

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1970**

State of Minnesota,
Respondent

vs.

Shunzhong Li,
Appellant.

**Filed July 27, 2020
Reversed
Ross, Judge**

Hennepin County District Court
File No. 27-VB-19-177010

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

Roger N. Knutson, Plymouth City Attorney, Alina Schwartz, Assistant City Attorney,
Campbell Knutson, P.A., Eagan, Minnesota (for respondent)

Shunzhong Li, St. Michael, Minnesota (pro se appellant)

Considered and decided by Ross, Presiding Judge; Slieter, Judge; and Kalitowski,
Judge.*

S Y L L A B U S

The offense of failing to yield to an emergency vehicle under Minnesota Statutes section 169.20, subdivision 5(a) (2018), requires proof that the emergency-vehicle driver gave an audible signal by siren, except in the case of an emergency vehicle escorting an oversize or overweight vehicle.

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

OPINION

ROSS, Judge

A police officer saw a van fail to slow or stop for an ambulance approaching with its emergency lights activated. The district court received testimony and video evidence of the officer's observation but no direct evidence about the ambulance's siren. It found the driver guilty of failing to signal a turn and failing to yield for an emergency vehicle. We reverse the failure-to-yield conviction because the state produced insufficient evidence that the ambulance driver gave an "audible signal by siren," a prerequisite to a failure-to-yield conviction under Minnesota Statutes section 169.20, subdivision 5(a) (2018).

FACTS

The district court presiding over a bench trial on two petty-misdemeanor charges heard Plymouth Police Officer Scott Kroeger testify about a traffic incident occurring on June 6, 2019. Officer Kroeger said that he was driving his squad car when he saw a van in front of him turn left, westbound onto County Road 6, without signaling. The officer testified that he then saw "an ambulance coming eastbound on County Road 6 with its flashing emergency lights on." Officer Kroeger and two other vehicles slowed and pulled over to let the ambulance pass, but the van did not. Officer Kroeger stopped the van and spoke with its driver, appellant Shunzhong Li, who claimed not to have noticed the ambulance. The officer cited Li for failing to yield to an emergency vehicle and failing to signal his turn. *See* Minn. Stat. §§ 169.19, subd. 5, .20, subd. 5(a), (e) (2018). The district court also received into evidence the squad-car video footage, which corroborated the officer's testimony.

Li testified in his own defense. He said that he signaled his turn and that he yielded to the ambulance.

The district court believed Officer Kroeger and disbelieved Li, finding Li guilty of both traffic offenses and fining him accordingly. Li appeals, challenging only his conviction of failing to yield to an emergency vehicle.

ISSUES

I. What are the elements of failing to yield to an emergency vehicle under Minnesota Statutes section 169.20, subdivision 5(a)?

II. Is Li's conviction supported by sufficient evidence?

ANALYSIS

Li challenges his failure-to-yield conviction, claiming as a matter of law that the evidence does not show that the ambulance emitted an audible siren as required by statute and claiming alternatively as a matter of fact that he did yield to the ambulance. We decide this appeal addressing only his first argument.

I

Li argues that one of the essential elements of a failure-to-yield conviction is proof that the ambulance had activated its siren, citing Minnesota Statutes section 169.20, subdivision 5(a). Li's ultimate sufficiency-of-the-evidence challenge requires us to consider the meaning of the statute. *See State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017). We analyze the meaning de novo, *see id.*, and we easily conclude that the statute readily supports Li's premise.

The statutory requirement to yield to emergency vehicles includes unambiguous terms:

Upon the immediate approach of an authorized emergency vehicle equipped with at least one lighted lamp exhibiting red light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle and, except as otherwise provided in paragraph (b), when the driver is giving audible signal by siren, the driver of each other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the highway clear of any intersection, and shall stop and remain in this position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer. The driver of another vehicle on a one-way roadway shall drive to the closest edge or curb and stop.

Minn. Stat. § 169.20, subd. 5(a). The exception “in paragraph (b)” occurs when an emergency vehicle is “escorting the movement of an oversize or overweight vehicle or load,” in which case the emergency vehicle’s driver must activate a red light but “need not sound an audible signal by siren.” *Id.*, subd. 5(b) (2018). The statute is clear. It plainly defines when a driver must yield (when approached by “an authorized emergency vehicle” that is “equipped with at least one lighted [red] lamp” and the emergency-vehicle “driver is giving audible signal by siren”) and plainly directs what the driver must then do (“yield the right-of-way . . . immediately drive to . . . the right-hand edge or curb of the highway . . . and . . . stop and remain . . . until the authorized emergency vehicle has passed”). *Id.*, subd. 5(a). A driver who disobeys his duty to yield commits a petty misdemeanor. *Id.*, subd. 5(e).

