STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1503

State of Minnesota,
Respondent,

vs.

Dwight David Patterson,
Appellant.

Filed June 2, 2014
Affirmed
Kirk, Judge

Becker County District Court
File No. 03-CR-12-1171

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Gretchen Thilmony, Becker County Attorney, Kevin M. Miller, Assistant County Attorney, Detroit Lakes, Minnesota (for respondent)

Daniel A. Eller, Waite Park, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Kirk, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

KIRK, Judge

On appeal from his convictions of careless driving and displaying prohibited lights, appellant argues that: (1) the district court's finding that he was not first-aid

qualified was clearly erroneous; (2) as a licensed protective agent, he is permitted by statute to display red lights when he is escorting oversized loads; and (3) the district court did not properly convict him of careless driving. We affirm.

FACTS

On April 25, 2012, off-duty Minnesota State Patrol Lieutenant Charles Backes observed a red pickup truck that was escorting two semitrailer trucks carrying oversized loads swerve over the center line of the road and force an oncoming vehicle to the shoulder of the road. Lieutenant Backes also had to take evasive action when the pickup swerved toward him. Lieutenant Backes reported what he had observed to dispatch, and Sergeant Tim Clements responded. As Sergeant Clements approached the convoy, he observed the red pickup truck flash red lights that were mounted on its roof. Sergeant Clements motioned for the convoy to pull over to the side of the road, and they complied. When Sergeant Clements and Lieutenant Backes approached the driver of the pickup, he identified himself as appellant Dwight David Patterson.

Respondent State of Minnesota charged appellant with one count of misdemeanor careless driving and one count of petty misdemeanor displaying prohibited lights. At the bench trial, appellant testified that he is a licensed protective agent in Minnesota and he and his wife own a business that provides escort vehicles to companies that transport oversized loads. He testified that he had a permit to escort the oversized load on April 25, 2012, and the district court admitted a copy of the permit into evidence. Appellant denied that he ever swerved across the center line to stop or notify vehicles approaching

from the other direction, or that he used flashing red lights while escorting the oversized load. The district court found appellant guilty of both counts. This appeal follows.

D E C I S I O N

I. The district court's finding that appellant was not first-aid qualified is not clearly erroneous.

Appellant challenges his conviction of violating Minn. Stat. § 169.64, subd. 2 (2010), which provides:

> Unless otherwise authorized by the commissioner of public safety, no vehicle shall be equipped, nor shall any person drive or move any vehicle or equipment upon any highway with any lamp or device displaying a red light or any colored light other than those required or permitted in this chapter.

Appellant argues that he is permitted by Minn. Stat. § 326.338, subd. 4 (2010), to use red lights when escorting oversized loads because he is a licensed protective agent. That statute defines a "protective agent" as:

> A person who for a fee, reward, or other valuable consideration undertakes any of the following acts is considered to be engaged in the business of protective agent:
>
> . . . .
>
> . . . controlling motor traffic on public streets, roads, and highways for the purpose of escorting a funeral procession and oversized loads[.]

Minn. Stat. § 326.338, subd. 4(4). The statute provides that "[a] person covered by this subdivision may perform the traffic-control duties . . . in place of a police officer when a special permit is required, provided that the protective agent is first-aid qualified." Minn. Stat. § 326.338, subd. 4. The district court found that appellant was not eligible to

perform traffic-control duties in place of a police officer because he did not show that he was first-aid qualified.

Appellant argues that the district court erred by finding that there was no evidence that he is first-aid qualified because his status as a licensed protective agent necessarily means that he is first-aid qualified. This court gives great deference to a district court's findings of fact and will not reverse those findings unless they are clearly erroneous. *State v. Gomez*, 721 N.W.2d 871, 883 (Minn. 2006).

