

*This opinion is nonprecedential except as provided by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
A23-0175**

State of Minnesota,
Respondent,

vs.

Bonita Hoglund,
Appellant.

**Filed February 5, 2024
Affirmed
Bratvold, Judge**

Kandiyohi County District Court
File No. 34-CR-21-981

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

Shane D. Baker, Kandiyohi County Attorney, Willmar, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Peter H. Dahlquist, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Ross, Judge; and Schmidt,
Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant challenges her judgment of conviction for refusal to submit to chemical testing under Minn. Stat. § 169A.20, subd. 2(2) (2020). Appellant argues that the evidence is insufficient to sustain her conviction because she never verbally refused when the deputy

served her with a search warrant for her blood or urine. We conclude that the circumstantial evidence is sufficient to sustain appellant’s conviction for test refusal. Thus, we affirm.

FACTS

Respondent State of Minnesota charged appellant Bonita Hoglund with refusal to submit to chemical testing under Minn. Stat. § 169A.20, subd. 2(2) (count one), and fourth-degree driving while impaired (DWI) under Minn. Stat. § 169A.20, subd. 1(2) (2020) (count two).¹ The following summarizes the state’s evidence as received at Hoglund’s jury trial, along with the relevant procedural history.

At about 3:10 p.m. on October 1, 2021, Hoglund drove a black car south on Highway 9 through New London. At about the same time, a Minnesota Department of Natural Resources (DNR) conservation officer, who was a licensed peace officer, was patrolling southbound on Highway 9 in a marked vehicle. The conservation officer saw Hoglund’s car “cross the center line, . . . make some corrective action in the middle of the lane, [and] cross over the fog line.” The conservation officer also saw students leaving the high school and watched Hoglund drive through a crosswalk near the school even though a “juvenile was waiting to cross.” At that point, the conservation officer started to follow Hoglund. He saw her car “again go over the center and fog line[s] and make short corrective movements [within] the lane.”

¹ The state later amended the complaint to add a third charge, operation of a motor vehicle under the influence of an intoxicating substance under Minn. Stat. § 169A.20, subd. 1(3) (2020), but dismissed this charge during trial.

The conservation officer initiated a traffic stop at a gas station, later testifying that he believed Hoglund “might be impaired.” The conservation officer questioned Hoglund, who complained of arm or shoulder pain. As they talked, the conservation officer observed that Hoglund “was kind of leaning forward, [was] lethargic when she was talking, [had] glossy, watery eyes,” had partially closed eyelids, slurred her speech, and swayed. In response to questions, Hoglund denied consuming any alcohol.

The conservation officer requested an ambulance for Hoglund to assess her complaints of pain. Hoglund complied with field sobriety testing, and the results showed impairment. The conservation officer then administered a preliminary breath test (PBT), which indicated that Hoglund had an alcohol concentration of 0.000. The conservation officer suspected Hoglund might be impaired by a controlled substance and arrested her for driving under the influence.

While others transported Hoglund to the hospital, the conservation officer applied for a search warrant to obtain a blood or urine sample from Hoglund. The warrant application was received as a trial exhibit without objection and summarized the conservation officer’s observations of Hoglund, as discussed above, along with the PBT and field-sobriety-test results. A district court judge found that probable cause existed and issued the search warrant.

The conservation officer brought the search warrant to the hospital and spoke with Hoglund. He was not wearing a body-worn camera at the time but used an audio recording device during his conversation with Hoglund. The audio recording and a transcript of the audio recording were received as trial exhibits without objection. The conservation officer

told Hoglund that he “had a search warrant for blood or urine” and that it is a crime to refuse to submit to a search warrant for chemical testing, and he presented her with the search warrant. Hoglund then informed him that she had taken Klonopin, a controlled substance, that day.

The conservation officer asked Hoglund for a blood or urine sample. Hoglund responded by repeatedly asking about probable cause. The following exchange typifies Hoglund’s responses to the officer’s request for testing:

OFFICER: This is a search warrant issued by the judge.

HOGLUND: I know it is. I know but . . . there should be a probable cause. There is none.

OFFICER: It states that there was probable cause . . . this isn’t a place to hold court. You’ll have that opportunity later . . . but right now the warrant is for your blood.

In response to the officer’s other requests for Hoglund to comply with the search warrant, she either questioned probable cause or stated that there was no probable cause—at least ten times. The conversation continued:

OFFICER: So are you refusing? Are you refusing?

HOGLUND: I’m not refusing

OFFICER: Yu-

HOGLUND: . . . nothin’

OFFICER: So then you (unintelligible)

HOGLUND: No, I’m not. No, I’m not. No, I’m not. I am not refusing anything.

