

*This opinion is nonprecedential except as provided by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
A24-0331**

State of Minnesota,
Respondent,

vs.

Mohammed Altigani Tabit Gouma,
Appellant.

**Filed December 30, 2024
Affirmed
Larson, Judge**

Mower County District Court
File No. 50-CR-22-1443

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

Thomas C. Baudler, Austin City Attorney, Emily M. Gullickson, Assistant City Attorney,
Austin, Minnesota (for respondent)

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

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Mohammed Altigani Tabit Gouma challenges his conviction for third-degree driving while impaired—refusal to submit to a chemical test—under Minn. Stat. § 169A.20, subd. 2(1) (2020). Because we conclude respondent State of Minnesota

presented sufficient evidence to prove that Gouma intended to refuse a breath test, we affirm.

FACTS

On July 22, 2022, at about 4:18 a.m., officers responded to a reported fight. Dispatch advised the officers that “the subjects involved were still on scene in a blue car.” Upon arrival at the scene, an officer (first officer) stopped a vehicle matching dispatch’s description, approached the driver (later identified as Gouma), and observed injuries consistent with participating in a fight. First officer also noted that Gouma had glassy eyes, smelled of alcohol, and had a bottle of whiskey on the driver’s side floorboard. After asking Gouma some questions, first officer had Gouma exit the vehicle to perform field sobriety tests. First officer subsequently arrested Gouma “for suspicion of driving while impaired.” Throughout the encounter, Gouma and first officer conversed in English.

At the jail, first officer read Gouma the Minnesota Breath Test Advisory. After he was given the opportunity to speak to an attorney, Gouma agreed to take a breath test. Another officer (second officer) administered the breath test after instructing Gouma to “take a big deep breath in and . . . blow long and steady. . . . [G]o until it clicks [I]t’s gotta be a good breath.” Second officer also demonstrated how to complete the test successfully. Gouma attempted the breath test twice. The first test resulted in the machine timing out with a deficient sample. After the first failed test and before administration of the second test, second officer tested Gouma’s breathing with his hand and provided feedback. After the second deficient sample, Gouma was informed he was being charged with refusal to submit to a chemical test. *See* Minn. Stat. § 169A.20, subd. 2(1).

During the testing, the following occurred. The officers provided continual instruction, orally and with demonstrations, and conversed with Gouma in English. Gouma commented that he had heart surgery a year prior and took medication for his heart condition, stated that he could not breathe, and protested when the officers said he was not adequately breathing into the machine. Second officer responded to Gouma multiple times that he was physically capable of completing the test, even with his alleged health issues. Further, Gouma provided adequate breaths that produced steady tones on the machine multiple times, but the tones stopped each time after a few seconds. The officers also noted that, at times, Gouma failed to blow into the machine, refused to keep his mouth properly around the tube, and kept pulling his head away.

The state charged Gouma with: (1) third-degree driving while impaired—refusal to submit to chemical test—under Minn. Stat. §§ 169A.20, subd. 2(1), .26 (2020) (count I); (2) third-degree driving while impaired under Minn. Stat. §§ 169A.20, subd. 1(1) (Supp. 2021), .26 (count II); and (3) open-bottle possession in a motor vehicle under Minn. Stat. § 169A.35, subd. 3 (2020) (count III). Gouma waived his right to a jury trial and used Arabic interpreters at the bench trial. Both officers testified at the bench trial consistent with the facts described above. First officer admitted during his testimony that there was a language barrier between him and Gouma, but he believed Gouma was responding and communicating “appropriately.” First officer further testified that he believed Gouma was

healthy enough to provide a sufficient breath sample. The state also played segments from two video exhibits depicting the administration of the breath tests.¹

The district court found Gouma guilty on counts I and III,² but not on count II. The district court sentenced Gouma to 180 days in jail with credit for time served, staying execution for one year with supervised probation, and ordered Gouma to pay a fine. Gouma appeals.

DECISION

Gouma challenges his conviction for third-degree driving while impaired—refusal to submit to a chemical test. 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 (2020) (governing chemical tests for intoxication).

On appeal, Gouma only challenges whether the state presented sufficient evidence that he intended to refuse the breath test.³ The state can prove an intent to refuse a chemical

¹ The record indicates that the state only offered, and the district court only admitted, “portion[s]” of the video exhibits. Appellant’s briefs rely on portions of the video exhibits that the state did not offer into evidence. Appellant makes no argument that playing only “portion[s]” of the video exhibits was an error. Thus, we must limit our review to only those portions of the video exhibits that the state offered into evidence at trial. *See Plowman v. Copeland, Buhl & Co.*, 261 N.W.2d 581, 583 (Minn. 1977) (“It is well settled that an appellate court may not base its decision on matters outside the record on appeal, and that matters not produced and received in evidence below may not be considered.”).

² On appeal, Gouma does not challenge his conviction for count III.

