

*This opinion is nonprecedential except as provided by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
A22-0338**

State of Minnesota,
Respondent,

vs.

Dinanden Dewayne Doby,
Appellant.

**Filed March 6, 2023
Affirmed
Jesson, Judge**

Washington County District Court
File No. 82-CR-19-4468

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

Kevin Magnuson, Washington County Attorney, Nicholas A. Hydukovich, Assistant
County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Melissa A. Haley, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and
Frisch, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Early on Halloween morning, an officer observed appellant Dinanden Dewayne Doby's vehicle traveling 60 miles per hour in a 40-mile-per-hour zone and pulled it over. After failing a field sobriety test, Doby was transported to the police station, where he did

not submit to a chemical test. After a bench trial, the district court convicted Doby of second-degree refusal to submit to a chemical test. Doby appeals, arguing that the conviction should be reversed for insufficient evidence. Because the record does not give rise to a rational hypothesis that Doby's actions were anything other than an attempt to frustrate the testing process, the evidence was sufficient to convict him.

FACTS

Respondent State of Minnesota charged Doby with second-degree operating a motor vehicle under the influence of alcohol and second-degree refusal to submit to a chemical test.¹ The following is a summary of facts from the court trial.

After observing Doby's vehicle traveling 60 miles per hour in a 40-mile-per-hour zone early on Halloween morning in 2019, an officer followed the vehicle and observed it swerving in its lane, veering "from the center to the right shoulder almost striking the curb two different times and then almost coming back and crossing the center line." The officer initiated a traffic stop.²

The officer detected the odor of an alcoholic beverage coming from the vehicle, noticed that Doby's eyes were bloodshot and watery, and perceived that Doby's reactions were delayed. Doby denied that he had drank any alcohol before driving but agreed to perform a horizontal gaze nystagmus test, a field sobriety test. Because Doby exhibited all six signs of impairment in the nystagmus test, the officer asked him to conduct a

¹ These offenses violate Minnesota Statutes, section 169A.25, subdivisions 1(a) and (b) (2018), respectively.

² Doby admitted at trial that the officer had a legitimate reason to stop his vehicle.

preliminary breath test. The preliminary breath test indicated that Doby's alcohol concentration was 0.144, above the legal limit to drive. And the officer testified that Doby provided a "fairly weak sample," which likely underestimated his alcohol concentration.

The officer placed Doby under arrest and transported him to the Washington County Jail. Doby testified that, at this point, he was frustrated because the officer had told Doby he would not tow his car, yet the officer had his car towed. Further, Doby needed to use the restroom and the officer would not stop to let him do so. Doby also testified that, as the officer took Doby out of the police car and into the station, "I was talking to him, you know, telling him that I would do what he wanted me to do while we were here. You know, I told him that I would blow while we're at the station as we were going in the door." But this interaction was not captured by the officer's body-worn camera or police station surveillance footage.

The officer then read Doby the breath-test advisory form. Doby stated that he did not understand and needed an interpreter. But at trial, Doby testified that he grew up in St. Paul and spoke English as his native language. He explained that when he asked for an interpreter, he "felt like [he] needed a mediator" to help him understand what was happening. The breath-test advisory began at 1:36 a.m. and finished at 1:41 a.m., when the officer decided to treat Doby's actions as a refusal to test. The officer testified that Doby never said he would take the test, while Doby testified that he never refused to cooperate with the test.

The district court found Doby guilty of second-degree test refusal and sentenced him to 365 days in jail, with all but 30 days stayed.

Doby appeals.

DECISION

Doby argues that the circumstances proved by the state do not support a finding of “actual unwillingness” to submit to chemical testing, as required for criminal test refusal. *See State v. Ferrier*, 792 N.W.2d 98, 102 (Minn. App. 2010) (stating 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”) (emphasis added), *rev. denied* (Minn. March 15, 2011). Accordingly, Doby challenges the sufficiency of the evidence supporting his conviction.

When evaluating the sufficiency of the evidence, we “carefully examine 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 [they were] 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 factfinder could have reasonably found the defendant guilty, the verdict will not be overturned. *Waiters*, 929 N.W.2d at 900.

