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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1674**

State of Minnesota,
Respondent,

vs.

Terrance Dujuan Mann,
Appellant.

**Filed August 19, 2019
Affirmed
Florey, Judge**

Hennepin County District Court
File No. 27-CR-17-11557

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Halbrooks, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Appellant challenges his conviction of first-degree driving while impaired (DWI)—driving under the influence of alcohol, arguing that it is not supported by sufficient evidence. We affirm.

FACTS

Respondent State of Minnesota charged appellant Terrance Dujuan Mann with first-degree DWI—driving under the influence of alcohol and fleeing a peace officer in a motor vehicle. The case was tried to a jury.

At trial, Minneapolis Police Officer Ty Jindra testified that on the night of May 8, 2017, he was on patrol with fellow Minneapolis Police Officer Joseph Grout, and they saw a Chevy Tahoe with a missing brake light on its left side. Officer Jindra testified that he saw the vehicle “slow down to speeds of about 5 to 10 miles an hour and then suddenly speed up back to . . . 30, 35” miles an hour, “drop back down to 5 or 10 miles an hour and speed up, constantly braking and stopping and starting.” Officer Jindra saw the vehicle decelerate and accelerate at least three times over the course of approximately three blocks. Officers Jindra and Grout testified that, based on their experience with impaired drivers, they believed that the vehicle’s continual deceleration and acceleration indicated that the driver may have been impaired.

The officers testified that they intended to stop the vehicle for the missing brake light and to investigate whether its driver was impaired. At approximately 10:15 p.m., Officer Grout activated their squad car’s emergency lights to initiate a traffic stop, but the

vehicle continued to roll very slowly for about another block. Officer Grout then turned on the squad car's siren. Officer Jindra used a public announcement speaker to tell the vehicle's driver to stop and pull over. Officer Jindra testified that the vehicle rolled "almost to a stop" at Stevens Avenue. Officer Jindra testified that he and Officer Grout exited the squad car and the vehicle suddenly accelerated away from them.

The officers pursued the vehicle. Officer Jindra testified that the vehicle exceeded speed limits by about 5 to 20 miles per hour, drove through several stop signs and stoplights, weaved in and out of oncoming traffic, and made many sharp turns as it traveled in a "twisting pattern." Officer Jindra testified that the vehicle turned into multiple dead ends and that it appeared that the driver did not know where the driver was going. Officer Grout testified that the vehicle's driving was "erratic," that the vehicle accelerated and decelerated throughout the pursuit, and that the vehicle "almost hit a few parked cars." Officer Jindra testified that after the vehicle turned onto Cedar Avenue, the officers' supervisor told them to terminate the pursuit because it had become too dangerous given the rainy conditions at the time. The officers testified that they terminated the pursuit by turning off their emergency lights and slowing down. A squad video depicting the pursuit was admitted into evidence and indicates that it lasted approximately four-and-one-half minutes.

Soon after terminating the pursuit, Officer Jindra saw the vehicle pull into a driveway. The officers drove to the driveway and pulled in behind the vehicle. Officer Grout testified that he and Officer Jindra approached the vehicle with guns drawn and directed the driver to exit the vehicle. The driver, appellant Terrance Dajuan Mann, exited

the vehicle, and the officers arrested him. Officer Grout testified that appellant “was really off balance” when the officer tried to get him to his feet and walk him over to the squad car, that he smelled of alcohol, and that his speech was slurred. Based on Officer Grout’s experience interacting with people who are intoxicated, he believed those observations indicated that appellant was impaired.

Officer Nicholas Englund of the Minneapolis Police Department testified that he had received training in detecting impaired driving and had made hundreds of DWI arrests. Officer Englund testified that indicia that a person is impaired include bloodshot and watery eyes, an odor of alcohol, unsteadiness, slurred speech, and admissions of drinking.

