STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0082

State of Minnesota,
Respondent,

vs.

Earlynne Joy Redday,
Appellant.

Filed December 23, 2019
Reversed and remanded
Larkin, Judge

Traverse County District Court
File No. 78-CR-17-28

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Matthew P. Franzese, Traverse County Attorney, Wheaton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Slieter, Judge; and Randall, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

LARKIN, Judge

Appellant challenges her convictions for two counts of first-degree driving while impaired (DWI) under Minn. Stat. § 169A.24 (2016). Because the evidence was insufficient to prove the felony DWI offenses that were tried to the jury, we reverse the resulting convictions. However, we remand for the district court to enter one judgment of conviction for a reduced misdemeanor DWI offense under Minn. Stat. § 169A.20, subd. 1 (2016), and to resentence appellant on that offense.

FACTS

Respondent State of Minnesota charged appellant Earlynne Joy Redday by complaint with two counts of first-degree DWI—driving under the influence of alcohol (counts one and two) and two counts of first-degree DWI—alcohol concentration of 0.08 or more (counts three and four). The complaint alleged that counts one and three were felonies because Redday "committed the violation within ten years of the first of three or more qualified prior impaired driving incidents." The complaint alleged that counts two and four were felonies because Redday "was previously convicted of felony-level Driving While Under the Influence on or about October 29, 1997 in Roberts County, South Dakota."

Redday agreed to a "Stipulation as to Prior Conviction Enhancing DWI Charge to Felony Level." The written stipulation provided,

> [Redday] stipulates . . . to [her South Dakota] conviction on October 29, 1997 for felony DWI, and to her convictions for DWI in Wahpeton, ND on April 14, 2008,

> Richland County, ND on September 9, 2008, Marshall County, SD on May 23, 2011 and again on November 18, 2013.
>
> [Redday] further stipulates that these convictions combine to enhance all driving under the influence charges herein to felony level, and, pursuant to this stipulation, these enhancing elements of the case should not go to the jury. . . . Redday . . . waive[s] her right to have the jury decide this element of the case and stipulates to the conviction or convictions in order to keep them from consideration by the jury.

At the beginning of Redday's trial, the state moved to dismiss counts one and three of the complaint because Redday had "agreed that [she] was going to stipulate to the priors" and "[t]here really is no distinction . . . in front of the jury [regarding] Counts 1 and 3 and Counts 2 and 4." The district court granted the state's motion and dismissed counts one and three, noting that the two remaining counts were "felony counts because of a prior felony conviction." At trial, the district court instructed the jury on the elements of DWI under Minn. Stat. § 169A.20, subd. 1(1), (5), and the jury found Redday guilty of both DWI offenses.

Prior to sentencing, the state notified the district court and Redday that the presentence investigator had questioned whether "Redday's prior South Dakota felony conviction qualifies as a prior felony conviction." At sentencing, the district court, prosecutor, and defense counsel discussed that issue. The prosecutor explained that, "based upon [Redday's] stipulation" to her 2008, 2011, and 2013 DWI convictions, Redday and the state "believe[d] that the Court [could] still sentence this as a felony but sentence it based upon the fact of the four prior convictions not the 1997 felony conviction from . . . South Dakota."

The district court entered judgments of conviction, reasoning that the charged offenses were felonies because Redday had committed a DWI "within 10 years of the first of four or more prior impaired driving incidents." The district court sentenced Redday to a stayed 42-month prison term on count two, driving under the influence of alcohol. Redday appeals.

D E C I S I O N

"It is a crime for any person to drive, operate, or be in physical control of any motor vehicle" when "the person is under the influence of alcohol" or "the person's alcohol concentration at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of the motor vehicle is 0.08 or more." Minn. Stat. § 169A.20, subd. 1(1), (5). A person who commits a DWI under Minn. Stat. § 169A.20 (2016), is guilty of felony first-degree DWI if an enhancement requirement under Minn. Stat. § 169A.24, subd. 1, is satisfied. Subdivision 1(1) provides that a DWI offense is enhanced to first-degree DWI if the offender "commit[ted] the violation within ten years of the first of three or more qualified prior impaired driving incidents." Minn. Stat. § 169A.24, subd. 1(1). Subdivision 1(2) provides that a DWI offense is enhanced to first-degree DWI if the offender "has previously been convicted of a felony under this section." *Id.*, subd. 1(2).

