

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0170**

State of Minnesota,
Respondent,

vs.

James Paul Aery,
Appellant.

**Filed November 14, 2022
Affirmed
Connolly, Judge**

Beltrami County District Court
File No. 04-CR-20-3276

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

David L. Hanson, Beltrami County Attorney, Michael V. Mahlen, Assistant County Attorney, Bemidji, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

On appeal from his convictions of second-degree test-refusal and obstruction of legal process, appellant argues that (1) the district court erred in denying his motion to suppress the evidence against him because law enforcement unlawfully seized him in his

parked vehicle without reasonable suspicion; and (2) respondent failed to prove beyond a reasonable doubt that appellant demonstrated an actual unwillingness to submit to chemical testing. We affirm.

FACTS

On December 3, 2020, at approximately 10:30 a.m., sheriff's deputies responded to a report of two individuals sleeping in a vehicle near a public lake access. The driver of the vehicle was identified as appellant James Aery who, after displaying signs of impairment, was arrested and transported to the county jail where he allegedly refused a chemical test of his blood or urine. Respondent State of Minnesota later charged appellant by amended complaint with second-degree test refusal, and obstruction of legal process.

Appellant moved to suppress “all evidence obtained from . . . [appellant] . . . as fruits of a poisonous tree” because the evidence was obtained after an unconstitutional seizure. A contested omnibus hearing was then held at which both Sergeant Robert Carlson and Deputy Nicholas Lewis testified, and recordings from their body cameras were admitted into evidence. This evidence and testimony established that, when performing a welfare check involving two individuals reportedly “sleeping or unconscious” in a vehicle at a public lake access, the deputies parked their squad cars in a manner such that the running vehicle was not prevented from leaving. And neither the squad car driven by Sergeant Carlson, nor the one driven by Deputy Lewis, had its emergency lights or sirens activated.

Sergeant Carlson testified that when he arrived at the scene, he observed an individual in the driver's seat not make any movement, and a female in the passenger seat open the passenger door and discard some items. Sergeant Carlson also testified that as he

approached the vehicle and spoke with the female passenger, he peered into the car to check on the individual in the driver's seat. According to Sergeant Carlson, the individual in the driver's seat "started moving his head side to side," and he "immediately" recognized the man as appellant, whom he has known for over 20 years. Sergeant Carlson testified that he has "personally . . . taken [appellant] into custody for various offenses over the years," that appellant has "long-term, substance abuse issues," that he's "never known [appellant] to possess a driver's license for many years," and that appellant "is fairly well known" in the "law enforcement community because . . . [law enforcement] encounters with him tend to be oppositional and there's some defiance that have been noted in the past."

Sergeant Carlson testified that he asked appellant to shut off the vehicle, and that as he spoke with the vehicle's passengers, he observed that both individuals "appeared to be very thin and almost frail," and both were "herky-jerky in [their] movements, very fidgety, very nervous." Sergeant Carlson testified that he interpreted his observations to be indicia of impairment. And according to Sergeant Carlson, appellant looked and acted differently when he was sober.

Deputy Nicholas Lewis testified that after arriving at the scene, he approached the driver's side of the vehicle and also recognized appellant from prior law enforcement encounters. According to Deputy Lewis, appellant has a history of fleeing, being assaultive, not ever having a valid driver's license, and not being compliant with law enforcement. Deputy Lewis testified that after approaching the vehicle, he knocked on the driver's side door and observed that appellant had "droopy eyelids" and appeared

“lethargic,” which Deputy Lewis stated were his “very first indication” that appellant was impaired.

