

Price v. Commissioner of Public Safety, Not Reported in N.W. Rptr. (2018)

2018 WL 817435

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Court of Appeals of Minnesota.

Justin Robert PRICE, petitioner, Appellant,

v.

COMMISSIONER OF PUBLIC SAFETY, Respondent.

A17-0929

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Filed February 12, 2018

Becker County District Court, File No. 03-CV-17-562

**Attorneys and Law Firms**

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Considered and decided by Bjorkman, Presiding Judge;  
Peterson, Judge; and Larkin, Judge.

**UNPUBLISHED OPINION**

PETERSON, Judge

\*1 This appeal is from a district court order sustaining the  
revocation of appellant's Minnesota driver's license following  
his conviction of an impaired-driving offense in Michigan.  
We affirm.

**FACTS**

On November 13, 2016, appellant Justin Robert Price  
was arrested in Michigan and charged with two offenses:

operating a vehicle while intoxicated and possession of  
a firearm under the influence. At his plea hearing, Price  
admitted to drinking two-and-a-half or three beers, and  
that his “evidentiary breath tests” revealed “a [0.11] and a  
[0.12].” It was also established that Price was pulled over  
by law enforcement after “he made a wide turn and hit  
the fog line, and then ... weaved within the lane.” When  
the Michigan judge asked Price if his alcohol consumption  
“made it less likely that [he] could safely drive the car,” Price  
answered, “Yes, your Honor.” Pursuant to Price's negotiated  
plea agreement, the Michigan court accepted his guilty pleas  
to a reduced charge of operating a vehicle while visibly  
impaired (OVWI) and to the firearm offense.

Following Price's convictions, the Minnesota Commissioner  
of Public Safety (commissioner) received certification  
of Price's Michigan impaired-driving conviction, revoked  
Price's Minnesota driver's license for 30 days, and  
“disqualified” Price from using his commercial driver's  
license for one year. Price petitioned to reinstate the licenses,  
arguing that the Michigan impaired-driving offense requires  
only that a driver's ability to operate a vehicle be “visibly  
impaired”; it does not require that a driver be “under the  
influence.” He also asserted that he would not be able to travel  
for work and was in danger of permanently losing his job if  
he was not able to drive.

The district court rejected Price's “primary contention ... that  
the conviction entered against him in Michigan for Operating  
While Visibly Impaired does not allow the revocation of his  
license in Minnesota” and denied his petition. The district  
court ruled that the Michigan driving conviction was in  
conformity with Minnesota law and Price's driving conduct in  
Michigan would constitute a driving-while-impaired (DWI)  
offense in Minnesota. This appeal follows.

**DECISION**

A person whose driver's license has been revoked or  
disqualified may petition the district court for a de novo  
hearing on whether the petitioner is subject to revocation or  
disqualification. *Minn. Stat. § 171.19 (2016)*. The petitioner  
bears the burden of proof on entitlement to reinstatement,  
which the district court will order if the commissioner's  
decision is contrary to law. *Pallas v. Comm'r of Pub. Safety*,

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781 N.W.2d 163, 166 (Minn. App. 2010). We “defer to the district court's credibility determinations and ability to weigh the evidence,” but we “review de novo the district court's application of the law.” *Constans v. Comm'r of Pub. Safety*, 835 N.W.2d 518, 523 (Minn. App. 2013).

In Minnesota, it is a crime “for any person to drive, operate, or be in physical control of any motor vehicle ... when ... the person is under the influence of alcohol.” Minn. Stat. § 169A.20, subd. 1(1) (2016).<sup>1</sup> This offense includes “the act of driving a motor vehicle while ability or *capacity to drive is impaired* by alcohol.” *Anderson v. State, Dep't of Pub. Safety*, 305 N.W.2d 786, 787 (Minn. 1981) (emphasis in original). Impairment must be shown “in some way or to some degree,” *State v. Shepard*, 481 N.W.2d 560, 562 (Minn. 1992), including “outward manifestations of intoxication.” *State v. Elmourabit*, 373 N.W.2d 290, 293 (Minn. 1985). But a DWI offense under section 169A.20, subdivision 1(1), does not require a specific level of intoxication, as compared to a DWI offense under Minn. Stat. § 169A.20, subd. (1)(5) (2016), which requires proof that the driver's alcohol concentration “is 0.08 or more.” See *State v. Tanksley*, 809 N.W.2d 706, 711 (Minn. 2012) (stating that “lack of impairment [is] irrelevant” in proving a DWI offense that is premised on the person's alcohol concentration).

