

*This opinion is nonprecedential except as provided by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
A23-1686**

State of Minnesota,
Respondent,

vs.

Hassan Mohamed Abdi,
Appellant.

**Filed November 4, 2024
Affirmed
Bratvold, Judge**

Hennepin County District Court
File No. 27-CR-22-25965

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

Kristyn M. Anderson, Minneapolis City Attorney, Cody Goodchild, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Johnson, Judge; and Reilly, Judge.*

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

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this challenge to the final judgment of conviction for driving while impaired (DWI)—test refusal, appellant argues that the circumstantial evidence was insufficient to sustain his conviction. Because the circumstances proved are consistent with appellant’s guilt and inconsistent with any reasonable hypothesis other than appellant’s guilt, we affirm.

FACTS

Respondent State of Minnesota charged appellant Hassan Mohamed Abdi with DWI—test refusal under Minn. Stat. § 169A.20, subd. 2(1) (2022).¹ Abdi waived his right to a jury trial and agreed to a stipulated-evidence trial. *See* Minn. R. Crim. P. 26.01, subd. 3(a) (“The defendant and the prosecutor may agree that a determination of the defendant’s guilt . . . may be submitted to and tried by the court based entirely on stipulated facts, stipulated evidence, or both.”). The parties agreed to the admission of several exhibits into evidence. These admitted exhibits included, as relevant to the issue in this appeal, the police report, breath-test advisory, breath-test results, and video recordings from the responding officers’ body-worn cameras.

The following summarizes the district court’s factual findings after the bench trial.

¹ The state also charged Abdi with violating an order for protection under Minn. Stat. § 518B.01, subd. 14(b) (2022). The district court found Abdi guilty of that charge, and Abdi does not challenge that conviction on appeal.

At about 12:15 a.m. on December 30, 2022, a Metro Transit officer (the first officer) was in his squad car when he saw a silver Hyundai hatchback run a red light as both vehicles were driving north on Hiawatha Avenue in Minneapolis. The first officer initiated a traffic stop, and the hatchback “was slow to stop after the [squad car’s] emergency lights were activated.” The first officer approached the hatchback, saw a driver and a passenger, and “observed that the passenger was under the influence.” The first officer also saw “a bottle of alcohol on the passenger floorboard” and that “the driver of the vehicle had red watery eyes.”

The first officer asked for the driver’s license, but the driver did not provide it and instead gave his name, “Hassan Mohamed Abdi,” and his date of birth. After the first officer found that Abdi’s name was “not on file,” the officer “removed the driver from the vehicle, handcuffed him behind his back, and seated him in the rear of the squad car until he could locate his name.”

A second officer arrived and spoke with the passenger, who appeared “extremely intoxicated” and told the officer that “they had been drinking alcohol at home.” The first officer confirmed the driver’s identity as Abdi and also noted that “he could smell the odor of alcohol emanating from [Abdi’s] breath.”

The first officer directed Abdi to perform three standardized field sobriety tests. All three tests showed signs of impairment. The first officer “attempted to administer a preliminary breath test,” but Abdi refused. The first officer arrested Abdi and brought him to the detention center, where the officer “read him the Minnesota Breath Test Advisory” and gave Abdi an opportunity to call an attorney. Abdi agreed to take a breath test.

The first officer “instructed [Abdi] how to blow into the tube with a long steady breath.” Initially, Abdi “was not making any attempt to blow”; then, he “would continue to blow and stop quickly, providing a deficient sample.” Abdi “kept stating that he had diabetes and could not blow.” The first officer administered a second test, during which Abdi “did not provide a long steady sample.” After Abdi “provided two deficient samples,” the first officer ended the test.

Though Abdi agreed to a stipulated-evidence trial, he also asked to testify, which the district court allowed. Abdi testified that he “did submit to the tests” and “did not refuse.” He testified that he has diabetes and that he “was not feeling well” and his “blood level was 180” on the night he was arrested.

The district court entered an order on August 11, 2023, setting out 50 factual findings and concluding that Abdi was guilty of test refusal. The district court sentenced Abdi to 364 days in the Hennepin County Adult Corrections Facility, stayed for three years if he complied with several conditions, including 90 days of electronic home monitoring.

DECISION

Abdi argues that the state “failed to prove that [he] was actually unwilling to submit to a chemical test.” The state disagrees and urges that the circumstantial evidence in the record sufficiently supports Abdi’s conviction for test refusal.

“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.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted).