Deputy Lewis ordered appellant out of the vehicle, and he eventually complied. But according to Deputy Lewis, appellant kept his right hand close to his stomach and chest area, causing more concern to the deputy. Deputy Lewis then asked appellant to show him his right hand. Appellant did not immediately comply, and after repeated requests by the deputy to show him his right hand, appellant threw an object toward the trees. The item was discovered to be a glass methamphetamine pipe containing white residue. Appellant was subsequently handcuffed and placed in the back of a squad car.¹

The district court determined that appellant was not seized when the officers approached the vehicle to conduct a welfare check. But the district court concluded that the deputies “articulated specific facts which [led] them to suspect that [appellant] was under the influence,” and that “[d]ue to their reasonable, articulable suspicion of additional illegal activity, the expansion of the scope of their encounter with [appellant] was lawful.” The district court, therefore, denied appellant’s motion to suppress.

Appellant waived his right to a jury trial and agreed to proceed with a bench trial. Deputy Lewis and another deputy testified on behalf of the state, and footage from Deputy Lewis’s body camera was introduced into evidence. This evidence showed that after appellant was removed from the vehicle, he began to exhibit noncompliant behavior and stated that he did not want to perform any field sobriety tests. Appellant was then

¹ After appellant was handcuffed, the deputies learned that he had an active warrant for his arrest.

transported to the county jail where a search warrant was obtained for appellant's blood or urine. Deputy Lewis attempted to execute the warrant at about 3:15 p.m., but according to the deputy, appellant "threw the search warrant on the ground" and said "he couldn't go at that time." During the next ten minutes, Deputy Lewis repeatedly told appellant that it was a crime to refuse a chemical test, and repeatedly asked appellant if he would provide a urine sample, to which appellant stated, "Well yeah I have to don't I," and, "Yeah I'm standing here aren't I?" But appellant told the deputy that he would "have to wait" because "I can't piss right now." Appellant also inquired about a blood test, but then stated that he did not want to do a blood test either. Throughout the interaction, appellant was belligerent and combative, and toward the end of the interaction, appellant complained about having an infection that is causing him "severe pain," and offered to show the deputy his penis. Deputy Lewis ultimately deemed appellant's conduct a test refusal.

Appellant testified in his defense and stated that after he was detained he repeatedly asked for something to drink because he was "severely dehydrated." Appellant also claimed that because he was dehydrated, he "knew [he] couldn't pee." And appellant claimed that the whole urination process is painful because he "had pain in [his] penis." Although appellant acknowledged "hollering" at Deputy Lewis, and claimed that he was confused about the implied-consent law, appellant testified that it was his intention to take a test.

The district court found appellant guilty as charged. As to the test-refusal count, the district court found:

It's clear through statements and through conduct together. It isn't just one. You can't have a statement that's contradictory to your actions and expect that the statement be taken alone without the actions. The statements made, the conduct, there was an offer of blood and urine; they were refused by conduct.

This appeal follows.

DECISION

I.

Appellant challenges the district court's denial of his motion to suppress. "When reviewing a district court's pretrial order on a motion to suppress evidence, we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted). "When facts are not in dispute . . . we review a pretrial order on a motion to suppress de novo and determine whether the police articulated an adequate basis for the search or seizure at issue." *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011) (quotation omitted).

The Fourth Amendment of the United States Constitution, and article I, section 10 of the Minnesota Constitution, prohibit unreasonable searches and seizures. Generally, warrantless searches and seizures are per se unreasonable. *State v. Horst*, 880 N.W.2d 24, 33 (Minn. 2016). But a law-enforcement officer may conduct a brief investigatory stop if the officer has a reasonable, articulable suspicion that a person has engaged in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 19-22 (1968); *State v. Diede*, 795 N.W.2d 836, 842-43 (Minn. 2011). There is a reasonable, articulable suspicion if "the police officer [is] able to point to specific and articulable facts which, taken together with rational inferences from

those facts, reasonably warrant that intrusion.” *Terry*, 392 U.S. at 21. An officer’s decision to seize a person may be justified based on the totality of the circumstances, and an officer “may draw inferences and deductions that might elude an untrained person.” *State v. Harris*, 590 N.W.2d 90, 99 (Minn. 1999) (quotation omitted).