Where the state relies on circumstantial evidence to prove an element of the offense, as it did here, this court must apply the circumstantial-evidence standard of review, which involves heightened scrutiny. *State v. Harris*, 895 N.W.2d 592, 601-03 (Minn. 2017)

(applying circumstantial-evidence standard).³ Under the circumstantial-evidence standard of review, we first determine the circumstances proved, disregarding evidence inconsistent with the verdict. *Id.* at 601. 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).

The implied-consent statute provides that a driver may be obligated to submit to a chemical test of their blood, breath, or urine when an officer has probable cause to believe the driver has been operating a vehicle while intoxicated and the driver has been lawfully placed under arrest for driving while intoxicated. Minn. Stat. § 169A.51, subd. 1(a), (b)(1) (2018). It is a crime to refuse to submit to this chemical test. Minn. Stat. § 169A.20, subd. 2 (2018). When the officer requests that the driver perform the test, the driver must be informed of specific information set out in the implied-consent statute. Minn. Stat. § 169A.51, subd. 2 (2018). The statute does not state that verbal refusal is required. Minn. Stat. § 169A.20, subd. 2(1). Rather, circumstantial evidence, such as the driver’s words and actions in light of the totality of the circumstances, can establish refusal without a direct statement of unwillingness. *Ferrier*, 792 N.W.2d at 102. An individual’s actions that completely frustrate the implied-consent procedure constitute test refusal. *State v. Collins*, 655 N.W.2d 652, 658 (Minn. App. 2003).

³ Here, the district court relied on Doby’s statements and conduct in finding him guilty of test refusal, which required the court to draw inferences from Doby’s conduct about his willingness to submit to a chemical test.

Here, the district court found that the state proved that Doby constantly interrupted the officer during the reading of the implied-consent advisory, asked for an interpreter three times but had no need for an interpreter, and refused to respond three times when the officer asked if Doby wanted an attorney. Further, the district court found that when the officer asked Doby if he would take a breath test, Doby indicated that he needed an interpreter and that he did not understand, but never said yes or no. Doby argues that these circumstances support the alternative rational hypothesis that he did not refuse the test because he was not given enough time to consider his options and the officer did not sufficiently explain the test requirement. We disagree.

Doby's actions were inconsistent with any rational hypothesis other than that he intended to frustrate the implied-consent procedure. There is no evidence in the record other than Doby's testimony that he ever affirmatively indicated a willingness to take the test. The officer read the required advisory to Doby and gave him time to decide before treating Doby's behavior as a refusal, and the body-camera footage does not show Doby asking for additional time. These actions demonstrate nothing other than an actual unwillingness to submit to chemical testing.

Still, Doby argues that the officer did not give him enough time to process the implied-consent advisory and make an informed decision, and that he was not refusing. Rather, he asserts that he was asking for more time to make his decision. But the statute includes no minimum time period for giving the advisory; it only includes the information that an officer must convey to a person at the time of the breath test. Minn. Stat. § 169A.51, subd. 2. And an "officer is not required to wait for the driver to decide at his convenience

whether or not he will submit to testing.” *Gabrick v. Comm’r of Pub. Safety*, 393 N.W.2d 23, 25 (Minn. App. 1986) (stating that a reasonably prompt decision whether the driver will take the test aligns with the purpose of the statute to protect the public from the hazards of intoxicated drivers). Furthermore, the officer asked Doby three times if he would submit to a test, and we have held that refusing to reply after three implied-consent advisories frustrates the testing process. *Busch v. Comm’r of Pub. Safety*, 614 N.W.2d 256, 257, 260 (Minn. App. 2000).

Doby further contends that the officer did not make sufficient attempts to explain the obligation to test once Doby told the officer that he did not understand. But Doby was requesting an interpreter when he admitted that what he really needed was someone to explain things to him, not translate into another language. Yet he did not request an attorney, who could have assisted him.

Finally, Doby posits that because his conduct was not persistent, extreme, offensive, and abusive from beginning to end, his conduct did not frustrate the testing process. But we have held that a simple refusal to answer the question “will you take the breath test” after it is asked once is enough to constitute a refusal to test. *Gabrick*, 393 N.W.2d at 25. Doby’s attempt to move the bar so that his conduct clears it is unavailing.

Because the record does not indicate that Doby’s actions were anything but an attempt to frustrate the testing process, the evidence was sufficient to convict him.

Affirmed.