Appellate courts must view the evidence “in the light most favorable to the verdict” and must assume “that the fact-finder disbelieved any evidence that conflicted with the verdict.” *Id.*

Under Minn. Stat. § 169A.20, subd. 2(1), “[i]t is a crime for any person to refuse to submit to a chemical test . . . of the person’s breath under” Minn. Stat. § 169A.51 (2022), which governs chemical tests for intoxication. Generally, “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.” *State v. Ferrier*, 792 N.W.2d 98, 102 (Minn. App. 2010), *rev. denied* (Minn. Mar. 15, 2011). The state must prove that the refusal was intentional, given that “the statute does not criminalize inability to perform the steps necessary for testing.” *Id.* at 101. In some cases, it is “difficult to distinguish between a driver who intends to submit to testing but is physically unable to perform the steps necessary for testing and one who intends to frustrate the testing process.” *Id.*

The parties contend that the record includes only circumstantial evidence to support Abdi’s conviction for test refusal. Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist,” while direct evidence is “based on personal knowledge or observation and . . . if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotations omitted). Intent is generally proved by circumstantial evidence. *Ferrier*, 792 N.W.2d at 101 (“[I]ntent generally must be proved by drawing inferences from the

defendant's words and actions in light of the totality of the circumstances." (quotation omitted)).

The record includes some relevant direct evidence. A body-camera recording captured Abdi's statement agreeing to provide a breath sample and showed Abdi's conduct as he took two breath tests and provided insufficient breath samples. *See State v. Blevins*, 10 N.W.3d 29, 39-40 (Minn. 2024) (concluding that video evidence is direct evidence of what the video shows). The record also includes the DataMaster results showing that the two breath samples Abdi provided were deficient. The first test result included remarks that Abdi "was not blowing steady and long"; the second test result had a similar remark and added that Abdi "kept pushing the tube out of his mouth." Still, to determine Abdi's intent—specifically, his actual unwillingness to participate in the testing process—the district court relied on inferences from the evidence. As a result, we consider the sufficiency of the circumstantial evidence.

"Circumstantial evidence is entitled to the same weight as direct evidence; however, if a conviction is based on circumstantial evidence, a higher level of scrutiny is warranted." *Bernhardt v. State*, 684 N.W.2d 465, 477 (Minn. 2004). Accordingly, "[w]hen the direct evidence of guilt on a particular element is not alone sufficient to sustain the verdict," appellate courts apply the circumstantial-evidence standard of review. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). When a conviction depends on circumstantial evidence to prove an element of the offense, the "[c]ircumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the

defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002).

Appellate courts apply a two-step analysis to determine whether there is sufficient circumstantial evidence to affirm a conviction. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, the appellate court must “identify the circumstances proved” and, in doing so, “defer to the fact finder” and their decisions about “acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the state.” *State v. Palmer*, 803 N.W. 2d 727, 733 (Minn. 2011) (quotation omitted). Accordingly, the circumstances proved include “evidence presented at trial by resolving all questions of fact in favor of the [fact-finder’s] verdict.” *Harris*, 895 N.W.2d at 600.

Second, the appellate court must “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Silvernail*, 831 N.W.2d at 599 (quotations omitted). In doing so, the appellate court “examine[s] independently the reasonableness of all inferences that might be drawn from the circumstances proved including inferences consistent with rational hypotheses other than guilt” and “give[s] no deference to the fact finder’s choice between reasonable inferences.” *State v. Al-Naseer*, 788 N.W.2d 469, 473-74 (Minn. 2010) (quotations omitted).

A. The Circumstances Proved

Beginning with the first step, the state proved the following circumstances. After taking Abdi to the detention center, the first officer read Abdi the Minnesota Breath Test

Advisory. Abdi agreed to take a breath test. The first officer instructed Abdi to “blow into the tube with a long and steady breath.” Initially, Abdi did not attempt to blow into the tube; then, Abdi started to “blow and stop quickly.” Abdi’s first breath sample was deficient, and the test result indicated that Abdi did not blow “steady and long.” Abdi told the officer that “he had diabetes and could not blow.” As Abdi gave a second breath sample, he “did not provide a long steady sample,” and the test result stated that Abdi “kept pushing the tube out of his mouth.” After the second deficient breath sample, the first officer ended the breath test.

B. The circumstances proved are consistent with Abdi’s guilt.

For the second step, we consider whether the circumstances proved are consistent with Abdi’s guilt and inconsistent with other rational hypotheses. *Silvernail*, 831 N.W.2d at 599. Abdi’s brief to this court candidly acknowledges that, “[a]rguably, these circumstances support an inference that [Abdi] purposefully failed to maintain a steady stream of breath.”

Still, Abdi appears to argue that the district court made a legal error in finding him guilty. Abdi points out that the district court reasoned that Abdi “providing two deficient samples constitutes a refusal.” Abdi contends that the district court erroneously relied on civil implied-consent caselaw. In a footnote, the district court’s order cited *Cole v. Commissioner of Public Safety*, which states: “Failure to produce ‘two separate adequate breath samples constitutes a refusal, unless the failure is the result of physical inability to provide a sample.’” 535 N.W.2d 816, 818 (Minn. App. 1995) (quoting former Minn. R. 7502.0430, subp. 1).

