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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1892**

Thomas Robert Gruidl, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed July 9, 2012
Affirmed
Hudson, Judge**

Rice County District Court
File No. 66-CV-11-1288

Thomas K. Hagen, Rosengren Kohlmeyer Law Office, Chtd., Mankato, Minnesota (for appellant)

Lori Swanson, Attorney General, Jeffrey Bilcik, Natasha Karn, Assistant Attorneys General, St. Paul (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and Collins, Judge.*

UNPUBLISHED OPINION

HUDSON, Judge

This is an appeal of an order revoking appellant's driver's license pursuant to Minn. Stat. § 169A.53 (2010), the implied-consent law. Appellant challenges the district

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

court's rejection of his probable-cause argument and affirmative defense of post-driving consumption. Appellant also argues that the district court (1) erred by basing a conclusion of law in its order revoking appellant's driver's license on alcohol-concentration evidence from the omnibus hearing; (2) issued improper findings of fact; and (3) violated his due-process rights by ruling on respondent's motion to reconsider without a hearing. We conclude that the officer had a substantial basis for determining that probable cause existed to believe that appellant was driving while impaired. Additionally, because the district court did not err in its conclusions of law, issued proper findings, did not clearly err in concluding appellant did not satisfy his burden to show post-driving consumption, and did not violate appellant's due process rights, we affirm.

FACTS

On February 26, 2011, at about 12:13 a.m., a Rice County deputy sheriff received information from dispatch that an "intoxicated, belligerent male, screaming in pain" had driven his snowmobile into a river. The driver, appellant Thomas Gruidl, was at a tavern that he owns; the reporting party was a bartender at the tavern.

When the deputy arrived at the tavern at around 12:21 a.m., he found appellant receiving treatment from multiple volunteer fire and rescue personnel. The deputy testified that appellant was screaming and yelling in pain and appeared to be suffering from frostbite. The deputy observed that appellant's jacket and helmet, which had been removed but still had snow and ice on them, were "dripping wet." The deputy testified that he believed appellant's snowmobile accident had recently occurred because the temperature was below zero outside, and appellant could not have survived "just

wandering around outside.” The tavern was located about three or four blocks from the site of the accident.

The deputy also smelled a strong odor of alcohol from appellant and observed that appellant’s eyes were bloodshot and watery and that he had a blank stare when looking at the deputy. The deputy testified that it would have been “extremely difficult” for appellant to consume any alcohol after the accident because his hands were turning purple, and he lacked hand function. However, the deputy later interviewed one of the volunteer first responders treating appellant, who stated that, when he arrived, appellant had a half-full bottle of beer in his hand, and he appeared drunk. Another volunteer first responder observed a plastic cup near appellant.

A close friend of appellant’s testified that, on the night of the accident, appellant had been at the friend’s house from about 9:00 p.m. until just before 10:00 p.m. He testified that appellant is an experienced snowmobile operator. The friend, who had been drinking that evening, did not observe any indication of alcohol consumption by appellant. The friend testified that, had his wife believed that appellant was intoxicated, she would not have allowed appellant to drive his snowmobile.

The bartender testified that appellant arrived at the bar at about 11:15 p.m., and, although appellant’s clothes were wet, he did not appear to have been drinking. The bartender testified that appellant took from the kitchen freezer a bottle of Jagermeister, which is a brown-colored, high-alcohol liquor, but he did not see appellant consume any alcohol. The bartender testified that, at appellant’s request, he called 911 for assistance at approximately 12:00 a.m.

A Minnesota State Patrol officer, who also responded to the dispatch message, testified that he observed appellant in extreme pain and smelled a strong odor of alcohol from appellant. The state patrol officer asked appellant to submit to a preliminary breath test, but appellant refused.

