STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1259

State of Minnesota,
Respondent,

vs.

Gerald Dean Russell,
Appellant.

Filed May 13, 2013
Affirmed
Stauber, Judge

Douglas County District Court
File No. 21CR111828

Lori Swanson, Minnesota Attorney General, Jennifer Coates, Assistant Attorney General, St. Paul, Minnesota; and

Chad Larson, Douglas County Attorney, Alexandria, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Theodora Gaïtas, Assistant State Public Defender, John Morrisey, certified student attorney, St. Paul, Minnesota (for appellant)

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

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

STAUBER, Judge

Appellant argues that his felony convictions of driving while impaired (DWI) must be reversed because the state failed to establish that appellant was the same

individual referenced in a record certifying a 2003 conviction and, thus, the evidence was insufficient to prove that he had the prior impaired-driving incidents required for a felony conviction. We affirm.

FACTS

In October 2011, appellant Gerald Dean Russell was charged with first-degree refusal to submit to chemical testing; first-degree DWI; and driving after cancellation—inimical to public safety. The complaint alleged that the first two offenses were first-degree offenses—felonies—because he had three or more qualified prior impaired-driving incidents within ten years.

At trial, appellant stipulated that he had two qualified prior impaired-driving incidents within ten years. The state then presented evidence of a third impaired-driving incident by introducing a certified disposition report from Wisconsin showing that a Gerald D. Russell, with a birthdate of May 17, 1961, was "guilty/no contest" in connection with the offense of operating while intoxicated in November 2003. The state, however, presented no further evidence connecting appellant to the Wisconsin offense, and appellant presented no evidence at trial rebutting this evidence.

The jury found appellant guilty of the charged offenses. Appellant subsequently moved for a judgment of acquittal arguing that the state failed to prove that appellant had a third qualified prior driving incident because there was not sufficient evidence to prove, beyond a reasonable doubt, that appellant was the same individual who was convicted of operating while intoxicated in Wisconsin in November 2003. The district court concluded that under *State v. West*, 175 Minn. 516, 221 N.W. 903 (1928), certified copies

of convictions in a defendant's name constitutes sufficient prima facie evidence of identity and is sufficient evidence to justify the jury finding beyond a reasonable doubt that a defendant is the same person as so named in the records of the prior convictions. Thus, the district court denied appellant's motion and sentenced him to the presumptive sentence of 60 months in prison. This appeal followed.

D E C I S I O N

When reviewing a challenge to the sufficiency of the evidence, this court conducts a thorough analysis of the record to determine whether the jury reasonably could find the defendant guilty of the offense based on the facts in the record and the legitimate inferences that can be drawn from those facts. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). In doing so, the reviewing court views the evidence in the light most favorable to the verdict and assumes that the jury believed the evidence supporting the guilty verdict and disbelieved any evidence to the contrary. *State v. Fleck*, 777 N.W.2d 233, 236 (Minn. 2010). This 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, reasonably could conclude that the defendant is guilty of the charged offense. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988).

Minn. Stat. § 169A.20, subd. 2 (2010), provides: "It is a crime for any person to refuse to submit to a chemical test of the person's blood, breath, or urine under section 169A.51 (chemical tests for intoxication), or 169A.52 (test refusal or failure; revocation of license)." To elevate the offense to a first-degree felony-level offense, the state was required to prove that appellant committed the offense "within ten years of the first of

three or more qualified prior impaired driving incidents." Minn. Stat. § 169A.24, subd. 1(1) (2010). '"Qualified prior impaired driving incident' includes prior impaired driving convictions and prior impaired driving-related losses of license." Minn. Stat. § 169A.03, subd. 22 (2010). Out-of-state convictions under statutes that conform to Minnesota's impaired-driving statute are qualified prior incidents. Minn. Stat. § 169A.03, subd. 20(5) (2010).

Appellant argues that the state failed to establish that he had a third qualified prior driving-while-impaired incident because the state failed to prove, beyond a reasonable doubt, that appellant is the same person as the person identified in the November 2003, Wisconsin operating-while-intoxicated conviction. Thus, appellant argues that the evidence is insufficient to support his conviction of first-degree test refusal.

We disagree. The supreme court has held that "[t]he identity of names is sufficient prima facie evidence of identity, and is sufficient evidence to justify the jury in finding beyond a reasonable doubt that defendant is the same person as so named in the records of the prior convictions." *West*, 175 Minn. at 517, 221 N.W. at 904. Here, the state introduced into evidence a certified disposition report from Wisconsin showing that a Gerald D. Russell, with a birthdate of May 17, 1961, was "guilty/no contest" in connection with the offense of operating while intoxicated in November 2003. Appellant's name is Gerald Dean Russell, which the jury heard appellant recite during the booking recording published to the jury as Exhibit 1. Moreover, the birthdate on the certified disposition report indicated that the person identified in the report was approximately 50 years old. Appellant was visible in the courtroom, and the jury is

permitted to draw reasonable inferences from the evidence presented. *See State v. Atkins*, 543 N.W.2d 642, 646 (Minn. 1996) (stating that a jury is free to make reasonable inferences from the evidence, including inferences based on their experiences or common sense). Finally, appellant presented no evidence rebutting the evidence presented by the state, and the jury believed the evidence presented by the state. *See Fleck*, 777 N.W.2d at 236 (stating that the reviewing court assumes that the jury believed the evidence supporting the guilty verdict and disbelieved any evidence to the contrary). Under *West*, the state's presentation of the November 2003 conviction from Wisconsin was sufficient for the jury to conclude, beyond a reasonable doubt, that the person named in the document is appellant. *See* 175 Minn. at 517, 221 N.W. at 904. This evidence established that appellant had a third qualified prior driving-while-impaired conviction. Accordingly, the evidence was sufficient to sustain appellant's conviction of first-degree refusal to submit to chemical testing.

Appellant argues that the district court's reliance on *West* impermissibly shifted the burden of proof on the prior-conviction element to appellant. Appellant claims that under the district court's rationale, once the state established that someone named Gerald D. Russell had a prior conviction, appellant was required to prove that he did not have a prior conviction. Appellant argues that this shifting of the burden of proof violated his due-process rights.

"It is well-settled that due process 'protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.'" *State v. Hage*, 595 N.W.2d 200, 204 (Minn. 1999) (quoting

Patterson v. New York, 432 U.S. 197, 204, 97 S. Ct. 2319 (1977)). As a result, "[d]ue process does not permit the state to place on a defendant the burden of disproving an element of the crime with which she is charged." *Id.*

Here, despite appellant's claim to the contrary, *West* does not impermissibly shift the burden of proof to appellant. Instead, *West* concludes that for purposes of establishing prior convictions, the introduction into evidence of a certified copy of the judgment of conviction, showing identity of names, is prima facie evidence of identity and will in itself be sufficient for a jury to conclude, beyond a reasonable doubt, that the person named in the document is the defendant. *West*, 175 Minn. at 517, 221 N.W. at 904; *see also Black's Law Dictionary* 638-39 (9th ed. 2009) (defining "prima facie evidence" as "[e]vidence that will establish a fact or sustain a judgment unless contradictory evidence is produced"). The defendant is then free to present evidence rebutting the evidence presented by the state if he so chooses. The fact that the defendant is free to present evidence rebutting the state's evidence of identity is not an impermissible shifting of the burden of proof. Rather, akin to any other criminal matter, once the state has presented evidence which, if believed, establishes guilt beyond a reasonable doubt, a defendant is free to present evidence rebutting the evidence presented in the state's case. Thus, appellant cannot establish a violation of his due-process rights.

Affirmed.