Redday contends that "[t]he state's evidence was insufficient to prove that [she] was guilty of first-degree driving while impaired pursuant to section 169A.24, subdivision 1(2)." The state counters that Redday "was NOT charged or convicted of a violation of [Minn. Stat. § 169A.24, subd. 1(2)]," that "[a]ll four charges, and the two convictions,

relate to violations of [Minn. Stat. § 169A.24, subd. 1(1)]," and that "[t]his is expressly noted not only on the criminal complaint . . . but also on the Sentencing Order." (Emphasis omitted.) Before we review the merits of Redday's sufficiency challenge, we must first determine the offenses of conviction.

Offenses of Conviction

The complaint in this case alleged that counts one and three were felonies because Redday "committed the violation within ten years of the first of three or more qualified prior impaired driving incidents." The complaint alleged that counts two and four were felonies because Redday "was previously convicted of felony-level Driving While Under the Influence on or about October 29, 1997 in Roberts County, South Dakota." However, the state points out that all four counts of the complaint reference Minn. Stat. § 169A.24, subd. 1(1), as the charging statute, which provides for felony enhancement based on the existence of three or more qualified prior impaired driving incidents. The state asserts that those references determine the offenses of conviction. Specifically, the state argues that "nowhere in the charging instrument was [Redday] charged with a violation of [Minn. Stat. § 169A.24, subd. 1(2)]." For the reasons that follow, we disagree.

The purpose of a complaint is to "apprise the defendant of the charge for which [she] is being held and tried." *State v. Clark*, 134 N.W.2d 857, 866-67 (Minn. 1965). "For each count, the indictment or complaint must cite the statute, rule, regulation, or other provision of law the defendant allegedly violated." Minn. R. Crim. P. 17.02, subd. 3. Thus, in determining what charges the state has brought against a defendant, courts should rely upon

the language of a complaint rather than the actual statutory citations contained in it. *See State v. DeVerney*, 592 N.W.2d 837, 847 (Minn. 1999) (discussing indictment).

The description of the offenses charged in counts one and three of the complaint indicate that those charges were based on Redday's 2008, 2011, and 2013 out-of-state DWI convictions. Counts one and three therefore set forth charges under Minn. Stat. § 169A.24, subd. 1(1), the felony-enhancement provision based on three or more qualified prior impaired driving incidents within ten years. But the district court granted the state's motion to dismiss counts one and three before trial, leaving counts two and four of the complaint for trial. The description of the offenses charged in counts two and four of the complaint indicate that those charges were based on Redday's 1997 felony-level South Dakota DWI conviction. Counts two and four therefore set forth charges under Minn. Stat. § 169A.24, subd. 1(2), the felony-enhancement provision based on a prior felony DWI conviction. Indeed, the state admits that "[a]s demonstrated by the charging language under Counts II and IV, [it] had intended to cite to [Minn. Stat. § 169A.24, subd. 1(2)]." Consistent with that admission, the district court stated that the two counts remaining for trial were "felony counts because of a prior felony conviction."

Because the district court granted the state's motion to dismiss counts one and three, counts two and four, which charged an enhanced offense under Minn. Stat. § 169A.24, subd. 1(2), were the only remaining counts to be tried to the jury. Thus, the jury's finding of guilt resulted in convictions of enhanced felony DWI under Minn. Stat. § 169A.24, subd. 1(2). We therefore consider whether the evidence was sufficient to convict Redday of felony DWI under that statute.

Sufficiency of the Evidence

When considering a claim of insufficient evidence, an appellate court carefully analyzes the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). An appellate court will not disturb a guilty 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 that the state proved that the defendant was guilty of the offense charged. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Redday does not argue that the evidence was insufficient to prove the elements of Minn. Stat. § 169A.20, the underlying DWI statute. Instead, Redday argues that the evidence was insufficient to prove that she had previously been convicted of a felony DWI, as required under Minn. Stat. § 169A.24, subd. 1(2). Redday stipulated that she had a "conviction on October 29, 1997 for felony DWI" and to the district court's receipt of a certified copy of her 1997 South Dakota conviction. But Redday asserts that her 1997 South Dakota conviction does not satisfy the requirement of Minn. Stat. § 169A.24, subd. 1(2), because she "was convicted of [a] felony driving under the influence offense under a South Dakota statute, and not under section 169A.24." *See* Minn. Stat. § 169A.24, subd. 1(2) (referring to a previous felony conviction "under *this* section" (emphasis added)). Redday also asserts that the conduct underlying her 1997 South Dakota DWI conviction would not constitute a felony DWI under Minn. Stat. § 169A.24, subd. 1(2). The state does not challenge either of Redday's assertions. Based on our review of the relevant statutes,

we agree that Redday's 1997 South Dakota conviction is not a felony DWI "under [Minn. Stat. § 169A.24]." *See id.*

