

No. A07-0059

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STATE OF MINNESOTA

IN COURT OF APPEALS

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Charles Aaron Sands,

Respondent,

vs.

Commissioner of Public Safety,

Appellant.

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APPELLANT'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

- I. Did Officer Boyer properly certify Respondent's breath test result of 0.24 alcohol concentration to the Commissioner of Public Safety when he filled out the Peace Officer's Certificate and checked the box that Respondent provided a breath sample "which indicated an alcohol concentration of 0.08 or more"?

The trial court held: In the negative.

Minn. Stat. § 169A.52, subd. 4(a) (2004);

*State v. Anderson*, 683 N.W.2d 818 (Minn. 2004);

*Tracey State Bank v. Tracey-Garvin Coop.*, 573 N.W.2d 393 (Minn. Ct. App. 1998);

*Szzech v. Commissioner of Public Safety*, 343 N.W.2d 305 (Minn. Ct. App. 1984).

## STATEMENT OF THE CASE AND FACTS

This is an appeal from a decision rescinding the revocation of Respondent's driving privileges under Minn. Stat. §§ 169A.51-.53 (2004), the implied consent law. It arises out of Respondent's DWI arrest on October 3, 2006, and the subsequent 180-day revocation of his driving privileges for driving a motor vehicle with an alcohol concentration in excess of the legal limit. By a petition dated October 9, 2006, Respondent sought judicial review of the revocation order.

This matter came on before the trial court on December 4, 2006, the Honorable Stephen M. Halsey, Judge of Wright County District Court, presided. By an Order dated December 13, 2006, the trial court rescinded the revocation of Respondent's driving privileges to the extent that the revocation exceeded 90 days. *See generally* Trial Court Order at AA1-AA3.<sup>1</sup> From that Order, Appellant takes the instant appeal.

On October 3, 2006, Annandale Police Officer Shawn Boyer arrested Charles Aaron Sands, Respondent herein, for driving while under the influence of alcohol. F.F. 1-2.<sup>2</sup> Officer Boyer invoked the Implied Consent law, read to Respondent the Minnesota Motor Vehicle Implied Consent Advisory, and asked Respondent to take a breath test.

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<sup>1</sup> "AA" references are to page of Appellant's Appendix. The Trial Court Order is reproduced in Appellant's Appendix at AA1-AA3.

<sup>2</sup> "F.F." references are to the Findings of Fact contained in the Trial Court Order.

F.F. 2. Respondent submitted to an Intoxilyzer test, which revealed that Respondent's alcohol concentration was 0.24. Exhibit 1<sup>3</sup>; F.F. 2.

After processing Respondent's arrest, Officer Boyer completed various forms and reports. *See generally* Exhibit 1. One of these forms was the Implied Consent Law Peace Officer's Certificate. Exhibit 1; F.F. 3. On the Peace Officer's Certificate, the officer wrote information regarding the date and location of the arrest, information about Respondent, and the reason for his initial contact with Respondent. Exhibit 1. Officer Boyer also marked various boxes to indicate the observations he made that provided him with probable cause to believe Respondent was driving in violation of the state's DWI laws. Exhibit 1.

At paragraph nine of the Peace Officer's Certificate, Officer Boyer marked the box that indicated that Respondent provided a breath sample "which indicated an alcohol concentration of .08 or more." Exhibit 1. The other two options at paragraph nine from which Officer Boyer had to choose were that Respondent "refused to provided a test sample" and that Respondent provided a blood or urine sample "which indicated the presence of a hazardous substance or schedule I or II controlled substance." Exhibit 1.

Officer Boyer sent the Peace Officer Certificate, along with Respondent's Intoxilyzer test record, the Minnesota Motor Vehicle Implied Consent Advisory, and the

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<sup>3</sup> Exhibit 1 refers to the packet of documents prepared by Officer Boyer and sent to the Department of Public Safety after arresting Respondent and was received into evidence by the trial court. A copy of Exhibit 1 is reproduced in Appellant's Appendix at AA4-AA11.

officer's supplemental narrative report, to the Commissioner of Public Safety. Thereafter, the Commissioner revoked Respondent's driving privileges for 180 days, because Respondent's alcohol concentration was 0.24. Exhibit 2<sup>4</sup>; F.F. 5.

Respondent received a Notice and Order of Revocation, which he signed to acknowledge his receipt, that noted his Intoxilyzer test result was 0.24. Exhibit 2. The form also explained that because Respondent's alcohol concentration level was 0.20 or more, 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 0.08. Exhibit 2.

