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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1784**

Melissa Jo Wirkus, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed August 3, 2026
Affirmed
Smith, Tracy M., Judge**

Washington County District Court
File No. 82-CV-24-4917

Jacob M. Birkholz, Paul W. Brink, Birkholz & Associates, LLC, Mankato, Minnesota (for appellant)

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Considered and decided by Smith, Tracy M., Presiding Judge; Harris, Judge; and Beane, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from the district court's order sustaining the revocation of appellant Melissa Jo Wirkus's driver's license, Wirkus argues that the district court erred by (1) rejecting her argument that the police unlawfully entered her home without a warrant, (2) rejecting her argument that the police unlawfully seized her, (3) rejecting her argument

that police lacked probable cause to arrest her, and (4) determining that she failed to meet her burden of proof for her defense of post-driving consumption. We affirm.

FACTS

Wirkus challenges the district court's order denying her implied-consent petition and sustaining the revocation of her driving privileges by respondent commissioner of public safety (the commissioner). The following recitation of the facts is derived from testimony and body-worn-camera (BWC) video presented at the implied-consent hearing.

On August 12, 2024, at around 2:00 p.m., Officer Olstad responded to a report from a caller at an automobile-service station in Forest Lake that a former employee (Wirkus) had caused a "disturbance" at the service station before she left the station at around 1:15 p.m. that day. The reporting party also provided a description and license plate of the vehicle that Wirkus had left in. Upon arriving at the station, Olstad spoke with several employees who told her that Wirkus had entered the building, including in the shop area where nonemployees are not permitted, and was trying to take pictures of the employees' cars and their license plates. One employee reported that he tried to get in Wirkus's way to obstruct her view of his license plate but Wirkus "grabbed [his] hands." The service station's manager reported that Wirkus then yelled at multiple employees and left. He also told Olstad that Wirkus was a former employee who "was fired for drinking on the job" and that Wirkus "was clearly inebriated" when she was there. The employee told Olstad that Wirkus "has drinking problems."

The employee asked that Wirkus be served a trespass notice, barring her from the store. Olstad said that she would have to get Wirkus's side of the story first. Olstad

communicated with Sergeant Ayers, who had also responded to the call and was attempting to locate Wirkus's vehicle in the area. Ayers and Olstad met at Wirkus's residence at approximately 2:08 p.m. to further investigate the disturbance, get Wirkus's version of events, and serve a trespass notice.

At Wirkus's residence, Olstad and Ayers observed a vehicle fitting the description of Wirkus's vehicle in the driveway and saw the keys and a purse inside. Olstad approached the front entrance of the house. The entrance was under a portico and had a screen door that opened outward to the home's solid front door. Olstad rang the doorbell. When no one answered, Olstad opened the screen door to knock on the front door. She then stepped back to wait, holding the screen door open. A man identified as Wirkus's fiancé opened the front door. At that moment, a dog slipped out of the house and into the yard. The fiancé stepped out of the house and closed the front door and told the officers to "hang on" while he went into the yard to collect the dog. Olstad remained at the front entrance, holding the screen door open with her body. After a short time, Olstad again knocked on the front door and waited. Getting no response, she knocked again.

Wirkus opened the front door. She stepped one foot outside, reached out and grabbed the screen door with her left hand, and said, "I'm going to shut this door." At the same time, Wirkus reached her right hand out and pushed against Olstad's utility belt, which was equipped with a service weapon, a taser, ammunition, and a baton. Both officers immediately grabbed Wirkus's right arm, pulled her fully outside, and tried to put her arms behind her back to place her in handcuffs. Wirkus was yelling and struggling. About a minute and six seconds after Wirkus opened the door, the officers successfully placed her

in handcuffs. Olstad testified that during the struggle she saw that Wirkus's eyes were watery and bloodshot and that she smelled the odor of alcohol. Twenty-four seconds after she was in handcuffs, Ayers told Wirkus that she was under arrest for driving while intoxicated (DWI).

