

*This opinion is nonprecedential except as provided by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
A23-1437**

State of Minnesota,
Respondent,

vs.

Eric Anthony Klaysmat,
Appellant.

**Filed July 8, 2024
Affirmed
Smith, John, Judge***

St. Louis County District Court
File No. 69HI-CR-21-538

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

Kimberly J. Maki, St. Louis County Attorney, Jeffrey Vlatkovich, Assistant County Attorney, Hibbing, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrew J. Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Cochran, Judge; and Smith, John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the convictions of appellant, Eric Anthony Klaysmat, for fleeing a peace officer in a motor vehicle, test refusal, and carrying a BB gun in a public place because there was sufficient evidence to prove beyond a reasonable doubt that he committed the three offenses¹ and the district court did not err in imposing sentences for driving after cancellation and carrying a BB gun in a public place.

FACTS

On July 14, 2021, Klaysmat was arrested after he failed to pull his car over when a police deputy initiated a traffic stop. The state charged him with fleeing a peace officer in a motor vehicle, *see* Minn. Stat. § 609.487, subd. 3 (2020), second-degree test refusal, *see* Minn. Stat. § 169A.20, subd. 2(1) (2020), gross misdemeanor driving after cancellation, *see* Minn. Stat. § 171.24, subd. 5 (2020), and carrying a BB gun in a public place, *see* Minn. Stat. § 624.7181, subd. 2 (2020). A one-day jury trial was held.²

The state's first witness was the deputy who initiated the traffic stop and subsequently arrested Klaysmat for failing to stop. The deputy testified that on the day in question, Klaysmat drove past her in his mother's red Dodge Durango. She had encountered Klaysmat previously, so she was able to identify him as he drove past. She

¹ Klaysmat was also convicted of driving after cancellation, but he does not challenge that conviction on a sufficiency basis.

² For reasons not relevant to this appeal, Klaysmat did not attend his trial. The district court found "his absence . . . voluntary" and decided to "proceed in his absence." The court did, however, appoint Klaysmat stand-by counsel who was present and involved at trial.

also was aware that the car he was driving belonged to his mother. The deputy explained that she immediately pulled her car onto the road behind Klaymat because she knew he had active warrants out for his arrest. She was driving a fully marked squad car and once she was behind Klaymat she activated her car's emergency lights and sirens, indicating to Klaymat that he should pull over.

The deputy then testified that Klaymat did not pull over, slow down, or stop after she activated her lights and siren. Instead, he merely kept driving, maintaining a speed of around 30 miles per hour, which was the speed limit. According to the deputy, after she initiated the stop, Klaymat made a right turn, drove one block, blew through a stop sign and "failed to yield to oncoming traffic" at the next intersection, turned right again, drove three blocks, and then turned left and finally pulled over in front of his mother's house. The deputy explained that "[Klaymat] had multiple areas that were safe for him to stop during the route of the travel that he took on his way back home after my emergency lights and sirens were activated."

Given the circumstances, the deputy testified that once Klaymat was parked at his mother's house she initiated a "felony style traffic stop." She positioned her squad car at a slight angle behind Klaymat's car so she could "exit [the] driver's side door[] and take cover behind the doors and the frame of the vehicle while [she] beg[a]n [giving] verbal commands." The deputy explained that she "advised Mr. Klaymat to turn the vehicle off. Set the keys on the dash. To put his hands out the window." Klaymat complied with these commands and was arrested "without any further incident."

While the deputy was transporting Klaysmat to jail, she grew suspicious that he was under the influence of some substance. She testified that during the 20-minute interaction, Klaysmat had “slurred deliberate speech,” also known as “thick tongue or thick speech,” and was “very argumentative” and belligerent. The deputy—who was a trained “drug recognition evaluator”—explained to the jury that these symptoms were consistent with those seen in people who have consumed alcohol and as a result have an impaired central nervous system. She then expanded on her training, stating that only 300 officers out of over 10,000 in Minnesota were drug recognition evaluators and that as one, she could accurately determine what controlled substance someone was under the influence of about 80% of the time.

