

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-532

JUNE TERM, 2007

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Grand Isle Circuit
Jack McGuire	}	
	}	DOCKET NO. 8-6-06 Gics
		Trial Judge: Mark J. Keller

In the above-entitled cause, the Clerk will enter:

Defendant Jack McGuire appeals pro se from the trial court's order granting judgment to the State in this civil suspension proceeding. We affirm.

In late May 2006, defendant was stopped for speeding and subsequently processed for DUI. He refused to take an evidentiary breath test. Criminal and civil suspension proceedings were instituted, and a final civil suspension hearing was scheduled for August 3, 2006. The hearing was continued several times at defendant's request, and it was ultimately conducted on November 16, 2006. The only issue at the hearing was whether the officer had reasonable grounds to believe that defendant was operating his vehicle while intoxicated. The arresting officer testified that after pulling defendant over, he detected a strong odor of alcohol coming from defendant's vehicle. Defendant's eyes were red and bloodshot, and his speech was "a little bit stumbled." Defendant initially informed the officer that he had not had anything to drink, but later stated that he had had a glass of wine. The officer administered field sobriety exercises, which defendant failed. A roadside breath test indicated that defendant's alcohol level was over the legal limit. A videotape of the stop was also introduced, as was the officer's DUI processing form, his affidavit, and the evidence ticket. Defendant testified on his own behalf. He admitted drinking two or three glasses of wine shortly before he was stopped. He indicated, however, that he had physical limitations that impeded his ability to successfully complete the field sobriety exercises and that his eyes were red and watery due to allergies. At the close of the hearing, the court granted judgment to the State. It concluded, based on the officer's observations as well as the videotape, that the officer had reason to believe that defendant was operating his vehicle while under the influence of alcohol. This appeal followed.

Defendant argues that the court was unable to make an objective decision. He maintains that his arrest was unwarranted, that the officer provided a fraudulent and misleading account of events, and that he was cited for an incorrect offense (DUI criminal refusal), which prejudiced the court against him. Defendant challenges certain observations noted by the officer in his affidavit, and provides his own explanation as to why his eyes were bloodshot, why he initially reported that he

had not been drinking, and why he failed the roadside sobriety field tests. He suggests that his attorney did not represent him to the best of the attorney's ability. Defendant also complains that his arraignment and the final hearing were not conducted in a timely manner.

We find no error in the court's decision. While defendant offers his own explanation for the evening's events, the trial court was not persuaded by his testimony. Instead, it credited the officer's observations of defendant's behavior and concluded that the officer had reasonable grounds to believe that defendant was operating his vehicle while intoxicated. It is for the trial court, not this Court, to assess the credibility of witnesses and weigh the persuasiveness of the evidence. Cabot v. Cabot, 166 Vt. 485, 497 (1997). Where, as here, the court's findings are supported by credible evidence in the record, they must stand on appeal. Id. The fact that defendant may have received an incorrect citation for criminal refusal is irrelevant. We note that defendant was not charged with criminal refusal, but rather with DUI, first offense, and that this charge was dismissed pursuant to a plea agreement. In any event, the criminal proceeding has no bearing on the court's decision in the civil suspension matter, and there is no support for defendant's assertion that the criminal citation, assuming that it was introduced at the final civil suspension hearing, prejudiced the trial court against him. Defendant's complaints about his attorney are equally immaterial. The record amply supports the court's conclusion that the State was entitled to judgment in its favor. See 23 V.S.A. § 1205(a), (i) (civil suspension required where officer has reasonable grounds to believe driver is operating under the influence and driver refuses to submit to evidentiary breath test).

Defendant's procedural claims were not raised below and they are therefore waived on appeal. See Bull v. Pinkham Eng'g Assocs., 170 Vt. 450, 459 (2000) ("Contentions not raised or fairly presented to the trial court are not preserved for appeal."). Even if these claims had been preserved, however, we would find them without merit. The timing of defendant's preliminary hearing appears consistent with the requirements of 23 V.S.A. § 1205(g), and the record indicates that defendant's attorney waived the forty-two day rule on June 22, 2006. See id. § 1205(h) (final hearing in civil suspension case must be held no later than forty-two days after the date of the alleged offense unless defendant consents to a continuance or unless good cause is shown). We find no error.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice