STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1693

State of Minnesota,
Appellant,

vs.

Cameron Marc Steene,
Respondent.

Filed February 10, 2009
Reversed and remanded
Bjorkman, Judge

Hennepin County District Court
File No. 07021558

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Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Connolly, Judge.

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

BJORKMAN, Judge

Appellant State of Minnesota challenges the district court's granting of respondent's motion for a judgment of acquittal following the jury's return of a guilty verdict. Because the record contains sufficient evidence to support the jury's guilty verdict, we reverse and remand.

FACTS

Following a traffic stop on April 1, 2007, respondent Cameron Steene was charged with third-degree driving while impaired (DWI), in violation of Minn. Stat. §§ 169A.20, subd. 1(1), .26, subd. 1(a) (2006), and failure to signal a turn, in violation of Minn. Stat. § 169.19, subd. 5 (2006).[1] A jury trial was held in August 2007. The police officer who initiated the stop and observed Steene was the sole witness. After the close of the evidence, Steene moved for a judgment of acquittal on the DWI count. The district court reserved its ruling on the motion. The jury found Steene guilty on both counts.[2] The next day, the district court issued a written order granting Steene's motion for a judgment of acquittal. This appeal follows.

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[1] The state also charged Steene with third-degree DWI for having an alcohol concentration over .20 within two hours of driving, Minn. Stat. §§ 169A.03, subd. 3(2), .26, subd. 1(a) (2006). The district court granted Steene's motion to suppress the Intoxilyzer test result and dismissed this second DWI charge.

[2] Although both charges were submitted to the jury, the verdict regarding the failure-to-signal charge was only advisory because the charge is a petty misdemeanor.

D E C I S I O N

The state argues that the district court erred in granting Steene's motion for judgment of acquittal because there was sufficient evidence to support the jury's guilty verdict.

The standard for deciding a motion to acquit is whether "the evidence is sufficient to present a fact question for the jury's determination, after viewing the evidence and all resulting inferences in favor of the state." *State v. Slaughter*, 691 N.W.2d 70, 74-75 (Minn. 2005). "A motion for judgment of acquittal is properly denied where the evidence, viewed in the light most favorable to the State, is sufficient to sustain a conviction." *State v. Simion*, 745 N.W.2d 830, 841 (Minn. 2008).

When reviewing the sufficiency of evidence in a criminal case, we determine whether the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably have concluded that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). We must assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

To secure a DWI conviction, the state must prove beyond a reasonable doubt that the defendant (1) drove a motor vehicle and (2) was under the influence of alcohol while driving the motor vehicle.[3] Minn. Stat. § 169A.20, subd. 1(1); 10A *Minnesota Practice*,

[3] Although Steene was charged with third-degree DWI under Minn. Stat. § 169A.26, subd. 1(a), which requires one aggravating factor, Steene stipulated to a qualified prior

CRIMJIG 29.02 (2006). The critical issue here is whether the evidence was sufficient to prove Steene was "under the influence of alcohol" at the time of the traffic stop. Minn. Stat. § 169A.20, subd. 1(1).

There is no standard as to the amount of alcohol a person must consume to be considered "under the influence" of alcohol; indeed, one may be "under the influence" despite an alcohol concentration under the legal limit. *State v. Shepard*, 481 N.W.2d 560, 562 (Minn. 1992). A driver is "under the influence" when he does not "possess that clearness of intellect and control of himself that he otherwise would have." *State v. Teske*, 390 N.W.2d 388, 390 (Minn. App. 1986) (quotation omitted). The state need only prove that the driver had consumed enough alcohol so that "the driver's ability or capacity to drive was impaired in some way or to some degree." *Shepard*, 481 N.W.2d at 562.

In granting Steene's motion, the district court focused on the officer's testimony that the three field sobriety tests he administered are collectively 91% accurate in identifying individuals who have an alcohol concentration of .10 or higher. The district court reasoned that this left a 9% rate of error, which it found to constitute reasonable doubt.

The district court's analysis is incorrect in several respects. First, the district court's emphasis on the apparent 9% rate of error was tantamount to requiring a certain degree of mathematical certainty to convict, which is improper. *See State v. Smith*, 674

DWI conviction as the aggravating factor. Therefore, this issue was not presented to the jury.

N.W.2d 398, 403 (Minn. 2004) (recognizing that "reasonable doubt does not require the case to be proved to a mathematical certainty"). Second, evidence of Steene's alcohol concentration, while informative, is not necessary to a finding that Steene was "under the influence." Third, and most fundamental, the district court's analysis did not consider all of the evidence in the light most favorable to the state. By emphasizing the rate-of-error evidence, the district court overlooked the officer's testimony regarding Steene's driving conduct, Steene's appearance and demeanor at the time of the stop, and the import of his performance on the field sobriety tests. The fact that Steene did not demonstrate every possible sign of impairment does not mean the jury's determination of Steene's guilt was unreasonable.

When properly viewed in the light most favorable to the state, the officer's testimony, taken as a whole, sufficiently supports the jury's guilty verdict. The testimony established that Steene left a bar shortly before the stop and admitted to consuming one large and one small beer at the bar. Steene failed to signal his turn until he pulled into the intersection, which the officer testified can be a sign of intoxication. Even though the officer initiated the stop immediately after Steene made his turn, Steene could not remember, when speaking to the officer, whether he had signaled or not. The officer observed that Steene had a moderate odor of alcohol about him, and had bloodshot, watery eyes, and dilated pupils—all of which the officer identified as signs of impairment.

Steene failed all three field sobriety tests, which, along with the other evidence, led the officer to believe that Steene was impaired. The district court expressed

reservations about the reliability of one of the field sobriety tests, and Steene suggests on appeal that the officer administered all three improperly. But the record, when viewed in the light most favorable to the state, establishes that only one of the tests was performed in a manner that deviated from the prescribed method, and the officer testified that the deviation did not affect the results of the test. Finally, Steene exhibited more indicia of impairment on each test than the minimum number from which impairment could be reasonably inferred.

Viewing the record evidence in the light most favorable to the state, we find the jury could reasonably have concluded that Steene was "under the influence" of alcohol and therefore guilty of the charged offense. Because the district court erred by granting Steene's motion for a judgment of acquittal, we reverse and remand for entry of a judgment of conviction.

Reversed and remanded.