Finally, the deputy testified that she did not conduct any field sobriety tests because Klaysmat was already in custody and in the backseat of her squad car. She instead “explained to [Klaysmat] [her] concerns of his impairment and . . . offered him a preliminary breath test” or PBT, which he refused. Based on his behavior, refusal of the PBT, and her training, the deputy believed “Klaysmat was under the influence of alcohol and unsafe to be operating a motor vehicle,” and she “began the process” of reading Klaysmat the implied consent advisory. A recording of the deputy reading the advisory was played for the jury. On the recording, the deputy can be heard reading the advisory twice. Klaysmat can then be heard slurring his words, talking slowly, refusing to answer any of the deputy’s questions, repeatedly stating that she did not have authority over him, and claiming that he could not take the test because it went against his religion. After about 19 minutes of this behavior from Klaysmat, the deputy can be heard warning Klaysmat that

his behavior indicated to her that he was refusing to take a chemical or breath test. Klaysmat continued to refuse the test for ten additional minutes. After the recording was finished, the deputy explained to the jury that Klaysmat “essentially refused to answer the questions or make a determination as to whether he would [or would not] give a breath test,” and that she interpreted this to be “refusal [to test] by conduct.”

The state then called the police officer who was present when Klaysmat was arrested to testify. The officer testified that he heard on the radio that the deputy was attempting to pull over a red Dodge Durango, so he followed along in case she needed assistance. After Klaysmat was arrested, the officer searched Klaysmat’s car and found a “rifle styled BB gun” in the front passenger seat. According to the officer, the gun was “made up [of] primarily plastic” and rattled when it was picked up, which indicated that there were “BBs inside of it.” The officer also found a “package of BBs for the BB gun” on the driver’s seat. Finally, while the officer testified that “BBs are a certain size,” he admitted that he did not measure the diameter of the BBs seized from the car.

The jury found Klaysmat guilty of all four charged counts and he now appeals.

DECISION

I. The evidence presented by the state was sufficient to uphold Klaysmat’s convictions.

Klaysmat argues that the state failed to present sufficient evidence to prove beyond a reasonable doubt that he was guilty of fleeing a peace officer in a motor vehicle, that he refused to test, and was carrying a BB gun in a public place.

In a criminal case, due process requires that the state present sufficient evidence to prove every element of the charged crime beyond a reasonable doubt. *State v. Culver*, 941 N.W.2d 134, 142 (Minn. 2020). “When evaluating the sufficiency of the evidence, appellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). Evidence is viewed “in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict.” *Id.* The level of scrutiny reviewing courts apply depends on whether the elements of an offense are supported by direct or circumstantial evidence. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013).

“[D]irect evidence is evidence that is based on personal knowledge or observation.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). When an element is supported by direct evidence, our sufficiency review is limited to “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did.” *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (quotation omitted).

Circumstantial evidence is “evidence from which the fact[-]finder can infer whether the facts in dispute existed or did not exist.” *Harris*, 895 N.W.2d at 599. This type of evidence “always requires an inferential step to prove a fact that is not required with direct evidence.” *Id.* When reviewing the sufficiency of circumstantial evidence, appellate courts

apply a two-step process. *Silvernail*, 831 N.W.2d at 598 (stating that the level of scrutiny a reviewing court applies depends on whether the elements of an offense are supported by direct or circumstantial evidence). First, an appellate court identifies the circumstances proved. *Id.* at 598-99. “In identifying the circumstances proved, we defer to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *Id.* Second, an appellate court “determine[s] whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* at 599. During this step, a reviewing court does not defer to the fact-finder’s choice between reasonable inferences. *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010).

A. The state presented sufficient evidence to prove beyond a reasonable doubt that Klaysmat fled from the police.

Klaysmat first contends that the state presented insufficient evidence to prove that he was fleeing from the deputy after she initiated the traffic stop. A defendant is guilty of fleeing a peace officer in a motor vehicle if they “flee[] or attempt[] to flee a peace officer who is acting in the lawful discharge of an official duty, and the perpetrator knows or should reasonably know the same to be a peace officer.” Minn. Stat. § 609.487, subd. 3. A person “flees” if they “increase speed, extinguish motor vehicle headlights or taillights, refuse to stop the vehicle, or use other means with intent to attempt to elude a peace officer following a signal given by any peace officer to the driver of a motor vehicle.” *Id.*, subd. 1 (2020). “With intent to” means that an “actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result.” Minn. Stat.