By 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. The trial court found that Respondent's test result was 0.24. F.F. 2. Additionally, the trial court concluded that the officer's certification of Respondent's alcohol concentration "as equal to or greater than 0.08 is not erroneous." Trial Court Order at AA3. After noting that the Peace Officer's Certificate does not provide a separate box for an officer to note that a driver tested at 0.20 or more, however, the trial court concluded that Officer Boyer did not properly certify that result to the Department of Public Safety. F.F. 4; Trial Court Order at AA3. Therefore, the trial court rescinded the additional period of Respondent's

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<sup>4</sup> Exhibit 2 refers to the packet of certified documents from the Department of Public Safety, including Respondent's driving record and the Notice and Order of Revocation, and was received into evidence by the trial court. A copy of Exhibit 2 is reproduced in Appellant's Appendix at AA12-AA14.

revocation that resulted from his alcohol concentration exceeding 0.20. Trial Court Order at AA3. From that Order, Appellant takes the instant appeal.

## ARGUMENT

### I. STANDARD OF REVIEW

A trial court's findings of fact are entitled to the same weight as a verdict of a jury and cannot be reversed if the court can reasonably make the findings of fact based on the evidence adduced at trial. *See Thompson v. Commissioner of Public Safety*, 567 N.W.2d 280, 281 (Minn. Ct. App. 1997), *rev. denied* (Minn. Sept. 25, 1997). Findings of fact will not be set aside unless clearly erroneous. *See State, Dept. of Highways v. Beckey*, 291 Minn. 483, 487, 192 N.W.2d 441, 445 (1971); *State v. Anderson*, 671 N.W.2d 900, 902 (Minn. Ct. App. 2003). Conclusions of law, on the other hand, can be overturned upon a showing that the trial court erroneously construed and applied the law to the facts of the case. *See Berge v. Commissioner of Public Safety*, 374 N.W.2d 730, 732 (Minn. 1985); *Dehn v. Commissioner of Public Safety*, 394 N.W.2d 272, 273 (Minn. Ct. App. 1986).

The trial court below concluded that the officer failed to properly certify Respondent's test results as provided by statute. With regard to statutory interpretation, this Court is not bound by the trial court's determinations of law. *See State v. Bissonette*, 445 N.W.2d 843, 844 (Minn. Ct. App. 1989) (stating statutory interpretation based on undisputed facts is a question of law and reviewing courts must determine whether trial court properly construed statute). Whether a statute has been properly construed is a

question of law subject to de novo review. *See State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996).

Here, the facts are not in dispute. Rather, Appellant submits that the trial court erred in its interpretation of Minn. Stat. § 169A.52, subd. 4(a) (2004) and its conclusion that the officer failed to properly certify Respondent's test result. Accordingly, the trial court's order rescinding Respondent's license revocation should be reversed.

**II. THE TRIAL COURT ERRED IN CONCLUDING THAT OFFICER BOYER FAILED TO PROPERLY CERTIFY RESPONDENT'S TEST RESULT.**

The trial court below concluded that Respondent's Intoxilyzer test result of 0.24 was not properly certified to the Commissioner because Officer Boyer merely checked the box on the Peace Officer's Certificate that indicated Petitioner's test result was ".08 or more," rather than specifically indicating to the Commissioner that the test result was 0.20 or more. Appellant submits that the trial court erred as a matter of law when it ignored the plain language of the applicable statute in creating an additional requirement for certification.

**A. The Implied Consent Statute Is A Remedial Statute Which Should Be Construed Liberally In Favor Of Public Safety In Order To Advance The Manifest Legislative Intent To Eliminate Impaired Drivers From The Roadways Of This State.**

It is a well-settled point of law that statutes relating to the revocation or suspension of a driver's license are not penal in nature, but are remedial statutes authorizing the exercise of the police power for the protection of the public. *See Mackey v. Montrym*, 443 U.S. 1, 17-18, 99 S. Ct. 2612, 2620-21 (1979); *State v. Hanson*, 543 N.W.2d 84, 89 (Minn. 1996). The Minnesota Supreme Court has repeatedly and specifically recognized

the remedial nature of the implied consent statute. See *Hanson*, 543 N.W.2d at 89-90; *State, Dep't of Public Safety v. Junczewski*, 308 N.W.2d 316, 319 (Minn. 1981); *State v. Normandin*, 169 N.W.2d 222, 224 (Minn. 1969). First in *Normandin*, again in *Junczewski*, and yet again in *Hanson*, the point has been made. In *Hanson*, the court rejected the claim that a driver's license revocation under the implied consent law constituted "punishment" for double jeopardy purposes. The view that driver's license revocations are not "punishment" can be traced back to *State ex rel. Connolly v. Parks*, 199 Minn. 622, 273 N.W. 233 (1937), which, in turn, relied upon earlier decisions involving other kinds of licenses. In *Junczewski*, the court quoted from a series of prior decisions and concluded that the legislature has demonstrated its intent for the implied consent statute to cover the broadest possible range of conduct and to be given "the broadest possible effect." *Id.* at 319. This public interest compels a nonrestrictive construction of the statute to be liberally construed in favor of public safety over the individual driver. See *Szzech 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 our streets and highways. Since this is unquestionably a legitimate objective, whenever there are two or more constitutionally permissible possible interpretations of the statute, that interpretation should be adopted which 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; *Juncewski*, 308 N.W.2d at 319.

