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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0229**

State of Minnesota,
Respondent,

vs.

Joshua Byron Stark,
Appellant.

**Filed March 18, 2019
Affirmed
Florey, Judge**

Renville County District Court
File No. 65-CR-17-34

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

David Torgelson, Renville County Attorney, Olivia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Appellant Joshua Byron Stark appeals his conviction of first-degree driving while impaired (DWI)—test refusal. He argues that the state presented insufficient evidence to

sustain his conviction under Minn. Stat. § 169A.20, subd. 2 (2016), because it failed to prove beyond a reasonable doubt that there was probable cause to believe he was under the influence of alcohol when an officer requested his breath sample. We affirm.

FACTS

In January 2017, an officer was on patrol looking for an individual who had an arrest warrant. The officer observed two cars driving near a known drug house. The officer ran the plate numbers on both vehicles and learned that one of the vehicles was registered to D.S., appellant's mother. The officer observed that the driver was male. The officer knew that appellant was the son of D.S. and that he did not have a license to drive. The officer also knew that D.S. had another son, who had a license, but who always drove a different car. Based on prior investigations, the officer was aware of the Stark brothers' potential involvement in illegal-drug activity. The officer observed that the male driver had a similar build to both sons, but could not tell for certain which one was driving that day. The officer turned his squad car around to follow the vehicle registered to D.S. in the hopes of observing illegal activity. The officer observed the vehicle rapidly accelerate and pass another vehicle without signaling. The officer estimated that the vehicle was traveling between 75 and 80 miles per hour on the gravel road, in what the officer believed to be an attempt to evade him. The officer observed numerous traffic violations during his pursuit, including failure to signal turns and a lane change, failure to stop at stop signs, and speeding. The officer turned on his emergency lights in order to initiate a traffic stop. The driver of the vehicle did not stop, but instead continued to speed, drive erratically, and take turns at dangerous speeds. The officer testified that he felt that, based on his observations

of the vehicle and the manner in which the driver would approach intersections and turns, the driver's depth perception was off.

Finally, after an eight-mile chase, the vehicle stopped at an intersection. The officer announced to the driver that he was under arrest and ordered him to put his hands out of the window. The driver put his hands out of the window, with his middle fingers extended, and repeatedly swore at the officer, stating that he would not listen. This behavior continued for around eight minutes before a police dog was brought to the driver's side of the vehicle, and, although the driver refused to open his door, eventually several officers were able to remove the driver and place him under arrest for fleeing a police officer. The driver was then identified by his ID as appellant. Despite being handcuffed, appellant remained defiant to commands. At this time, the officer suspected appellant was impaired due to the officer's observation of his erratic driving, the indications of his poor depth perception, his disregard for the safety of others, his aggressiveness towards the arresting officers, and his refusal to comply with commands. The officer then transported appellant to the Renville County Jail for booking on the fleeing charge.

At the jail, the officer spoke to appellant and observed that his eyes were bloodshot and watery and that his pupils were dilated. Based on the officer's drug-recognition-expert training, he knew these to be indications of impairment either by alcohol or controlled substances. Based on the officer's training, the next step in his investigation of possible impairment was to subject appellant to standardized field sobriety assessments. When the officer attempted to conduct the first test, which involved shining a light in appellant's eyes and having him follow movement, appellant informed the officer that he would not comply

with any testing. The officer read appellant the implied-consent advisory and requested a breath test. Appellant refused. The officer asked again if appellant would submit to a breath test, but he again refused.

Appellant was charged with first-degree DWI—test refusal, three counts of DWI—impaired driving, fleeing a police officer in a motor vehicle, and driving after cancellation. Appellant moved to have the four DWI-related charges dismissed for lack of probable cause. Following an omnibus hearing, the district court dismissed the three DWI—impaired-driving charges for lack of probable cause, but declined to dismiss the test-refusal charge. Appellant pleaded guilty to the charge of driving after cancellation, but submitted the test-refusal and fleeing charges for a jury trial. He was found guilty of both charges.

This appeal follows.