The officers then brought Wirkus to the station and read her the implied consent advisory. Wirkus consented to a DataMaster DMT breath test (DMT test), which returned an alcohol concentration of 0.14. The Commissioner subsequently revoked Wirkus's driving privileges.

In October 2024, Wirkus filed an implied-consent petition, requesting a hearing and rescission of the revocation of her driving privileges. A hearing was held in June 2025. Wirkus raised a post-driving-consumption defense and testified that she began drinking only after arriving home. An expert from the Minnesota Bureau of Criminal Apprehension (BCA) testified to calculations that she performed to extrapolate what Wirkus's alcohol concentration would have been based on her claimed post-driving consumption. After the hearing, the district court filed its findings of fact, conclusions of law, and order (the order) denying the petition and sustaining the revocation.

This appeal follows.

DECISION

As noted above, Wirkus asserts four arguments as to why the district court erred in rejecting her petition for rescission of her license revocation. The arguments, in brief, assert that rescission is required based on (1) an illegal search, (2) an illegal seizure, (3) a lack of

probable cause for Wirkus’s arrest, and (4) Wirkus’s post-driving consumption. We address each argument in turn.

I. The district court did not err by rejecting Wirkus’s argument that the police unlawfully entered her residence without a warrant.

Wirkus argues that that the district court erred by rejecting her argument that the police unlawfully intruded on her residence without a warrant.¹

In reviewing a district court’s order on an implied-consent petition, “due regard will be given to the trial court’s opportunity to judge the credibility of the witnesses, and findings of fact will not be set aside unless clearly erroneous.” *Frost v. Comm’r of Pub. Safety*, 348 N.W.2d 803, 804 (Minn. App. 1984) (emphasis omitted). “When the facts are not in dispute, the validity of a search is a question of law subject to de novo review.” *Haase v. Comm’r of Pub. Safety*, 679 N.W.2d 743, 745 (Minn. App. 2004); see *Berge v. Comm’r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985).

The United States and Minnesota Constitutions prohibit “unreasonable searches and seizures.” U.S. Const. amend. VI; Minn. Const. art. I, § 10. “[A]n officer’s warrantless entry of a home is presumptively unreasonable.” *State v. Mangen*, 25 N.W.3d 52, 61 (Minn. App. 2025). Officers “with legitimate business may enter the areas of the curtilage which are impliedly open to use by the public.” *State v. Crea*, 233 N.W.2d 736, 739 (Minn. 1975).

¹ Wirkus also argues that the district court erred by concluding that Wirkus’s challenge to her license revocation based on an alleged illegal search of her home was outside the scope of permitted challenges in an implied-consent hearing under Minnesota Statutes section 169A.53, subdivision 3 (2024). While the district court did make this conclusion, it also rejected the merits of her challenge. Because we decide that Wirkus’s claim of an illegal search of her home fails on the merits, we need not decide whether the district court erred by stating that the issue was outside the scope of an implied-consent hearing.

Accordingly, officers “may walk on the sidewalk and onto the porch of a house and knock on the door if they are conducting an investigation and want to question the owner.” *Id.*

Here, the district court determined that the officers “properly engaged in ‘knock and talk’ . . . to investigate the alleged disturbance . . . and to potentially issue a trespass notice.” The district court concluded that, because the officers did not enter Wirkus’s home or prevent a door from closing, they did not commit a warrantless entry into her residence.

Wirkus argues that the officers unlawfully intruded on her residence by (a) preventing her from closing the front door and (b) pulling her out of her home.

Preventing the Door from Closing

Wirkus argues that the district court misapplied *Hasse* in concluding that Olstad did not intrude on her residence by preventing the front door from closing. In *Hasse*, we held that an officer committed a warrantless entry into a constitutionally protected area by “kicking his leg out to trip the auto-reverse sensor” of a garage-door opener to prevent a garage door from closing when Hasse was inside his garage and trying to close the door. 679 N.W.2d at 745. We reasoned that, while a garage can be entered by officers if left “impliedly open,” Hasse’s garage was not impliedly open because he was trying to close the door. *Id.* at 746-47. As a result, the officer had entered an area in which Hasse had a reasonable expectation of privacy. *Id.* at 747. The district court here distinguished *Hasse*, explaining the officers “did not prevent the closing of any door that was in the process of being closed” and, instead, were reacting for their own safety to Wirkus’s “aggressive conduct” of taking a step out of the door and pushing on Officer Olstad’s utility belt.

