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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1172**

Bryan James Roach, petitioner,  
Appellant,

vs.

Commissioner of Public Safety,  
Respondent.

**Filed March 3, 2014  
Affirmed  
Minge, Judge\***

Goodhue County District Court  
File No. 25-CV-12-2921

Douglas V. Hazelton, Christina Zauhar Anderson, Halberg Criminal Defense,  
Bloomington, Minnesota (for appellant)

Lori Swanson, Attorney General, Kristi Nielsen, Assistant Attorney General, St. Paul,  
Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Hudson, Judge; and Minge,  
Judge.

**UNPUBLISHED OPINION**

**MINGE**, Judge

In this appeal of the district court's order sustaining the implied-consent  
revocation of his driver's license under Minn. Stat. § 169A.52 (2012), appellant alleges

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

that his due-process rights were violated because he did not receive a seven-day temporary license. Because we find that appellant did receive a full seven days of temporary driving privileges, we affirm.

## FACTS

In the early hours of November 25, 2012, appellant Bryan Roach was arrested for driving while impaired (DWI). Roach took a breath test, revealing that he had an alcohol concentration above the legal limit. Electronic-charging software generated a notice alerting Roach that, under Minn. Stat. § 169A.52, his driver's license would be revoked for one year, starting December 2, 2012.<sup>1</sup> The notice was time stamped at 2:34 a.m. on November 25. Roach was issued a temporary driver's license, which listed the issuance date as November 25, 2012, and stated that it is valid for seven days.

Roach petitioned for judicial review, seeking rescission of the revocation of his driver's license on the ground that he was denied due process because he did not receive a full seven-day temporary license. His argument was based on the fact that November 25 was counted as one of the seven days for the temporary license, even though it was only a partial (21 hours and 26 minutes) day.

In April 2013, the district court sustained the revocation of Roach's driver's license on the determination that Roach was afforded seven days of driving before the revocation went into effect, complying with Minnesota law. This appeal followed.

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<sup>1</sup> As both parties note, the district court erroneously stated that Roach's license was revoked as of December 1. The correct date, as set forth in the documents, is December 2, 2012.

## DECISION

Under the implied-consent law, when a person submits to an alcohol-concentration test that indicates a concentration of 0.08 or more, an officer must immediately issue a notification of revocation to that person. Minn. Stat. § 169A.52, subd. 7(a). The revocation becomes effective when the notice is delivered. *Id.*, subd. 6. Along with giving the notice of revocation, the officer must invalidate the person’s driver’s license and issue a temporary license “effective for only seven days.” *Id.*, subd. 7(c).

Roach argues that his due-process rights were violated because he was not afforded a full seven days of temporary driving privileges with the revocation of his driver’s license. On appeal, Roach operates under the assumption that his temporary license was for only six days, arguing that “[h]e was denied an entire day of driving privilege.”<sup>2</sup> Statutory interpretation is a question of law, which this court reviews de novo. *Johnson v. Comm’r of Pub. Safety*, 756 N.W.2d 140, 143 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008). We accord statutes a presumption of constitutionality, and if there is a reasonable construction of the statute that would be constitutional, we so interpret the statute. Minn. Stat. § 645.17(3) (2012); *Fed. Distillers, Inc. v. State*, 304 Minn. 28, 39, 229 N.W.2d 144, 154 (1975) (“If a legislative act is

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<sup>2</sup> Roach did not appeal the district court’s determination that he received seven days of driving privileges based on its interpretation of the statute, and Roach did not brief an argument on appeal about how the time for the temporary license should be counted. Because we find the issue of time to be dispositive of Roach’s due-process argument, and failure to address this issue would be prejudicial toward respondent Commissioner of Public Safety, we address it.

reasonably susceptible of two different constructions, one of which will render it constitutional and the other unconstitutional, the former must be adopted.”).

Despite Roach’s implied stance that he was entitled to seven midnight-to-midnight days, there is no support for this argument. While Minn. Stat. § 645.15 (2012) gives directions for computing time by excluding the first day in a prescribed period, Minn. Stat. § 645.26, subd. 1 (2012), provides that a more specific statute prevails over the general canons of statutory construction. Because Minn. Stat. § 169A.52 directs that revocation begins immediately on receiving notice, the computation of time for the temporary license logically must begin at that same time. The language requiring that the offender receive a temporary license for “only seven days,” indicates a legislative intent that a person receives 168 hours of temporary driving privileges. *Id.*, subd. 7(c).

The immediate-revocation procedure was followed in this case and nothing precludes Roach from having had 168 hours of temporary driving privileges. The notice of revocation that Roach received was time stamped at 2:34 a.m. on November 25, 2012 and states that starting on December 2, 2012, he is not allowed to drive in Minnesota. At the same time, Roach received a temporary license, stating that it was issued on November 25, 2012, and was effective for seven days. Though the temporary license did not have a timestamp, these two documents can reasonably be read together. Because the revocation became effective immediately, the timestamp indicates when time began to run for the seven days of temporary driving privileges. As such, Roach’s temporary driving privileges expired at 2:34 a.m. on December 2, 2012. There is no indication on the notice of revocation or temporary license that Roach’s temporary driving privileges

ended any sooner than that, and Roach was not charged with driving after revocation at any time during the seven-day temporary license period. Although Roach may have chosen not to drive between midnight and 2:34 a.m. on December 2, 2012, this does not mean he was denied the full seven-day temporary driver's license.

Roach did not question whether a full seven-day period of temporary driving would afford due process but assumes that it would. Because his temporary driving privileges extended for a full seven days, we need not reach the issue of whether receiving slightly less time infringes on his due-process rights. Although our analysis differs from that of the district court, we conclude that it did not err in sustaining the revocation and denying Roach's motion for rescission of his driver's license revocation. *Bains v. Piper, Jaffray & Hopwood, Inc.*, 497 N.W.2d 263, 270 (Minn. App. 1993) ("An appellate court will not reverse a correct decision of the trial court simply because the trial court based its conclusion on incorrect reasons."), *review denied* (Minn. Apr. 20, 1993).

**Affirmed.**