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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0295**

Steven Scott Manley, petitioner,  
Appellant,

vs.

Commissioner of Public Safety,  
Respondent.

**Filed October 15, 2012  
Affirmed  
Stoneburner, Judge**

Hennepin County District Court  
File No. 27-CV-11-5880

Steven Scott Manley, Minneapolis, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Stephen D. Melchionne, Assistant Attorney General, St.  
Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and  
Harten, Judge.\*

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

## **UNPUBLISHED OPINION**

**STONEBURNER**, Judge

Appellant challenges the district court's order sustaining respondent Commissioner of Public Safety's revocation of appellant's driving privileges. Appellant asserts that the state failed to prove a temporal connection between his drinking and driving and that he was unlawfully seized. We affirm.

### **FACTS**

Officer Jonas Novak, a licensed peace officer with the Minneapolis Police Department, was on patrol on a Saturday evening in February 2011. At approximately 9:39 p.m., Officer Novak received a dispatch advising him of a "suspicious vehicle" with heavy front-end damage abandoned in the middle of a Minneapolis intersection. Shortly before this dispatch, two other calls to dispatch had been made about the same vehicle, identified by its license plate: one reported that the vehicle had been involved in a property-damage hit-and-run incident and the other reported a vehicle being driven in an erratic manner, running red lights, and almost hitting pedestrians. None of the calls to dispatch provided a description of the driver.

Officer Novak and his partner went to the location of the abandoned vehicle. According to Officer Novak, the vehicle appeared to have "hit something very hard." After obtaining the name and a photograph of the vehicle's owner, the officers searched the vicinity for approximately five minutes. They did not locate the vehicle's owner or any injured occupants. The officers then prepared to have the vehicle towed from the intersection.

As Officer Novak completed paperwork in his squad car, he saw a male approaching on the sidewalk. The man was staggering and stopped to look at the damaged vehicle. Officer Novak recognized the man as the owner of the vehicle, appellant Steven Scott Manley. Manley looked at each officer and then started to walk away from the intersection. Officer Novak concluded that Manley was trying to avoid contact with the police. Officer Novak pursued Manley and instructed him to come over to him, but Manley continued to walk away. The officers physically apprehended Manley and placed him in the back of the squad car. Officer Novak noted that Manley's hands were bloody and that he had slurred speech and a strong odor of alcohol.

In the squad car, Manley affirmed that he owned the vehicle. He said that he had been driving east when the vehicle stalled. He said he got out of the vehicle and walked to his girlfriend's house a few blocks away. During the conversation, Manley never indicated that he had allowed anyone else to drive the vehicle or asserted that he had consumed alcohol after abandoning the vehicle. He also held keys to the abandoned vehicle.<sup>1</sup>

Based on Manley's walk, speech, odor, and demeanor, Officer Novak suspected that Manley was intoxicated. Manley agreed to take a preliminary breath test (PBT), which registered 0.249. Officer Novak arrested Manley for driving while impaired (DWI).

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<sup>1</sup> Officer Novak testified that he verified that the keys in Manley's hand were for the vehicle. But no one verified whether the keys left on the vehicle tire were for the vehicle.

Manley's driving privileges were revoked.<sup>2</sup> Manley petitioned the district court for rescission of the revocation. Manley did not appear personally at the implied-consent hearing but was represented by counsel, who called Raelynn King to testify on Manley's behalf. King testified that she is a good friend of Manley, whom she had known for five years. She testified that she had picked up Manley in her vehicle at approximately 3:30 or 4:00 p.m. on the Saturday in question. She said that they went grocery shopping and stopped at "a couple" of bars, after which she dropped off Manley at his home around 8:30 or 9:00 p.m. King testified that it was her understanding that Manley had loaned his vehicle to someone else that day. She said that after she dropped Manley off at his home, she drove past the intersection where Manley's vehicle was parked in the middle of the street, and she drove back to Manley's home and told him about the vehicle in the intersection. King testified that Manley then left on foot to check on the vehicle and she remained at his home. She did not hear from him again until he called her from the jail.

Manley argued to the district court that the officers lacked probable cause to arrest him for DWI because there was insufficient evidence of a temporal connection between his driving and drinking. The district court credited Officer Novak's testimony that (1) he received the dispatch about the abandoned vehicle at 9:39 p.m.; (2) he was aware

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<sup>2</sup> Under the implied-consent law, the commissioner of public safety shall revoke a person's driver's license if a police officer certifies that (1) there was probable cause to believe that the person had been driving while impaired and (2) the person submitted to a chemical test that indicated an alcohol concentration of .08 or more. Minn. Stat. § 169A.52, subd. 4(a) (2010). The record on appeal does not contain a copy of the certification or evidence that Manley submitted to a chemical test that indicated a test result of .08 or more. Manley appears to concede that adequate documentation preceded the revocation.

of the calls to dispatch indicating that the vehicle was being driven shortly before 9:39 p.m.; (3) Officer Novak arrived at the scene of the abandoned vehicle a few minutes after the 9:39 p.m. dispatch; and (4) Manley arrived at the scene intoxicated, with blood on his hands and the vehicle keys in his hands, while the officers were still processing information and arranging for the vehicle to be towed. The district court noted that, at the time of his arrest, Manley made no claim of postdriving consumption of alcohol. The district court found that even though Manley had left the scene for a short time after abandoning his vehicle in the intersection, Officer Novak was justified in concluding that Manley did not become intoxicated during that interval. The district court found that a sufficient temporal connection had been established between Manley's driving and drinking to support revocation of his driving privileges.

