STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1896

Rusty James Moore, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed August 25, 2025
Affirmed
Bratvold, Judge

Morrison County District Court
File No. 49-CV-24-1067

Anthony M. Bussa, CJB Law, PLLC, Fergus Falls, Minnesota (for appellant)

Keith Ellison, Attorney General, Rhianna Torgerud, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Harris, Presiding Judge; Bjorkman, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant challenges the district court's order sustaining the revocation of his driver's license, arguing that the district court abused its discretion by concluding that he did not meet his burden to establish a prescription-drug defense. Appellant contends that (1) he used amphetamines according to the terms of his prescription before driving and

(2) his ability to operate a motor vehicle was not impaired as a result. Because the record supports the district court's determination that appellant's ability to drive was impaired, we affirm and need not decide the first issue.

FACTS

The following summarizes the district court's written factual findings following an evidentiary hearing, along with record evidence helpful to understand the issues on appeal.

At about 5:30 p.m. on Friday, May 31, 2024, a trooper for Minnesota State Patrol responded to a citizen call that a tan sedan was "driving all over the road" and traveling westbound towards Little Falls on Highway 27. The caller stayed on the phone with dispatch to provide updates on the sedan's location. Before the trooper could locate the sedan, a Little Falls police officer stopped the sedan because it had an inoperable taillight, a cracked windshield, and made "jerky movements while driving within the lane." After she arrived on scene, the trooper identified appellant Rusty James Moore as the driver of the sedan.

The trooper, who is a certified drug-recognition expert (DRE), briefly spoke with Moore and observed "signs of possible impairment," including bloodshot, watery, and glassy eyes; fast speech; trembling hands; and a "pulsating" carotid artery in his neck. The trooper described Moore as "nervous and anxious."

The trooper told Moore that "he was called in on a driving complaint for being all over the road." Moore denied driving "all over the road" and told the trooper that he was late to his daughter's graduation. The trooper observed that Moore was "unable to sit still," had "a difficult time controlling his movements," spoke fast, and often interjected and

interrupted the trooper during their conversation. Based on the trooper's training and experience as a peace officer and DRE, she suspected that Moore was impaired by a central-nervous-system (CNS) stimulant.

The trooper asked Moore if he took any prescription medication or any illegal substances. Moore responded that he had a prescription for Adderall, an amphetamine, and that he took it at 6:00 a.m. that day as prescribed. The trooper conducted field sobriety tests after confirming that Moore did not have any recent brain injuries, concussions, tumors, or lower-body injuries.

First, the trooper took Moore's pulse, which was 116 beats per minute (BPM). The trooper noted that this was higher than the average pulse of 60-90 BPM. Next, the trooper conducted the modified Romberg test,[1] where Moore estimated the passage of 30 seconds in 35 seconds, which was within the acceptable test range. Moore, however, forgot the test instructions. Moore "exhibited full body tremors, swayed while standing, fidgeted with his fingers," and clenched his teeth during the test.

The trooper then conducted the horizontal gaze nystagmus (HGN) test.[2] The trooper observed "no clues," but testified that this result did not rule out CNS-stimulant

[1] The trooper testified that, during the modified Romberg test, the driver stands with their feet together, arms by their side, tilts their head back, closes their eyes, and estimates the passage of 30 seconds.

[2] The trooper testified that, during the HGN test, the driver tracks a stimulus with only their eyes—without moving their head—and the examiner looks for "the involuntary jerking of the eye."

impairment.[3] Next, the trooper conducted the lack-of-convergence test.[4] The trooper observed that Moore's eyes converged and testified that this result ruled out "marijuana impairment" but did not rule out CNS-stimulant impairment. The trooper noted that Moore's eyes were bloodshot, watery, and glassy.

The trooper confirmed that Moore did not have any injuries that prevented him from completing movement-based tests. The trooper then conducted the walk-and-turn test.[5] The trooper instructed Moore on how to perform the test and demonstrated it for him. Moore missed the heel to toe and placed his right foot on top of his left foot. The trooper observed Moore "lose his balance during instructions, use his arms for balance, miss[] heel to toe, step[] off line, improper[ly] turn, and stop[] while walking." The trooper next conducted the one-leg-stand test and verified that Moore had proper footwear. The trooper had to repeat instructions and observed Moore sway while balancing, use his arms for balance, and put his foot down. The trooper was concerned that Moore would fall and stopped the test.

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[3] The trooper testified that HGN "is common among depressants and other drug categories or alcohol."

