* Appellant's Brief at 4-6. Respondent submits that Appellant's claims lack merit because his implied consent revocation was properly certified to the Commissioner within the purview of Minn. Stat. § 169A.52, and his procedural due process rights were not violated by the certification process that occurred in this case. Accordingly, this Court should affirm the trial court's decision to sustain Appellant's revocation.

A. Appellant's Implied Consent Revocation Was Properly Certified To the Commissioner.

Under the Implied Consent Law, a revocation occurs "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" Minn. Stat. § 169A.52, subd. 4(a) (2006). In this case, Appellant asserts that "Officer Hastings failed to certify as required by Minnesota law" because the officer did not check a box on Line 9 of the Peace Officer's Certificate. *See* Appellant's Brief at 4-5. This argument must fail for two reasons. First, the implied consent statute was not violated by Officer Hastings'

actions, which constituted proper certification. Second, even if Officer Hastings failure to check a box on Line 9 of the Peace Officer's Certificate constituted a technical violation of the statute, the clerical mistake was harmless and did not invalidate certification. Therefore, this Court should affirm the trial court's conclusion that Officer Hastings' properly certified Appellant's revocation when he submitted all necessary documentation to the Commissioner.

1. As Required By The Plain Language Of The Statute, Officer Hastings Properly Certified All Necessary Information To The Commissioner To Effectuate A Proper Implied Consent Revocation.

A basic canon of statutory construction requires that words and phrases be construed "according to their common and approved usage." Minn. Stat. § 645.08(1) (2006). When the language of a statute is plain and unambiguous, a reviewing court "must not engage in any further construction." *State v. Anderson*, 683 N.W.2d 818, 821 (Minn. 2004). This Court has previously determined that the statute at issue in this case, Minn. Stat. § 169A.52, subd. 4(a)⁵, is plain and unambiguous. *See Sands v.*

⁵ The entire text of Minn. Stat. § 169A.52, subd. 4(a) (2006) reads as follows:

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 or the presence of a controlled substance listed in schedule I or II or its metabolite, other than marijuana or tetrahydrocannabinols, then the commissioner shall revoke the person's license or permit to drive, or nonresident operating privilege:

(1) for a period of 90 days;

(2) if the person is under the age of 21 years, for a period of six months;

(Footnote Continued on Next Page)

Commissioner of Public Safety, 744 N.W.2d, 27 (Minn. Ct. App. 2008). Specifically, this Court observed that:

Minn. Stat. § 169A.52, subd. 4(a) is a two-part statute. The first part addresses what a peace officer must do to enable the commissioner to revoke a person's license to drive, while the second part lists the commissioner's revocation options and the bases for each.

Id. In other words, if the officer certifies the two facts required by the first part of the statute, Respondent's revocation options are listed in the second part of the statute.

The implied consent statute provides for varying revocation periods that are conditioned on additional factors, such as the driver's age, prior impaired driving incidents, and the test results. *See* Minn. Stat. § 169A.52 (2006). These additional factors, and the resulting revocation lengths, are independent of the first portion of the statute addressing certification. Notably, the factual bases that support these additional factors are not based merely on information provided by an officer on the face of the Peace Officer's Certificate, but are instead gathered from other sources such as the test record and the motorist's past driving record. Therefore, this Court recognized that "it is the commissioner who independently makes these additional factual determinations." *Sands*, 744 N.W.2d at 28. Accordingly, certification occurs when a peace officer submits all necessary documentation regarding an individual's DWI arrest to the Commissioner,

(Footnote Continued From Previous Page)

- (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 indicate an alcohol concentration of 0.20 or more, for twice the applicable period in clauses (1) to (3).

who then makes appropriate determinations for revocation under the Implied Consent Law. *See id.*

In this case, the plain language of Minn. Stat. § 169A.52, subd. 4(a), required Officer Hastings to certify that he had probable cause to believe Appellant was driving while impaired and that Appellant's breath test indicated that his alcohol concentration was 0.08 or more. Officer Hastings did exactly that when he submitted all paperwork corresponding to Appellant's DWI arrest, including the Peace Officer's Certificate, the Implied Consent Advisory form, Appellant's breath test record, and his narrative report, to the Commissioner. T. 16; Ex. 1. Information on the Peace Officer's Certificate and contained within Officer Hastings' narrative report clearly documented that the officer had probable cause to believe that Appellant was driving while impaired, and the breath test record showed that Appellant's alcohol concentration was 0.08 or more. *See* Ex. 1. Therefore, Officer Hastings fulfilled his obligations under the certification portion of the statute.