In *Cole*, we affirmed a license revocation based on test refusal after determining that Cole “had at least three significant opportunities to blow into the Intoxilyzer.” *Id.* Our reasoning relied in part on the 1994 version of Minn. Stat. § 169.123, subd. 2b(c), which stated that “failure of a person to provide two separate, adequate breath samples in the proper sequence constitutes a refusal.” *Id.* The current provision for license revocation based on test refusal is identical. *See* Minn. Stat. § 169A.51, subd. 5(c) (“[F]ailure of a person to provide two separate, adequate breath samples in the proper sequence constitutes a refusal.”).

Here, however, the state charged Abdi under Minn. Stat. § 169.20A, subd. 2(1), which states that it is a crime to “refuse to submit to a chemical test . . . of the person’s breath.” This criminal statute does not provide that two insufficient breath samples is a per se test refusal. The civil license-revocation provisions for test refusal based on two deficient breath samples, as stated in Minn. Stat. § 169A.51, subd. 5(c), do not apply to criminal test refusal. *See State v. Hughes*, No. A13-0196, 2014 WL 3396122, at *4 n.1 (Minn. App. Jul. 14, 2014) (reasoning that the state’s “reliance on section 169A.51, subdivision 5(c) is misplaced” because it “applies to civil, not criminal, test refusal”), *rev. granted* (Minn. Sept. 16, 2014) *and ord. granting rev. vacated* (Minn. Apr. 14, 2015).² Thus, the district court erred by relying on civil implied-consent caselaw and statutes to support its legal analysis of Abdi’s guilt for criminal test refusal.

² *Hughes* is a nonprecedential opinion and is “cited for [its] persuasive value.” *State v. Jonsgaard*, 949 N.W.2d 161, 169 n.9 (Minn. App. 2020). We find *Hughes* to be persuasive because it is factually and legally similar to this case, as discussed in this opinion.

This error, however, does not affect our analysis because, when viewed favorably to the verdict and taken as a whole, the circumstances proved, including Abdi's two deficient breath samples, are consistent with his guilt under the criminal standard for determining test refusal. This court has held that a defendant's failure to provide adequate samples for DWI testing may be an "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*, 729 N.W.2d at 102 (affirming a test-refusal conviction based on circumstances including three failed attempts to provide a urine sample).

We are also persuaded by our reasoning in *Hughes*, in which a driver twice failed to provide a sufficient breath sample for chemical testing and in which, on appeal, we upheld the record evidence as sufficient to sustain a conviction for test refusal. 2014 WL 3396122, at *1. At trial, Hughes presented evidence that she had "medical conditions [that] prevented her from providing an adequate breath sample," including "respiratory issues" such as "a sinus infection, congestion, and bronchitis." *Id.* at *5. Hughes did not, however, disclose any health limitations when the officer administered a breath test, though she told the officer that "she could not complete the test because her nose was previously broken." *Id.* The officer testified that "use of the nose is not required to blow into the Intoxilyzer" and that the officer "did not observe [Hughes] wheeze or exhibit any other difficulties breathing." *Id.* Accordingly, during appellate review of the sufficiency of the evidence, we determined that the "evidence, when viewed in a light most favorable to the conviction, is sufficient to have permitted the jurors to convict [Hughes] of criminal test refusal." *Id.*

The evidence in Abdi's case is similar to the evidence against Hughes. Both drivers twice failed to provide an adequate breath sample and informed the officer that they could not provide a breath sample. *See id.* Hughes, however, offered evidence at trial of medical conditions that affected her breathing, while Abdi did not. *See id.* Even with evidence that Hughes suffered from respiratory illnesses, we determined that the record evidence was sufficient to convict Hughes of criminal test refusal. *Id.*

Thus, we conclude that the district court's error in citing *Cole* and Minnesota Statutes section 169A.51, subdivision 5(c), does not impact our analysis. Abdi's two failures to provide an adequate breath sample indicates an "actual unwillingness" to participate in a chemical test and satisfies the criminal standard for test refusal as discussed in *Ferrier*, 729 N.W.2d at 101. Thus, the circumstances proved are consistent with Abdi's guilt.

C. The circumstances proved are inconsistent with any reasonable alternative hypothesis other than Abdi's guilt.

Abdi next argues that it is "equally rational" to infer from the circumstances proved that Abdi "was physically unable to maintain a steady breath" and that the circumstances proved were therefore consistent with a reasonable hypothesis other than Abdi's guilt. The state argues that this alternative hypothesis is not reasonable because there is no evidence that Abdi's diabetes or another physical condition caused Abdi to be unable to provide an adequate breath sample.