Wirkus argues that the district court clearly erred by finding that Olstad did not prevent a door from being closed because Olstad admitted that she was blocking the screen door from being closed. At the hearing, Olstad agreed that she was “holding the screen door open with [her] body.” But the issue here, as in *Hasse*, is whether Olstad, by holding the screen door open, was intruding on a place in which Wirkus had a reasonable expectation of privacy. *Id.* at 746. There are two main differences between this case and *Hasse* that establish that Olstad was not intruding in a protected place.

First, the screen door here opened outward such that Olstad did not have to enter the house to open it or hold it open. This situation is different from *Hasse*, in which the officer had to move his foot into the garage (a constitutionally protected space) to keep the door open. *See id.* at 745. The officers here only intruded on the area outside the front entrance, which is a constitutionally unprotected space. *See Crea*, 233 N.W.2d at 739; *see also United States v. Santana*, 427 U.S. 38, 40-42 (1976) (concluding that the appellant had no expectation of privacy when standing in her doorway). And, as the district court noted, Wirkus opened the front door—the officers neither opened it nor blocked any attempt to close it.

Second, neither Wirkus’s nor her fiancé’s conduct supported a reasonable expectation of privacy in the screen door area before the seizure. The fiancé made no attempt to close it when he answered the door and stepped outside to chase the dog. And when Wirkus finally answered the door, the screen door had been open for over a minute. In these circumstances, Olstad had no reason to believe that the screen door area was not impliedly open. This differs from *Hasse*, in which the officer saw the garage door being

closed and *then* intruded to keep it open. *See Haase*, 679 N.W.2d at 745. It is true that Wirkus likely established an expectation of privacy when she opened the front door, took a step outside, said that she was going to close the screen door, and tried to close it. But Wirkus simultaneously pushed Olstad’s utility belt, which triggered the officers’ seizure of Wirkus, and Olstad had no time to react to Wirkus’s newly expressed intent to close the screen door. Therefore, Olstad’s opening of the screen door and holding it open until the seizure did not intrude on an area with a reasonable expectation of privacy.

Pulling Wirkus Out of Her Home

Wirkus argues that the district court misapplied this court’s nonprecedential decision in *State v. Hulne* when concluding that the officers did not attempt to enter Wirkus’s residence. No. A24-1414, 2025 WL 1431529, at *1 (Minn. App. May 19, 2025). In *Hulne*, we determined that Hulne’s constitutional rights were violated when an officer entered Hulne’s open garage without consent and seized him without a warrant or exception to the warrant requirement. 2025 WL 1431529, at *1, *6. The district court distinguished *Hulne* because, here, neither officer “made any attempts to enter [Wirkus’s] residence.”

Wirkus argues that *Hulne* focused on the physical act of pulling Hulne out of the garage, rather than the officer’s entry into the garage. As an initial matter, we note that *Hulne* is not a precedential decision and is therefore not binding. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c). In any event, Wirkus’s argument mischaracterizes *Hulne*. In that case, we repeatedly focused on the “warrantless *entry*,” rather than the act of pulling Hulne out of the garage. 2025 WL 1431529, at *3-6 (emphasis added). And unlike in *Hulne*,

Wirkus actually stepped out of her home before the seizure. “A search occurs whenever governmental agents intrude upon an area where a person has a reasonable expectation of privacy.” *In re Welfare of B.R.K.*, 658 N.W.2d 565, 578 (Minn. 2003). The officers here did not enter Wirkus’s home and thus did not intrude upon a protected area.

