

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-2225**

State of Minnesota,  
Appellant,

vs.

Terry Raye Dye,  
Respondent.

**Filed June 10, 2013  
Reversed and remanded  
Chutich, Judge**

Olmsted County District Court  
File No. 55-CR-12-3458

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County Attorney, Rochester, Minnesota (for appellant)

Thomas R. Braun, Christopher W. Coon, George F. Restovich & Associates, Rochester, Minnesota (for respondent)

Considered and decided by Chutich, Presiding Judge; Peterson, Judge; and Smith, Judge.

**UNPUBLISHED OPINION**

**CHUTICH**, Judge

Appellant State of Minnesota challenges the district court's pretrial dismissal of its complaint against respondent Terry Raye Dye for lack of probable cause. Because the

district court applied the incorrect legal standard and improperly weighed the state's evidence in granting Dye's motion to dismiss the charge of criminal vehicular operation, we reverse the dismissal and remand to the district court for further proceedings.

## **FACTS**

Around 1:00 a.m. on September 17, 2011, R.Z. was riding his bicycle near Rochester on Highway 52, a large divided highway that has three "through" northbound lanes and one exit/entrance lane. R.Z. was riding in the middle northbound lane of traffic when he was hit by a semi-truck. The truck did not stop, but R.Z. was able to call 911 as he was lying on the side of the road. R.Z. suffered serious injuries from the collision.

Surveillance video from Minnesota Department of Transportation cameras captured the accident and showed that R.Z. had been struck at 1:01:50 a.m. The video shows a full-sized semi-truck hitting R.Z. and R.Z.'s bicycle skidding to the side of the road. The video footage, along with broken pieces of a plastic bumper and fog lamp found at the scene, led police to conclude that R.Z. had been hit by a truck driven by Dye.

Dye is an over-the-road trucker and was driving for his employer, C.R. England Trucking Company. Law-enforcement officers located Dye in Missouri about one week after the accident and seized the truck. Another C.R. England employee told police that Dye told him that "he thought he had struck a deer, but it was dark when the collision occurred."

Logs obtained from C.R. England reflected Dye's location on that night in 15-minute increments. At 1:00 a.m., Dye was traveling northbound on Highway 52. At 1:15 a.m., Dye was on West Circle Drive, a city street that skirts the west side of Rochester.

At 1:30 a.m., Dye was again traveling northbound on Highway 52. Records also show that Dye sent a message to his employer in the afternoon of September 17, stating that he hit a deer around 11:00 p.m. the night before under foggy conditions in Wisconsin.

The state charged Dye with one count of criminal vehicular operation in violation of Minn. Stat. § 609.21, subd. 1(7) (2010) (leaving the scene of the accident). Dye moved to dismiss the charge for lack of probable cause, arguing that the state's evidence was insufficient to establish probable cause that he knew he hit a person. The state asserted that the evidence, including the truck logs, Dye's statements, and the video, were sufficient to establish probable cause. Particularly, the state argued that the video showed that Dye flashed his headlights at R.Z. before the crash, suggesting that he saw R.Z. and thus knew he hit a person. The district court disagreed and granted Dye's motion, concluding that no probable cause existed to believe that Dye knew he hit a person. The state appealed the dismissal.

## **D E C I S I O N**

If the district court dismisses a case for lack of probable cause, the state may appeal "based on questions of law." Minn. R. Crim. P. 28.04, subd. 1(1). The state must show that (1) the district court's decision will have a "critical impact" on its ability to prosecute the case, and (2) the district court's decision was error. *State v. Barrett*, 694 N.W.2d 783, 787 (Minn. 2005). Dye concedes that the state's appeal meets the critical-impact test. *See State v. Dunson*, 770 N.W.2d 546, 550 (Minn. App. 2009) ("Dismissal of a complaint based on a question of law satisfies the critical impact requirement."), *review denied* (Minn. Oct. 20, 2009). The state contends that the district court erred by

applying an incorrect legal standard in determining whether probable cause existed. We review de novo the district court's dismissal for lack of probable cause based on a legal determination. *State v. Linville*, 598 N.W.2d 1, 2 (Minn. App. 1999).

In general, "the test of probable cause is whether the evidence worthy of consideration . . . brings the charge against the prisoner within reasonable probability." *State v. Florence*, 306 Minn. 442, 446, 239 N.W.2d 892, 896 (1976) (quotation omitted); *see also* Minn. R. Crim. P. 11.04, subd. 1(a) ("The court must determine whether probable cause exists to believe that an offense has been committed and that the defendant committed it."). Probable cause is a lower standard than proof beyond a reasonable doubt; to support a charge, the state only has to show a reasonable probability exists that the defendant committed the crime. *See State v. Knoch*, 781 N.W.2d 170, 177 (Minn. App. 2010), *review denied* (Minn. June 29, 2010). The district court "must exercise an independent and concerned judgment addressed to this important question: Given the facts disclosed by the record, is it fair and reasonable . . . to require the defendant to stand trial?" *Florence*, 306 Minn. at 457, 239 N.W.2d at 902.