§ 609.02, subd. 9(4) (2020). And while “elude” is not defined by statute, dictionaries define it as “to avoid or escape,” *see* Bryan A. Garner, *Garner’s Dictionary of Legal Usage* 47 (3d ed. 2011) (defining “elude”), or “to evade or escape from,” *see* *The American Heritage Dictionary of the English Language* 581 (5th ed. 2018) (defining “elude”). *See also* *State v. Prigge*, 907 N.W.2d 635, 638 (Minn. 2018) (“If a statute does not define a word or phrase, we give that word or phrase its plain and ordinary meaning. To determine plain meaning, we look to the dictionary definitions of th[e] words and apply them in the context of the statute.” (quotations omitted)).

Klaysmat argues that the evidence does not support the conclusion that he “engaged in driving tactics *intended* to help him escape from the police.” A defendant’s intent or state of mind is usually proven through circumstantial evidence, so we apply the two-step heightened standard of review. *See State v. McAllister*, 862 N.W.2d 49, 53 (Minn. 2015) (“It is rare for the State to establish a defendant’s state of mind through direct evidence.”).

The circumstances proved are as follows: on the day of the incident, the deputy was driving a fully marked police squad car that had working emergency lights and a working siren. The deputy saw Klaysmat drive past her and recognized him based on past encounters. She also recognized the car he was driving as one that belonged to his mother. The deputy knew that Klaysmat had an active warrant, so she pulled directly behind him and initiated a traffic stop by activating her lights and siren. Klaysmat did not immediately pull his car over after the deputy initiated the stop, despite it being safe to do so in the area where he was driving. Klaysmat took at least two turns and drove approximately five blocks before he stopped and parked in front of his mother’s house. He drove the speed

limit and did not increase or decrease his speed. After the deputy initiated the stop, Klaysmat drove through a stop sign without slowing down or stopping. Once he was parked, Klaysmat was arrested without incident.

When viewed in the light most favorable to the verdict, *see Griffin*, 887 N.W.2d at 263, the only reasonable inferences that can be drawn from these circumstances are consistent with guilt. The deputy was in a marked squad car and activated her lights and siren while she was driving directly behind Klaysmat. From this, we can infer that Klaysmat knew he was being followed by a police officer and that a traffic stop had been initiated. Then, despite having multiple safe places to pull over, Klaysmat kept driving. Given that Klaysmat must have been aware a police officer was trying to stop him, his failure to stop gives way to the inference that he intentionally chose not to pull over. And finally, committing a moving violation by failing to stop at a stop sign creates a reasonable inference that Klaysmat was attempting to flee and evade arrest by returning home. *See* Minn. Stat. § 609.487, subd. 1 (stating that a person “flees” if they “increase speed, extinguish motor vehicle headlights or taillights, *refuse to stop the vehicle*, or *use other means . . .*” (emphasis added)).

Klaysmat argues that it is reasonable to infer he “was not attempting to escape the police, but rather was attempting to park his mother’s car at her house, presumably so she would have a car to drive after he was taken into custody.” Yet, this hypothesis is not inconsistent with guilt and therefore not persuasive. Even if we assume Klaysmat continued driving after the deputy initiated the stop because he wanted to drop the car off at his mother’s house, his behavior still meets the definition of “flee” because he intentionally

refused to stop for a peace officer. *See id.* And our caselaw does not support the proposition that a person is exempt from pulling over when an officer initiates a traffic stop simply because they want to park their car at home before being arrested. *See State v. Dahm*, 394 N.W.2d 589, 591 (Minn. App. 1986) (“Appellant testified that he knew the police wanted him to stop, but that he refused to do so because he wanted to get his car home. Based on this and the officers’ testimony that he increased his speed while being pursued, a jury could reasonably conclude that appellant was intending to ‘flee’ the officers within the meaning of the statute.”). Accordingly, because the reasonable inferences are only consistent with guilt, we conclude that the state presented sufficient evidence to prove beyond a reasonable doubt that Klaysmat fled from the police.