The district court found King's testimony not credible concerning Manley's whereabouts during the relevant time period and her understanding that Manley had loaned his vehicle to someone else, noting that this testimony conflicted with Manley's admissions to the officers that he had driven the vehicle to the intersection where it was abandoned. The district court denied Manley's petition to rescind revocation of his driving privileges and sustained the revocation. This appeal followed.

## **D E C I S I O N**

On appeal, Manley argues that the district court erred by sustaining the revocation of his driver's license because the arresting officer lacked probable cause to believe that he was driving while impaired. The existence of probable cause is a mixed question of law and fact. *Groe v. Comm'r of Pub. Safety*, 615 N.W.2d 837, 840 (Minn. App. 2000),

*review denied* (Minn. Sept. 13, 2000). This court will not reverse the district court's findings of fact unless they are clearly erroneous. *Thompson v. Comm'r of Pub. Safety*, 567 N.W.2d 280, 281 (Minn. App. 1997), *review denied* (Minn. Sept. 25, 1997). And we will not set aside the district court's conclusions of law unless the district court 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). We give great deference to the district court's determinations of witness credibility. *See In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995).

Manley first asserts that the district court erred by finding that Officer Novak had probable cause to believe that Manley drove his vehicle on the night in question. But Officer Novak testified that, on numerous occasions, Manley admitted to driving his vehicle to the intersection. Officer Novak also testified that, at the scene of the arrest, Manley never denied driving and never asserted that another person had driven his vehicle. Although King testified that someone else drove Manley's vehicle and that Manley was a passenger in her vehicle, the district court explicitly found this testimony "not credible." On this record, the district court did not err by finding probable cause to believe that Manley drove his vehicle on the night in question.

Manley next asserts that the district court erred by finding probable cause to believe that he was under the influence of alcohol when he was driving. Manley does not dispute that he was impaired by alcohol at the time of his arrest. Rather, Manley argues that the facts are not sufficient to establish a "temporal connection" between his driving

and his state of intoxication. *See Dietrich v. Comm'r of Pub. Safety*, 363 N.W.2d 801, 803 (Minn. App. 1985).

To support probable cause to believe that a person is driving while impaired, a time frame must be established that demonstrates a connection between the person's drinking and driving. *Delong v. Comm'r of Pub. Safety*, 386 N.W.2d 296, 298 (Minn. App. 1986), *review denied* (Minn. June 13, 1986). The fact that a police officer does not specifically inquire about postdriving activities is not fatal to a finding of probable cause. *Rohlik v. Comm'r of Pub. Safety*, 400 N.W.2d 791, 793 (Minn. App. 1987), *review denied* (Minn. Apr. 17, 1987). Here, Officer Novak knew of two reports of Manley's vehicle being driven after 9:00 p.m., and at 9:39 p.m. he received the dispatch that the vehicle had been abandoned. Officer Novak arrived at that location within "a couple" of minutes. The officers spent about five minutes looking for anyone who might have been injured and were processing the vehicle for towing when Manley arrived at the scene. The record does not establish the precise time that Manley last drove the vehicle or the precise time that Manley arrived at the scene after abandoning the vehicle. But Manley never asserted that he had consumed alcohol after he left the vehicle in the intersection. We conclude that the evidence is sufficient to establish that the officers had probable cause to believe that Manley was impaired by alcohol when he was driving. *See Eggersgluss v. Comm'r of Pub. Safety*, 393 N.W.2d 183, 185 (Minn. 1986) (concluding that under the totality of the circumstances, an officer had probable cause to arrest a driver who had been involved in an accident for DWI despite the fact that the officer did not know when the accident occurred or whether the driver had consumed alcohol after

the accident); *see also Rohlik*, 400 N.W.2d at 793 (reversing an order rescinding revocation of Rohlik’s driver’s license and finding that an officer had probable cause to arrest Rohlik for DWI based on Rohlik’s admission that he had been driving a car that was found destroyed by fire in a ditch and the officer’s observation of indicia of Rohlik’s intoxication at the time of his arrest at his home shortly after the discovery of the car).

For the first time on appeal, Manley claims that he was unlawfully seized. To raise a license-revocation issue for judicial review, a petitioner must “state with specificity the grounds upon which the petitioner seeks rescission of the order of revocation.” Minn. Stat. § 169A.53, subd. 2(b)(3) (2010); *Schafer v. Comm’r of Pub. Safety*, 348 N.W.2d 365, 368 (Minn. App. 1984). The purpose of the specific-pleadings requirement is to alert the commissioner and the district court to the specific matters at issue. *Rancour v. Comm’r of Pub. Safety*, 355 N.W.2d 462, 464 (Minn. App. 1984). A district court does not err by failing to address an issue not raised in the petition for judicial review. *Id.* At the implied-consent hearing, Manley specifically waived all issues except probable cause for the arrest. Because Manley did not raise the issue of unlawful seizure below, it is waived on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that an appellate court will generally not consider matters not argued to and considered by the district court).

**Affirmed.**