\*2 The commissioner “shall immediately revoke the license of a driver upon receiving a record of the driver's conviction of ... a violation of section 169A.20 [or] ... an offense in another state that, if committed in this state, would be grounds for revoking the driver's license.” Minn. Stat. § 171.17, subd. 1(a)(2) and (9) (2016).<sup>2</sup> The record establishes that Price consumed alcohol and that his ability to drive was impaired by the alcohol. Price was observed driving erratically; he admitted that he consumed alcohol; and he admitted that his consumption “made it less likely that [he] could safely drive the car.” Price's conduct, if it occurred in Minnesota, would be grounds for revoking his licenses under Minn. Stat. § 169A.20, subd. 1(1).

Price argues that the Michigan misdemeanor OVWI offense of driving “while visibly impaired” by alcohol<sup>3</sup> does not require “such a substantial degree of impairment” as the Minnesota misdemeanor DWI offense of driving “under the influence of alcohol.” We disagree. In Michigan, the alcohol consumption must cause a driver to be “visibly impaired.” Visible impairment is shown when “the defendant's ability to drive [is] so weakened or reduced by consumption of intoxicating liquor that defendant drove with less ability than would an ordinary, careful and prudent driver. Such weakening or reduction of ability to drive must be visible to an ordinary, observant person.” *People v. Calvin*, 548 N.W.2d 720, 722–23 (Mich. Ct. App. 1996) (quotation omitted), *review denied* (Mich. Jan. 31, 1997). In Minnesota, the alcohol consumption must cause the person to be “under the influence,” so that the person's ability to drive is impaired “in some way or to some degree.” *Shepard*, 481 N.W.2d at 562; *Anderson*, 305 N.W.2d at 787. The elements of both offenses require impairment of a driver's ability to operate a motor vehicle due to alcohol consumption. The language of the statutes differs, but the statutes use similar criteria to prohibit identical conduct. In *Anderson*, the supreme court noted that “courts in other states having [DWI] statutes of similar phraseology and purpose have generally interpreted the phrase [“under the influence of alcohol”] to cover driving by a person who has drunk enough liquor so that his capacity to drive is impaired in some way.” 305 N.W.2d at 787. Applying this interpretation, Price's impaired-driving offense in Michigan, if committed in this state, would be grounds for revoking Price's driver's license.

**Affirmed.**

**All Citations**

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**Footnotes**

1 DWI is a misdemeanor, if no aggravating factors are present. Minn. Stat. § 169A.27, subd. 1, 2 (2016).

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2 The revocation period for a first-time DWI offense is “not less than 30 days.” [Minn. Stat. § 169A.54, subd. 1\(1\) \(2016\)](#). The period of disqualification for a commercial license following a DWI offense is one year. [Minn. Stat. § 171.165, subd. 1 \(2016\)](#); [49 C.F.R. § 383.51\(b\)\(1\) \(2016\)](#) (“Table 1” sets forth a one-year period of disqualification for a commercial driver who “operates a motor vehicle and is convicted of ... [b]eing under the influence of alcohol as prescribed by State law.”).

3 The Michigan misdemeanor impaired-driving offense of OVWI is defined as follows:

A person, whether licensed or not, shall not operate a vehicle upon a highway ... when, due to the consumption of alcoholic liquor, a controlled substance, or other intoxicating substance, or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance, the person's ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered.

[Mich. Comp. Laws § 257.625\(3\), \(9\) \(2016\)](#).