Probable cause exists "[i]f the trial judge is satisfied that the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict of acquittal if proved at trial." *Id.* at 459, 239 N.W.2d at 903. The district court must view the evidence in the light most favorable to the state, *Knoch*, 781 N.W.2d at 178, and may not "assess[] the relative credibility or weight of . . . conflicting evidence." *State v. Hegstrom*, 543 N.W.2d 698, 702 (Minn. App. 1996), *review denied* (Minn. Apr. 16, 1996); *see also State v. Trei*, 624 N.W.2d 595, 598 (Minn. App. 2001) (stating that

the district court must not “invade the province of the jury” by determining issues of credibility).

The statute at issue provides that a driver is guilty if she “causes injury to or the death of another as a result of operating a motor vehicle . . . where the driver who causes the accident leaves the scene of the accident.” Minn. Stat. § 609.21, subd. 1(7). Interpreting the mens rea required for the crime, the supreme court held that the state must prove that the defendant had actual knowledge that he hit a person or another vehicle. *State v. Al-Naseer*, 734 N.W.2d 679, 688 (Minn. 2007). Actual knowledge may be proved by circumstantial evidence. *Id.*

The parties agree that Dye drove the truck that hit R.Z. and that he failed to stop after the collision. In concluding that no probable cause existed to show that Dye knew he hit a person, the district court applied the test we use when reviewing the sufficiency of the evidence, after trial, in cases involving circumstantial evidence. Under that test, we first closely scrutinize the evidence to identify the circumstances proved and then examine the reasonable inferences that can be drawn from those circumstances. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011). If we can draw a reasonable inference from the circumstances proved that points to an outcome other than the defendant’s guilt, we will find the evidence insufficient to support the conviction. *Id.*

Identifying the circumstances proved requires deference to the jury’s acceptance or rejection of the evidence presented by the state. *Id.* In a review assessing the sufficiency of the evidence, therefore, we defer to the jury’s ability to weigh the evidence and to assess the witness’ credibility. *Id.*; see also *State v. Al-Naseer*, 788 N.W.2d 469,

473 (Minn. 2010) (“We recognize that the trier of fact is in the best position to determine credibility and weigh the evidence.”). In contrast, to make a probable-cause determination, the district court specifically *may not* weigh the evidence or assess credibility. By applying the circumstantial-evidence test, the district court improperly weighed the evidence against Dye, a task that must be left to the fact-finder. *See Hegstrom*, 543 N.W.2d at 702.

The district court focused mainly on the surveillance video that captured the accident; it found that the video did not support the state’s assertion that Dye saw R.Z. before the collision and therefore knew he hit a person. After engaging in a lengthy analysis of the video, the district court found that Dye did not, in fact, flash his headlights at R.Z., but that he passed behind a post that created an appearance of flashing headlights. Thus, the district court found that the state’s assertion that the video shows that Dye knew he hit a person is “inherently incredible.”

While the district court’s analysis of the headlight issue may be correct, the video clearly shows Dye’s truck driving behind R.Z. and eventually hitting him, which suggests that Dye had some pre-collision opportunity to see R.Z. The district concluded that the video was not enough to show that Dye knew what he hit, however, because the crash occurred at night. Because it was dark, the district court stated, “the driver’s opportunity to see and identify [R.Z.] would have been sudden, brief, and unexpected. Headlight illumination is nothing like an equivalent to broad daylight.” With this conclusion, the district court improperly weighed the evidence concerning the relative illumination of the scene. While it is true that the collision did not occur in daylight, our review of the video

footage shows that the area was a large highway intersection with off- and on-ramps and was quite well-lit; the light was more than mere headlight illumination. A jury could watch the video and conclude that the light in the area was sufficient to suggest that Dye saw what he hit.

Further, the district court improperly weighed the credibility of the statements that Dye made after striking R.Z. Concerning Dye's statement to his dispatcher that he hit a deer, the district court stated that "a fact finder could reasonably infer that [Dye's] statement attributing the damage to a collision in Wisconsin at 11:00 p.m. is: (a) not accurate, and; (b) exculpatory. Such an inaccuracy could be a deliberate falsification; and a deliberate exculpatory falsification may imply guilty knowledge." Despite this finding, however, the district court discounted the inference because it was not sufficient "beyond a reasonable doubt." This standard is incorrect for addressing a probable-cause challenge. The credibility of Dye's statements is crucial, and a fact-finder must assess the credibility and implication of these statements.

In addition, the district court fails to address evidence that Dye inexplicably left Highway 52 for a period of time immediately after his truck struck R.Z. A jury could find that this evidence shows that Dye intentionally left the scene of the crash, implying knowledge that he struck a person. The evidence does not suggest any other reason why a full-sized semi-truck would leave a freeway-style road for a short period of time to travel on a smaller city street, presumably with a lower speed limit, only to return to the highway a short time later. Dye's deviation from his route further supports the reasonable probability that he knew that he hit R.Z.

We recognize that this case is unusual, involving a bicyclist traveling in the middle of the night in the center lane of a busy highway, and we express no opinion as to whether the state will ultimately be successful in proving Dye's guilt. In a probable-cause challenge, however, caselaw is clear that the district court must view the evidence in the light most favorable to the state and not weigh the evidence or the credibility of witnesses. *See Knoch*, 781 N.W.2d at 178. Applying the proper standard, we conclude that the state's evidence establishes the "reasonable probability" that Dye knew he hit a person or vehicle. *See Florence*, 306 Minn. at 446, 239 N.W.2d at 896. We therefore reverse the district court's dismissal of the charge against Dye and remand for further proceedings consistent with this opinion.

**Reversed and remanded.**