Appellant was transported to the hospital, where he told another Rice County deputy sheriff that he had consumed a couple of beers and a couple of mixed drinks that night but also had eaten several times. The deputy testified that appellant told him he had been to a party that night and had taken a wrong turn on his snowmobile and ended up in the river. Appellant told the deputy that he was in the river for about 20 minutes before he got out and walked to the tavern. The deputy testified that he smelled an odor of alcohol from appellant. The deputy read the implied-consent advisory to appellant at 1:17 a.m., and appellant agreed to a blood test. Appellant's alcohol concentration was 0.16. Appellant's driver's license was revoked pursuant to Minn. Stat. § 169A.52 (2010).

The district court held a combined implied-consent and omnibus hearing. The district court concluded that probable cause existed to believe that appellant drove his snowmobile while under the influence of alcohol and that appellant did not meet his burden of demonstrating that the alcohol-concentration test result would have been under 0.08 but for the post-driving consumption of alcohol. In its order revoking appellant's driver's license, the district court stated that it took judicial notice of the alcohol-concentration evidence introduced in the omnibus hearing. The district court rejected appellant's defense of post-driving consumption, noting that appellant's alcohol concentration tested at 0.16. But the district court nevertheless rescinded the revocation

of appellant's license pursuant to Minn. Stat. § 169A.07 (2010) and concluded that, because appellant had driven a snowmobile and did not have qualifying prior impaired-driving incidents, he was not subject to the implied-consent law. Respondent moved for reconsideration pursuant to Minn. R. Gen. Pract. 115.11. The district court then amended its previous conclusion, stating that it had made an error of law in concluding that the application of qualified impaired-driving incidents under Minn. Stat. § 169A.07 was limited to those occurring in the last ten years. Accordingly, the district court sustained the revocation of appellant's driver's license. Appellant requested that the district court issue specific findings pursuant to Minn. R. Civ. P. 52, which the district court issued. This appeal follows.

D E C I S I O N

I

Appellant asserts that the district court erred by basing a conclusion of law on evidence of his alcohol content from an exhibit at his omnibus hearing that was not introduced at the implied-consent hearing. An arrest for driving while intoxicated may result in two separate penalties in two proceedings: a civil implied-consent proceeding under Minn. Stat. §§ 169A.50-.53 (2010), which involves the revocation of the defendant's driver's license, and a criminal driving-while-impaired (DWI) prosecution under Minn. Stat. §§ 169A.20-.37 (2010), which involves criminal punishment. *State v. Lemmer*, 736 N.W.2d 650, 654 (Minn. 2007). However, the district court may combine an implied-consent and criminal omnibus hearing for driving while impaired. Minn. Stat. § 169A.53, subd. 3(a) (stating implied-consent hearing "may be conducted at the same

time . . . as hearings upon pretrial motions in the criminal prosecution” for DWI). We reverse a conclusion of law “only upon a determination that the [district] 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).

The district court stated that, for purposes of deciding the implied-consent challenge, it took judicial notice of evidence of appellant’s alcohol concentration that was introduced at the omnibus hearing, which was combined with the implied-consent hearing. In support of its conclusion that appellant failed to prove at his implied-consent hearing that intoxication was due to post-driving consumption, the district court found that appellant’s alcohol content was 0.16. *See Dutcher v. Comm’r of Pub. Safety*, 406 N.W.2d 333, 335 (Minn. App. 1987) (stating that post-driving consumption is affirmative defense to driving while impaired). Because Minn. Stat. § 169A.53 allows district courts to combine the implied-consent and omnibus hearings, judicial notice of appellant’s blood-alcohol content was unnecessary. The statute expressly allows a combined hearing. Therefore, evidence admitted at one is admitted in the other.¹ Accordingly, we hold that the district court did not err by basing its post-driving consumption conclusion on evidence that was introduced in the combined criminal omnibus hearing.