**B. As Required By The Plain Language Of The Statute, The Officer Properly Certified That He Had Probable Cause And That Respondent's Test Result Was 0.08 Or More.**

The trial court concluded that the officer failed to properly certify Respondent's test result because it determined that the applicable statute is ambiguous and could be considered to require an officer to specifically report that a motorist took a breath test that indicated an alcohol concentration of 0.20 or more. Appellant submits that the trial court erred in its construction of the statute and that the Respondent failed to establish any statutory violation by Officer Boyer.

The certification statute, Minn. Stat. § 169A.52, subd. 4(a) (2004), provides:

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;
- (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).

*Id.* (emphasis added).

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)

(2004). When the language of a statute is plain and unambiguous, a reviewing court “must not engage in any further construction.” *See State v. Anderson*, 683 N.W.2d 818, 821 (Minn. 2004) (citations omitted).

The plain language of this statute may be reduced to two basic parts: “[1] Upon certification...[2] then the commissioner shall revoke....” *See* Minn. Stat. § 169A.52, subd. 4(a) (2004). The first portion, addressing certification, applies to what an officer must do by requiring the officer to certify that there existed probable cause to believe that a motorist was driving while impaired and that the motorist did one of two things mandating license revocation: submitted to a test that indicated “an alcohol concentration of 0.08 or more”; or submitted to a test that indicated “the presence of a controlled substance listed in schedule I or II or its metabolite, other than marijuana or tetrahydrocannabinols.”<sup>5</sup>

The second portion of the statute applies to what the Commissioner of Public Safety must do by instructing the Commissioner regarding the period for which a driver’s license should be revoked. The 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. These additional factors, and the resultant revocation lengths, are independent of the first portion of the statute addressing certification.

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<sup>5</sup> The certification requirements for an arrest involving a motorist who refuses testing are covered by a separate subdivision that Respondent did not challenge, and the trial court did not address, below. In the event that a motorist refuses testing, an officer is required to certify that there existed probable cause to believe that a motorist was driving while impaired and that the motorist “refused to submit to a test.” *See* Minn. Stat. § 169A.52, subd. 3(a) (2004).

Further, the factual bases that support these 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 past driving record. Moreover, any effect on a revocation period based on a motorist's age, prior impaired incidents, or test result of 0.20 or more only becomes relevant after an officer certifies that there existed probable cause to believe the motorist was driving while impaired and the driver provided a breath sample that indicated an alcohol concentration of 0.08 or more.

In the present matter, the plain language only required Officer Boyer to certify that he had probable cause to believe Respondent was driving while impaired and that Respondent's breath test indicated that his alcohol concentration was 0.08 or more. Officer Boyer did exactly that when he completed the Peace Officer's Certificate to indicate that Respondent's test result, which was 0.24, was 0.08 or more. Therefore, Officer Boyer fulfilled his obligations under the certification statute, and the trial court's order rescinding Respondent's revocation should be reversed.

**C. The Trial Court Erred By Deeming The Certification Statute To Be Ambiguous, By Reading Additional Language Into The Statute, And By Construing The Remedial Statute Against The Interests Of The Public.**

Appellant submits that the trial court improperly construed this statute by combining the two separate portions addressing the requirements of the peace officer and the Commissioner. As a result of the trial court's failure to distinguish between the first and second portions of this subdivision, the trial court deemed the statute to be ambiguous and read additional language into the statute.

A statute is ambiguous only when the language is subject to more than one reasonable interpretation. *See State v. Stevenson*, 646 N.W.2d 235, 238 (Minn. 2003). The plain language of Minn. Stat. § 169A.52, subd. 4(a) (2004), though, can only be interpreted one way. The statute only requires that an officer certify that there existed probable cause and that the motorist provided a breath sample that indicated an alcohol concentration of 0.08 or more. When the second portion of the statute, addressing what revocation period the Commissioner must impose, dependent on the motorist's age, prior driving record, and test result, is delineated from the first part, there is no ambiguity in its meaning or application.

Not only did the trial court erroneously deem the statute to be ambiguous, the trial court also erred in its construction by adding language not included by the legislature. When the language of a statute is unambiguous, a court should not read additional language into that statute. *See Minn. Stat. § 645.16* (2004) (“When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.”); *see also Tracey State Bank v. Tracey-Garvin Coop.*, 573 N.W.2d 393, 395 (Minn. Ct. App. 1998) (“[W]hen a statutory question involves the failure of expression rather than the ambiguity of expression, this court is not free to substitute amendment for construction and thereby supply the omissions of the legislature.”). However, that is precisely what the trial court below did in its consideration of the statute when it concluded that one reasonable interpretation of the certification statute is that the legislature intended to require a “specific certification for a BAC over 0.20.” Trial Court Order at AA2. Had the

legislature intended a specific certification for tests over 0.20, it could have done so with language such as: "Upon certification...that the person submitted to a test and the test results indicate an alcohol concentration between 0.08 and 0.19, or an alcohol concentration of 0.20 or more..." The legislature, however, included no such language, and the trial court erred by adding it in its analysis.

