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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1190**

Jon Dennis LaRoque, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed March 30, 2020
Affirmed
Reyes, Judge**

Ramsey County District Court
File No. 62-CV-18-3879

Steven J. Meshbesh, Meshbesh & Associates, P.A., Minneapolis, Minnesota (for
appellant)

Keith Ellison, Attorney General, Leah M. P. Hedman, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Bryan,
Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant challenges the district court's order sustaining the revocation of his
driving privileges based on its conclusion that he had physical control of a motor vehicle
in which he was a passenger, arguing that (1) it clearly erred by finding that he changed

the vehicle's gears and (2) an attempt by a passenger to change a vehicle's gears or grab its keys while driving does not constitute physical control as a matter of law. We affirm.

FACTS

A Minnesota state trooper responded to a call reporting a domestic incident along I-35E. When he arrived, he saw a parked vehicle and a man, as described in the call, chasing a woman along the shoulder of the road. The man, appellant Jon Dennis LaRoque, told the trooper that the woman, later identified as appellant's stepdaughter, L.G., had been driving him to Duluth when he wanted to go to Shoreview. According to the trooper, appellant said that, in an effort to stop them from going to Duluth, he grabbed the vehicle's "clutch" multiple times, changed its gears to slow it down, and tried to grab the keys. He said the vehicle stopped "at one point" because he changed its gears. Appellant appeared intoxicated, and a preliminary breath test showed an alcohol concentration approximately three times the driving-while-intoxicated (DWI) limit.¹ L.G. told a Lino Lakes police officer who had also arrived that appellant "had grabbed the steering wheel, pulled it towards him, which caused the vehicle to go towards the shoulder of the road. And then she pulled over."

The trooper arrested appellant for DWI and administered a breath test that reported an alcohol concentration of more than 0.08. The Commissioner of Public Safety (the commissioner) therefore issued appellant a notice of license revocation under the Implied

¹ Appellant did not raise the issue of intoxication at his implied-consent hearing, and he does not raise it here. The district court admitted testimony about appellant's intoxication at appellant's request to show his state of mind.

Consent Law, Minn. Stat. §§ 169A.50-.53 (2016 & Supp. 2017). Appellant filed a petition for review. At his implied-consent hearing, he raised the issue of physical control and waived all other issues. The trooper and officer testified to what appellant and L.G., respectively, told them at the scene. Appellant testified contrary to his statements at the scene. The district court sustained the revocation. This appeal follows.

DECISION

Appellant argues that the district court clearly erred by finding that he grabbed the vehicle's "clutch" and changed its gears and that therefore there is insufficient evidence that he had physical control of the vehicle. We disagree.

To sustain a license revocation, the commissioner "must show by a fair preponderance of the evidence" that the intoxicated person had physical control of the vehicle. *Roberts v. Comm'r of Pub. Safety*, 371 N.W.2d 605, 607 (Minn. App. 1985), review denied (Minn. Oct. 11, 1985). A person has physical control if he (1) "has the means to initiate any movement of [the] vehicle" and (2) "is in close proximity to the operating controls of the vehicle." *State v. Fleck*, 777 N.W.2d 233, 236 (Minn. 2010).

We will not set aside the district court's factual findings unless clearly erroneous, and we give "due regard" to its assessment of witness credibility. Minn. R. Civ. P. 52.01; see also *id.* Findings of fact are clearly erroneous when we are "left with a definite and firm conviction" that the district court made a mistake. *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002) (quotation omitted). In determining this, we view the record in the light most favorable to the findings. See *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). We review the question of physical control de

novo once the facts are established. *Snyder v. Comm’r of Pub. Safety*, 744 N.W.2d 19, 22 (Minn. App. 2008).

Here, the district court found² that appellant grabbed the vehicle’s “clutch” while L.G. drove it, causing the vehicle to change gears and stop moving “at one point.” The trooper’s testimony about appellant’s statements at the scene supports this finding. The factfinder need not hear eyewitness testimony that a person had been driving or operating a vehicle to find that the person had physical control of it. *See State v. Starfield*, 481 N.W.2d 834, 838 (Minn. 1992). The record further supports that appellant and L.G. were arguing before the trooper arrived, contrary to appellant’s testimony that they were only having a “discussion” about their destination.

Appellant argues that the district court’s findings are clearly erroneous because it credited the trooper’s testimony about his statements at the scene despite his intoxication and several pieces of evidence that directly contradict the trooper’s testimony. First, he claims his prior statement that he grabbed the vehicle’s “clutch” and changed its gears, as testified to by the trooper, is “impossible.” Appellant testified that he did not tell the trooper that he grabbed the “clutch,” and he argues that the automatic-transmission vehicle that L.G. drove did not have the “clutch” that he “allegedly” described grabbing. Second, he argues in the alternative that, even if he grabbed the vehicle’s *gearshift* and told the trooper that he grabbed the “clutch” in mistaken reference to the gearshift, he contradicted

² The district court expressed some facts as conclusions of law. Appellate courts consider these to be findings of fact. *Big Lake Lumber, Inc. v. Sec. Prop. Investments, Inc.*, 836 N.W.2d 359, 366-67 n.8 (Minn. 2013).

his statement about changing the vehicle's gears with his testimony that the vehicle's gears could not change without someone pressing the brake and a lever on the gearshift simultaneously. Third, he points to his testimony that he was not in "physical control" of the vehicle because he never had its keys and did not touch its gearshift, steering wheel, or pedals, in contradiction to the trooper's testimony. Fourth, he argues that the trooper testified only that appellant *tried* to change the vehicle's gears, not that he did so.

Appellant's arguments involve determinations about witness credibility, on which we defer to the district court. *See Snyder*, 744 N.W.2d at 22. The district court as factfinder may credit the trooper's testimony about appellant's out-of-court statements over appellant's in-court testimony to the contrary. *See Thorud v. Comm'r of Pub. Safety*, 349 N.W.2d 343, 345 (Minn. App. 1984). While appellant focuses on the word "clutch," the district court relied on his statements that he changed the vehicle's gears and caused it to stop, not on his description of the mechanism he grabbed to do so. Moreover, contrary to appellant's assertion, he did not testify that the vehicle's brake always needed to be pressed to change gears. Rather, he testified that "*to get it out of park*, you push the brake, and then there is a lever that you have to push in, and then move the shift indicator to the gear." But L.G. had been driving the vehicle at the time of the incident, and nothing in the record supports appellant's assertion that the brake must be pressed to change out of gears other than park. Finally, the trooper testified not only that appellant *tried* to grab the "clutch," but that he "*was grabbing the clutch*" and "*changing the gears multiple times* and that the vehicle did stop because of that, at one point."

Appellant does not challenge the district court's determination that changing the vehicle's gears would constitute physical control. Because the district court did not clearly err by finding that appellant changed the vehicle's gears while it was moving and caused it to stop, it properly determined that he had physical control. We therefore need not reach appellant's second issue of whether attempts to change the vehicle's gears or grab its keys would constitute physical control.

Affirmed.