II

Appellant argues that the district court’s findings were improper because its order lacked formal findings of fact. The Minnesota Rules of Civil Procedure require that, in

¹ The parties do not dispute that the implied-consent and omnibus hearings were combined, and the record supports that the hearings were combined.

all actions tried without a jury, the district court finds facts and states separately its conclusions. Minn. R. Civ. P. 52.01. The purpose of the rule is to aid the appellate court by affording it a clear understanding of the grounds or basis of the district court's decision. *Transit Team, Inc. v. Metro. Council*, 679 N.W.2d 390, 398 (Minn. App. 2004). However, findings need not be issued in any specific format and rule 52.01 allows for a written opinion or memorandum to constitute findings of fact and conclusions of law. *Id.*

Here, the district court attached a two-page memorandum to its original order. The order contained analysis of its ruling, including analysis of both claims made by appellant. This analysis included the facts on which the district court relied and provided a clear understanding of its decision. *See id.* at 399 (refusing to reverse district court's order where memorandum "clearly provided . . . an understanding of the basis of the court's decision"). Therefore, the district court's findings comport with rule 52.01.

III

A determination of probable cause is a mixed question of fact and law. *Clow v. Comm'r of Pub. Safety*, 362 N.W.2d 360, 363 (Minn. App. 1985), *review denied* (Minn. Apr. 26, 1985). After the facts are determined, this court must apply the law to determine if probable cause existed. *Id.* In reviewing a probable-cause determination, we examine whether the officer "had a substantial basis for concluding that probable cause existed at the time of invoking the implied consent law." *Heuton v. Comm'r of Pub. Safety*, 541 N.W.2d 361, 363 (Minn. App. 1995) (quotation omitted). A reviewing court must consider the totality of the circumstances when determining probable cause. *Eggersgluss v. Comm'r of Pub. Safety*, 393 N.W.2d 183, 185 (Minn. 1986).

Appellant argues that the district court erred in sustaining revocation of his driver's license because the lack of any temporal connection between appellant's driving and observations of appellant's intoxication precluded a finding of probable cause. Evidence supporting probable cause must show a temporal connection between a defendant's driving and the defendant's intoxication. *Dietrich v. Comm'r of Pub. Safety*, 363 N.W.2d 801, 803 (Minn. App. 1985). However, an officer need not testify to the precise time a defendant was believed to be driving under the influence of alcohol. *Graham v. Comm'r of Pub. Safety*, 374 N.W.2d 809, 811 (Minn. App. 1985).

Appellant relies on *Dietrich*, 363 N.W.2d 801, to argue that no temporal connection existed between his driving the snowmobile and his later intoxication. In *Dietrich*, an officer arrived at the scene of an accident after the driver left the scene, and bystanders identified the defendant as the driver of the vehicle. 363 N.W.2d at 802. The officer located the defendant at his father's house, and the defendant told the officer that he had consumed "a couple." *Id.* A field sobriety test revealed an alcohol-concentration level over .10. *Id.* The officer did not testify as to the time of the accident, only that he had been on duty at 9:19 on the night of the accident and that the implied consent advisory was begun at 10:24 p.m. *Id.* We affirmed the district court's rescission of the revocation of the defendant's license, concluding that the evidence was not sufficient to provide probable cause that the defendant was driving while under the influence of alcohol. *Id.*

The circumstances here share some similarities to *Dietrich*. Appellant, like *Dietrich*, did not state when, in relation to the accident, he consumed alcohol. Both

appellant and Dietrich tested over the legal limit. But here, under the totality of the circumstances, the evidence *is* sufficient to establish probable cause to suspect that appellant was intoxicated while driving. The deputy who arrived at the tavern knew that appellant had driven his snowmobile into the river, and circumstances support the officer's belief that appellant had recently come into the tavern, given the temperature outside, appellant's frostbitten condition, and the fact that appellant's jacket and helmet were covered in snow and ice and dripping with water. The 911 caller described appellant as intoxicated. And when appellant told a deputy he had consumed beer and mixed drinks, appellant failed to assert that he had consumed alcohol after the accident, supporting the inference that the alcohol he had consumed that night was consumed before the accident. *See Dutcher*, 406 N.W.2d at 335 (noting driver did not tell officer she had been drinking after accident and concluding officer had probable cause to believe she had been driving while intoxicated). We conclude that the circumstances in this case provide sufficient evidence to support the determination that probable cause existed to believe that appellant was driving while intoxicated when he drove the snowmobile into the river.