Officer Englund testified that he responded to the area of the pursuit to assist Officers Jindra and Grout. When Officer Jindra informed Officer Englund that the vehicle was parked in a driveway, Officer Englund drove to the driveway and cleared the vehicle to ensure it did not have any other occupants and that there were no officer-safety risks. After clearing the vehicle, Officer Englund transported appellant from the scene. Officer Englund testified that appellant’s eyes were bloodshot and watery and that the officer could smell alcohol emanating from him. Officer Englund testified that appellant’s speech was not “overly slurred” and that he “seemed to be standing alright” and did not lose his balance. Because appellant’s eyes were bloodshot and watery and he smelled of alcohol, Officer Englund asked appellant to submit to field sobriety tests, which he refused. Officer Englund obtained a search warrant authorizing collection of a sample of appellant’s blood for chemical testing. Officer Englund transported appellant to a hospital, and a nurse drew a sample of appellant’s blood pursuant to the warrant at approximately 11:37 p.m. A

forensic scientist from the Minnesota Bureau of Criminal Apprehension testified that chemical testing revealed that appellant's alcohol concentration was "0.073 plus or minus .004."

The jury found appellant guilty as charged. The district court entered judgments of conviction on both counts and sentenced appellant to a 42-month prison term on the DWI count and a consecutive one-year-and-one-day prison term on the fleeing-a-peace-officer count. Appellant appeals, challenging his DWI conviction.

D E C I S I O N

Appellant contends that "[t]he evidence was insufficient, as a matter of law, to convict [him] of driving under the influence of alcohol when the circumstantial evidence did not prove that he was intoxicated."

When considering a claim of insufficient evidence, this court carefully analyzes the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We "assume that the jury believed the state's witnesses and disbelieved contrary evidence." *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). We will not disturb a guilty verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the state proved that the defendant was guilty of the offense charged. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

When the state relies on circumstantial evidence to prove an element of an offense, an appellate court applies a heightened standard of review. *See State v. Harris*, 895 N.W.2d

592, 601-03 (Minn. 2017) (applying circumstantial-evidence standard to individual element of criminal offense that was proved by circumstantial evidence). Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Id.* at 599 (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.*

“It is a crime for any person to drive, operate, or be in physical control of any motor vehicle . . . within this state . . . when: (1) the person is under the influence of alcohol[.]” Minn. Stat. § 169A.20, subd. 1(1) (2016). “A person is under the influence when a person does not possess that clearness of intellect and control of himself that he otherwise would have.” *State v. Ards*, 816 N.W.2d 679, 686 (Minn. App. 2012) (quotation omitted). The state may obtain a conviction of DWI even if the driver’s alcohol concentration was below the legal limit “provided the state shows that the driver had drunk enough alcohol so that the driver’s ability or capacity to drive was impaired in some way or to some degree.” *State v. Shepard*, 481 N.W.2d 560, 562 (Minn. 1992).

I. Sufficiency Standard

As a threshold matter, the parties disagree regarding the standard that this court should apply in reviewing the sufficiency of the evidence supporting appellant’s DWI conviction. Appellant argues that because “[t]here was no direct evidence of [his] guilt of intoxication and the verdict on [that] element was based upon circumstantial evidence,” the heightened circumstantial-evidence standard applies. Respondent argues that the direct-

evidence standard applies because its “case included evidence of police officers’ observations of Appellant, and the law is clear that evidence of a witness’s observations is direct evidence, *not* circumstantial evidence.” Respondent relies on *State v. Stokes*, 354 N.W.2d 53, 56 (Minn. App. 1984), and *State v. Holmes*, 701 N.W.2d 267 (Minn. App. 2005), *aff’d in part and rev’d in part on other grounds*, 719 N.W.2d 904 (Minn. 2006), in support of this argument.

In *Stokes* and *Holmes*, this court rejected the argument that the heightened circumstantial-evidence standard applied when analyzing sufficiency challenges to convictions of driving under the influence of alcohol based on witness observation of indicia of intoxication. *Holmes*, 701 N.W.2d at 271; *Stokes*, 354 N.W.2d at 54, 56. This court also concluded that the evidence was sufficient to support the conviction in each case under both the direct-evidence standard and the heightened circumstantial-evidence standard. *Holmes*, 701 N.W.2d at 271; *Stokes*, 354 N.W.2d at 56. In *State v. Olson*, this court recently addressed whether the circumstantial-evidence standard applies to a sufficiency challenge to a DWI conviction based on observations of indicia of intoxication. 887 N.W.2d 692, 700 (Minn. App. 2016). We concluded that the direct-evidence standard applied in that case “because the state presented direct evidence of [the defendant’s] alcohol consumption and impaired driving through eyewitness testimony.” *Id.*

We need not decide whether the direct-evidence standard or the circumstantial-evidence standard applies to the sufficiency challenge in this case because even under the heightened circumstantial-evidence standard there is sufficient evidence to support appellant’s conviction of DWI—driving under the influence of alcohol.