Minnesota requires protective agents to be licensed. Minn. Stat. § 326.3381 (2010). The statutes that govern licensure of protective agents do not require an individual to be first-aid qualified in order to obtain a protective-agent license. Minn. Stat. §§ 326.32–.339 (2010). However, the administrative rules governing protective agents require "armed protective agents" to receive first-aid training. Minn. R. 7506.2300, subp. 1(E). The rules also provide that to maintain a license as an "armed" protective agent, an individual must complete first-aid training and present evidence of first-aid certification. Minn. R. 7506.2700, subp. 2.

Appellant testified that he is licensed as a protective agent in Minnesota, but he did not testify that he is first-aid qualified. There is no other evidence in the record that appellant is first-aid qualified, or that he is licensed as an "armed" protective agent. Appellant's testimony that he is a licensed protective agent was insufficient to establish that he is first-aid qualified because it is possible for him to be a licensed protective agent without being first-aid qualified. This conclusion is supported by the language of the statute defining a protective agent, which contemplates that not all protective agents are

first-aid qualified. The statute states that a protective agent "may perform the traffic-control duties . . . in place of a police officer when a special permit is required, *provided that* the protective agent is first-aid qualified." Minn. Stat. § 326.338, subd. 4(4) (emphasis added). If all protective agents are necessarily first-aid qualified, the "provided that" language would be unnecessary. Therefore, the district court's finding that appellant was not first-aid qualified is not clearly erroneous. Because we reach this conclusion, we need not address appellant's argument that, as a licensed protective agent, he is permitted to display red lights when escorting oversized loads.

II. The district court properly convicted appellant of careless driving.

Appellant next challenges his conviction of careless driving, arguing that the district court failed to properly apply the statutory criteria and the state failed to prove his guilt beyond a reasonable doubt. "Whether a statute has been properly construed is a question of law to be reviewed de novo by [appellate] court[s]." *State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996). "A district court's application of statutory criteria to the facts found is a question of law that we review de novo." *State v. Perez*, 779 N.W.2d 105, 108 (Minn. App. 2010), *review denied* (Minn. June 15, 2010).

The district court convicted appellant of violating Minn. Stat. § 169.13, subd. 2 (2010), which provides that an individual commits careless driving if he or she "operates or halts any vehicle upon any street or highway carelessly or heedlessly in disregard of the rights of others, or in a manner that endangers or is likely to endanger any property or any person, including the driver or passengers of the vehicle."

The record supports the district court's determination that appellant committed careless driving. Lieutenant Backes testified that he observed appellant's vehicle drive toward his vehicle, forcing him to take evasive action toward the right side of the road. He also testified that he observed appellant swerve over the center line of the road and force several oncoming vehicles to the side of the road. Although appellant denied that he swerved across the center line of the road, the district court's decision to find appellant guilty indicates that it did not find appellant to be credible, and we defer to the fact-finder's credibility determinations. *See State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002).

In addition, both Lieutenant Backes and Sergeant Clements testified about the standard practices employed when they escort oversized vehicles in their capacities as police officers. Lieutenant Backes testified that he has never swerved toward oncoming traffic to force vehicles toward the side of the road, and that police officers are not allowed to do so. Instead, he drives close to the center line with an arm extended out his open window to signal oncoming vehicles to move over. Similarly, Sergeant Clements testified that it is standard for a police officer who is escorting an oversized load to drive close to the center yellow line, but not to cross the line.

We are unpersuaded by appellant's argument that the oncoming vehicles, including Lieutenant Backes's vehicle, were at fault for not yielding to the red lights that his vehicle displayed. Even if appellant was permitted to use red lights while escorting the oversized vehicles, his action of swerving into the oncoming lane of traffic was behavior that was likely to endanger oncoming vehicles and the passengers in those

vehicles. *See* Minn. Stat. § 169.13, subd. 2. As Lieutenant Backes and Sergeant Clements testified, appellant's actions were unacceptable even for a police officer who performs escort duties. Accordingly, the district court properly convicted appellant of careless driving.

Affirmed.