Wirkus also argues that the district court erred by mischaracterizing her argument as challenging the officers’ approach to her residence, rather than the officers’ holding the door open and pulling her out of her home. But the district court thoroughly engaged with Wirkus’s arguments under *Hasse* and *Hulne* that the officers intruded on her residence by holding the door open and pulling her out of her home. The district court concluded that the officers engaged in a proper “knock and talk” *because* it determined that the officers never intruded on Wirkus’s residence. We see no error in the district court’s characterization of Wirkus’s argument.

Because the officers here never entered Wirkus’s home or intruded upon any other constitutionally protected space, the district court did not err by rejecting Wirkus’s challenge to the unlawful entry of her residence.

II. The district court did not err by determining that Wirkus was lawfully seized.

Wirkus argues that the district court erred by determining that she was lawfully seized.

“When reviewing the legality of a . . . seizure, an appellate court will not reverse the trial court’s findings unless clearly erroneous or contrary to law.” *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999) (quotation omitted). Under the Fourth Amendment and the Minnesota Constitution, a seizure must be reasonable, meaning that, under an objective

test, “the facts available to the officer at the moment of the seizure” would warrant a person “of reasonable caution in the belief that the action taken was appropriate.” *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (quoting *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968)) (other quotation omitted). “[T]he use of force reasonable under the circumstances will be permitted without a showing of probable cause when force is necessary for the protection of the investigating officers and the degree of force used is reasonable.” *State v. Balenger*, 667 N.W.2d 133, 139 (Minn. App. 2003), *rev. denied* (Minn. Oct. 21, 2003). “In determining the propriety of a stop’s scope and duration, courts must balance the nature and degree of the intrusion on an individual’s Fourth Amendment rights against the governmental interest in crime prevention and legitimate concerns about the safety of law-enforcement officers.” *Id.*

Here, the district court found that the BWC video “clearly shows [Wirkus] pushed [Olstad] as [Wirkus] comes out aggressively towards her” and that “Ayers testified credibly that he jumped into the escalating situation because he feared for [Olstad’s] safety.” The district court concluded that Ayers therefore “had proper justification for his seizure of [Wirkus].”

Wirkus argues that the district court made clearly erroneous factual findings in support of its conclusion that the seizure was justified by safety concerns. She argues that Ayers’s statement that he acted out of concern for safety or danger “came out as an after-the-fact justification in [his] testimony” because the BWC video did not show Ayers expressing concern for safety. Rather, she contends, it showed Ayers’s anger at Wirkus for shutting the door on Olstad.

The district court found that Ayers was concerned for Olstad's safety. At the hearing, Ayers testified that he "[had] no idea what [Wirkus's] intentions were other than here she is substantially larger than my partner grabbing towards her gun belt, her gun, taser." The district court found Ayer's testimony about safety concerns credible. Wirkus argues that the district court's determination is clearly erroneous because the BWC video shows that Wirkus was only trying to close the screen door. But the BWC video supports the district court's finding that Wirkus was "pushing/reaching toward [Olstad's] duty belt." We discern no clear error, and we defer to the district court's credibility determination. *See* Minn. R. Civ. P. 52.01.

Wirkus also argues that any threat to officer safety had been mitigated when Olstad grabbed Wirkus's hand and thus the officers' further restraint of Wirkus was unreasonable. But the BWC videos show that as soon as the officers grabbed her arm, Wirkus began yelling and struggling. Ayers testified that part of his concern arose from the fact that Wirkus was larger than Olstad. We conclude that physically restraining Wirkus and handcuffing her were reasonable actions taken in response to Wirkus's attempt to push Olstad and her subsequent struggle. *See Balenger*, 667 N.W.2d at 139; *see also State v. Varnado*, 582 N.W.2d 886, 891 (Minn. 1998) ("[O]fficer safety is a paramount interest.").