Abdi argues that "the district court did not discredit the evidence" that he had diabetes and was not feeling well "as untrue." Abdi contends that the district court instead

“shifted the burden to [Abdi] to prove that these conditions impacted his ability to provide adequate breath tests.” Although the district court did not expressly state that Abdi had the burden to show that he was physically unable to provide a breath sample, it did state that Abdi “ha[d] not proven that his diabetic condition had any impact on his ability to provide the two breath tests required.”

The state argues that, “[u]nder Minnesota law, physical inability to test is an affirmative defense that an accused driver has the burden to prove by preponderance of the evidence.” The state relies on *Bale v. Commissioner of Public Safety*, in which we reasoned in an implied-consent appeal that a “driver may raise the issue of physical inability at the hearing” and that, “[o]nce the issue is raised, the trial court must make specific findings on the alleged inability.” 385 N.W.2d 870, 873 (Minn. App. 1986). In *Bale*, we affirmed the district court’s license revocation based on its conclusion that the driver “did not prove by a fair preponderance of the evidence that her refusal was reasonable due to a physical inability.” *Id.*

Bale is not relevant to our analysis because Abdi’s conviction is for criminal test refusal. Because the state has the burden to prove “each element of the crime charged beyond a reasonable doubt,” *State v. Merrill*, 428 N.W.2d 361, 366 (Minn. 1988), the state had the burden to prove Abdi’s actual unwillingness to provide a breath sample. *See Ferrier*, 792 N.W.2d at 101.

But neither a district court nor a jury must accept a defendant’s claim that they are physically unable to provide a sample for chemical testing. Our analysis is guided by *Ferrier*, in which the driver failed to provide a urine sample after three attempts in over an

hour. *Id.* at 100-02. The officer conducting the chemical testing believed that Ferrier may have had “stage fright.” *Id.* at 102. The officer provided Ferrier with “between 6 and 15 glasses of water” during the testing period, and Ferrier “never indicated that she was physically incapable of urinating or requested an alternative test.” *Id.* Even so, Ferrier “failed to produce a sample.” *Id.* On appeal, Ferrier contended that the circumstantial evidence was insufficient to prove her actual unwillingness to submit to testing. *Id.* at 100-02.

Applying the second step of the circumstantial-evidence test, we determined that the circumstances proved were consistent with Ferrier’s guilt because they showed Ferrier’s actual unwillingness to submit to testing when she failed to urinate. *Id.* at 102. We also concluded that the circumstances proved were inconsistent with Ferrier’s alternative hypothesis that she was willing to participate in the testing process. *Id.* We reasoned that “[t]his record as a whole is inconsistent with [Ferrier’s] failure to urinate being attributable to inability and is consistent with her unwillingness to submit to the testing process.” *Id.*

Similarly to Ferrier, Abdi argues on appeal that the circumstances proved are consistent with his willingness to participate in testing and the alternative hypothesis that he was unable to provide a breath sample because he has diabetes. This case is a closer call than that in *Ferrier* because, unlike the driver in *Ferrier*, Abdi stated at the time of testing that he “had diabetes and could not blow” after the officer’s first attempt to collect a sample.

Even so, nothing in the record establishes the effects of Abdi's diabetes or whether it affected his ability to give an adequate breath sample. Without any record evidence that Abdi's health condition prevented him from providing an adequate breath sample, Abdi's alternative hypothesis is "untied to the evidence" and unreasonable because there is no objective indication that he was physically unable to provide a breath sample. *State v. German*, 929 N.W.2d 466, 475 (Minn. App. 2019). "[P]ossibilities of innocence do not require reversal" when "the evidence taken as a whole makes such theories seem unreasonable." *Id.* at 472 (quotation omitted). Accordingly, Abdi's argument does not rest on the circumstances proved and is therefore not a reasonable alternative hypothesis.

In short, the circumstances proved show that Abdi agreed to perform a breath test, he received instructions on how to provide an adequate breath sample, he attempted to give two breath samples but did not blow "steady and long," and he provided two deficient samples. Also, nothing in the record suggests that Abdi's diabetes made him physically unable to perform the steps necessary for testing. *See Ferrier*, 792 N.W.2d at 101. As in *Ferrier*, the "record as a whole" is inconsistent with the hypothesis that Abdi's failure to provide an adequate breath sample is "attributable to inability" and, instead, is consistent with his "unwillingness to submit to the testing process." *Id.* at 102. Thus, we conclude that the circumstances proved are inconsistent with any rational hypothesis other than Abdi's guilt.

Affirmed.