Despite the fact that all necessary documentation was forwarded to Respondent, Appellant claims that "certification" was improper or incomplete based on Officer Hastings' failure to check a box on Line 9 of the Peace Officer's Certificate. *See* Appellant's Brief at 5. However, this assertion lacks foundation in case law or statutory interpretation, and more importantly, puts form over substance. The Peace Officer's Certificate is provided to officers for convenience in complying with the certification requirement of the implied consent statute. There is no statutory requirement that any particular form be used or followed by the officer in his or her certification to

Respondent. Nevertheless, use of the Peace Officer's Certificate form provided by Respondent promotes uniformity and ease in the administration of the certification by the peace officer. *Cf. Hallock v. Commissioner of Public Safety*, 372 N.W.2d 82 (Minn. Ct. App. 1988) (no statutory requirement exists that mandates use of any particular ICA form under the implied consent statute). The Peace Officer's Certificate form itself encourages proper certification by requiring a peace officer to "send with copy of alcohol influence report, arrest or accident report, Intoxilyzer records, laboratory report to the Department of Public Safety." *See* Ex. 1. Based upon all of this information, Respondent independently determines the basis for the implied consent revocation and revokes accordingly. *See Sands*, 744 N.W.2d at 28. Here, Officer Hastings correctly submitted all of documentation regarding Appellant's DWI arrest to Respondent, who subsequently revoked Appellant's license pursuant to the Implied Consent Law. *See* Ex. 1-2. The officer's inadvertent failure to check a box on Line 9 did not constitute a statutory violation. Therefore, Appellant's implied consent revocation was properly certified under Minn. Stat. § 169A. 52, subd. 4(a), and the trial court's order sustaining the revocation should be affirmed.

2. Even If A Technical Violation Of The Statute Occurred, The Clerical Mistake By Officer Hastings Was Harmless And Did Not Invalidate Certification.

In this case, the trial court concluded that "although the implied consent statute has been technically violated given that the box in question number 9 was left unchecked, Officer Hastings certified that Petitioner's BAC was 0.25 when he submitted his paperwork to the Commissioner." *See* Trial Court Order at RA5. However, Appellant

seeks reversal of the trial court's order and ultimately rescission of his implied consent revocation based on the technical violation of the statute. Even if the Court determines that Officer Hastings' failure to check a box on Line 9 of the Peace Officer's Certificate was a technical violation of the statute, the clerical mistake by the officer was harmless and should not invalidate certification for two reasons.

First, the statutory language of Minn. Stat. § 169A.52, subd. 4(a), is directory and does not limit Respondent's actions to cases where certification is completed. The use of the word "shall" or "must" is not necessarily conclusive as to whether the statute is mandatory or directory. *See State v. Jones*, 48 N.W.2d 662, 663 (Minn. 1951). A factor that weighs heavily in favor of construing a statute as directory is the failure of the statute to declare the consequences of non-compliance. *See In re Application of Crown Cork, Inc.*, 458 N.W.2d 132, 138 (Minn. Ct. App. 1990) (holding that the Minnesota Court of Appeals will construe statutory language as directory if a rule contains no penalty for failure to comply with its provisions). Clearly, the text of Minn. Stat. § 169A.52, subd. 4(a), does not prohibit Respondent from effectuating an implied consent revocation when certification is not technically completed by a peace officer or, more accurately stated, a particular type of certificate process is or is not followed. Therefore, it necessarily follows that the violation of a directory statute does not automatically invalidate action taken under the statute. *See Sullivan v. Credit River Township*, 217 N.W.2d 502, 507 (Minn. 1974). Technical defects in compliance that do not reflect bad faith or prejudice the rights of those intended to be protected by the procedures will not suffice to overturn governmental action. *See City of Minneapolis v. Wurtele*, 291 N.W.2d 386, 391 (Minn.

1980). In this case, there is no evidence of bad faith by Officer Hastings' failure to check a box on Line 9 of the Peace Officer's Certificate. To the contrary, Officer Hastings submitted all documentation regarding Appellant's DWI arrest, including the officer's own narrative report documenting the reasons for Appellant's arrest and results of Appellant's breath test, to Respondent. *See* Ex. 1. Accordingly, the officer's inadvertent failure to check a box on Line 9 of the Peace Officer's Certificate was harmless.

Second, the public interest promoted by the Implied Consent Law compels a non-restrictive application of the statute, which should be construed in favor of public safety over the individual driver. *See Szczech v. Commissioner of Public Safety*, 343 N.W.2d 305, 306-07 (Minn. Ct. App. 1984). The continued legislative attention paid to the problems posed by impaired drivers amply demonstrates the continued public frustration and interest in finding effective means for removing drinking drivers from the public roadways. Within the purview of this legitimate objective, this Court should adopt an interpretation of the implied consent statute that will most effectively advance the clear interest every citizen has in being able to use the public streets and highways free from the inexcusable dangers posed by impaired drivers. *See Szczech*, 334 N.W.2d at 306-07. Thus, because Minn. Stat. § 169A.52, subd. 4(a), does not define certification or provide for a particular type of certification process, a non-restrictive interpretation dictates that an officer's act of sending in all DWI documentation to the Commissioner is sufficient for certification. Accordingly, even if this Court determines that Officer Hastings' failure to check a box on Line 9 of the Peace Officer's Certificate constituted a technical

violation of the statute, the clerical mistake was harmless and did not invalidate certification.