B. The state produced sufficient evidence to prove beyond a reasonable doubt that Klaysmat was guilty of test refusal.

Klaysmat also argues that the evidence offered at trial was insufficient to support his conviction for second-degree test refusal. “The implied consent law provides that any person who drives a motor vehicle consents to a chemical test to determine the presence of alcohol.” *Busch v. Comm’r of Pub. Safety*, 614 N.W.2d 256, 258 (Minn. App. 2000). Under Minnesota Statutes section 169A.20, subdivision 2(1), “[i]t is a crime for any person to refuse to submit to a chemical test . . . of the person’s breath under [Minnesota Statutes] section 169A.51 (chemical tests for intoxication), or 169A.52 (test refusal or failure; revocation of license).” “[S]ection 169A.20, subdivision 2, in turn, incorporates the requirement from section 169A.51 that an officer may request that a person submit to a chemical test [only] when the officer ‘has probable cause to believe the person was driving,

operating, or in physical control of a motor vehicle' while impaired.” *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011) (quoting Minn. Stat. § 169A.51, subd. 1(b) (2010)). “[R]efusal 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.” *State v. Ferrier*, 792 N.W.2d 98, 102 (Minn. App. 2010), *rev. denied* (Minn. Mar. 15, 2011). At issue here is Klaysmat’s refusal to submit to a breath test.

Test refusal can be established by direct or circumstantial evidence. *Id.* The evidence offered here—the deputy’s personal observations of Klaysmat—is direct evidence. *See Horst*, 880 N.W.2d at 40 (stating that a sufficiency review of direct evidence is limited to “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did”).

Here, the jury was told that to find Klaysmat guilty of test refusal, it had to find that the evidence proved the following seven elements beyond a reasonable doubt: (1) a peace officer had probable cause to believe that the defendant drove, operated, or was in physical control of a motor vehicle while they were under the influence of alcohol; (2) a peace officer placed the defendant under lawful arrest for driving while impaired, if an officer has reason to believe the defendant was in violation of the law and can explain why they believed that, the arrest is lawful; (3) a defendant was given the breath test advisory by the officer; (4) a peace officer requested that the defendant submit to a chemical test of the defendant’s breath; (5) the defendant refused to submit to the test; (6) the defendant has a

qualified prior driving incident within the ten years immediately prior to the current offense; and (7) the defendant's act took place on or about the date alleged by the state. *See* Minn. Stat. § 169A.51; *see also* 10A *Minnesota Practice*, CRIMJIG 25.09 (2020).

On appeal, Klaysmat contests only the evidence offered in support of the first and second elements. He contends that the evidence did not support that the deputy had probable cause to believe that he was operating a motor vehicle while under the influence of alcohol and that the state did not establish that he was under lawful arrest for driving while impaired before the implied consent advisory was given.

i. Probable cause that Klaysmat was under the influence

“Probable cause under section 169A.51, subdivision 1(b), exists whenever there are facts and circumstances known to the officer which would warrant a prudent man [to believe] that the individual was driving or was operating or was in physical control of a motor vehicle while impaired.” *Koppi*, 798 N.W.2d at 362 (quotation omitted). This is an objective inquiry. *Id.* at 363. But “because an officer’s training and experience is the lens through which the fact-finder must evaluate the reasonableness of an officer’s determination of probable cause, probable cause incorporates the individual characteristics and intuitions of the officer to some extent.” *Id.* at 362.

We conclude that the evidence was sufficient to prove beyond a reasonable doubt that the deputy had probable cause to believe Klaysmat was under the influence. She spoke with and observed Klaysmat for 20 minutes while she was driving him to jail. During this time, the deputy observed that Klaysmat’s speech was slow and slurred, and that his affect was argumentative and belligerent. She explained that her training as a drug recognition

evaluator taught her that these symptoms were consistent with alcohol use. *See id.* (stating that a determination of the existence of “probable cause incorporates the individual characteristics and intuitions of the officer to some extent”). And we are not persuaded by Klaysmat’s argument that the deputy’s observations about his speech patterns are not enough to create probable cause because “[a]n officer needs only one objective indication of intoxication to constitute probable cause to believe a person is under the influence.” *State v. Kier*, 678 N.W.2d 672, 678 (Minn. App. 2004) (quotation omitted).