Appellant does not contest the validity of the welfare check by law enforcement, nor does he claim that he was seized when the deputies walked up to the vehicle to perform the welfare check. But appellant contends that by directing him to turn off the engine and exit the vehicle, law enforcement “transformed a lawful welfare check into an investigatory seizure.” Appellant argues that the seizure was unconstitutional because it was clear that the vehicle’s “occupants were not asleep or in need of medical care, and because the limited observations police were able to make in the short amount of time between their arrival and the seizure did not amount to reasonable articulable suspicion that [appellant] was involved in criminal activity.” Appellant further contends that the “seizure was not justified by the officers’ knowledge about [his] past driver’s license status,” and that Deputy Lewis’s “alleged safety concerns did not justify removing [him] from the car.”

We acknowledge that each of the individual circumstances presented here, in and of themselves, may not be enough to establish the requisite suspicion. But the proper inquiry is whether all the circumstances, taken in the totality, are enough to establish a reasonable, articulable suspicion of criminal activity. *See State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998) (stating that in determining whether reasonable suspicion exists, courts weigh the totality of the circumstances). And a police officer “need only have one objective indication of intoxication to constitute reasonable and probable grounds to

believe a person is under the influence.” *Holtz v. Comm’r of Pub. Safety*, 340 N.W.2d 363, 365 (Minn. App. 1983).

Here, the deputies were presented with the unusual circumstance of conducting a welfare check involving two people who were reportedly sleeping in their vehicle at 10:30 a.m. near a public lake access. Upon arriving at the scene, Sergeant Carlson observed the individual in the passenger seat open the car door and discard some items. He also observed appellant, an individual whom he has known for over 20 years, in the driver’s seat. Both Sergeant Carlson and Deputy Lewis testified that appellant has a history of being combative, abusing controlled substances, and not having a driver’s license.

Sergeant Carlson testified that as he spoke with the vehicle’s passengers, he observed that both individuals “appeared to be very thin and almost frail,” and both were “herky-jerky in [their] movements, very fidgety, very nervous,” which Carlson interpreted to be indicia of impairment. In fact, Sergeant Carlson opined that appellant looked and acted different when he was sober. And Deputy Lewis testified that after approaching the vehicle, he knocked on the driver’s side door and observed that appellant had “droopy eyelids” and appeared “lethargic,” which Deputy Lewis stated were his “very first indication” that appellant was impaired. Both Sergeant Carlson and Deputy Lewis were able to articulate specific facts which, when considered in light of their training, indicated that appellant was under the influence of a controlled substance. *See State v. Kier*, 678 N.W.2d 672, 678 (Minn. App. 2004) (“Common indicia of intoxication include an odor of alcohol, bloodshot and watery eyes, slurred speech, and an uncooperative attitude.”); *see also Franko v. Comm’r of Pub. Safety*, 432 N.W.2d 469, 472 (Minn. App. 1988) (stating

that facts indicating intoxication include incoherent and rambling speech and “spaced out” appearance). The law enforcement officers’ observations, when considered in the totality of all the circumstances presented—including the deputies’ knowledge of appellant’s history and the unusual circumstances involving the welfare check—provided the officers with a reasonable basis to suspect that appellant was in actual physical control of a motor vehicle while being under the influence of a controlled substance.² Therefore, the district court did not err by denying appellant’s motion to suppress.

II.

Appellant also contends that the evidence presented by the state was insufficient to prove beyond a reasonable doubt that he failed to submit to a chemical test. When evaluating the sufficiency of the evidence, this court “carefully examine[s] the record to determine whether the facts and the legitimate inferences drawn from them would permit the [factfinder] to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). In conducting this analysis, we view the evidence in the light most favorable to the verdict. *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). We also assume that the factfinder “believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). If the

² Because the totality of the circumstances provided the deputies with reasonable suspicion that appellant was under the influence of a controlled substance, we need not address his arguments related to Deputy Lewis’s concerns for officer safety.

factfinder could have reasonably found the defendant guilty, the verdict will not be overturned. *Walters*, 929 N.W.2d at 900.

