STATE OF MINNESOTA
IN COURT OF APPEALS
A10-506

Shane Victor Edstrom, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed February 1, 2011
Affirmed
Ross, Judge

Washington County District Court
File No. 82-CV-08-3329

Shane Victor Edstrom, St. Cloud, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Mary R. McKinley, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Hudson, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

This appeal concerns the validity of Shane Edstrom's driver's license revocation for his chemical-test refusal following a traffic stop and drunk-driving arrest in Stillwater. Edstrom challenges the revocation because the state failed until after the implied-consent

hearing to give Edstrom a copy of the police dashboard video recording that had captured his underlying traffic stop and arrest. Edstrom unsuccessfully sought to have his revocation reversed or for a new implied-consent hearing, arguing that the video recording constituted newly discovered evidence contradicting the officer's justification for the traffic stop. Because the district court properly concluded that the video recording had not commenced until after the officer observed the stop-justifying conduct, and because there is no other reason that the evidence would mandate a new hearing, we affirm.

FACTS

Stillwater police officer John Siebenaler saw a car make a prohibited left turn in the early morning hours. According to Officer Siebenaler, he followed the car, investigated its license plate, and learned that the owner's driver's license had been revoked. He watched the car pull into an apartment building parking lot. The officer circled the block and later saw the vehicle leaving the lot. He sped up to reach it, and as it turned to enter an office building's parking lot, he initiated a traffic stop. Officer Siebenaler observed characteristics of chemical impairment, administered field sobriety tests, and arrested Edstrom for driving while impaired. He took Edstrom to the Washington County jail for implied-consent alcohol testing. But Edstrom refused to submit to a chemical test, and the state revoked his driver's license under Minnesota Statutes section 169A.52, subdivision 3(a) (2008).

Edstrom challenged the revocation at a September 2008 implied-consent hearing. Officer Siebenaler testified that no video recording of the incident existed because his

squad car's camera had been broken at the time of the stop. Edstrom unsuccessfully appealed the revocation first to the district court and then to this court. *Edstrom v. Comm'r of Pub. Safety,* No. A08-1815 (Minn. App. Sept. 9, 2009) (order op.).

Days before Edstrom's drunk-driving criminal trial involving the same incident, the state gave Edstrom a copy of the video recording of the stop captured by the dashboard camera in Officer Siebenaler's squad car. Edstrom relied on this newly disclosed evidence in filing motions to vacate the license revocation and for a new implied-consent hearing. The district court denied the motions. Edstrom appeals.

D E C I S I O N

Edstrom argues that the district court erred by denying his motions to vacate and for a new hearing because the squad car video proves that the traffic stop was unconstitutional. We review for an abuse of discretion both a district court's decision whether to vacate a judgment pursuant to rule 60 of the Minnesota Rules of Civil Procedure, *Northland Temporaries, Inc. v. Turpin,* 744 N.W.2d 398, 402 (Minn. App. 2008), *review denied* (Minn. Apr. 29, 2008), and whether to grant a new trial pursuant to rule 59, *Bosshart v. Commissioner of Public Safety*, 427 N.W.2d 720, 722 (Minn. App. 1988). We consider only whether the district court's refusal to grant a new trial violated a clear legal right or constituted a manifest abuse of discretion. *Bosshart*, 427 N.W.2d at 722.

Newly discovered evidence may be the basis for relief from an order under rule 60.02 or for a new trial under rule 59.01. The parties do not dispute that the video recording constitutes newly discovered evidence. But newly discovered evidence

justifies a new trial only if it is likely to impact the outcome of a new trial and is not "merely collateral, impeaching, or cumulative" evidence. *Regents v. Univ. of Minn. v. Med. Inc.*, 405 N.W.2d 474, 478 (Minn. App. 1987), *review denied* (Minn. July 15, 1987); *Vikse v. Flaby*, 316 N.W.2d 276, 284 (Minn. 1982).

We disagree with Edstrom's assertion that the new evidence "conclusively proves" that the traffic stop was unlawful. We have reviewed the video recording and find support for the district court's conclusion that the events that the officer described as justifying the traffic stop are not depicted. The district court implicitly and reasonably found that the period of the officer's challenged observations precede the recording. The lack of video footage depicting the stop-justifying events described by the officer therefore cannot prove that the traffic stop was unjustified. The video evidence is merely cumulative of but not contradictory to the officer's testimony. Its only other reasonable use would be to impeach the officer's representation that his camera had been broken at the time of Edstrom's arrest. But the district court cannot grant a motion to vacate or for a new trial based on newly discovered evidence that serves only to impeach a witness. *Viske*, 316 N.W.2d at 284.

We add that when a district court judge was the initial fact finder and decision maker, he is in a "peculiarly good position to determine the probable effect of the newly discovered evidence on the findings of fact." *Wurdemann v. Hjelm*, 257 Minn. 450, 466, 102 N.W.2d 811, 821 (1960). The same district court judge who presided over Edstrom's implied-consent hearing denied Edstrom's posttrial motions. That judge concluded that a "review of the video conclusively shows that it would not have any effect on a new trial,"

that the "tape is cumulative," and that its only practical use would be merely "to impeach the officer." We see nothing in the evidence or proceedings leading us to question the district court's sound assessment, and we hold that the district court did not abuse its discretion.

Edstrom contends that Officer Siebenaler's testimony in the related criminal proceeding is also newly discovered evidence that both undercuts the legality of the traffic stop and proves that he violated Edstrom's right to counsel. But the officer's testimony in the criminal proceeding is not properly before this court on appeal from the civil proceeding. We expressly excluded our consideration of the criminal transcript by special term order and we disregard factual allegations beyond the record on appeal. *See* Minn. R. Civ. App. P. 110.01 ("The papers filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases."). We therefore do not address Edstrom's arguments arising from the alleged testimony in his criminal proceeding.

Edstrom raises several additional arguments, including that the district court violated his due process rights by failing to grant him a new hearing and that it erred by selectively analyzing the video recording. We have considered Edstrom's arguments and conclude that they do not warrant further discussion. We also note but do not address the commissioner's district-court challenge to Edstrom's posttrial motions on timeliness grounds. The commissioner had opposed the motions based on the deadlines of rules 60.02(b) and 59.03. The district court decided the motions based on their substance

rather than their untimeliness, and neither party raises the deadline issue on appeal. We therefore do not address whether the motions were timely.

Affirmed.