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**DISTRICT II**

May 8, 2013

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You are hereby notified that the Court has entered the following opinion and order:

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2012AP1857

State of Wisconsin ex rel. Charles S. McNeal v. David H. Schwarz  
(L.C. #2012CV195)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Charles S. McNeal appeals pro se from a circuit court order affirming the revocation of his parole and extended supervision on certiorari review. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).<sup>1</sup> We affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version.

Following a hearing in front of an administrative law judge (ALJ), McNeal's supervision was ordered revoked. The decision was based on two violations: (1) that McNeal consumed alcohol in violation of his supervision rules and (2) that McNeal operated a stolen vehicle without the owner's permission. At the hearing, Officer Hodorowski provided a written probable cause statement and testified that during a traffic stop involving McNeal as the driver, the officer observed a bandana tied around the car's damaged steering column. Hodorowski testified that the damage to the column appeared to be fresh and that pieces of the broken column were on the floor. The officer testified that there was no key in the ignition and that there was a screwdriver wedged between the passenger seat and the console. When questioned, McNeal told Hodorowski that the car belonged to his aunt and that he had thrown the ignition key out of the window to avoid a drunk driving citation. Using McNeal's cell phone, Hodorowski called a woman purporting to be McNeal's aunt, and she said McNeal had permission to drive the car. However, when Hodorowski asked for her contact information, she disconnected the call. Hodorowski testified that during the stop, another officer contacted the registered owner, who said the car was stolen. Hodorowski testified that he, too, spoke with the owner by telephone and confirmed his nonconsent.

The ALJ determined that the department established the second violation<sup>2</sup> through Hodorowski's testimony and written statement. The decision was sustained on administrative appeal. Upon McNeal's petition for writ of certiorari, the circuit court entered an order affirming the revocation decision. McNeal appeals.

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<sup>2</sup> McNeal stipulated to the first violation.

On certiorari review of an administrative decision revoking probation, we review the decision of the division, not that of the circuit court. *State ex rel. Warren v. Schwarz*, 211 Wis. 2d 710, 717, 566 N.W.2d 173 (Ct. App. 1997). Our review of the division's decision is limited to four inquires: (1) whether it stayed within its jurisdiction, (2) whether it acted according to law, (3) whether its action was arbitrary, and (4) whether the evidence was such that the division could reasonably arrive at its decision. *Id.* Because McNeal challenges the sufficiency of the evidence, our review is limited to whether there is "substantial evidence" to support the decision. *State ex rel. Washington v. Schwarz*, 2000 WI App 235, ¶17, 239 Wis. 2d 443, 620 N.W.2d 414. Revocation proceedings are civil in nature and accordingly the evidentiary burden is low. *Id.*, ¶¶16-17. We determine only whether reasonable minds could arrive at the conclusion reached by the division. *George v. Schwarz*, 2001 WI App 72, ¶10, 242 Wis. 2d 450, 626 N.W.2d 57. We defer to the division's credibility findings and to its determination concerning the weight of the evidence. *Id.* If substantial evidence supports the division's determination, it must be affirmed even though the evidence may also support a contrary determination. *Von Arx v. Schwarz*, 185 Wis. 2d 645, 656, 517 N.W.2d 540 (Ct. App. 1994).

We conclude that there was substantial evidence supporting the revocation decision. McNeal was discovered in the driver's seat of a car with a newly damaged steering column partially disguised by a bandana. There was a screwdriver in between the driver's seat and console, yet there was no ignition key to be found. The car was reported stolen, and the owner told Hodorowski that McNeal did not have permission to operate the car. The ALJ reasonably discounted the suspicious, evasive phone call with a woman claiming to own the car.

McNeal argues that the ALJ was not entitled to rely on the hearsay offered by Hodorowski concerning ownership and nonconsent. We disagree. In a revocation proceeding, the rules of evidence do not strictly apply and other constitutional protections are less than those in a criminal proceeding. *Washington*, 239 Wis. 2d 443, ¶¶21-23. Hearsay is admissible. See WIS. ADMIN. CODE § HA 2.05(6)(d); see also WIS. STAT. § 911.01(4)(c) (rules of evidence do not apply to revocation hearings). While a violation may not be proved by unreliable hearsay alone, *State ex rel. Thompson v. Riveland*, 109 Wis. 2d 580, 583, 326 N.W.2d 768 (1982), that is not what occurred in this case. First, the ALJ found the hearsay to be reliable, and this determination is supported by substantial evidence. Second, hearsay was not the only proof presented. Evidence of Hodorowski's observations both corroborated the hearsay and provided independent proof of the violation. In fact, even without the alleged hearsay, there was substantial evidence that McNeal operated the car without the owner's permission. It is reasonable to conclude that a man operating a car with a newly damaged and concealed steering column who possesses a screwdriver but no ignition key and whose only explanation for the activity is suspicious is driving a stolen car.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*