B. Appellant's Procedural Due Process Rights Were Not Violated.

Due process imposes constraints on governmental decisions that deprive individuals of property interests, including a driver's license. *See Heddan v. Dirkswager*, 336 N.W.2d 54, 58 (Minn. 1983). "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). Depending upon the particular situation, due process protections may include reasonable notice, the timely opportunity for a hearing, the right to personally appear at the hearing with counsel, the opportunity to present evidence and argument, the right to an impartial decision-maker, and the right to a reasonable decision based solely on the record. *See Goldberg v. Kelly*, 397 U.S. 254, 267-71 (1970). In this case, Appellant claims that his procedural due process rights were violated because "Officer Hastings did not follow the procedure set forth under Minnesota law to revoke a driver's license." *See* Appellant's Brief at 5-6. Specifically, Appellant asserts that his due process rights were violated when Officer Hastings "signed a certificate that failed to certify any test result" *See* Appellant's Brief at 6. Appellant cites to no authority for this proposition, nor does he develop his argument to explain how his due process rights were violated. Nevertheless, Respondent submits that Appellant cannot assert a due process claim on this record because he has failed to show any prejudice caused by the certification process. But even if this Court considers the issue, Appellant's claim must fail because he cannot show any unconstitutional deprivation caused by the

allegedly defective certification process. Therefore, this Court should find that Appellant's procedural due process rights were not violated.

1. Appellant Cannot Assert A Due Process Claim Because He Has Failed To Show Any Prejudice.

In order to challenge the constitutionality of a statute, a party must "show a direct and personal harm resulting from the alleged denial of constitutional rights." *Davis v. Commissioner of Public Safety*, 509 N.W.2d 380, 391 (Minn. Ct. App. 1993), *aff'd* 517 N.W.2d 901 (Minn. 1994). In this case, Appellant is unable to show that he has been prejudiced or harmed by any alleged technical defect in the Peace Officer's Certificate or the certification process. To the contrary, the undisputed facts reveal that Appellant was arrested for driving while impaired and he submitted to a breath test, which revealed an alcohol concentration result of 0.25. *See* Exhibit 1. Officer Hastings submitted all paperwork corresponding to Appellant's DWI arrest, including the Peace Officer's Certificate, the Implied Consent Advisory form, Appellant's breath test record, and his narrative report, to the Commissioner. T. 16; Ex. 1. Information on the Peace Officer's Certificate and contained with Officer Hastings' narrative report clearly documented that the officer had probable cause to believe that Appellant was driving while impaired, and the breath test record showed that Appellant's alcohol concentration was 0.08 or more. *See* Ex. 1. Therefore, Appellant has failed to offer any evidence of direct harm caused by "improper certification," such as evidence showing that his license was improperly revoked. In fact, Appellant's driving record shows that he was properly revoked for test failure (alcohol concentration of 0.08 or more). *See* Exhibit 2. Accordingly, Appellant

cannot show any prejudice associated with this alleged error in the certification process and his argument should be rejected.

2. Even If Appellant Is Allowed To Assert His Due Process Claim, He Cannot Show Any Unconstitutional Deprivation Based On The Certification Process.

In *Mathews v. Eldridge*, 424 U.S. 319, 335 (1973), the United States Supreme Court applied a three-factor balancing test in evaluating a due process challenge to the governmental deprivation of a property interest. The *Mathews* test balances: (1) the private interest affected by the official action; (2) the governmental interest served, including any reduction in administrative and fiscal burdens; and (3) the risk of erroneous deprivation of the private interest through the procedures used. *See id.* at 335. In *Heddan v. Dirkswager*, 336 N.W.2d 54 (Minn. 1983), the Supreme Court applied the *Mathews* test and determined that the Minnesota implied consent procedures did not violate procedural due process. *See id.* at 59-60. In particular, the Minnesota Supreme Court held that the pre-hearing license revocation provision of the implied consent statute did not violate due process, based partially on the threat drunk drivers pose to the health and safety of Minnesota citizens. *See id.* at 63. Further, in *Davis v. Commissioner of Public Safety*, 509 N.W.2d 380 (Minn. Ct. App. 1993), *aff'd* 517 N.W.2d 901 (Minn. 1994), the Minnesota Supreme Court considered whether the Implied Consent Law comported with due process after the statute was amended to remove a provision providing immediate hardship relief. *See id.* at 904. Once again, the Minnesota Supreme Court upheld the statute, ultimately concluding that the challenged amendments did not change the result of due process analysis in *Heddan*. *See id.*

In this case, the *Mathews* test can be applied to Appellant's claim that his procedural due process rights were violated by the certification process. The first factor looks at the nature and weight of the private interest affected by the official action challenged. With regard to an implied consent revocation, the private interest involved is the license to operate a motor vehicle, or more particularly, the continued and uninterrupted possession of that privilege pending the outcome of a hearing. In this case, the private interest affected is no greater than what was argued in *Davis*, where this Court determined that the implied consent statute did not violate procedural due process. *See Davis*, 509 N.W.2d at 390. Therefore, the first factor of the *Mathews* test does not tip the balance in Appellant's favor.

The second *Mathews* factor looks at the public interest at stake. In implied consent cases, the governmental interest in preserving the safety of Minnesota roadways is compelling. *See Heddan*, 336 N.W.2d at 62 ("drunken drivers pose a severe threat to the health and safety of the citizens of Minnesota"); *Davis*, 509 N.W.2d at 390 (noting the "compelling" nature of the governmental interest in "protecting the health and safety of citizens from drunken drivers"). The implied consent statute serves the compelling governmental interest by providing an inducement for the driver to submit to testing and by promptly removing drunk drivers from roadways. *See Heddan*, 336 N.W.2d at 62. In this case, the public interest served is arguably even more compelling than normal due to Appellant's conduct of driving a motor vehicle on a public roadway with an alcohol concentration of 0.25. *See Ex. 1*. Therefore, the second factor of the *Mathews* test does not tip the balance in Appellant's favor.

The third *Mathews* factor concerns “the likelihood of an erroneous deprivation of the private interest involved.” *Heddan*, 336 N.W.2d at 61. In completing the certification process, the Peace Officer’s Certificate clearly requires that a peace officer send the Peace Officer’s Certificate along with “test results and police reports” to the Department of Public Safety. *See* Exhibit 1. After all information is sent in by a peace officer, “it is the commissioner who independently makes additional factual determinations” and then revokes an individual’s license. *Sands v. Commissioner of Public Safety*, 744 N.W.2d 24, 28 (Minn. Ct. App. 2008). In this case, Appellant did not offer any evidence that his license was improperly revoked. To the contrary, the undisputed facts reveal that Appellant was arrested for driving while impaired and he submitted to a breath test, which revealed an alcohol concentration result of 0.25. *See* Exhibit 1. Officer Hastings submitted all paperwork corresponding to Appellant’s DWI arrest, including the Peace Officer’s Certificate, the Implied Consent Advisory form, Appellant’s breath test record, and his narrative report, to Respondent. T. 16; Ex. 1. Subsequently, Appellant’s driving record shows that he was properly revoked for test failure (alcohol concentration of 0.08 or more). *See* Exhibit 2. Since the Commissioner does not act to revoke a license based solely on an officer’s statements contained in Line 9 of the Peace Officer’s Certificate, but instead looks at all documentation submitted by the officer before revocation is ordered, any alleged technical defect in not completing Line 9 does not unduly increase the risk of an erroneous revocation. Therefore, no evidence of a risk of erroneous deprivation exists in this case and the third *Mathews* factor does not tip the balance in Appellant’s favor.

Under the facts of this case, an analysis of *Mathews* balancing test does not show that Appellant experienced an unconstitutional deprivation based on the certification process used for his implied consent revocation. This Court should find that Appellant's procedural due process rights were not violated when Officer Hastings certified Appellant's implied consent revocation to the Commissioner by partially filling out the Peace Officer's Certificate and supplementing the same with additional reports and documentation of Appellant's test results. Accordingly, the trial court's order sustaining the revocation of Appellant's driving privileges should not be disturbed on appeal.

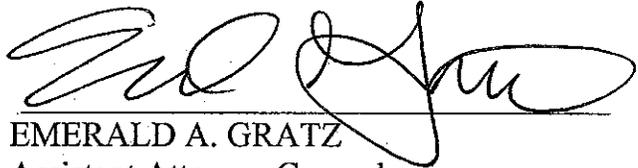
CONCLUSION

Based upon the above-referenced arguments and facts of this case, the Commissioner properly revoked Appellant's license under the Implied Consent Law based on Officer Hastings' certification of all necessary documentation concerning Appellant's arrest for DWI. Furthermore, Appellant's procedural due process rights were not violated by the certification process used in this case. Accordingly, this Court should affirm the trial court's decision to sustain Appellant's implied consent revocation.

Dated: 4/1/08

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