STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0901

State of Minnesota,
Respondent,

vs.

Joel Michael Cooper,
Appellant.

Filed June 24, 2008
Affirmed
Halbrooks, Judge

Isanti County District Court
File No. CR-06-603

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Jeffrey Edblad, Isanti County Attorney, 555 18th Avenue Southwest, Cambridge, MN 55008 (for respondent)

Richard W. Curott, Curott & Associates, LLC, P.O. Box 206, Milaca, MN 56353 (for appellant)

Considered and decided by Willis, Presiding Judge; Halbrooks, Judge; and Johnson, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges his conviction of driving while impaired (DWI), contending that the evidence was insufficient. Because we conclude that the evidence was sufficient

to permit the jury to determine beyond a reasonable doubt that appellant operated his vehicle within two hours of the alcohol concentration test that indicated a result of .13, we affirm.

FACTS

At 12:47 a.m. on April 20, 2006, Deputy Wade Book of the Isanti County Sheriff's Department was dispatched to the scene of a one-vehicle accident at the intersection of County Road 7 and 325th Avenue in Isanti County.[1] The intersection of these two roads is located in a rural area, and the police dispatcher informed the deputy that a vehicle had driven off the road and was currently disabled in some trees near the intersection. Deputy Book arrived at the scene at approximately 12:55 a.m.

Deputy Book, who was the only witness at appellant's trial, testified that as he was approaching but was still 100 yards away from the scene of the accident, an individual on foot flagged him down. The individual was subsequently identified as appellant Joel Michael Cooper. When Deputy Book saw appellant, he stopped his squad car and got out of the vehicle to check on him. Deputy Book asked appellant if he had been driving the vehicle that was located in the trees a short distance away. Appellant replied that he had been driving the vehicle when it crashed. Deputy Book also asked appellant if he was hurt and if anyone else was in the vehicle. Appellant responded negatively to both questions. Appellant then proceeded to explain to Deputy Book that he was unprepared

[1] The source of the report of this accident and the time that it was reported to the police dispatcher are unknown, as the district court sustained defense counsel's objection to an attempt to introduce documentation that would have presumably shed light on these matters.

to negotiate the stop sign at the intersection and, as a result, lost control of the vehicle and drove it through the intersection and into the trees.

Deputy Book offered to give appellant a ride back to his disabled vehicle. Appellant accepted and got into the squad car. Deputy Book located the vehicle in the trees and determined that it was registered to appellant's wife.

When appellant got into the squad car, Deputy Book smelled an odor of alcohol emanating from him and noticed that when appellant spoke, he slurred his speech. When appellant got out of the squad car, he had a difficult time maintaining his balance. Deputy Book asked appellant if he had consumed any alcohol that night, and appellant stated that he had been drinking in St. Francis. Deputy Book administered three different field sobriety tests, with appellant performing all three tests poorly. The deputy then arrested appellant on suspicion of DWI and transported him to the Isanti County Jail.

At the jail, Deputy Book invoked the implied-consent law, and at approximately 1:47 a.m. appellant took an Intoxilyzer 5000 breath test. The test revealed an alcohol concentration of .13.

Appellant was subsequently charged with one count of gross misdemeanor third-degree DWI in violation of Minn. Stat. §§ 169A.20 subd. 1(5), .26 (2004), operating a motor vehicle within two hours of having an alcohol concentration of .08 or more. After a jury trial, he was convicted. This appeal follows.

D E C I S I O N

Minn. Stat. § 169A.20, subd. 1(5) (2004), criminalizes use of a motor vehicle "when the person's alcohol concentration at the time, or as measured within two

hours of the time, of . . . operati[on] . . . of the motor vehicle is 0.08 or more." The only issue here concerns whether the evidence was sufficient to establish that appellant's operation of his motor vehicle was within two hours of his breath test that revealed an alcohol concentration of .13.

In reviewing a sufficiency-of-the-evidence claim, appellate courts will not disturb the jury's verdict "if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that [a] defendant was proven guilty of the offense charged." *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted) (alteration in original). "[W]e view the evidence in the record in the light most favorable to the jury's verdict and assume that the jury believed the state's witnesses and disbelieved contrary evidence." *Dale v. State*, 535 N.W.2d 619, 623 (Minn. 1995).

Here, Deputy Book did not observe appellant operating the motor vehicle. And appellant, while admitting to the deputy that he was the one who drove the vehicle off the road, did not articulate when he did so. Therefore, the jury's conclusion that appellant drove the vehicle within two hours of his 1:47 a.m. Intoxilyzer test is based on circumstantial evidence. *See Bernhardt*, 684 N.W.2d at 477 n.11 ("'Circumstantial evidence' is defined as '[e]vidence based on inference and not on personal knowledge or observation' and '[a]ll evidence that is not given by eyewitness testimony.'" (quoting Black's Law Dictionary 595 (8th ed. 2004)). A conviction based on circumstantial evidence must do more than raise a suspicion of guilt; it must point unerringly to the defendant's guilt. *State v. Scharmer*, 501 N.W.2d 620, 622 (Minn. 1993). Circumstantial

evidence must "form a complete chain which, in light of the evidence as a whole, leads so directly to the guilt of the accused as to exclude, beyond a reasonable doubt, any reasonable inference other than that of guilt." *State v. Wahlberg,* 296 N.W.2d 408, 411 (Minn. 1980).