The district court did not err by determining that Wirkus's seizure was justified by officer safety concerns.²

² Wirkus also argues that the officers did not have reasonable suspicion that she had committed a crime at the time of the seizure. Although this issue was raised by Wirkus in her brief to the district court, the district court did not discuss the issue, instead concluding that the seizure was justified by reasonable concerns for officer safety. Because we agree

III. The district court did not err by determining that the officers had probable cause to arrest Wirkus.

Wirkus argues that the district court erred by determining that the officers had probable cause for her arrest.

When Wirkus Was Considered Under Arrest

As an initial matter, we determine when Wirkus was considered under arrest and thus when the probable-cause requirement was triggered.

A person is considered under arrest when “a reasonable person would have concluded, under the circumstances, that he was under arrest and not free to go.” *State v. Beckman*, 354 N.W.2d 432, 436 (Minn. 1984). Limited detentions or seizures are not arrests. *State v. Moffatt*, 450 N.W.2d 116, 120 (Minn. 1990). “There is no bright-line test separating a legitimate investigative stop from an unlawful arrest.” *Balenger*, 667 N.W.2d at 139 (citing *Graham v. Connor*, 490 U.S. 386, 396-97 (1989)).

Here, the officers went to Wirkus’s home to investigate the disturbance at the service station, serve the trespass notice, and investigate a suspected DWI. Wirkus answered the door and moved to push Olstad. The officers immediately grabbed Wirkus’s arm and struggled with her for a little over a minute to get her in handcuffs. Twenty-four seconds after she was in handcuffs, Ayers told Wirkus that she was under arrest for DWI.

Wirkus argues that “[t]he initial seizure and the arrest merged factually into one action” because “[t]here was a consistent set of actions from the grab and pull to placing

with the district court that the seizure was justified by officer safety concerns, we need not decide whether the seizure was also supported by reasonable suspicion of wrongdoing.

[Wirkus] in the squad car.” As a result, she argues that she was under arrest as soon as the officers grabbed her and, therefore, the officer’s observations during the struggle cannot be considered in determining whether there was probable cause to arrest her. But Wirkus cites no caselaw in support of her argument that the actions “merged.” Rather, caselaw explains:

In determining whether a police officer’s conduct turned an investigative stop into an unlawful arrest, courts must specifically consider the aggressiveness of the police methods and the intrusiveness of the stop against the justification for the use of such tactics, i.e., whether the officer had a sufficient basis to fear for his or her safety.

Balenger, 667 N.W.2d at 139; *see also State v. Nading*, 320 N.W.2d 82, 84 (Minn. 1982) (“The officers had reason to believe [the suspects] might be armed and dangerous and were entitled to take reasonable precautions.”).

Wirkus argues that the officers here were more intrusive than in *State v. Carver*, 577 N.W.2d 245 (Minn. App. 1998), and therefore the seizure here should be considered an arrest. In *Carver*, an officer ordered a suspect to the ground and then put him in handcuffs. 577 N.W.2d at 247. This court concluded that the defendant “was under arrest at the time he was placed in handcuffs.” *Id.* at 248. *Carver* is different from this case because, unlike Wirkus, the suspect there made no aggressive movements towards the officer. Moreover, even in *Carver*, we determined that the arrest occurred when the suspect was placed in handcuffs, not when he was otherwise detained (ordered to lie on ground). *Id.*; *see also Nading*, 320 N.W.2d at 84 (holding that limited physical detention without handcuffs—

order to lie on the ground—was not an arrest). At most, *Carver* supports that Wirkus was not under arrest until at least when she was put in handcuffs.

Here, the officers did not go to Wirkus's home to arrest or even seize her. They initially seized her only in reaction to her aggressive move towards Olstad. This was a reasonable response given Wirkus's aggression. *See Balenger*, 667 N.W.2d at 139. Accordingly, we conclude that Wirkus was not under arrest at the time the officers initially grabbed her arms. This leaves the possibility that she was placed under arrest either when she handcuffed or when she was verbally notified of the arrest. But we need not resolve that question because, at either point, the officers had already observed signs of impairment.³ Therefore, the officers' observations can be considered when determining probable cause.