³ Gouma also raises a due-process argument. This argument is forfeited both because it was not raised below and it relies on evidence outside the record. *See State v. Reek*, 942 N.W.2d 148, 165 (Minn. 2020) (“We decline to reach the merits of these claims because we do not base our decisions on matters outside the record.”); *Roby v. State*, 547 N.W.2d 34, 357 (Minn. 1996) (stating this court will not decide issues which were not raised before the district court, including constitutional questions of criminal procedure).

test by presenting evidence of “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 standard of review for sufficiency-of-the-evidence claims depends on whether the challenged element was proved by circumstantial or direct evidence.⁴ In test-refusal cases where the defendant does not expressly refuse to take a chemical test, the state must prove intent by relying on circumstantial evidence. *See id.* at 101-02. A conviction based on circumstantial evidence attracts greater scrutiny on review than a conviction based on direct evidence. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). In this case, Gouma did not expressly refuse the chemical test, so the circumstantial-evidence test applies.

To apply the circumstantial-evidence test, we first “identify the circumstances proved” and, in doing so, “defer” to the factfinder’s “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. Hawes*, 801 N.W.2d 659, 668 (Minn. 2011) (quotation omitted). Second, we must “determine whether the circumstances proved are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis

⁴ Gouma relies on a license-revocation case to argue that the clear-error standard applies in this case. *See Berge v. Comm’r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985). But we apply a sufficiency-of-the-evidence standard to evaluate whether the state presented sufficient evidence to sustain the conviction. *See State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016).

except that of . . . guilt.” *Id.* at 669 (quotation omitted). In the second step, we do not defer to the fact-finder’s “choice between reasonable inferences” and “do not review each circumstance proved in isolation.” *Id.* (quotations omitted). “Instead, we must consider whether the circumstances presented are consistent with guilt and inconsistent, *on the whole*, with any reasonable hypothesis of innocence.” *State v. Andersen*, 784 N.W.2d 320, 332 (Minn. 2010) (quotation omitted).

Here, the circumstances proved related to Gouma’s intent to refuse the chemical test include: (1) both officers conversed with Gouma in English; (2) Gouma followed first officer’s instructions when performing field sobriety tests and other instructions from both officers while in custody; (3) Gouma appeared to understand both officers’ instructions and first officer believed Gouma responded and communicated “appropriately” throughout the investigation and arrest; (4) first officer read Gouma the Minnesota Breath Test Advisory; (5) thereafter, Gouma was provided an opportunity to speak with an attorney and then agreed to take the breath test; (6) the officers gave detailed instructions and demonstrations throughout the testing; (7) second officer allowed Gouma to practice blowing and provided feedback; (8) during the testing, second officer instructed Gouma to keep blowing, and Gouma protested that he was blowing; (9) during the testing, Gouma provided adequate breaths producing a steady tone several times, but then stopped each time after a few seconds; (10) during the testing, Gouma at times pulled his head back from the mouthpiece and did not keep his lips in a tight seal around the mouthpiece; (11) during the testing, Gouma commented that he had heart surgery a year prior and took medication for a heart condition; (12) during the testing, Gouma stated that he could not breathe;

(13) the machine timed out twice without Gouma providing an adequate breath sample; and (14) based on their observations during the test, both officers believed Gouma was healthy enough to perform the tests and felt Gouma was capable of providing an adequate sample.

We conclude that the circumstances proved are consistent with the hypothesis that Gouma intended to refuse to submit to the chemical test. *See* Minn. Stat. § 169A.20, subd. 2(1). The evidence indicates that, despite being given the Minnesota Breath Test Advisory, and clear instructions and demonstrations on how to complete the test, Gouma intended to refuse to provide an adequate sample by pulling his head back from the mouthpiece, failing to keep a tight seal around the mouthpiece, and refusing to blow sufficiently into the machine.

Gouma does not dispute that this is a reasonable hypothesis. Instead, he contends that the evidence presented at trial also supports a rational hypothesis that he did not intend to refuse to complete the breath test. Gouma presents two alternative hypotheses: (1) that the circumstances proved show that he did not understand the instructions and demonstrations and (2) that the circumstances proved show that he lacked the physical ability to complete the test. We are not persuaded that either is a reasonable hypothesis.

First, it is not reasonable to hypothesize that Gouma lacked understanding of the instructions and demonstrations. While the first officer did testify to the presence of a language barrier, the circumstances proved reflect that Gouma understood the officers' instructions and communicated appropriately with both officers throughout the investigation and testing procedure. Second, it is not a reasonable hypothesis that Gouma

was physically unable to complete the breath test. While it is true that Gouma commented that he had heart surgery and took medication for a heart condition,⁵ the circumstances proved indicate that Gouma was able to perform field sobriety tests and converse normally with the officers until he had to blow into the machine.⁶ Further, the circumstances proved indicate that, based on their interactions with Gouma, the officers believed Gouma was physically able to complete the test.⁷

For these reasons, we conclude the state proved beyond a reasonable doubt that Gouma intended to refuse the breath test. Accordingly, we affirm his conviction.

Affirmed.

⁵ Gouma also points to video evidence depicting him coughing during the testing. But neither cough occurred during the testing procedure.

⁶ Gouma also argues that he made a request to perform a blood test and this “lends credibility to [his] claim that he did not refuse the alcohol test.” *See Carlson v. Comm’r of Pub. Safety*, 374 N.W.2d 791, 794 (Minn. App. 1985). But there is no evidence in the record that Gouma offered to take a blood test.

⁷ The district court’s order indicates it found the officers’ testimony credible, and we defer to its credibility determinations. *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff’d*, 508 U.S. 336 (1993).