Moreover, the deputy’s observations about Klaysmat’s speech came on the heels of her watching him flee from the police, run through a stop sign, and refuse to take a PBT. The totality of these circumstances is sufficient to prove beyond a reasonable doubt that probable cause existed as to whether Klaysmat was under the influence of alcohol. *Cf. State v. Mellett*, 642 N.W.2d 779, 788 (Minn. App. 2002) (affirming test-refusal conviction where the defendant committed one traffic violation—driving the wrong way down a one-way street—and then refused to perform field sobriety tests or a PBT).

ii. Lawful arrest for driving while impaired

We are also not persuaded by Klaysmat’s assertion that the evidence is insufficient to prove he was under lawful arrest for driving under the influence before the implied consent advisory was read to him. Factors that can indicate that a person is under arrest include being handcuffed, searched, placed in a squad car, and being told they are under arrest. *See State v. Olson*, 634 N.W.2d 224, 229 (Minn. App. 2001) (reasoning that an officer told the defendant “that he was ‘under arrest,’ handcuffed him, and began a pat-down search in anticipation of placing [defendant] in his squad car,” and that “a reasonable

person in [the defendant's] circumstances would have believed that he was formally under arrest"), *rev. denied* (Minn. Dec. 11, 2001); *State v. Moorman*, 505 N.W.2d 593, 599 (Minn. 1993) (concluding that a defendant was under arrest after an officer handcuffed him, "led him to the squad car and searched him").

Here, Klaysmat was already handcuffed and in custody for the other offenses he committed when the driving under the influence charge was communicated to him. On the recording played at trial, the deputy stated: "I believe you [meaning Klaysmat] have been driving, operating, or controlling a motor vehicle in violation of Minnesota's DUI laws *and you have been placed under arrest for this offense.*" (Emphasis added). Klaysmat immediately asked the deputy if she was "arresting [him] for a DUI," and she replied, "[a]long with your other charges, yes." About three minutes later, the deputy again told Klaysmat that he had been placed under arrest for driving under the influence. A reasonable person who was handcuffed in the back of a police car and told three times that they were under arrest for a DUI would understand that they were, in fact, under arrest for DUI. And as for Klaysmat's claim that the deputy placed him under arrest for a DUI after she read him the implied consent advisory, this argument is not supported by the record. Prior to telling Klaysmat he was under arrest for DUI, the only information the deputy communicated to him was her belief that he had driven under the influence. Only after placing him under arrest for a DUI did the deputy explain that refusing a chemical or breath test was a crime.

Therefore, because the evidence is sufficient to prove that the deputy had probable cause to believe Klaysmat was under the influence and that she placed him under lawful

arrest prior to reading the implied consent advisory, we affirm Klaymat's conviction for second-degree test refusal.

C. Klaymat's conviction of carrying a BB gun in a public place was supported by sufficient evidence.

Next, Klaymat contends that the evidence presented at trial does not support a finding that the gun found in the car was a BB gun. Because the evidence offered in support of this conviction—the officer's personal observations of the item found in the car—is direct evidence, *see Harris*, 895 N.W.2d at 599, our review is limited to “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did,” *Horst*, 880 N.W.2d at 40 (citation omitted).

Minnesota Statutes section 624.7181, subdivision 2 provides that “[w]hoever carries a BB gun, rifle, or shotgun on or about the person in a public place is guilty of a gross misdemeanor.” “BB gun” is defined as “a device that fires or ejects a shot measuring .18 of an inch or less in diameter.” Minn. Stat. § 624.7181, subd. 1(a) (2020). Klaymat argues that “the state made no effort to prove the diameter of the ammunition that could be fired from the device found in Klaymat's car,” which means “there was no information before the jury that would permit them to conclude that the device was a BB gun as defined” in section 624.7181, subdivision 1(a).

Klaymat is correct that no evidence showing the diameter of the BBs found in his car was presented at his trial, but this does not mean we are required to reverse his conviction. The jury heard testimony that a rifle style gun was found on the passenger seat,

that the gun was “primarily plastic,” that it rattled when it was picked up, which indicated to the officer that there were “BBs inside of it,” that a packet of BBs was found on the driver’s seat, and that BBs are all a certain size. It also saw pictures of the evidence that the officer found in Klaymat’s car. This evidence—particularly the officer’s testimony that BBs are all a “certain size”—is sufficient to allow the jury to reasonably infer that what was found in the car that day was in fact a BB gun.

II. The district court did not err by imposing sentences for both driving after cancellation and carrying a BB gun in a public place.

In the alternative, Klaymat argues that the district court erred by imposing a sentence for both his driving after cancellation and carrying a BB gun in public convictions because he claims these two offenses arose out of a single behavioral incident.

