

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-370

APRIL TERM, 2005

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Orleans Circuit
Karl Davignon	}	
	}	DOCKET NO. 57-6-04 Oscs
		Trial Judge: Dennis R. Pearson

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

Defendant appeals pro se from the civil suspension of his driver's license. He appears to argue that the court violated his right to due process. We affirm.

In June 2004, defendant was arrested for suspicion of driving under the influence, and he was provided with a notice that his driver's license would be suspended. Defendant requested a civil suspension hearing, and a final hearing was held in August 2004. At the hearing, the State submitted an affidavit from the arresting officer. The officer averred that on the evening in question, defendant was found in his car, which he had driven off the road. Defendant was behind the wheel, the keys were in the ignition, and the vehicle was in drive. After speaking with defendant, it became apparent to the officer that defendant was intoxicated. The officer could smell a strong odor of alcoholic beverages coming from defendant, and defendant was confused and repeating things over and over. His eyes were bloodshot, his speech was slurred, and when he exited the vehicle, he swayed and stumbled as he walked. There was an open container of beer in the car. The officer informed defendant of his rights, and defendant submitted to a breath test. Defendant's breath alcohol level was .205 percent. The State also submitted an affidavit from Theodore Manazir, a state chemist, regarding the accuracy and reliability of the breath testing procedure. Based on the State's evidence, and defendant's failure to raise any issues in writing as required by 23 V.S.A. § 1205(h), the court entered judgment for the State, suspending defendant's license. This appeal followed.

Defendant's assertion that he was denied due process is without merit. The court made findings on the issues set forth in 23 V.S.A. § 1205(h). While defendant argues that the key to his automobile was not in the ignition and the car was not in drive on the evening in question, the trial court found otherwise. The court found that the arresting officer had reasonable grounds to believe that defendant had been operating, attempting to operate, or in actual physical control of his vehicle, while under the influence of alcohol in violation of 23 V.S.A. § 1201. Because this finding is supported by the evidence, we will not disturb it on appeal. N.A.S. Holdings, Inc. v. Pafundi, 169 Vt. 437, 438 (1999) (trial court's factual findings will stand unless, taking the evidence in the light most favorable to the prevailing party, and excluding the effect of modifying evidence, there is no reasonable or credible evidence to support them). While defendant complains that he was not allowed to introduce evidence, he did not provide the court with a list of issues (limited to those set forth in 23 V.S.A. § 1205(h)) that he intended to raise at the hearing. 23 V.S.A. § 1205(h). Section 1205(h) specifically provides that a defendant may only raise evidence that is relevant to an issue that he has listed; he "shall not be permitted to raise any other evidence at the final hearing, and all other evidence shall be inadmissible." We find no basis to disturb the court's judgment.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned