STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0113

State of Minnesota,
Respondent,

vs.

Angelica Shantel Easterling,
Appellant.

Filed September 8, 2020
Affirmed
Cochran, Judge

Ramsey County District Court
File No. 62-CR-19-2170

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

Lyndsey M. Olson, St. Paul City Attorney, Clifford R. Berg, Assistant City Attorney, St. Paul, Minnesota (for respondent)

Stephen V. Grigsby, Northfield, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Florey, Judge; and Cochran, Judge.

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

COCHRAN, Judge

In this direct appeal from the judgment of conviction for driving under the influence of marijuana, appellant argues that the evidence was insufficient to prove beyond a reasonable doubt that she was impaired by marijuana. We affirm.

FACTS

Respondent State of Minnesota charged appellant Angelica Shantel Easterling with third-degree driving while impaired (DWI), in violation of Minn. Stat. § 169A.20, subd. 1(2) (2018), alleging that she operated a motor vehicle under the influence of marijuana. Easterling proceeded by court trial. Before trial began, Easterling stipulated to four facts:

> 1. On January 7, 2019 at approximately 5:27 p.m., Angelica Shantel Easterling was driving a motor vehicle in the area of Payne Avenue and Tedesco in the City of Saint Paul, Ramsey County, Minnesota.
>
> 2. A sample of Angelica Shantel Easterling's blood taken at 7:03 p.m. revealed the presence of tetrahydrocannabinol and a metabolite of tetrahydrocannabinol in her system within two hours of driving.
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> 3. Tetrahydrocannabinol and the metabolite of tetrahydrocannabinol are Schedule 1 controlled substances per Minn. Stat. § 152.02.2 (h)(1)(2).
>
> 4. Angelica Shantel Easterling has a previous conviction for driving while under the influence from November 23, 2013.

Easterling also expressly agreed on the record that she was stipulating to all elements of the offense except that she was driving under the influence of marijuana.

The state called one witness, a Saint Paul police officer. The officer testified that he had training in field sobriety testing, including training in the detection of "impaired driving with unknown controlled substances." He was also a field sobriety instructor and a drug recognition evaluator. The officer testified that poor driving conduct is an indicator that a driver is under the influence. Specifically, things like speeding, failing to stop for

stop signs, and failing to yield for vehicles that have the right-of-way are indicators that a person might be driving under the influence.

On January 7, the officer and his partner observed a vehicle driven by Easterling make a left turn in front of a school bus at an intersection when the school bus had the right-of-way. Both the school bus and Easterling had a green light. The school bus had to stop to avoid a crash, and the vehicle came close to the bus. The officers caught up to Easterling's vehicle to conduct a traffic stop. As the officer approached Easterling's vehicle, she rolled her windows down and a large amount of smoke vented out of the vehicle. The officer detected a strong odor of burnt marijuana. The officer asked Easterling how much marijuana she had smoked that day. Easterling responded that she had smoked a marijuana cigarette about an hour before the traffic stop.

Believing that this was a good opportunity for trainee officers to perform field sobriety tests, the officer called for a trainee squad to come to the location. A trainee officer conducted field sobriety tests. The trainee officer conducted the horizontal gaze nystagmus test, the walk-and-turn test, the one-leg stand test, and the lack-of-convergence test.[1] After observing the tests that the trainee officer conducted, the officer concluded that Easterling should be arrested for DWI.

[1] The lack-of-convergence test, according to the officer's testimony, is designed to detect whether the suspect is under the influence of certain drugs, including "cannabis."

The officer testified that he was also a "certified DRE."[2] He did not conduct a "DRE exam," however, because he believed that there was "more than enough" information to arrest Easterling for DWI based on her driving conduct, her admission to smoking marijuana, and the results of the field sobriety tests.

For her case-in-chief, Easterling called a friend who was riding in her car during the incident. The friend testified that he did not see Easterling smoke marijuana. He testified that he smoked marijuana in Easterling's car that day. Easterling did not testify.

The district court issued written findings of fact, conclusions of law, and an order determining that Easterling drove under the influence of marijuana and was therefore guilty of third-degree DWI. Easterling appeals.

D E C I S I O N

The sole issue in this appeal is whether the evidence is sufficient to prove that Easterling drove while under the influence of marijuana. It is a crime to drive a motor vehicle while under the influence of a controlled substance. Minn. Stat. § 169A.20, subd. 1(2). A person is under the influence of a substance "when a person does not possess that clearness of intellect and control of himself that he otherwise would have." *State v. Ards*, 816 N.W.2d 679, 686 (Minn. App. 2012) (quotation omitted). Easterling maintains that the evidence is insufficient to prove, beyond a reasonable doubt, that she drove while under the influence of marijuana.

[2] In this context, "DRE" means "Drug Recognition Expert." *See State v. Klawitter*, 518 N.W.2d 577, 578 (Minn. 1994).

There are two standards of review that might apply to a sufficiency-of-the-evidence challenge. The nature of the evidence supporting the conviction dictates which standard applies. When a conviction is based on direct evidence alone, we undertake a "painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the [fact-finder] to reach the verdict which [it] did." *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (quotation omitted). We assume that "the [fact-finder] believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted).

"A conviction based on circumstantial evidence, however, warrants heightened scrutiny." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). When reviewing the sufficiency of the evidence for a conviction based on circumstantial evidence, we conduct a two-step analysis. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). First, we identify the circumstances proved at trial, disregarding evidence that is not consistent with the fact-finder's verdict. *Id.* Second, we consider the inferences that can be drawn from the circumstances proved. *Id.* We give no deference to the fact-finder's choice among reasonable inferences at this second step. *Id.* The evidence is sufficient if the circumstances proved, viewed as a whole, are "consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt." *Id.* To overturn a conviction, the hypothesis of innocence must be rational given the circumstances proved, and not "too speculative to create a reasonable doubt." *State v. Hughes*, 355 N.W.2d 500, 502 (Minn. App. 1984) (quotation omitted), *review denied* (Minn. Jan. 2, 1985); *see also State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010)

("To successfully challenge a conviction based upon circumstantial evidence, a defendant must point to evidence in the record that is consistent with a rational theory other than his guilt. However, possibilities of innocence do not require reversal of a jury verdict so long as the evidence taken as a whole makes such theories seem unreasonable." (quotation omitted)).

In this case, we apply the circumstantial-evidence standard.[3] We first determine the circumstances proved. The circumstances proved include the four stipulated facts identified above. The other circumstances proved include: (1) the police officer had been trained in sobriety testing, including the detection of "impaired driving with unknown controlled substances"; (2) the officer testified that driving conduct, including failing to yield for vehicles that have the right-of-way, may indicate that a person is driving under the influence of a substance; (3) the officer saw Easterling turn left in front of a school bus that had the right-of-way at an intersection; (4) Easterling's vehicle came close to the bus, and the bus had to slow down to avoid a collision; (5) when the officer approached Easterling's vehicle after stopping her, he saw a large cloud of smoke vent out of the vehicle; (6) the officer detected a strong odor of burnt marijuana; (7) Easterling admitted that she smoked marijuana about an hour before the traffic stop; (8) the officer observed a

[3] We have previously held that the traditional direct-evidence standard applies when reviewing a DWI conviction when the state presents direct evidence of the defendant's alcohol consumption and direct evidence of impaired driving. *See State v. Olson*, 887 N.W.2d 692, 700 (Minn. App. 2016). Because the parties agreed at oral argument that the circumstantial-evidence standard applies, and because we ultimately conclude that Easterling's sufficiency challenge fails even under the heightened circumstantial-evidence standard, we apply the heightened standard and therefore do not need to determine which standard applies.

trainee officer conduct field sobriety tests, including a horizontal gaze nystagmus test, the walk-and-turn test, the one-leg stand test, and the lack-of-convergence test; and (9) after watching the tests that the trainee officer conducted, the officer concluded that Easterling should be arrested for impaired driving.

Next, we determine whether the circumstances proved, viewed as a whole, are "consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt." *Harris*, 895 N.W.2d at 601. Here, the only element at issue is whether Easterling was impaired by marijuana, meaning that she did "not possess that clearness of intellect and control of [herself] that [s]he otherwise would have" absent substance use. *Ards*, 816 N.W.2d at 686 (quotation omitted).