IV

To prevail on the affirmative defense of post-driving consumption, the defendant must prove: (1) that he was drinking after the time he operated a motor vehicle, and (2) that the subsequent drinking caused his alcohol concentration to equal or exceed 0.08. *Id.* at 336. A district court's ruling on post-driving consumption is reviewed under the clearly erroneous standard. *Id.*

Appellant argues that the district court erred in determining that he did not satisfy his burden of proving that his alcohol concentration would have been under 0.08 at the time of testing but for his post-driving drinking. The district court supported its determination with findings that no person testified to seeing appellant drink after he operated the snowmobile, and appellant provided insufficient evidence to show that he had not been drinking prior to driving the snowmobile. The district court also noted that appellant's alcohol content was 0.16—twice the legal limit—and that appellant failed to demonstrate that he drank enough after driving the snowmobile to increase his alcohol content from 0.08 to 0.16 between the time he arrived at the tavern and the arrival of assistance. Appellant asserts that he satisfied his burden based on testimony from his longtime friend and his employee-bartender, both of whom testified that appellant was not intoxicated either before driving or when he arrived at the tavern. But appellant neglects to mention that the bartender testified that, just 45 minutes after he arrived at the tavern, the bartender called 911 concerning appellant's condition, and based on that call, the dispatcher reported to the deputy sheriff that appellant was belligerent and intoxicated. Appellant also points to testimony regarding the bottle of Jagermeister that he took from the freezer and the bartender's testimony that the bottle was largely empty when appellant left for the hospital. But the bartender also testified that he never saw appellant consume the Jagermeister and that other people could have accessed the liquor. Appellant additionally asserts that one of the volunteer rescue personnel observed appellant drinking a beer. But, as respondent points out, this testimony revealed only that

the volunteer saw appellant holding a half-finished beer, not that he saw appellant drinking a beer.

Given the conflicting testimony and the lack of evidence regarding post-driving consumption of alcohol, the district court's conclusion that appellant did not satisfy his burden on the affirmative defense of post-driving consumption was not clearly erroneous. *See id.* (ruling of district court on post-driving consumption will not be disturbed unless clearly erroneous).

V

A driver's license is considered an important property interest and, therefore, is subject to due-process protection. *Heddan v. Dirkswager*, 336 N.W.2d 54, 58–59 (Minn. 1983). Due process is satisfied by the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Id.* at 59 (quotation omitted). Additionally, due process calls for procedural protections that fit what the situation demands. *Id.*

Respondent moved by letter for reconsideration under Minn. R. Gen. Pract. 115.11, asserting that the statute upon which the district court relied in rescinding appellant's license revocation does not apply to drivers with a record of qualified impaired-driving incidents, of which appellant had three in 1990 and 1997. The district court, without a hearing, issued a revised ruling sustaining the revocation of appellant's license and stating that it had made an error of law in concluding that qualified impaired-driving incidents could only be applied if they had occurred within ten years of the revocation. The district court also stated, “There is no need for a hearing.”

Appellant asserts that he was denied due process because he was deprived of the opportunity to be heard. Motions for reconsideration are not an opportunity to present new facts and may not be used to supplement the record. *Am. Bank of St. Paul v. Coating Specialties, Inc.*, 787 N.W.2d 202, 206 (Minn. App. 2010) (citing Minn. R. Gen. Pract. 115.11 1997 advisory comm. cmt.), *review denied* (Minn. Oct. 27, 2010). The rule states that responses to motions to reconsider are to be made “only by letter to the court.” Minn. R. Gen. Pract. 115.11. Therefore, appellant could have been heard on the issue by submitting a letter to the district court; he did not do so. Additionally, appellant indicates that he received the district court’s ruling and had no opportunity to respond. However, the letter containing respondent’s motion for reconsideration indicates that appellant’s counsel received a copy of the letter, and appellant does not dispute this. Therefore, appellant was not deprived of due process.

Affirmed.