“[T]he law generally prohibits multiple sentences, even concurrent sentences, for two or more offenses that were committed as part of a single behavioral incident.” *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016) (quotation omitted). Under Minnesota Statutes section 609.035, subdivision 1 (2020), “if a person’s conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses.” This protects defendants who have been convicted of multiple offenses “against unfair exaggeration of the criminality of his conduct.” *State v. Johnson*, 653 N.W.2d 646, 651 (Minn. App. 2002). Offenses are presumed to be part of the same behavioral incident until the state provides evidence proving the acts were part of separate incidents. *Id.* at 652; *see also Bakken*, 883 N.W.2d at 270 (noting that the state has the burden to prove that two offenses were part of different behavioral incidents to justify

imposing sentences for both offenses). Whether multiple offenses occurred during a single behavioral incident “depends on the facts and circumstances of the case.” *State v. Jones*, 848 N.W.2d 528, 533 (Minn. 2014) (citing *State v. Hawkins*, 511 N.W.2d 9, 13 (Minn. 1994)). This issue presents a “mixed question of law and fact, so [appellate courts] review the district court’s findings of fact for clear error and its application of the law to those facts de novo.” *Bakken*, 883 N.W.2d at 270.

The Minnesota Supreme Court has articulated two different tests for determining whether multiple offenses are part of a single behavioral incident. *See State v. Johnson*, 141 N.W.2d 517, 525 (Minn. 1966); *State v. Bauer*, 776 N.W.2d 462, 478 (Minn. App. 2009), *aff’d*, 792 N.W.2d 825 (Minn. 2011). “The test to be applied depends on whether the offenses involved are intentional crimes.” *Bauer*, 776 N.W.2d at 478. “Where intent is not a factor,” like in Klaysmat’s case, “it is the singleness of the conduct or behavioral incident itself that must be given the most significance.” *Johnson*, 141 N.W.2d at 525. In this situation, courts will examine “whether the offenses (1) occurred at substantially the same time and place and (2) arose from ‘a continuing and uninterrupted course of conduct, manifesting an indivisible state of mind or coincident errors of judgment.’” *Bauer*, 776 N.W.2d at 478 (quoting *State v. Gibson*, 478 N.W.2d 496, 497 (Minn. 1991)).

Klaysmat’s case mirrors our previous decision in *State v. Butcher*, 563 N.W.2d 776 (Minn. App. 1997), *rev. denied* (Minn. Aug. 5, 1997). In *Butcher*, a defendant had gone hunting prior to being pulled over by the police. 563 N.W.2d at 778. Based on what was found during that interaction, the defendant was charged and convicted of driving after cancellation, taking big game out of season, and transporting an uncased firearm. *Id.* at

778-79. The district court imposed sentences for all three convictions despite the big game and the uncased firearm being found in the defendant's car after he was pulled over by police. *Id.* at 779. We concluded that the district court did not err by imposing three sentences because the three offenses were not part of a single behavioral incident. *Id.* at 784. We reasoned that each of the offenses “was committed and proven independently of the others” and that “[o]ne did not necessarily give rise to another.” *Id.* Thus, “the charged offenses . . . [did] not manifest an indivisible state of mind or coincident errors of judgment. All three, although committed during the same time frame, were independent of each other.” *Id.*

We acknowledge that Klaysmat did commit both offenses at the same time—while he was driving—and in the same place—his car while it was driving around Chisholm. But like in *Butcher*, the offenses of driving after cancellation and carrying a BB gun in public are not related to one other, do not involve the same type of criminal conduct, and do not involve the same “errors of judgement.” *See id.* They can be proven independently of each other. And the offense of driving after cancellation does not in any way give rise to the offense of carrying a BB gun in public. Simply put, “the charged offenses in [Klaysmat's] case do not manifest an indivisible state of mind.” *See id.*; *see also State v. Clement*, 277 N.W.2d 411, 412-13 (Minn. 1979) (concluding that a defendant's convictions for driving while impaired and unlawful possession of tear gas were not part of a single behavioral incident “because the motivations underlying the nonintentional traffic offense were

different from and unrelated to the motivations underlying the intentional possessory offense”). We therefore affirm the imposition of both sentences.

Affirmed.