Probable Cause

Wirkus argues that the district court erred by determining that her arrest was supported by probable cause.

Appellate courts “review the district court’s findings of historical fact relating to the probable cause determination for clear error under the clearly erroneous standard” and “independently review *de novo* the issue of probable cause.” *State v. Lee*, 585 N.W.2d 378, 383 (Minn. 1998). “Findings of fact are clearly erroneous if, on the entire evidence,

³ We note that even “briefly handcuffing a suspect while the police sort out the scene of an investigation does not per se transform an investigatory detention into an arrest.” *Munson*, 594 N.W.2d at 137. And, considering Wirkus's aggression, the officers' grabbing Wirkus and handcuffing her was likely reasonably necessary to protect the officers. *See Balenger*, 667 N.W.2d at 139 (holding that officers could constitutionally use “reasonable force” that is “necessary for the protection of the investigating officers”).

[appellate courts] are left with the definite and firm conviction that a mistake occurred.” *State v. Andersen*, 784 N.W.2d 320, 334 (Minn. 2010).

“The test of probable cause to arrest is whether the objective facts are such that under the circumstances a person of ordinary care and prudence would entertain an honest and strong suspicion that a crime has been committed.” *State v. Johnson*, 314 N.W.2d 229, 230 (Minn. 1982) (quotation omitted). “Probable cause is not a high standard; it requires something more than mere suspicion but less than the evidence necessary for conviction.” *State v. Mosley*, 994 N.W.2d 883, 889 (Minn. 2023) (quotation omitted).

A suspect may be arrested for a DWI when there is “probable cause to believe the defendant was driving, operating, or in actual physical control of a motor vehicle while under the influence of alcohol.” *State v. Olson*, 342 N.W.2d 638, 640 (Minn. App. 1984). “An officer needs only one objective indication of intoxication to constitute probable cause to believe a person is under the influence.” *State v. Kier*, 678 N.W.2d 672, 678 (Minn. App. 2004) (quotation omitted), *rev. denied* (Minn. June 15, 2004).

Here, the officers had the following information at the time of Wirkus’s arrest. The service station’s employees reported that Wirkus showed up at the station and tried to take pictures of license plates. She got into a physical struggle with one of the employees and yelled at others. The manager stated that Wirkus was “clearly inebriated,” and the employee stated that she had drinking problems. The police were informed that Wirkus then left in a vehicle. At Wirkus’s home, the officers observed a vehicle matching the description of Wirkus’s vehicle with keys and a purse in the front seat. When Wirkus answered the door, she reached out to push Olstad and began struggling and yelling when

the officers seized her. During the struggle, Olstad observed that Wirkus's eyes were watery and bloodshot and smelled the odor of alcohol coming from Wirkus.

Wirkus argues that the service station's manager's statement that Wirkus was "clearly inebriated" was unreliable and thus does not support probable cause because the manager did not provide a basis for his observation. The reliability of an informant's tip is determined based on the totality of the circumstances, including "(1) identifying information given by the informant, and (2) the facts that support the informant's assertion that a driver is under the influence." *Jobe v. Comm'r of Pub. Safety*, 609 N.W.2d 919, 921 (Minn. App. 2000). Citizen informants are presumed reliable. *Id.*

Here, Wirkus is correct that the manager did not provide any specific facts supporting why he thought Wirkus was intoxicated. Wirkus cites *Olson v. Commissioner of Public Safety*, 371 N.W.2d 552 (Minn. 1985), in which the supreme court held that there was a "complete lack of even the most minimal indicia of reliability" because the informant provided no basis for their "bare assertion of a possibly drunk driver." *Olson*, 371 N.W.2d at 556. However, a tip can be reliable based on other indicia, including that the informant identifies themselves or indicates that their tip was based on personal observation, or their tip is minimally corroborated. *See, e.g., City of Minnetonka v. Shepherd*, 420 N.W.2d 887, 890-91 & n.2 (Minn. 1988) (identification, personal observation, and corroboration); *Playle v. Comm'r of Pub. Safety*, 439 N.W.2d 747, 748-49 (Minn. App. 1989) (identification and personal observation); *Jobe*, 609 N.W.2d at 921-22 (identification and personal observation). All these indicia are present here. The manager identified himself, stated that Wirkus was "clearly inebriated," and indicated that he personally observed

Wirkus, and the statement was corroborated by Olstad's observation of Wirkus's bloodshot eyes and odor of alcohol. Under the totality of the circumstances, and considering the presumption of reliability, *see Jobe*, 609 N.W.2d at 921, the manager's statement was sufficiently reliable.