Because Redday's 1997 South Dakota conviction does not satisfy the requirements of Minn. Stat. § 169A.24, subd. 1(2), the evidence was insufficient to convict her of first-degree DWI under that statute. We therefore reverse her convictions.

Remedy

If an appellate court reverses a district court's judgment of conviction, the appellate court must direct:

> (a) a new trial;
> (b) vacation of the conviction and entry of a judgment of acquittal; or
> (c) reduction of the conviction to a lesser included offense or to an offense of lesser degree, as the case may require. If the court directs a reduction of the conviction, it must remand for resentencing.

Minn. R. Crim. P. 28.02, subd. 12.

Redday argues that "[i]f this Court is not inclined to vacate [her] conviction[s] outright given the jury's verdict, it may alternatively reduce [her] convictions for first-degree driving while impaired to the lesser included offense of misdemeanor driving while impaired."

At trial, the district court instructed the jury on the elements of DWI under § 169A.20, subd. 1(1), (5), and the jury found Redday guilty of both DWI offenses. A person who violates Minn. Stat. § 169A.20, subd. 1, is guilty of fourth-degree DWI, a misdemeanor. Minn. Stat. § 169A.27 (2016). Because Redday does not dispute that the

evidence was sufficient to support the jury's finding of guilt based on the elements of DWI under Minn. Stat. § 169A.20, subd. 1(1), (5), a reduced conviction is appropriate.

However, Redday argues and the state agrees that the district court improperly entered judgments of conviction for both of the proven DWI offenses because they arose from the same alleged criminal conduct and derive from different subsections of the same statute. At sentencing, the district court stated, "I'm not going to adjudicate or do anything on Count 4 because it's a lesser included offense. It will remain unadjudicated." But the district court's judgment of conviction states that Redday was convicted of two counts of first-degree DWI under Minn. Stat. § 169A.24, subd. 1(1). Appellate courts look to the official judgment of conviction in the district court file as conclusive evidence of whether an offense has been formally adjudicated. *See Spann v. State*, 740 N.W.2d 570, 573 (Minn. 2007) (stating that the "official judgment of conviction in the district court file" is "conclusive evidence of whether an offense has been formally adjudicated" (quotation omitted)).

"Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both." Minn. Stat. § 609.04, subd. 1 (2016). An "included offense" includes "[a] lesser degree of the same crime" and "[a] crime necessarily proved if the crime charged were proved." *Id.*, subd. 1(1), (4). The Minnesota Supreme Court has interpreted Minn. Stat. § 609.04 to "bar[] multiple convictions under different sections of a criminal statute for acts committed during a single behavioral incident." *State v. Jackson*, 363 N.W.2d 758, 760 (Minn. 1985). Whether a conviction

violates Minn. Stat. § 609.04 is a legal question that this court reviews de novo. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012).

The circumstances of *State v. Clark* are instructive. 486 N.W.2d 166, 170-71 (Minn. App. 1992). In *Clark*, a jury found the defendant guilty of "driving while under the influence of alcohol and driving with a blood alcohol concentration of .10 or more" in violation of the DWI statute in effect at the time. *Id.* at 169. The district court entered judgments of conviction for both offenses and sentenced the defendant for the offense of driving under the influence of alcohol. *Id.* at 170-71. This court held that one of the convictions must be vacated under Minn. Stat. § 609.04 because they were based on different subsections of the same statute and stemmed from acts committed during a single behavioral incident. *Id.*

As in *Clark*, the DWI convictions in this case were based on different subsections of the same criminal statute and stemmed from acts committed during a single behavioral incident. Like *Clark*, there may be only one judgment of conviction in this case.

Remand Instructions

We remand for the district court to vacate Redday's felony-level judgments of conviction under Minn. Stat. § 169A.24, to enter one judgment of conviction for a reduced misdemeanor DWI offense under Minn. Stat. § 169A.20, subd. 1, and to resentence Redday on that misdemeanor offense.

Reversed and remanded.