D E C I S I O N

When considering a claim of insufficient evidence, this court conducts “a painstaking review of the record to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury to reach its verdict.” *Lapenotiere v. State*, 916 N.W.2d 351, 360-61 (Minn. 2018) (quotation omitted). We must assume that the trier of fact “believed the state’s witnesses and disbelieved any contradictory evidence.” *State v. Webster*, 894 N.W.2d 782, 785 (Minn. 2017) (quotation omitted). A reviewing court “will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that a

defendant was proven guilty of the offense charged.” *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted).

Stark was convicted of first-degree DWI—test refusal. *See* Minn. Stat. § 169A.20, subd. 2. Under Minn. Stat. § 169A.20, subd. 2, “[i]t is a crime for any person to refuse to submit to a chemical test of the person’s . . . breath . . . under section 169A.51.” A police officer may require a person to take a chemical test, under Minn. Stat. § 169A.51, subd. 1(b) (2016), if the officer has probable cause to believe that person was driving while impaired and that person (1) has been lawfully placed under arrest for DWI; (2) has been involved in a motor-vehicle accident resulting in property damage, personal injury, or death; (3) has refused to take the preliminary-screening test provided for by Minn. Stat. § 169A.41 (2016); or (4) has taken a preliminary test and the result indicated an alcohol concentration of 0.08 or more. Probable cause exists when the totality of the circumstances known “would lead a reasonable officer to entertain an honest and strong suspicion that the suspect has committed a crime.” *State v. Koppi*, 798 N.W.2d 358, 363 (Minn. 2011) (quotation omitted).

Appellant argues that the state presented insufficient evidence to sustain his conviction because it failed to prove beyond a reasonable doubt that there was probable cause to believe he was under the influence of alcohol when a Renville County police officer requested his breath sample. Probable cause of impairment is a required element of test refusal. *See id.* at 362 (holding probable cause of impairment is an element of test refusal); *see also State v. Merrill*, 428 N.W.2d 361, 366 (Minn. 1998) (holding due-process

clause of the United States Constitution requires the state to prove “each element of the crime charged beyond a reasonable doubt”).

Appellant urges this court to conclude that the state’s evidence of probable cause of impairment, which consisted of squad and booking-room video evidence and testimony from the arresting officer regarding his direct observations, was circumstantial, and therefore we should apply the two-step analysis for evaluating the sufficiency of circumstantial evidence. *See, e.g., State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010) (“[W]hen reviewing the sufficiency of circumstantial evidence, our first task is to identify the circumstances proved. . . . Our second step is to examine independently the reasonableness of all inferences that might be drawn from the circumstances proved; this includes inferences consistent with a hypothesis other than guilt.” (quotations omitted)).

Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Direct evidence is “evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Id.* (quotation omitted). Circumstantial evidence always requires an inferential step that is not required with direct evidence. *Id.*

Probable cause of appellant’s impairment was proved with direct, and not circumstantial, evidence. The officer’s direct observations of appellant were sufficient to support probable cause of impairment by alcohol, drugs, or both.

The officer testified that he observed appellant’s erratic driving, his apparent lack of depth perception, his strange and defiant behavior, his bloodshot and watery eyes, his

dilated pupils, and his refusal to cooperate with officers or follow commands. Squad and booking-room video presented at trial support the officer's testimony regarding these observations. Based on the direct-evidence standard, and when viewed in the light most favorable to the conviction, the indicia of impairment that the officer observed are sufficient for a jury to conclude, beyond a reasonable doubt, that the officer had probable cause to believe that appellant was driving while impaired. *See Martin v. Comm'r of Pub. Safety*, 353 N.W.2d 202, 204 (Minn. App. 1984) (stating that "even a single objective indication of intoxication may be sufficient, depending upon the circumstances in each case").

Appellant further contends that, based on the arguments and unobjected-to jury instructions presented at trial, the state was required to prove beyond a reasonable doubt that the officer had probable cause to believe he was specifically under the influence of alcohol. Here, even though the jury was incorrectly instructed that the element of probable cause required the officer to believe that appellant was under the influence of alcohol, the evidence, when viewed in the light most favorable to the conviction, supports the conclusion that there was probable cause to believe appellant was under the influence of alcohol, drugs, or both.

Affirmed.