II. Sufficiency of the Evidence

Under the circumstantial-evidence standard, we first determine the circumstances proved. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). When evaluating the circumstances proved, we “disregard evidence that is inconsistent with the jury’s verdict.” *Harris*, 895 N.W.2d at 601. Next, we determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *Loving*, 891 N.W.2d at 643. We will reverse a conviction based on circumstantial evidence only if there is a reasonable inference other than guilt. *Id.*

The trial evidence established the following circumstances. On the night of May 8, 2017, Officers Jindra and Grout saw a Chevy Tahoe “slow down to speeds of about 5 to 10 miles an hour and then suddenly speed up back to . . . 30, 35” miles per hour, “drop back down to 5 or 10 miles an hour and speed up, constantly braking and stopping and starting.” The vehicle decelerated and accelerated at least three times over the course of approximately three blocks. Based on their experience with impaired drivers, the officers believed that the vehicle’s continual deceleration and acceleration indicated that the driver may have been impaired.

The officers attempted to initiate a traffic stop to investigate. They activated their squad car’s emergency lights, turned on its siren, and used a public-announcement speaker to tell the vehicle’s driver to pull over and stop. The vehicle continued to move very slowly. The vehicle almost rolled to a stop at Stevens Avenue, but when the officers exited the squad car, the vehicle suddenly accelerated away from them. The officers pursued the vehicle for approximately four-and-one-half minutes. During the pursuit, the vehicle

exceeded speed limits by about 5 to 20 miles per hour, drove through several stop signs and stoplights, weaved in and out of oncoming traffic, and made many sharp turns as it traveled in a “twisting pattern.” The vehicle’s driving was “erratic,” it accelerated and decelerated throughout the pursuit, and it “almost hit a few parked cars.” The vehicle also turned into multiple dead ends. After the vehicle turned onto Cedar Avenue, the officers’ supervisor told them to terminate the pursuit because it had become too dangerous given the rainy conditions at the time.

Soon after terminating the pursuit, Officer Jindra saw the vehicle pull into a driveway. The officers pulled in behind the vehicle and directed the driver, appellant, to exit the vehicle. Appellant exited the vehicle and the officers arrested him. Appellant was “really off balance” when Officer Grout tried to get him to his feet and walk him over to the squad car, he smelled of alcohol, and his speech was slurred.

Officer Englund transported appellant from the scene. Appellant’s eyes were bloodshot and watery and Officer Englund could smell alcohol emanating from him. Because appellant’s eyes were bloodshot and watery and he smelled of alcohol, Officer Englund asked appellant to submit to field sobriety tests, which he refused. Officer Englund obtained a search warrant authorizing collection of a sample of appellant’s blood for chemical testing. Officer Englund transported appellant to a hospital and a nurse drew a sample of appellant’s blood pursuant to the warrant at approximately 11:37 p.m., more than an hour after the driving conduct. Chemical testing revealed that appellant’s alcohol concentration was “0.073 plus or minus .004.”

Appellant argues that his driving conduct alone was not sufficient to prove he was under the influence of alcohol and that the “remaining circumstantial evidence did not provide a complete chain that led directly to [his] guilt.” Appellant notes that no field sobriety tests were performed in this case because he refused. Appellant also notes that Officer Grout’s testimony that appellant was off-balance and slurred his speech is inconsistent with Officer Englund’s testimony that appellant’s speech was not “overly slurred” and with body-camera video depicting Officer Englund’s interactions with appellant, and that Officer Grout’s body-camera video shows appellant exit the vehicle and comply with Officer Grout’s order to get on the ground without stumbling. And appellant notes that chemical testing showed that his alcohol concentration was under the legal limit of .08 and that it is not unlawful to drink alcohol beverages and then drive or be in physical control of a motor vehicle.

Again, “[a] person is under the influence when a person does not possess that clearness of intellect and control of himself that he otherwise would have.” *Ards*, 816 N.W.2d at 686 (quotation omitted). Here, appellant accelerated and decelerated at least three times over the course of approximately three blocks when the officers initially followed him. Then, when officers initiated a traffic stop, appellant accelerated away from them and led them on a chase that lasted about four-and-one-half minutes. During the chase, appellant weaved in and out of oncoming traffic, drove through several stop signs and stoplights, made many sharp turns, exceeded speed limits, repeatedly accelerated and decelerated, and nearly hit parked cars.