[4] The trooper testified that, during the lack-of-convergence test, the driver follows a stimulus with their eyes in a circular motion. The examiner then brings the stimulus close to the bridge of the test subject's nose "to see whether [their] eyes can converge and cross and follow [the stimulus] all the way in."

[5] The trooper testified that, during the walk-and-turn test, the driver is instructed to stand with their "left foot on an imaginary line with their right foot in front of that directly heel to toe with their arms by their side."

The trooper retook Moore's pulse, which was 130 BPM. Finally, the trooper conducted a preliminary breath test (PBT), which showed a 0.000 alcohol concentration. During the PBT, the trooper saw that Moore had a dry mouth, which was consistent with stimulant use. Based on her observations during the field sobriety tests, the trooper believed that Moore was under the influence of a CNS stimulant and "too impaired to drive."

The squad car's dash-camera video recording (squad video) recorded Moore as he performed the field sobriety tests, but there was no audio. The trooper agreed that the squad video was "an accurate representation of the scene" but testified that it did not "capture everything" and that her "eyes will always be able to document and capture more than a . . . still camera."

The trooper asked Moore about methamphetamine use. Moore denied "current methamphetamine use" but admitted that he used it in the past. When asked how he used methamphetamine in the past, Moore stated that he used to snort it.

The trooper asked Moore about his Adderall prescription. Moore gave the trooper his prescription bottle and said that he took 30 milligrams (mg) of Adderall as prescribed that day. The trooper saw a 30-mg pill and a half pill in the bottle. The trooper believed that a half pill was "inconsistent" with Moore's prescription.

The trooper asked Moore if he snorted or took the other half of the pill after work that day.[6] Moore denied misusing his medication and told the trooper that he sometimes takes half of his prescription on weekends.

[6] The trooper testified that crushing and snorting a stimulant has "a similar effect" to "using methamphetamines."

The trooper arrested Moore for DWI.[7] The trooper obtained a search warrant, and Moore's blood was sent to the Minnesota Bureau of Criminal Apprehension (BCA) for testing. The BCA report showed that Moore had 0.034 milligrams per liter (mg/L) of amphetamine in his blood. Respondent Minnesota Commissioner of Public Safety revoked Moore's driver's license.

Moore petitioned the district court to rescind his license revocation, asserting a prescription-drug affirmative defense. At the October 2024 evidentiary hearing, the district court received testimony from the trooper and Moore, the squad video, and Moore's medication list. The district court received additional briefing from the parties and took the matter under advisement.

The district court denied Moore's petition to reinstate his driver's license, concluding that Moore did not meet his burden to establish a prescription-drug defense. First, the district court determined that Moore failed to prove that he took Adderall in accordance with a valid prescription. Second, the district court determined that, even if Moore did take Adderall as prescribed, "the evidence presented leads to the conclusion that he was impaired."

Moore appeals.

DECISION

On appeal, Moore challenges the district court's determination that he did not meet his burden to establish the prescription-drug defense. Specifically, Moore challenges the

[7] The record does not include the criminal complaint or identify the statute that Moore allegedly violated.

district court's findings that (1) he did not use Adderall in accordance with a valid prescription and (2) his ability to operate a motor vehicle was impaired. Because the impairment issue is determinative, we address that issue first.

Appellate courts review a district court's determination that a driver failed to prove a prescription-drug defense in an implied-consent proceeding for abuse of discretion. *Thordson v. Comm'r of Pub. Safety*, 10 N.W.3d 310, 315 (Minn. App. 2024).[8] A district court abuses its discretion by making "findings unsupported by the evidence or by improperly applying the law." *Underdahl v. Comm'r of Pub. Safety (In re Comm'r of Pub. Safety)*, 735 N.W.2d 706, 711 (Minn. 2007).

The commissioner of public safety must revoke a driver's license when a peace officer certifies that an executed search warrant of the driver's blood has revealed "the presence of a controlled substance listed in Schedule I or II or its metabolite, other than marijuana." Minn. Stat. § 171.177, subds. 3(2)(iii), 5(a) (2024). Amphetamines are generally Schedule I or Schedule II substances. Minn. Stat. § 152.02, subds. 2(g), 3(d)(1) (2024). A driver, however, can challenge their license revocation by asserting a prescription-drug defense:

> It is an affirmative defense to the presence of a Schedule I or II controlled substance that the person used the controlled substance according to the terms of a prescription issued for the person according to sections 152.11 and 152.12, *unless the court finds by a preponderance of the evidence that*

[8] Although the *Thordson* opinion cites a different implied-consent statute with the prescription-drug defense, the statutory language in *Thordson* is identical to the statutory language applicable to Moore. *Compare* Minn. Stat. § 169A.53, subd. 3(i) (2022), *with* Minn. Stat. § 171.77, subd. 12(h) (2024).

