STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2211

State of Minnesota,
Respondent,

vs.

Sadi Mohamed Gure,
Appellant.

Filed December 15, 2009
Affirmed
Toussaint, Chief Judge

Blue Earth County District Court
File No. 07-CR-08-2241

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Ross Arneson, Blue Earth County Attorney, Christopher J. Rovney, Assistant County Attorney, Blue Earth County Justice Center, 401 Carver Road, P.O. Box 3129, Mankato, MN 56002-3129 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and Hudson, Judge.

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

TOUSSAINT, Chief Judge

Appellant Sadi Mohamed Gure challenges his first-degree driving-while-impaired (DWI) conviction and sentence, arguing that the conviction was not supported by sufficient evidence and the district court abused its discretion in sentencing him to the upper level of the presumptive range. Because the evidence was sufficient to support appellant's conviction and because the district court did not abuse its discretion in sentencing appellant, we affirm.

D E C I S I O N

I.

In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). Appellant argues that his convictions for DWI and test refusal were not supported by sufficient evidence.

A. *Driving Under the Influence of Alcohol*

It is a crime for any person in Minnesota to operate a motor vehicle "when the person is under the influence of alcohol." Minn. Stat. § 169A.20, subd. 1(1) (2008). To

secure a conviction of driving under the influence, 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. 10A Minnesota Practice, CRIMJIG 29.02 (2008). Minn. Stat. § 169A.20, subd. 1(1), sets out no standard as to the amount of alcohol that must be consumed for a person to be considered "under the influence" of alcohol. *Compare* Minn. Stat. § 169A.20, subd. 1(5) (2008) (person is driving while impaired if alcohol concentration is .08 or more). The state can demonstrate that a driver was under the influence of alcohol by showing only that "the driver had drunk enough alcohol so that the driver's ability or capacity to drive was impaired in some way or to some degree." *State v. Shepard*, 481 N.W.2d 560, 562 (Minn. 1992).

The only trial witness was the officer who arrested appellant. He testified that, after receiving a report of a possibly impaired driver, he saw a vehicle matching the reporter's description swerve over both the center and fog lines and make an abrupt lane change. Based on this behavior, he stopped the vehicle and spoke to its driver, appellant. He noted that appellant's speech was slurred and slowed, that the car contained an open bottle and a closed bottle of alcoholic beverages, and that appellant's breath and the car both smelled of alcohol. The officer testified that, after appellant failed all three of the field tests the officer administered, the officer's observations and experience led him to believe appellant was under the influence of alcohol.

When the officer asked appellant to perform a preliminary breath test, appellant refused. The officer read the implied-consent advisory. Appellant indicated he understood the advisory, declined to contact an attorney, and declined to submit to further

testing. When the officer arrived with appellant at the law enforcement center, appellant appeared to be asleep. But neither that officer nor two others were able to rouse appellant, and he was taken to the hospital by ambulance. Law enforcement therefore did not obtain the results of any blood or urine tests.

Appellant argues that this evidence is circumstantial in nature and that the state failed to prove beyond a reasonable doubt that appellant's behavior and failure of field sobriety tests were due to alcohol impairment and not some other cause. But an individual can be convicted of driving while impaired by the testimony of an arresting officer alone. *See State v. Waterston*, 371 N.W.2d 650, 651-52 (Minn.App.1985) (holding evidence sufficient to sustain conviction when officers determined that appellant was intoxicated based on their observation that he was involved in one-car accident, smelled of alcohol, was unusually talkative, and was unsteady). The officer's testimony was detailed and, when viewed in the light most favorable to the verdict, provided sufficient basis for the jury to determine that appellant was driving under the influence of alcohol.

B. ***Test Refusal***

Second, appellant challenges the sufficiency of the evidence supporting his test-refusal conviction. The elements of refusal to submit to testing include (1) probable cause to arrest for driving while impaired; (2) recitation of the implied consent advisory; (3) a request by a police officer to submit to a chemical test; and (4) refusal to submit to the requested chemical test. 10A Minnesota Practice, CRIMJIG 29.28 (2008); *see* Minn. Stat. §§ 169A.20, subd. 2; .52, subd. 3 (2008). Appellant now argues that the record

demonstrates that he was confused and unsure about what the officer was asking him to do, not that he refused to submit to testing.

But the implied consent recording demonstrates that appellant said he would not provide a blood or urine sample.

> Officer: Sadi, are you willing to provide a blood or urine sample, then?
>
> Appellant: No.
>
> Officer: No blood or urine?
>
> Appellant: No.
>
> Officer: Okay. What's your reason for refusing to test?
>
> Appellant: I never refused no test. What test?
>
> Officer: I just asked you if you would provide a blood or a urine test.
>
> Appellant: For what?
>
> Officer: To determine your level of alcohol.
>
> Appellant: You guys take me to jail.

Appellant argues that his responses were ambiguous and should have been clarified. But, even if appellant was initially confused about which test he was refusing, the transcript shows that the officer clearly explained which test he wanted appellant to take and why, and appellant replied, "Just take me to jail." Appellant may have been confused due to his own intoxication, but confusion due to intoxication is not a defense. *Johnson v. Comm'r of Pub. Safety*, 375 N.W.2d 99, 102 (Minn. App. 1985).

The jury had sufficient evidence to determine beyond a reasonable doubt that appellant refused to submit to testing.

II.

This court reviews a sentence "to determine whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court." Minn. Stat. § 244.11, subd. 2(b) (2008). This court reviews a sentence imposed by a district court under an abuse of discretion standard. *State v. Ford*, 539 N.W.2d 214, 229 (Minn. 1995). Only in a "rare" case will a reviewing court reverse a district court's imposition of the presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). Appellant argues that the district court abused its discretion in sentencing him to the high end of the presumptive sentencing range.

Appellant received the maximum presumptive guideline sentence. The guidelines are meant to help "maintain uniformity, proportionality, rationality, and predictability in sentencing." *State v. Maurstad*, 733 N.W.2d 141, 146-47 (Minn. 2007). He argues that imposition of the maximum presumptive sentence was an abuse of discretion because, in sentencing him for the DWI conviction, the district court considered a prior lenient sentence imposed for a burglary conviction that included the condition that appellant not consume alcohol. But he offers no support for this argument. He relies on *State v. Kebaso*, 713 N.W.2d 317 (Minn. 2006), and *State v. Mendoza*, 638 N.W.2d 480 (Minn. App. 2002), *review denied* (Minn. Apr. 16, 2002), but they are inapposite: they address only the district court's consideration of immigration consequences in the context of

determining which of two offenses is more serious (*Kebaso*, 713 N.W.2d at 319-20) and whether to depart from the presumptive guideline sentence (*Mendoza*, 638 N.W.2d at 481). Appellant's sentence was within the presumptive guideline range and was not an abuse of the district court's discretion.

Affirmed.