

STATE OF MINNESOTA
IN COURT OF APPEALS

A24-1292



Leng Bualue Wong, petitioner,

Respondent,

vs.

Commissioner of Public Safety,

Appellant.

ORDER OPINION

Ramsey County District Court
File No. 62-CV-22-5520

Considered and decided by Johnson, Presiding Judge; Schmidt, Judge; and Reilly, Judge.*

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. In September 2022, a police sergeant stopped a vehicle driven by respondent Leng Bualue Wong, arrested him on suspicion of driving while impaired (DWI), transported him to a police facility, and gave him a breath test using the DataMaster DMT-G with fuel cell option (DMT). Based on the DMT results, respondent Commissioner of Public Safety (the commissioner) revoked Wong's driving privileges. Wong filed a petition challenging his license revocation.

2. In June 2024, the district court held a hearing on Wong's petition. The commissioner offered the DMT results into evidence as an exhibit. Wong's counsel

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

conceded that the exhibit was “a true and accurate copy of the test,” though Wong’s counsel withheld waiver as to “the ultimate issues.” The district court admitted the exhibit.

3. The commissioner called the police sergeant as a witness. She testified that Wong agreed to a breath test, she is a certified DMT operator, and that she administered the DMT test to Wong. The sergeant acknowledged that she performed a 15-minute observation period for Wong to ensure that he did not “burp, belch, throw up, have anything in [his] mouth such as gum or anything that would possibly defect or affect the DMT operations.” The sergeant acknowledged that Wong used the bathroom during the observation period, and she explained that during this time she could hear him but could only partially see him. She testified that she did not see Wong do anything to interfere with the DMT test. The sergeant testified that the DMT passed the diagnostic check and tests, Wong provided two breath samples, and the DMT provided a final reported value of 0.12. The sergeant testified that she administered the test consistent with her training, and she opined that the DMT gave an accurate result.

4. On cross-examination, the sergeant admitted that she failed to follow her training “by failing to conduct a proper observation period” while Wong used the restroom. Wong’s counsel then moved for judgment as a matter of law (JMOL). The commissioner opposed the motion, arguing that it established a prima facie case for admissibility of the DMT results by establishing (1) that a certified DMT operator administered the test, and (2) that the diagnostic test showed that the DMT was in working order. The district court granted Wong’s JMOL motion and rescinded the revocation of his driving privileges, reasoning that Wong had “met [his] burden” in challenging the accuracy and reliability of

the test because the observation period was deficient. When the commissioner questioned whether the district court was finding that it established a prima facie case for admissibility of the DMT results, the district court responded that it was “not so sure” it was making that finding but that even if the commissioner established a prima facie case, Wong “met [his] burden, once it’s been shifted to [him], that there’s questions about the reliability of the test because the observation period wasn’t completed as required.” The district court later filed an order rescinding the revocation of Wong’s driving privileges. The commissioner appeals.

5. The commissioner argues that the district court erred by granting Wong’s JMOL motion because it was premature. Wong concedes that the grant of JMOL was premature. We agree. We review de novo a district court’s grant of JMOL. *650 N. Main Ass’n v. Frauenshuh, Inc.*, 885 N.W.2d 478, 486 (Minn. App. 2016), *rev. denied* (Minn. Nov. 23, 2016). Under Minn. R. Civ. P. 50.01(a), a district court may grant JMOL “[i]f during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue.” At the time Wong made the JMOL motion, the commissioner had not rested its case, and the record suggests that the commissioner had an additional witness, a forensic scientist, who was at the hearing. Therefore, the commissioner had not been “fully heard” as to the accuracy and reliability of the DMT test. *See* Minn. R. Civ. P. 50.01(a). Moreover, while not argued by the parties, JMOL is applicable in a jury trial, not a bench trial. *See Sorchaga v. Ride Auto, LLC*, 893 N.W.2d 360, 369 (Minn. App. 2017) (“The trial in this case was a bench trial, and therefore a rule 50 motion was inappropriate.”), *aff’d*, 909

N.W.2d 550 (Minn. 2018); *see also Glen Edin of Edinburgh Ass’n v. Hiscox Ins. Co.*, 992 N.W.2d 393, 399 (Minn. 2023) (rejecting a footnote in *Sorchaga* discussing Minn. R. Civ. P 5.04(a)). Because we agree with the commissioner that Wong’s motion was premature, we do not address the commissioner’s other argument that it presented sufficient evidence to defeat Wong’s JMOL motion.

6. While Wong concedes that the district court erred in granting JMOL, the parties disagree as to this court’s instructions on remand. The commissioner argues that Wong failed to present evidence to challenge its prima facie showing on the accuracy and reliability of the DMT test, and therefore the district court erred in determining that Wong had met that burden. The commissioner asks this court to “clarify on remand” that the DMT result “is admissible, and it is [Wong’s] burden to impeach the test result.” Wong argues that this court should not “render an advisory opinion on the state of the record at the time that [Wong] moved for” JMOL. “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.” *Vondrachek v. Comm’r of Pub. Safety*, 906 N.W.2d 262, 272 (Minn. App. 2017) (quotation omitted), *rev. denied* (Minn. Feb. 28, 2018).

7. Here, the district court granted JMOL after the sergeant admitted that she did not follow her training in conducting the observation of Wong. The district court ruled that Wong had met his burden to show that the test was not accurate and reliable. In a precedential opinion of this court, *Knapp v. Commissioner of Public Safety*, this court addressed the admissibility of DMT-test results based on an alleged defect in the observation period. ___ N.W.3d ___, ___, No. A24-1440, slip op. at 2 (Minn. App. May

19, 2025). We held that a prima facie case for admissibility of DMT results is established with evidence that the test was administered by a certified DMT operator, and the instrument was functioning correctly, as demonstrated by its successful completion of diagnostic checks. *Id.* at 12. Moreover, we stated that once a prima facie case for admissibility is shown, a party challenging the reliability of the test must show more than an imperfect observation period: “A driver must prove that he ingested or regurgitated something that affected the test results.” *Id.* at 13-14. Because *Knapp* is binding precedent, the district court must apply *Knapp* when analyzing Wong’s challenges to the DMT process in this case.

IT IS HEREBY ORDERED:

1. The district court’s order is reversed, and the matter is remanded for completion of the evidentiary hearing. The district court shall apply *Knapp* when analyzing Wong’s challenges to the DMT process in this case.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: May 19, 2025

BY THE COURT

/s/

Judge Denise Reilly