> *the use of the controlled substance impaired the person's ability to operate a motor vehicle.*

Minn. Stat. § 171.177, subd. 12(h) (emphasis added). Thus, the prescription-drug defense has two parts: (1) the driver used a controlled substance according to a prescription and (2) the district court does *not* find that the use of the controlled substance impaired the driver's ability to operate a motor vehicle. It is the driver's burden to prove a prescription-drug defense. *Thordson*, 10 N.W.3d at 315-16.

The district court's written analysis set out three reasons supporting its determination that Moore's ability to drive was impaired. First, an "identified citizen" reported that Moore's sedan was "all over the road."[9] Second, the Little Falls officer corroborated the reported driving conduct and observed Moore's sedan "making jerky movements within its traffic lane." *See State v. Riley*, 568 N.W.2d 518, 523 (Minn. 1997) (explaining that "the *entire* knowledge of the police force is pooled and imputed to the arresting officer" (quotation omitted)). And third, the trooper "testified to an abundance of

[9] In the facts section of his brief, Moore states that "the reported caller to dispatch was not corroborated to be an identified concerned citizen, establishing inherent reliability as [the trooper] did not remember the person's identification information, and did not provide this information in the trooper's report in order to possibly refresh the trooper's recollection." In the argument section, Moore does not argue that the caller's report was unreliable and cites no authority along these lines.

When law enforcement knows an informant's identity, it can reasonably rely on the informant's tip because it "could hold the identified informant accountable if he knowingly provided false information." *State v. Pealer*, 488 N.W.2d 3, 5 (Minn. App. 1992). Here, the trooper testified that the caller told dispatch their name and phone number, described Moore's vehicle and license plate number, placed the sedan at a specific location on Highway 27, and stayed on the phone while law enforcement responded. Although the trooper did not include the caller's name in her report, the detailed information provided to dispatch shows that the trooper could reasonably rely on the caller's report.

evidence establishing" that Moore was impaired by a CNS stimulant. This included Moore's "elevated pulse"; "fidgeting"; "uncontrollable body movements"; "trouble balancing"; "poor coordination and motor function"; and "difficulty understanding, remembering, and following directions" during the field sobriety tests.[10] The factual findings for each reason are supported by the record.

Moore argues that the district court abused its discretion by determining that his use of Adderall impaired his ability to operate a motor vehicle. Moore challenges many underlying factual findings. These findings, however, "will not be set aside unless clearly erroneous." *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002). When reviewing factual findings for clear error, appellate courts "view the evidence in a light favorable to the findings," do not "reweigh the evidence," and do not "reconcile conflicting evidence." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (quotations omitted); *see Jackson v. Comm'r of Pub. Safety*, No. A21-0716, 2022 WL 764168, at *3 (Minn. App. Mar. 14, 2022) (applying *Kenney* in the implied-consent context).[11]

Moore contends that his ability to drive was not impaired because (1) innocent explanations account for some of his observed conduct, (2) the squad video does not show

[10] The facts section of the district court's order noted other signs of impairment, including that Moore's "eyes were bloodshot, watery, and glassy"; "his hands were trembling"; and "his carotid artery was visibly pulsating"; he "would frequently interject and interrupt" the trooper; he failed the walk-and-turn and one-leg-stand tests; and he "had a dry mouth."

[11] Nonprecedential opinions are not binding on this court but "may be cited as persuasive authority." Minn. R. Civ. App. P. 136.01, subd. 1(c).

some signs of impairment and therefore contradicts the trooper's testimony, (3) he passed specific field sobriety tests, and (4) he did not engage in an "impaired-driving-related offense." We consider each argument in turn.

Innocent Explanations for Moore's Conduct

Moore argues that some aspects of his conduct, including uncontrollable body movements and interrupting the trooper during the stop, "were due to his ever-increasing agitation as he believed that he did not do anything wrong, did not drive his vehicle in an erratic manner, and that [he] was running late for his daughter's graduation." Moore also contends that his diabetic neuropathy "prevented [him] from successfully performing the Walk and Turn test and the One-Leg stand test."