"To successfully challenge a verdict based on circumstantial evidence, [an appellant] must show his [or her] claim is consistent with a rational hypothesis other than guilt." *State v. Bias*, 419 N.W.2d 480, 486 (Minn. 1988). But possibilities of innocence do not require reversal of a jury verdict if the evidence, taken as a whole, makes such theories seem unreasonable. *See State v. Anderson*, 379 N.W.2d 70, 78 (Minn. 1985) (stating that circumstantial "evidence as a whole need not exclude all possibility that the [accused is innocent]. It must, however, make that theory seem unreasonable"). A jury normally is in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference. *State v. Berndt,* 392 N.W.2d 876, 880 (Minn. 1986).

Here, appellant correctly asserts that the precise time that he drove his vehicle into the ditch was never established at trial. As such, he contends that the accident could have occurred hours earlier, suggesting scenarios that he could have left the accident scene and returned shortly before Deputy Book arrived or that he could have remained at the accident scene for a substantial period of time before he encountered Deputy Book. Thus, appellant reasons, the evidence was not sufficient to allow the jury to convict him under Minn. Stat. § 169A.20, subd. 1(5), because it cannot be conclusively established that he was operating the vehicle within the two hours immediately preceding his 1:47 a.m. breath test.

Appellant relies on *Dietrich v. Comm'r of Pub. Safety*, 363 N.W.2d 801 (Minn. App. 1985), in support of his argument that the evidence was insufficient to sustain his conviction. There, the commissioner administratively revoked Dietrich's license on the suspicion that Dietrich was impaired when he crashed his vehicle into a parked trailer. 363 N.W.2d at 802-03. Dietrich challenged the revocation based on the lack of a temporal connection between the impaired state he was found in and his operation of the vehicle. *Id.* We held that, before the commissioner may properly revoke a driver's license for DWI, there must be evidence establishing that a driver found in an impaired state was also impaired at the time he operated the motor vehicle. *Id.* at 803. Because Dietrich was found impaired at his father's house, some distance from the scene of the accident and some unknown time after the crash, we concluded that the commissioner did not have probable cause to revoke Dietrich's license on the basis that he was impaired when he crashed his vehicle into the parked trailer. *Id*.

But *Dietrich* is distinguishable. *Dietrich* stands for the proposition that when "there is no evidence whatsoever connecting the time of driving with the time of an officer's observations" of impairment, revocation of the driver's license is improper. *Hedstrom v. Comm'r of Pub. Safety*, 410 N.W.2d 47, 49 (Minn. App. 1987). But the evidence in this case permitted a jury to draw reasonable inferences about the temporal connection between appellant's operation of the motor vehicle and his breath test. This is not a case where "no evidence whatsoever" connects the two events. *Id.*

An examination of the record produces the following evidence. It is undisputed that appellant, and no one else, drove the vehicle into the ditch. It is also undisputed that

Deputy Book first encountered appellant just 100 yards away from the vehicle just minutes after dispatch radioed the report of the accident to him. The deputy testified that it would take a person only a few minutes to walk from the vehicle to the location he encountered appellant even if the person were intoxicated. Deputy Book also stated that, in his experience, an intoxicated driver will often attempt to extricate his vehicle from the ditch for a short time before seeking assistance. The jury, quite reasonably, drew the most plausible inference from this evidence: that appellant had recently crashed the vehicle and, unable to extricate it from the ditch, had begun to walk away from the accident site when he encountered Deputy Book.

As previously noted, appellant proffers several other scenarios that support the conclusion that he had not driven within two hours of his 1:47 a.m. Intoxilyzer test. The question then is: are these possibilities of innocence unreasonable when looking at the evidence as a whole? *See Anderson*, 379 N.W.2d at 78. We conclude that they are. No evidence supports the inference that the accident happened at a substantially earlier time. Deputy Book admitted on cross-examination that he could not rule out the possibility that the accident had happened hours earlier, but that testimony alone does not establish that such was the case. No evidence suggests that appellant left and later returned to the accident scene. And there was no evidence that appellant had been at the accident scene for a substantial period before Deputy Book arrived. Therefore, we cannot agree with appellant's contention that his speculative theories of innocence support "a reasonable inference other than that of guilt." *Wahlberg*, 296 N.W.2d at 411. We give the jury's evaluation of the circumstantial evidence the due deference it deserves. *Berndt*, 392

N.W.2d at 880. Looking at the evidence in a light most favorable to the jury's verdict, we conclude that there was sufficient evidence for the jury to have concluded that appellant operated his motor vehicle within two hours of the Intoxilyzer test that established appellant's alcohol concentration at .13.

Affirmed.