Applying the statute in this case, the state bore the burden of proving these elements beyond a reasonable doubt: (1) Li was immediately approached by an authorized emergency vehicle; (2) the emergency vehicle displayed a visible red light; (3) the emergency vehicle emitted a siren; and (4) Li failed to yield the right-of-way, stop near the right-hand curb, and remain there until the emergency vehicle passed. Having clarified these elements, we consider whether the state's evidence supports the conviction.

II

The district court never expressly found that the ambulance was emitting a siren, but because the statute includes the siren element and the district court found Li guilty, we deem the finding as having been implicitly made. *See* Minn. R. Crim. P. 26.01, subd. 2(e). As Li argues, however, for the following reasons we see no sufficient evidence supporting the finding, and the deficiency undermines Li's conviction.

We first must determine the appropriate standard of review for Li's sufficiency argument. Which standard applies depends on whether the district court reached its finding based on direct or circumstantial evidence. *State v. Petersen*, 910 N.W.2d 1, 6 (Minn. 2018). Direct evidence rests on personal observation or knowledge and stands on its own, needing no additional inference or presumption to prove an elemental fact, while circumstantial evidence needs some additional inference or presumption. *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017). If the state proves an element with direct evidence, we consider whether the evidence viewed in the light favorable to the conviction was sufficient to permit the district court to reach the guilty verdict. *State v. Horst*, 880 N.W.2d 24, 39–40 (Minn. 2016). But if the state relies instead on circumstantial evidence to prove

an element, we first identify the circumstances proved by the state while deferring to the district court's acceptance of the state's evidence, and we consider second whether those circumstances are consistent only with guilt—precluding any other rational hypothesis. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

The state offered no direct evidence that the ambulance was emitting an audible siren. Officer Kroeger testified only that he “saw an ambulance coming . . . *with its flashing emergency lights on.*” (Emphasis added.) He did not mention any siren. And the video recording is not direct evidence of an activated siren, because the recording is silent at the time the ambulance approached Li. Because the state presented no direct evidence on the siren element, we will consider whether the state offered circumstantial evidence to prove the element. We see very little. The evidence presented by the state and accepted by the district court establishes that Officer Kroeger followed Li through a left turn, that an ambulance approached from the opposite direction, that the ambulance's emergency lights were activated, and that Officer Kroeger and two other drivers stopped while Li continued on without slowing or applying his brakes. These circumstances are insufficient to prove that the ambulance was emitting a siren. One could rationally infer that the officer and other drivers stopped only because they saw the ambulance's activated emergency lights and that its siren was not activated.

The state argues that there is “plenty of relevant evidence to infer that the driver of the ambulance gave [an] audible signal by siren.” The state's cited circumstances fall far short. It reasons vaguely from the negative, maintaining that Li's failure to disclaim having heard the ambulance is “telling.” The state essentially invites us to presume that, because

Li failed to claim that he heard no audible siren, the siren must have been audible. This reasoning has two flaws, both fatal. First, it progresses like one of those impossible-object optical illusions, which appears plausible only at a glance but proves unworkable under minor scrutiny. Second, to the extent the state is commenting about Li's trial testimony rather than his on-scene claims, the reasoning ignores the fact that the state bore the burden of proving the disputed element, *see State v. Struzyk*, 869 N.W.2d 280, 289 (Minn. 2015), and that Li bore no burden to disprove the element. The state also cites the fact that the ambulance's emergency lights were activated, suggesting a likelihood that its siren was also activated. The state offered no evidence that the audible and visible signaling devices of emergency vehicles generally, or ambulances specifically, are activated at once rather than separately, and we think the implication is almost certainly false. And if the two devices operate separately, the record includes no evidence from which a fact-finder could conclude, beyond a reasonable doubt, that the ambulance driver in this case turned both on at once. We hold that the state presented no evidence sufficient to prove that the ambulance's siren was activated as it approached Li.

D E C I S I O N

Because neither the direct nor circumstantial evidence proved that the ambulance's siren was activated, we reverse Li's conviction for failing to yield to an emergency vehicle.

Reversed.