Appellant argues that his “ability to lead the police on a high-speed chase, without causing an accident, supports the argument that he was not impaired.” We disagree. Appellant’s driving conduct was erratic and reckless; it does not suggest that he was thinking clearly at the time. Instead, it strongly suggests that he did not possess the clearness of intellect and control of himself that he otherwise would have if he were not under the influence of alcohol.

Moreover, officers observed additional indicia of intoxication after appellant exited the vehicle. Officer Grout observed that appellant was unsteady on his feet, that he smelled of alcohol, and that his speech was slurred.¹ Officer Englund noticed that appellant smelled of alcohol and that his eyes were bloodshot and watery. And the chemical test, taken more than an hour after the driving conduct, indicated that appellant’s alcohol concentration was close to the legal limit.

Under the circumstances, it was reasonable for the jury to conclude that appellant was under the influence of alcohol. Thus, the circumstances proved are consistent with guilt.

Appellant compares this case to *State v. Elmourabit*, in which the supreme court concluded that there was insufficient evidence to prove that a driver was under the

¹ Officer Englund’s testimony that appellant’s speech was not “overly slurred” and he “seemed to be standing alright” when Officer Englund observed him does not affect our sufficiency analysis here. In reviewing the evidence in this sufficiency challenge, we view that evidence “in a light most favorable to the conviction.” See *Webb*, 440 N.W.2d at 430. Thus, we assume the jury believed Officer Grout’s testimony that appellant was unsteady on his feet and had slurred speech. To the extent that Officer Englund’s testimony regarding those specific indicia of intoxication is inconsistent with Officer Grout’s testimony, we disregard it.

influence of alcohol. 373 N.W.2d 290, 293-94 (Minn. 1985). In that case, the driver challenged the sufficiency of evidence supporting his DWI conviction and the supreme court described the issue as “a close one.” *Id.* at 292-93. The supreme court determined that the evidence was insufficient to support the DWI conviction, reasoning as follows:

Here the state lacked direct proof of actual consumption, except for [the driver’s] admission of only one beer and a few sips of another. Consequently, the state relied primarily on outward manifestations of intoxication observed after the [driver] was stopped. The inferences to be drawn from this evidence, however, are in somewhat uneasy equilibrium. [The driver] was driving 13 miles over the speed limit, but this is not uncommon for sober drivers too. There was an odor of alcohol, but the recent drinking of one bottle of beer may leave an odor of alcohol on the breath. [The driver’s] speech was at times slurred, but English is not his native tongue. There was testimony of some lack of coordination, but the video-taped dexterity tests showed none. There was evidence of glassy, bloodshot eyes, but also evidence of a heightened hyperventilative state. There was evidence [the driver] was not having a heart attack, but neither could the officers nor the paramedics say authoritatively that [the driver] had no medical problems or was not experiencing pain. If [the driver’s] behavior in the police station was at times strange, to account for that behavior by the amount of alcohol consumed between 11:30 p.m. and 12:26 a.m., after allowing for [the driver’s] itinerary on leaving work, seems also difficult to explain.

These are the kind of issues that this court, with rare exception, has always left to a jury. We conclude, however, that this is one of those rare exceptions. Even with the credence to be given the state’s case, the unique facts and circumstances here, particularly in their various combinations, require us to conclude that the state’s proof falls short of proof beyond a reasonable doubt.

Id. at 293-94.

The circumstances of *Elmourabit* are readily distinguishable from those in this case. Appellant's erratic and reckless driving conduct is much more unusual for a sober driver than the *Elmourabit* driver's conduct of driving 13 miles per hour over the speed limit. Unlike *Elmourabit*, there was no alternative medical explanation presented for appellant's conduct here. Likewise, appellant refused to take and therefore did not pass dexterity tests like the driver in *Elmourabit* did. Instead, appellant took a chemical test that indicated that his alcohol concentration was near the legal limit. In sum, this case does not present the unique facts and circumstances that justified overturning the jury's verdict in *Elmourabit*.

Sufficient evidence supported appellant's conviction of DWI—driving under the influence of alcohol.

Affirmed.