The circumstances proved are clearly consistent with a reasonable inference that Easterling drove while under the influence of marijuana. Easterling admitted that she used marijuana about an hour before the traffic stop. The officer observed Easterling nearly cause an accident by driving in front of a school bus that had the right-of-way at an intersection. The officer saw smoke vent out of Easterling's vehicle, and detected the odor of burnt marijuana. Easterling performed poorly on field sobriety tests. And Easterling's blood sample contained tetrahydrocannabinol and a metabolite of tetrahydrocannabinol. These circumstances are consistent with the reasonable inference that Easterling ingested marijuana and that she did not "possess that clearness of intellect and control of [herself] that [s]he otherwise would have" had she not ingested marijuana. *Id.* (quotation omitted).

Easterling argues, however, that the circumstances proved are consistent with the rational hypothesis that she was not under the influence of marijuana. She asserts that

without evidence of how she would act while sober, the trial evidence does not foreclose the reasonable inference that she was operating as she ordinarily would. And Easterling maintains that there was no evidence in the record supporting that the field sobriety tests that she took could accurately detect whether she was impaired by marijuana.[4] We are not persuaded.

We conclude that it is not reasonable to infer from the circumstances proved that Easterling was not under the influence of marijuana. It is not disputed that Easterling ingested marijuana about an hour before the traffic stop. Moreover, the officer observed smoke vent out of her vehicle and detected the odor of marijuana during the traffic stop. Easterling also showed signs of impairment. The basis of the traffic stop was that Easterling took a left turn in front of a school bus with the right-of-way at a stoplight. The officer testified at trial that poor driving conduct, including failure to yield for those with the right of way, may indicate impairment. Furthermore, according to the officer, Easterling's performance on field sobriety tests showed "impairment." In isolation, each of these facts may be insufficient to prove that Easterling drove under the influence of

[4] Easterling also maintains that the evidence is insufficient to support her conviction because the officer did not testify that he believed that Easterling was under the influence of marijuana. This assertion is inconsistent with the record. While the officer never expressly testified that he believed that Easterling was under the influence of marijuana, he did testify that after observing the trainee officer administer field sobriety tests, he "concurred with the [trainee officer] that he had enough to show impairment and to make an arrest." In context with the officer's other testimony about the indicia of marijuana use during the traffic stop, and the officer's specific testimony that one of the field sobriety tests that the trainee officer administered was designed to detect whether the suspect was under the influence of certain drugs, including cannabis, it is clear to us that the officer's testimony establishes his opinion that Easterling was impaired by marijuana.

marijuana. But viewed as a whole, the circumstances proved foreclose any *reasonable* inference that Easterling "possess[ed] that clearness of intellect and control of [herself] that [s]he otherwise would have" had she not ingested marijuana. *Ards*, 816 N.W.2d at 686 (quotation omitted).

Relying primarily on an unpublished, non-precedential opinion, Easterling also asserts that the state failed to prove that she did not have some other condition that might explain her driving conduct and sobriety-test performance, other than marijuana impairment. *See State v. Suber*, No. A06-2438, 2008 WL 942622, at *5 (Minn. App. Apr. 8, 2008). But unlike in *Suber*, there is no evidence in the record that Easterling had some other condition that would explain the behavior that supports an inference of impairment. Thus, in this case, the premise that Easterling had a condition that could negate the inference of impairment is merely speculation and is insufficient to establish a rational hypothesis. *See State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008) (holding that a defendant "may not rely on mere conjecture" and instead must "point to evidence in the record that is consistent with a rational theory other than guilt"). Easterling's conviction for DWI survives the circumstantial-evidence standard of review because the circumstances proved are "consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt." *Harris*, 895 N.W.2d at 601.

Finally, Easterling appears to argue that expert testimony—specifically, testimony regarding the drug-recognition protocol addressed in *Klawitter*[5]—is required to prove that a defendant was under the influence of marijuana. But Easterling cites no authority that establishes such a requirement. We are unaware of any statute or appellate decision that requires the state to introduce expert testimony to establish marijuana impairment and decline to establish that requirement here.

Affirmed.

[5] In *Klawitter*, the supreme court held that testimony regarding the drug-recognition protocol was admissible at trial in appropriate circumstances. 518 N.W.2d at 586.