Appellant was convicted of test-refusal under Minn. Stat. § 169A.20, subd. 2(2) (2020), which provides that “[i]t is a crime for any person to refuse to submit to a chemical test . . . of the person’s blood or urine as required by a search warrant.” It is not necessary that an individual expressly and vocally refuse to take a test to sustain a conviction for test refusal. *State v. Ferrier*, 792 N.W.2d 98, 101-02 (Minn. App. 2010), *rev. denied* (Minn. Mar. 15, 2011). Rather, “refusal to submit to chemical testing includes any indication of actual unwillingness to participate in the testing process, as determined from the driver’s words and actions in light of the totality of the circumstances.” *Id.* at 102. If a driver’s actions “frustrate” the testing process, then “it will amount to refusal to test.” *State v. Collins*, 655 N.W.2d 652, 658 (Minn. App. 2003), *rev. denied* (Minn. Mar. 26, 2003).

If the state relied on circumstantial evidence to prove an element of the offense, this court must apply a heightened standard of review. *See State v. Harris*, 895 N.W.2d 592, 601-03 (Minn. 2017) (applying circumstantial-evidence standard). The district court here relied on appellant’s statements and conduct in finding him guilty of test-refusal, which required the court to draw inferences from appellant’s conduct about his willingness to submit to a chemical test. We therefore apply the circumstantial-evidence standard of review. *See Ferrier*, 792 N.W.2d at 101-02 (holding that a test-refusal conviction may be premised on “actual unwillingness to participate in the testing process, as determined from the driver’s words and actions in light of the totality of the circumstances”).

Under the circumstantial-evidence standard of review, we first determine the circumstances proved, disregarding evidence that is inconsistent with the verdict. *Harris*, 895 N.W.2d at 600-01. Second, we determine “whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt.” *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (quotation omitted).

Here the state proved the following circumstances: (1) appellant was presented with a search warrant for blood or urine; (2) appellant was repeatedly informed that it was a crime to refuse a chemical test; (3) appellant was repeatedly asked if he would acquiesce to testing; (4) appellant stated that he could not urinate at that time and that he had a medical condition that made it painful to urinate; (5) appellant pulled his pants down, which revealed a sore near his penis; and (6) although appellant provided conflicting answers to whether he would submit to testing, he never provided or attempted to provide a test and was belligerent throughout the process.

Appellant argues that the state failed to prove that he “was actually unwilling to submit to a chemical test” because he “articulated two physical concerns related to his ability to provide a urine sample”: (1) he was dehydrated; and (2) “pain with urination.” Appellant also claims that it was “clear” that he was “confused” about the process and that the time he took to understand the process “should . . . not be held against him.” Appellant’s arguments are unpersuasive because the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt.

In *Ferrier*, an impaired driver initially agreed to submit to chemical testing of her urine but was unable to provide an adequate sample. 792 N.W.2d at 100. In affirming the

driver's conviction of test refusal, this court engaged in a detailed discussion of what constitutes test refusal. *Id.* at 101-03. This court stated that a specific verbal refusal is not required, and a driver is not permitted to "verbally agree to testing and then frustrate the testing process without criminal consequence." *Id.* at 101. The court concluded that the rule is that "refusal to submit to chemical testing includes any indication of actual unwillingness to participate in the testing process, as determined from the driver's words and actions in light of the totality of the circumstances." *Id.* at 102.

Similar to the defendant in *Ferrier*, appellant gave some verbal indications that he would take a test, but his conduct spoke louder than his words. Appellant was argumentative, combative, and aggressive towards Deputy Lewis. And appellant never attempted to provide a sample. Although appellant claims that he had "physical concerns" related to his ability to provide a sample, the totality of the circumstances undermines his assertion that he was willing to provide a sample of either his blood or urine. Accordingly, there was sufficient evidence to sustain his conviction of test refusal.

Affirmed.