The commissioner counters that the district court "heard Moore's testimony about his alleged innocent explanations for his poor performance and did not credit it." The commissioner maintains that the record shows the trooper "confirmed with Moore that he would be able to properly perform the tests and Moore said he would."

The commissioner's arguments are persuasive. The district court credited the trooper's testimony about her observations of Moore's conduct that suggested an impaired ability to drive, as discussed. The trooper also testified that Moore did not report any injuries before the walk-and-turn and one-leg-stand tests and that his poor performance on those tests—including balance and coordination issues—suggested CNS-stimulant impairment.

Although some of Moore's conduct could be explained by agitation or diabetic neuropathy, the record reasonably supports the district court's determination that Moore's

ability to drive was impaired. And this court does not reweigh the evidence or assess witness credibility because "that task is best suited to, and therefore is reserved for, the factfinder." *Kenney*, 963 N.W.2d at 223. Thus, these findings were not clearly erroneous.

Squad-Video Evidence

Moore maintains that the squad video "is the truth serum" and shows that he "did not visibly sway while standing, did not exhibit any visible body tremors," and did not clench his teeth while performing the modified Romberg test. The commissioner argues that, "contrary to Moore's assertions, the [squad] video shows him repeatedly exhibit fidgeting or involuntary bodily movements." The commissioner urges this court not to reweigh the video evidence or "second-guess" the district court's decision to credit the trooper's testimony "because of the noted limitations of the squad video."

The district court implicitly credited the trooper's testimony that the squad video is accurate and that the trooper's "eyes will always be able to document and capture more" than the fixed dash camera. The trooper testified that she saw Moore exhibit full body tremors, sway while standing, fidget fingers, and clench teeth during the modified Romberg test. Even assuming that the squad video conflicts with the trooper's testimony, this court does not "reconcile conflicting evidence." *Id.* at 222 (quotation omitted). Because the trooper's testimony supports the district court's findings on the field sobriety tests, they are not clearly erroneous.

Field Sobriety Test Results

Moore argues that he "sufficiently passed the modified Romberg test, the [HGN] test, and the Lack of Convergence test." As discussed, the trooper testified that she

observed signs of impairment during the modified Romberg test. And although Moore passed the HGN and lack-of-convergence tests, the trooper testified that these specific tests do not reveal CNS-stimulant impairment and instead identify impairment from other substances, like marijuana and alcohol.

Driving Conduct

Moore argues that he "was not impaired through his prescription as [he] did not engage in any impaired-driving-related offense or circumstance" and that he "was not driving recklessly or erratically." The commissioner counters that "the statute does not require the district court to conclude that the driver committed a traffic offense (or impaired-driving-related offense) to determine that the driver's ability to drive was impaired."

It is unclear whether Moore contends that impaired driving conduct is required to prove that the ability to drive is impaired or that driving conduct is merely a factor to consider when making an impairment determination. Moore cites no authority indicating that impaired driving conduct is needed to find impaired driving ability.

Under the relevant statute, the prescription-drug defense is defeated if the district court finds "by a preponderance of the evidence that the use of the controlled substance impaired the person's *ability to operate* a motor vehicle." Minn. Stat. § 171.177, subd. 12(h) (emphasis added). Thus, section 171.177 does not require evidence of impaired driving conduct.

Even so, the record includes evidence from the citizen caller and the Little Falls officer that Moore's driving conduct was impaired. Caselaw recognizes that weaving

within a lane or failing to drive straight shows an impaired ability to drive. *See State v. Richardson*, 622 N.W.2d 823, 826 (Minn. 2001) ("Even observing a motor vehicle weaving within its own lane in an erratic manner can justify an officer stopping a driver."); *State v. Engholm*, 290 N.W.2d 780, 784 (Minn. 1980) (upholding the traffic stop of a vehicle driving slow and "weaving within its lane"); *State v. Driscoll*, 427 N.W.2d 263, 265 (Minn. App. 1988) (listing "failure to drive vehicle in a straight line" as a sign of impairment). Therefore, the district court's factual findings of Moore's impaired driving conduct were not clearly erroneous.

In sum, we conclude that the district court's determination that Moore's ability to drive was impaired rests on factual findings with ample support in the record. Therefore, the district court did not abuse its discretion when it sustained Moore's license revocation. Because we uphold the district court's decision based on Moore's failure to satisfy the second part of the prescription-drug defense, we need not consider whether Moore satisfied his burden to prove that he was using Adderall as prescribed.

Affirmed.