OFFICER: Well then why

HOGLUND: I am saying

OFFICER: . . . [C]an I not get your blood?

HOGLUND: . . . [W]hat is the probable cause?

. . . .

OFFICER: . . . [T]his is a warrant issued by the judge so . . . you need to either give blood or you need to give urine . . . otherwise it’s . . . a refusal once again.

. . . .

OFFICER: . . . Bonita Mary Hoglund . . . is refusing to

HOGLUND: I'm not refusing.

OFFICER: This is your opportunity.

HOGLUND: Oh no.

OFFICER: We have waited—we've

HOGLUND: I'm not refusing, I want to know the probable cause.

. . . .

OFFICER: The probable cause is that while following you, you were going over the lines[,] . . . you went through a crosswalk[,] . . . there was a kid standing by the crosswalk waiting to cross[,] . . . you went through the crosswalk[,] . . . you nearly missed a turn and almost went into the ditch as you went into the Country Stop.

During the trial, the conservation officer testified that he asked Hoglund for a blood or urine sample “over 25 times” throughout their approximately one-hour-and-fifteen-minute interaction at the hospital. He described Hoglund’s demeanor as “not aggressive but . . . noncompliant.” The conservation officer agreed that Hoglund never specifically said, “No,” when asked to provide a blood or urine sample. He also testified that Hoglund never agreed to provide, nor did she actually provide, a blood or urine sample.

At the jury trial on November 3, 2022, the state offered testimony from two witnesses, the conservation officer and a second officer who observed the field sobriety tests. Hoglund did not testify or offer evidence. The jury found Hoglund guilty of both counts. The district court convicted Hoglund of count one, test refusal, and imposed a sentence of 365 days in jail, staying 335 days. No conviction was entered for count two, DWI, which the district court determined to be an included offense.

Hoglund appeals.

DECISION

On appeal, Hoglund challenges her test-refusal conviction, arguing that the evidence is insufficient to sustain the conviction as a matter of law. Hoglund does not challenge the validity of the search warrant.

Due process requires that the state prove beyond a reasonable doubt every fact necessary to the crime charged. *State v. Hage*, 595 N.W.2d 200, 204 (Minn. 1999). Under Minnesota law, “[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 under sections 171.177 and 626.04 to 626.18.” Minn. Stat. § 169A.20, subd. 2(2). “Refusal to reply to a request to take . . . [a] test may constitute a refusal to submit to testing,” and “[a] driver who fails to respond to an officer has refused to take the test where there is no indication the driver is incapable of refusal.” *State v. Hagen*, 529 N.W.2d 712, 714 (Minn. App. 1995).

When addressing a challenge to the sufficiency of the evidence supporting a conviction, an appellate court’s review “is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). An appellate court will not reverse a conviction for insufficient evidence “if the jury, acting with due regard for the presumption of innocence” and the need for proof beyond a reasonable doubt, “could reasonably conclude that [the] defendant was proven guilty” of the offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

A. Standard of Review

The parties disagree about which standard of review applies to assess the sufficiency of the evidence. Our analysis varies depending on whether the element challenged on appeal is supported by direct or circumstantial evidence. *State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010) (“A conviction based on circumstantial evidence receives stricter scrutiny than a conviction based on direct evidence.”). “[D]irect evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Id.* (quotation omitted). “[C]ircumstantial evidence always requires an inferential step to prove a fact that is not required with direct evidence.” *Id.*

Hoglund argues that the state offered “no direct evidence that Hoglund was unwilling to submit to chemical testing,” and therefore, a circumstantial-evidence standard of review applies. In support of her argument that no direct evidence supports this element, she points out that the conservation officer agreed that Hoglund “didn’t specifically say no she won’t give” a blood or urine sample.

The state argues that the record includes both direct and circumstantial evidence of Hoglund’s unwillingness to submit to chemical testing. The state contends that the direct evidence includes that Hoglund “indicated her desire to end the testing process at the hospital” and “demanded to be taken to jail.” The state argues that “[o]ne cannot take a test

at the hospital if one is not at the hospital,” which directly proves Hoglund’s “actual unwillingness.”

