

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0540**

David Patrick Curran,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed December 13, 2021
Affirmed
Kirk, Judge***

Crow Wing County District Court
File No. 18-CV-20-670

Charles A. Ramsay, Daniel J. Koewler, Ramsay Law Firm, P.L.L.C., Roseville, Minnesota
(for appellant)

Keith Ellison, Attorney General, Nicholas R. Moen, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Jesson, Judge; and Kirk, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

KIRK, Judge

In this appeal from the district court's order denying reinstatement of his driving privileges, appellant David Patrick Curran argues that the district court erred in denying his motion to compel disclosure of the DataMaster DMT-G (DMT) source code. We affirm.

FACTS

On February 2, 2020, after an alcohol-related traffic incident, police had Curran take a breath test using a DMT. The DMT results showed that Curran had an alcohol concentration of 0.13, which is above the legal limit of 0.08. Because of this incident, Curran's license was revoked pursuant to Minn. Stat. § 169A.52 (2020).

Curran filed a petition for judicial review of the revocation of his driving privileges, as well as a motion to compel discovery of the source code for the DMT that was used to analyze his breath sample. The parties submitted written arguments and exhibits. Curran submitted the following exhibits in support of his motion: nonprecedential cases from the court of appeals; a transcript of testimony given in an unrelated case by Dr. Andreas Stolz, a professor of physics; various newspaper articles and law review articles on breath testing in general; and contracts between the state and the company that supplies the DMT. At the hearing, Curran only challenged the validity, reliability, and accuracy of the DMT test pursuant to Minn. Stat. § 169A.53, subd. 3(b)(8)(i), (10) (2020).

The district court denied Curran's motion to compel disclosure of the DMT source code. The court found that there was "absolutely no evidence that raises any specific

concerns that [Curran's] test was faulty or that would indicate any reasonable likelihood of discovering a source code error that impacted the test results." The district court noted that Curran relied on the transcript of Dr. Stolz's testimony from a different case where he was called as an expert, and found that Dr. Stolz never looked at Curran's test results. The district court subsequently sustained the revocation of Curran's driving privileges pursuant to Minn. Stat. § 169A.52. Curran appeals only the denial of his discovery request.

DECISION

"Rulings on evidentiary matters rest within the sound discretion of the district court and will not be reversed on appeal absent a clear abuse of discretion." *In re Source Code Evidentiary Hearings*, 816 N.W.2d 525, 537 (Minn. 2012). An abuse of discretion occurs when "the district court erred by making findings unsupported by the evidence or by improperly applying the law." *State v. Underdahl*, 767 N.W.2d 677, 684 (Minn. 2009).

Minnesota Statutes section 169A.53, subd. 2 (2020), governs how a person who has had their driver's license revoked under the implied-consent law may obtain review of that revocation. Review "must be conducted according to the Rules of Civil Procedure, except that prehearing discovery is mandatory and is limited to" four enumerated items. Minn. Stat. § 169A.53, subd. 2(d). "Other types of discovery are available only upon order of the court." *Id.* The DMT's source code is not one of four items specified in subd. 2(d), and therefore, Curran was only able to obtain the source code by a court order.

If a petitioner moves the district court for nonmandated discovery he "must show that the discovery is relevant and, if it is not relevant to a claim or defense, the petitioner must show good cause for its production." *Abbott v. Comm'r of Pub. Safety*, 760 N.W.2d

920, 925 (Minn. App. 2009). “[T]he discovery sought is relevant only if it is reasonably calculated to lead to admissible evidence.” *Id.* at 924 (quotation omitted). In addition to considerations of relevance, discovery also must be:

proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Minn. R. Civ. P. 26.02(b).

Whether evidence is discoverable “depends in any given case, as always, on the showing made by the parties. When the issue of relevance turns on disputed facts, the district court must make findings based on the evidence presented.” *Abbott*, 760 N.W.2d at 926. The party seeking discovery has the burden to demonstrate that an item is discoverable. *Id.*

Curran argues that the district court abused its discretion when it denied his motion for discovery of the DMT source code. He argues that “the testimony of Dr. Stolz alone is more than adequate to establish the relevance” of the DMT source code. He also argues that his other exhibits “exceeded the showing” that the source code is relevant here. The district court, however, was “not obligated to credit” Curran’s assertions. *Id.*

Curran relied predominantly upon the testimony of Dr. Stolz. However, Dr. Stolz’s testimony, which had been given in an entirely independent case, did not have anything to do with Curran or Curran’s test results. Additionally, Dr. Stolz never looked at Curran’s test results and none of the other documents that Curran submitted dealt with his test result.

Therefore, Curran did not meet his burden of showing that the “evidence is capable of bearing on validity and reliability, discovery would be relevant” to his defense. *Id.* at 925-26. The district court did not err in denying Curran’s discovery request.

Affirmed.