Wirkus also asserts that "Olstad knew that the manager did not personally interact with [Wirkus]." But the BWC video clearly shows that the manager told Olstad that he talked to Wirkus. Wirkus argues that the facts provided by the service station's employees support only that Wirkus was driving, not that she was driving impaired. But the manager told Olstad that Wirkus was "clearly inebriated," and the reporting party stated that Wirkus left in a vehicle. These facts support that Wirkus was driving while impaired. Wirkus also points to Olstad's admission at the hearing that Wirkus's conduct at the service station was not criminal, so therefore it was clearly erroneous for the district court to consider the reports of the station's employees for probable cause. But just because taking pictures while intoxicated is not a crime, this does not mean that reports of that conduct cannot be considered for probable cause of a DWI. *Cf. State v. Hawkins*, 622 N.W.2d 576, 580 (Minn. App. 2001) (holding that innocent alternative explanations for conduct do not defeat probable cause).

Wirkus argues that the district court clearly erred by finding that she acted aggressively when pushing Olstad. But the BWC video shows that Wirkus stepped out of her home and pushed Olstad by making contact with her utility belt. It was not clear error for the district court to find that this conduct was aggressive. Wirkus also argues that aggressive behavior does not necessarily indicate impairment. But "uncooperative attitude"

is a recognized common indicator of intoxication. *Kier*, 678 N.W.2d at 678. Finally, Wirkus argues that neither officer testified that aggression indicated impairment here. But Olstad testified that “the aggressiveness . . . would lead [her] to believe there could be intoxication.”

The police learned from employee reports that Wirkus had “drinking problems” and was “clearly inebriated” and had a physical altercation with the employees less than an hour before the police arrived at the service station. The reporting party stated that Wirkus left in a vehicle. Shortly after the officers responded to the station, they went to Wirkus’s residence, where they saw keys and a purse in Wirkus’s car. At her front door, Wirkus aggressively reached to push Olstad and then struggled with the officers. Wirkus’s eyes were watery and bloodshot, and she smelled of alcohol. These facts support “an honest and strong suspicion” at the time of arrest that Wirkus had driven while impaired. *Johnson*, 314 N.W.2d at 230.⁴

The district court did not err by determining that there was probable cause to arrest Wirkus for a DWI.

⁴ The commissioner concedes that the district court erred by basing its probable-cause determination on two additional facts that the officers did not have at the time of the arrest: (1) that the service station manager thought that Wirkus was inebriated based on Wirkus’s behavior and glassy eyes and (2) that the manager observed Wirkus drive the vehicle away. These facts were communicated to Olstad in an interview with the manager that occurred *after* Wirkus’s arrest. However, because we conclude that the other facts that were known by the officers at the time of arrest are sufficient to support probable cause, we ignore the district court’s error as harmless. *See Minn. R. Civ. P.* 61.

IV. The district court did not err by determining that Wirkus failed to prove post-driving consumption.

Wirkus argues that the district court erred by determining that she failed to prove her affirmative defense of post-driving consumption.

Minnesota Statutes section 169A.46 sets out the affirmative defense for post-driving consumption:

If proven by a preponderance of the evidence, it is an affirmative defense to [a DWI] . . . that the defendant consumed a sufficient quantity of alcohol after the time of the violation and before the administration of the evidentiary test to cause the defendant's alcohol concentration to exceed the level specified in the applicable clause.