“Our previous decisions involving the criminal test-refusal statute have consistently recognized the legitimacy of circumstantial evidence in establishing a defendant’s intent.” *State v. Ferrier*, 792 N.W.2d 98, 101-02 (Minn. App. 2010) *rev. denied* (Minn. Mar. 15, 2011). In a context other than test refusal, the supreme court has noted that direct evidence of intent is rarely available, and therefore, intent generally must be proved “by drawing inferences from the defendant’s words and actions in light of the totality of the circumstances.” *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). We have concluded that a jury must determine the defendant’s intent to refuse when it evaluates, for example, whether a driver is physically unable to test or “intends to frustrate the testing process.” *Ferrier*, 792 N.W.2d at 101.²

While the record includes direct evidence of Hoglund’s conduct—for example, that she never submitted a blood or urine sample despite being served with a search warrant—there is also circumstantial evidence of her intent—for example, her repeated arguments that probable cause was missing in response to the officer’s request for a blood or urine sample. Because the state offered circumstantial evidence from which it asked the jury to

²Also, we note that this court, in a nonprecedential opinion, has applied a circumstantial-evidence standard of review to assess inferences from a defendant’s conduct to determine whether they refused testing. *State v. Hunter*, No. A21-0562, 2022 WL 274757, at *4 (Minn. App. Jan. 31, 2022), *rev. denied* (Minn. Apr. 19, 2022). We find *Hunter* persuasive because it considered similar facts to evaluate the sufficiency of the evidence for a test-refusal conviction. “[N]onprecedential opinions may be cited as persuasive authority.” Minn. R. Civ. App. P. 136.01.

determine whether Hoglund refused to comply with the search warrant, we conclude that the circumstantial-evidence standard of review is appropriate here.

Appellate courts apply a two-step analysis when reviewing a conviction based on circumstantial evidence. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011). The first step identifies the circumstances proved by deferring to the fact-finder’s “acceptance of the proof of these circumstances and rejection of evidence” that conflicted with those circumstances. *State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013) (quotations omitted). The second step “examine[s] independently the reasonableness of all inferences that might be drawn from the circumstances proved” to determine whether they are “consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* at 599 (quotations omitted).

B. Circumstances Proved

First, we appreciate that Hoglund’s brief to this court acknowledges the circumstances proved in a light favorable to the state. Specifically, Hoglund’s brief states that the circumstances proved include that the conservation officer informed Hoglund of the search warrant for her blood or urine; Hoglund argued with the officer and asked what was the probable cause for the search warrant; Hoglund was given “twenty-five opportunities” to submit a blood or urine sample; Hoglund was with the conservation officer for over an hour; and Hoglund never agreed to submit a sample of her blood or urine, nor did she submit a sample of either.

Second, we include Hoglund’s list of circumstances proved along with additional circumstances related to her test refusal as proved by the state’s evidence: (1) when

Hoglund was at the hospital, the conservation officer served her with the search warrant and asked her to provide a sample of her blood or urine; (2) the conservation officer informed Hoglund that refusing to provide a sample was a crime; (3) in response to the conservation officer's request for a blood or urine sample, Hoglund repeatedly asked about probable cause and stated that there was no probable cause; (4) the conservation officer informed Hoglund about his observations of her driving conduct and impairment and explained the probable cause supporting the search warrant; (5) the conservation officer asked Hoglund to provide a blood or urine sample approximately 25 times over more than one hour; and (6) Hoglund never provided the conservation officer with a blood or urine sample.

C. Consistency with Guilt

Hoglund implies, but does not directly argue, that the circumstances proved are inconsistent with the conclusion that she refused to submit to chemical testing. Hoglund contends that “[i]t is insufficient to prove that Hoglund did not submit a sample of her blood or urine.” As indicated above, the state's case proved more than Hoglund's failure to provide a blood or urine sample.

We review the circumstances proved in their totality. “[A] 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.” *Ferrier*, 792 N.W.2d at 101-02. A verbal refusal is not required. *Id.* “If the conduct of any driver does frustrate the process, 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).

We conclude that the circumstances proved are consistent with Hoglund's conviction for three reasons. First, "[a] driver who fails to respond to an officer has refused to take the test where there is no indication the driver is incapable of refusal." *Hagen*, 529 N.W.2d at 714. Nothing in the record suggests that Hoglund was incapable of refusal, nor did she make any claim that she was incapable, either during the testing process or during district court proceedings. Yet, Hoglund failed to respond to the conservation officer's repeated requests to provide a blood or urine sample as required by a search warrant.

Second, while "[a]ctual unwillingness to submit to testing must be proved," we have observed that "[d]espite this evident meaning of the statute, the language does not suggest . . . that circumstantial evidence could not establish refusal without a direct statement of unwillingness." *Ferrier*, 792 N.W.2d at 101-02. The statute "does not state that verbal refusal of testing is required. . . . It is discernible from the statutory language that one may indicate unwillingness in nonverbal ways." *Id.* at 101 (citation and quotation marks omitted). Thus, the state need not prove that Hoglund stated she was refusing to provide a blood and/or urine sample. Rather, the state was required to prove actual unwillingness.