The trial court's analysis also was flawed by suggesting that the officer's certification of Respondent's test result did not adequately inform Respondent about the consequences that flowed from that test result. *See* Trial Court Order at AA2. This reasoning is erroneous, because the Peace Officer's Certificate was not the form that was provided to Respondent to inform him about his revocation. Rather, Officer Boyer issued Respondent the Notice and Order of Revocation on the night of his arrest, which explained the basis for, and length of, his revocation due to his test result. *See* Exhibit 2. The requirements for notifying a driver with this Notice and Order of Revocation are prescribed by a separate statutory provision that is unrelated to the certification provisions challenged by Respondent. *See* Minn. Stat. § 169A.52, subd. 6 (2004). Additionally, the Peace Officer's Certificate is not intended to provide notice to a driver. Instead, it is designed to promote uniformity of communication between an officer and the Commissioner in order to reduce the risk of an erroneous deprivation of a motorist's driver's license. *See Davis v. Commissioner of Public Safety*, 509 N.W.2d 380, 389-90 (Minn. Ct. App. 1994) ("[T]he Commissioner is authorized to revoke a driver's license only upon certification by the officer that probable cause existed and that the driver...took the test with a result of an alcohol concentration of .10 or more."), *aff'd*

517 N.W.2d 901 (Minn. 1994). Accordingly, the trial court mistakenly considered the sufficiency of the Peace Officer's Certificate for purposes of notifying Respondent about the consequences of his test result.

Even if the certification statute could somehow be deemed to be ambiguous, the trial court erred by construing the statute in favor of Respondent's private interests. Although the trial court initially recognized that the implied consent law "must be applied broadly in favor of the public safety," as addressed in Argument II.A., above, the trial court nevertheless interpreted the statute "in favor of [Respondent] and against the State." Trial Court Order at AA2. The trial court further reasoned that it would "interpret a statute narrowly to maximize the rights and privileges of the individual affected by that statute in this case." Trial Court Order at AA3. Appellant submits that the trial court's explicit statements explaining that it was interpreting the certification narrowly against the state and public in favor of Respondent's rights was an error of law that warrants reversal of the trial court's rescission order. *See Szczech*, 334 N.W.2d at 306-07.

If the trial court had properly construed the statute in the interest of the public, it should have sustained the 180-day revocation of Respondent's driver's license. Assuming *arguendo* that the statute is ambiguous, the trial court should have considered which interpretation better protects the public's interests--the interpretation that reads additional language into the statute requiring a separate certification for a test result of 0.20 or more, or the interpretation that includes a test result of 0.24 as part of ".08 or more." The former interpretation allows a drunk driver to prevail in an implied consent hearing based on a technical paperwork error that does nothing to address the risk of an

erroneous revocation; the latter interpretation protects the public's interest in removing drunk drivers from the road for the statutorily-prescribed revocation period that corresponds with a motorist's egregiously high test result.

A broad interpretation of the certification statute in favor of the public's interest necessarily incorporates 0.24 as part of ".08 or more," because it is consistent with increased remedial action against a motorist whose alcohol concentration far exceeds the legal limit. The trial court's narrow interpretation of the statute is inconsistent with the public's interest in highway safety and the remedial purpose of the Implied Consent law. Because the trial court should have construed the statute in favor of the public and against Respondent, the trial court's rescission order must be reversed on these grounds as well.

### CONCLUSION

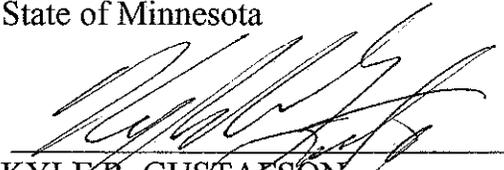
Appellant submits that the trial court erred when it failed to applied the plain language of the certification statute. The statute merely requires an officer to certify that probable cause existed and that the a motorist's test result was 0.08 or more. Officer Boyer fulfilled the requirements of the statute when he certified that respondent's test result of 0.24 was "0.08 or more." The trial court improperly construed the statute to be ambiguous and interpreted the statute against the interests of the public. Accordingly, the trial court's order rescinding Respondent's revocation must be reversed.

For the foregoing reasons, Appellant respectfully requests that this Court reverse the decision below.

Dated: February 20, 2007

Respectfully submitted,

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