Minn. Stat. § 169A.46, subd. 1 (2024). The petitioner carries the burden of proof. *Dutcher v. Comm'r of Pub. Safety*, 406 N.W.2d 333, 336 (Minn. App. 1987).

Wirkus testified to the following at the implied-consent hearing. She left the service station at around 1:16 p.m. and arrived home about ten minutes later. She did not drink any alcohol before arriving home, but, immediately after she got home, she started drinking for the entire half-hour until she was arrested. She stated she drank “8 to 10 shots of Rumple Minze” and “a chaser of Tito’s, Mt. Dew” in this time. Wirkus later testified on redirect examination that she drank “a pint of Rumple Minze.” She also noted that she “used to be a severe alcoholic,” and that she “just had an epileptic attack” that was affecting her memory during her testimony.

The BCA expert testified at the hearing that her initial calculations, based on Wirkus’s prehearing statements, reflected that Wirkus’s alcohol concentration at the time of the DMT test would have been far higher than the 0.14 result—it instead would have

been between 0.7 and 1.024. She also recalculated based on Wirkus's new testimony at the hearing, stating that if Wirkus had consumed the amount of alcohol she testified to post-driving, Wirkus's alcohol concentration would have been 0.197 (using the average burn-off rate) or 0.167 (using the burn-off rate for a "severe alcoholic"). The BCA expert concluded that, to get from zero to Wirkus's 0.14 DMT test result, she would have had to have consumed either (a) 2.8 to 3.8 one-and-a-half-ounce shots of 100 proof alcohol or (b) 3.5 to 4.8 one-and-a-half-ounce shots of 80 proof alcohol.

In the order, the district court noted that it found Wirkus's testimony not credible, except for two parts: (1) that she suffered from severe alcoholism and (2) that she experienced an epileptic episode that affected her memory. The district court pointed out the inconsistencies in Wirkus's testimony and the lack of specification with regard to how much alcohol she consumed. The district court found that the BCA expert's testimony was credible and "contradicted" Wirkus's testimony. It adopted the expert's testimony regarding how much Wirkus would have to have consumed after driving, and concluded that, because both potential total amounts were significantly less than the pint that she testified to drinking, Wirkus failed to meet her burden of proving post-driving consumption.

Wirkus argues that her defense of post-driving consumption is supported by her testimony that she was a severe alcoholic and the service-station employee's statement that "she has drinking problems." But the fact that Wirkus was a severe alcoholic supports both that she was driving while intoxicated and post-driving consumption. This evidence alone is insufficient to meet her burden.

Wirkus appears to argue that the district court clearly erred by finding that the BCA expert contradicted her testimony. She asserts that the BCA expert's conclusion that her alcohol concentration would have been 0.167 was consistent with her actual result of 0.14. But 0.167 is not "consistent" with 0.14. Furthermore, 0.167 was the most conservative estimate the BCA expert gave—based on the smallest quantity of alcohol Wirkus testified to consuming and the highest burn-off rate. Wirkus inconsistently testified to consuming other greater amounts, which were even less consistent with her DMT test result. The district court did not clearly err by finding that the BCA expert's testimony contradicted Wirkus's.

Wirkus also argues that the district court made inconsistent credibility findings. She argues that it was inconsistent for the district court to accept that Wirkus had an epileptic episode affecting her memory and then also doubt Wirkus's credibility because she testified to consuming different amounts of alcohol. She argues that, because the district court accepted Wirkus's inability to recall the amount of alcohol she drank, the district court could not have also found Wirkus's testimony inconsistent with her DMT test result. But a district court has broad discretion over which parts of a person's testimony to accept or reject as credible. *Frost*, 348 N.W.2d at 804. And this court must defer to a district court's credibility determinations, Minn. R. Civ. P. 52.01, especially regarding experts, *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002). The district court here did not clearly err by finding that Wirkus's testimony was not credible regarding how much she drank.

In sum, the district court did not clearly err by determining that Wirkus failed to prove post-driving consumption.

Affirmed.