Third, *Ferrier* supports our conclusion that the circumstances proved by the state in Hoglund's case are consistent with her test-refusal conviction. *Ferrier* never said, "No," or "I refuse," and this court affirmed her test-refusal conviction. *Id.* at 102. In summarizing the circumstances proved, we noted that (1) the law-enforcement officer advised *Ferrier* that refusal to submit to testing is a crime and asked her to provide a blood or urine sample;

(2) Ferrier elected to provide a urine sample, but then did not provide a sample even after being given “between 6 and 15 glasses of water”; and (3) Ferrier did not disclose any physical inability to urinate. *Id.* We concluded that Ferrier’s failure to produce a urine sample was sufficient evidence of her refusal to submit to testing. *Id.*

Similar to Ferrier, Hoglund never verbally refused to take a test or provide a sample. Hoglund failed to provide a blood or urine sample in response to a valid search warrant and repeated requests from the conservation officer. Even though Hoglund was with the officer for over an hour, she responded to his requests for a sample by arguing about probable cause. Thus, we conclude that the circumstantial evidence is consistent with the conclusion that Hoglund refused to submit to testing.

D. Inconsistency with Reasonable Alternative Hypothesis

Hoglund argues that the evidence “fails to rule out the reasonable hypothesis other than guilt, specifically, that [she] simply wanted to see the search warrant affidavit prior to submitting to testing, and had [the conservation] [o]fficer . . . showed her that, she would have provided a sample of her blood or urine.”

Hoglund’s request to see the search-warrant application, including the conservation officer’s affidavit, does not convince us of her alternative hypothesis for two reasons. First, Hoglund assumes that law-enforcement officers must consider a driver’s conditions, requests, or counteroffers when administering a chemical test. Hoglund has identified no legal support for her assertion that she can condition her compliance with chemical testing

on her demand to be shown the search-warrant application.³ We conclude that Hoglund's request to see the search-warrant affidavit, when viewed in a light favorable to the verdict, is circumstantial evidence of refusal because refusal occurs when a driver is actually unwilling to submit to the chemical-testing process. *Ferrier*, 792 N.W.2d at 101-02 (concluding refusal occurs when there is "any indication of actual unwillingness to participate in the testing process"); *Collins*, 655 N.W.2d at 658 (concluding that refusal occurs when a driver's actions frustrate the testing process).

Second, Hoglund's alternative hypothesis is not reasonable because it is inconsistent with the circumstances proved. The conservation officer asked Hoglund to provide a blood or urine sample approximately 25 times over more than one hour. Hoglund repeatedly asked the conservation officer about probable cause and stated that there was no probable cause. The conservation officer informed Hoglund about his observations of her driving conduct and impairment and explained the probable cause supporting the search warrant. In fact, from our review of the transcript of their conversation, the conservation officer

³ Indeed, persuasive caselaw suggests otherwise. In a nonprecedential opinion, *State v. Hess*, we discussed that "while law enforcement officers are obligated to provide drivers with 'a reasonable opportunity to obtain legal advice before deciding whether to submit to [warrantless] chemical testing,' a driver 'has no right to have counsel present during the test itself.'" No. A22-0781, 2023 WL 2962252, at *3 (Minn. App. Apr. 17, 2023) (first quoting *Friedman v. Comm'r of Pub. Safety*, 473 N.W.828, 835 (Minn. 1991); and then quoting *Sturgeon v. Comm'r of Pub. Safety*, 350 N.W.2d 487, 489 (Minn. App. 1984)), *rev. denied* (Minn. June 28, 2023). We noted an absence of any legal authority requiring officers to satisfy conditions that a driver may place on their willingness to submit to a chemical test and discerned "no basis in the applicable statutes to support the proposition that a driver may negotiate with testing officers regarding the administration of the test or may otherwise insist that testing officers meet a driver's preconditions." *Id.* We concluded that "Hess's identified inference that he would have taken the chemical test only if a lawyer had been present, even if true, is not consistent with innocence." *Id.*

appears to have read or closely paraphrased his affidavit in support of the search warrant while speaking with Hoglund. It is therefore not a reasonable hypothesis that Hoglund would have complied had the conservation officer shown her the search-warrant application and affidavit.

We therefore conclude that the evidence is sufficient to sustain Hoglund's conviction for refusal to submit to chemical testing.

Affirmed.